

INDEX

Sr. No.	Chapter Name	Page No.
1	Judicial and Administrative Framework	1.1 – 1.16
2	General Principles of Drafting and Relevant Substantive Rules	2.1 – 2.15
3	Secretarial Practice in Drafting Notice, Agenda and Minutes of Company's Meetings	3.1 – 3.25
4	Drafting and Conveyancing Relating to Various Deeds and Documents (I)	4.1 – 4.41
5	Drafting and Conveyancing Relating to Various Deeds and Documents (II)	5.1 – 5.17
6	Drafting and Conveyancing Relating to Various Deeds and Documents (III)	6.1 – 6.39
7	Drafting and Conveyancing Relating to Various Deeds and Documents (IV)	7.1 – 7.26
8	Drafting of Agreements under the Companies Act	8.1 – 8.22
9	Pleadings	9.1 – 9.27
10	Art of Writing Opinions	10.1 – 10.9
11	Appearances & Art of Advocacy	11.1 – 11.12



Judicial and Administrative Framework

Legislative functions of Administration

There is no such general power granted to the executive to make law, it only supplements the law under the authority of legislature. This supplementary legislation is known as 'delegated legislation' or 'subordinate legislation'. The development of the legislative powers of the administrative authorities in the form of the delegated legislation occupies very important place in the study of the administrative law.

Necessity

Some of the limitation of the law making role of the Parliament are:

- The Parliament sits only for a limited period of time. Certain emergency situations may arise which necessitate special measures. In such cases speedy and appropriate action is required.
- The bulk of the business of the Parliament has increased and it has no time for the consideration of complicated and technical matters.
- Certain matters covered by delegated legislation are of technical nature which require handling by experts. In such cases it is inevitable that powers to deal with such matters is given to the appropriate administrative agencies to be exercised according to the requirements of the subject matter.
- Parliament while deciding upon a certain course of action cannot foresee the difficulties, which may be encountered in its execution. Various statutes contain a 'removal of difficulty clause' empowering the administration to remove such difficulties by exercising the powers of making rules and regulations.
- The rules and regulations, if found to be defective, can be modified quickly. Experiments can be made and experience can be profitably utilized.

Constitutionality

Articles 245 and 246 provide that the legislative powers shall be discharged by the Parliament and State legislature. The power of Legislature to delegate its legislative power is not prohibited in the Constitution.

There are risks inherent in the process of delegation. An overburdened legislature or one controlled by a powerful executive may unduly overstep the limits of delegation.

It may-

- not lay down any policy at all;
- declare its policy in vague and general terms;
- not set down any standard for the guidance of the executive;
- confer an arbitrary power to the executive to change or modify the policy laid down by it without reserving for itself any control over subordinate legislation.

Delegation is permissible so long as the Legislature does not abdicate its law making role in favour of the executive. When a legislature is given plenary power to legislate on a particular subject, there must also be an implied power to make laws incidental to the



exercise of such power. A legislature cannot certainly strip itself of its essential functions and vest the same on an extraneous authority. The primary duty of law making has to be discharged by the legislature itself but delegation may be resorted to as a subsidiary or ancillary measure.

Mahajan C.J. in *Hari Shankar Bagla v. State of Madhya Pradesh*, had observed: "The Legislature cannot delegate its functions of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. The legislature must declare the policy of the law and the legal principles which are to control and govern cases and must provide a standard to guide the officials of the body in power to execute the law".

The Constitution confers a power and imposes a duty on the legislature to make laws. The essential legislative function is the determination of the legislative policy and its formulation as a rule of conduct. Obviously it cannot abdicate its functions in favour of another.

The delegation should not, in any case, be unguided and uncontrolled. Parliament and State Legislatures cannot abdicate the legislative power in its essential aspects which is to be exercised by them. It is only a non-essential legislative function that can be delegated.

Forms of delegation

There are various types of delegation of legislative power:

1. **Skeleton delegation:** In this type of delegation of legislative power, the enabling statutes set out broad principles and empowers the executive authority to make rules for carrying out the purposes of the Act. Eg: The Mines and Minerals (Regulation and Development) Act, 1948.
2. **Machinery type:** This is the most common type of delegation of legislative power, in which the Act is supplemented by machinery provisions, that is, the power is conferred on the concerned department of the Government to prescribe –
 - i) The kind of forms
 - ii) The method of publication
 - iii) The manner of making returns, and
 - iv) Other administrative details
3. **Removal of difficulty clause:** Usually such a power comes with a time limit within which it can be exercised. The power delegated to the Executive to modify any provisions of an Act by an order must be within the framework of the Act giving such power. The power to make such a modification no doubt, implies certain amount of discretion but it is a power to be exercised in aid of the legislative policy of the Act and cannot –
 - i. travel beyond it, **OR**
 - ii. run counter to it, **OR**
 - iii. change the essential features, the identity, structure or the policy of the Act.

Requirements

Judicial and Admin framework

- 1) **Prior consultation with affected people:** Interested bodies must be consulted before the formulation and application of rules and regulations to ensure the participation of affected interests so as to avoid various possible hardships
- 2) **Prior publicity of proposed rules and regulations:** The rules of publication provide that notice of proposed 'statutory rules' is given and the representations of suggestions by interested bodies be considered and acted upon if proper.
- 3) **Publication of Delegated Legislation:** To ensure that law may be ascertained with reasonable certainty by the affected persons. Further the rules and regulations should not come as a surprise and should not consequently bring hardships which would naturally result from such practice. If the law is not known a person cannot regulate his affairs to avoid a conflict with them and to avoid losses.
- 4) **Laying:** After delegation is sanctioned in an Act, the exercise of this power by the authority concerned receives the attention of the House of the Parliament. In a formal sense, this is sought to be provided by making it necessary that the rules, etc., shall be laid on the Table of the House. The provisions for laying the rule, etc., are being made now practically in every Act which contains a rule making provision.

Modes of control over delegated legislation

The delegation of legislative power in hands of administrative authorities can also be dangerous because of the possibility of abuse of powers and other attendant evils.

The control of delegated legislation may be one or more of the following types:

1) Procedural

The most beneficial safeguard is the development of a procedure to be followed by the delegates while formulating rules and regulations. Usually The Acts of Parliament provide certain procedural requirements to be complied with by such authorities while making rules and regulations etc., for example consultation with interested bodies, publication of draft rules and regulations, hearing of objections, considerations of representations, subordinate legislation in contravention of mandatory procedural requirements would be invalidated by the court as being ultra vires the parent statute.

2) Parliamentary

Discretion as to the formulation of the legislative policy is prerogative and function the legislature and it cannot be delegated to the executive. Discretion to make notifications and alterations in an Act while extending it and to effect amendments or repeals in the existing laws is subject to the condition precedent that essential legislative functions cannot be delegated.

Parliamentary control of delegated legislation is exercised through Parliamentary debate on the provisions of a Bill providing for delegation. During such debates the issue of necessity of delegation and the contents of the provisions providing for delegation can be taken up.

Along with bill Memoranda of Delegated Legislation is also provided in which -

- i. full purpose and effect of the delegation of power to the subordinate authorities,
- ii. the points which may be covered by the rules,
- iii. the particulars of the subordinate authorities or the persons who are to exercise



the delegated power

AND

By getting them scrutinized by Parliamentary Committee (Committee on Subordinate Legislation, presided by member of opposition) of the Rules, Regulations, Bye-laws and Orders.

The Committee examines whether-

- i) The statutory rules, orders, bye-laws, etc. made by any-making authority, and reports to the House whether the delegated power is being properly exercised.
- ii) The Subordinate legislation is as per general objects of the Constitution or the particular;
- iii) It contains matter which should more properly be dealt within an Act;
- iv) It contains imposition of any tax;
- v) It directly or indirectly, ousts the jurisdiction of the courts of law;
- vi) It gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly confer any such power;
- vii) It is constitutional and valid;
- viii) It involves expenditure from the CFI or the Public Revenues;
- ix) it appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made; and there appears to have been unjustifiable delay in its publication on its laying before the Parliament.

Judicial

Judicial control over delegated legislature can be exercised at the following 2 levels:

- 1) Delegation may be challenged as unconstitutional: The scope of permissible delegation is fairly wide. Within the wide limits delegation is sustained if it does not, otherwise, infringe the provisions of the Constitution. Article 13(3)(a) of the Constitution of India lays down that law, which includes any ordinances, order, by-law, rule, regulation, notification, etc. if found in violation of fundamental rights would be void. The limitations imposed by the application of the rule of ultra vires are quite clear. If the Act of the Legislature under which power is delegated is ultra vires, the power of the legislature in the delegation can never be good.
- 2) That the Statutory power has been improperly exercised. The court can inquire into whether delegated legislation is within the limits laid down by the statute.

The validity of the rules may be assailed as the stage in 2 ways:

- a. That they run counter to the provisions of the Act; and
- b. That they have been made in excess of the authority delegated by the Legislature. If a piece of delegated legislation were found to be beyond such limits, court would declare it to be ultra vires and hence invalid.

Tribunals

They are quasi-judicial bodies that are less formal, less expensive and enable speedy disposal of cases. With 42nd amendment in constitution in 1976, Part XIV-A of the



Judicial and Admin framework

Constitution of India having only 2 Articles viz 323 A and 323 B makes provisions for establishment and functioning of the Tribunals in India. As per Article 323A any parliamentary law may establish administrative Tribunal for Union and even for State separately. Article 323 B covers matters other than specified under Article 323A. There are tribunals for settling various administrative and other disputes including CAT, ITAT, NCLT, NGT, COMPAT, SAT and many more.

Important Tribunals

Debt Recovery Tribunal

Established u/s 3 of Recovery of Debts Due to Banks and Financial Institutions (RDDBFI) Act, 1993. Purpose was to receive claim applications from Banks and Financial Institutions against their defaulting borrowers so that speedy recovery can be made and NPA with banks and FI can be reduced. DRT acts as a single judicial forum for adjudication of cases as well as execution of the decrees passed for recovery of debts due to banks and FI under RDDBFI Act 1993, SARFAESI Act 2002 and IBC 2016 for Individuals and Partnership firms.

National Company Law Tribunal

NCLT is a quasi-judicial body exercising equitable jurisdiction, which was earlier being exercised by the High Court or the Central Government.

established by the Central government under section 408 of the Companies Act, 2013 with effect from 1st June 2016.

It has powers to regulate its own procedures.

Establishment of NCLT consolidates the corporate jurisdiction of the following authorities:

- i. CLB
- ii. BIFR
- iii. AAIFR
- iv. Jurisdiction and powers relating to winding up restructuring and other such provisions, vested in the High Courts.

Consumer Forum

To protect the rights of the consumers and establish a mechanism for settlement of consumer disputes, a 3-tier redressal forum containing District, State and National level consumer forums has been set up. The District Consumer Forum deals with consumer disputes involving a value of up-to Rs. 20 Lakh. State Commission has jurisdiction in consumer disputes having a value of up-to Rs.1 Cr. The National Commission deals in consumer disputes above Rs.1 Cr, in respect of defects in goods and or deficiency in service. It is important to note that consumer courts do not entertain complaints for alleged deficiency in any service that is rendered free of charge or under a contract of personal service.

Motor Accident Claims Tribunal (MACT)

MACT deals with matters related to compensation of motor accidents victims or their next of kin (legal Heir). Victims of motor accident or legal heirs of motor accident



victims or a representing Advocate can file claims relating to loss of life/property and injury cases resulting from Motor Accidents. Motor Accident Claims Tribunal are presided over by Judicial Officers from the State Higher Judicial Service and are under direct supervision of the Hon'ble High Court of the respective state.

Central Administrative Tribunal (CAT)

Central administrative Tribunal is a multi-member body to hear on cases led by the staff members alleging non-observation of their terms of service or any other related matters and to pass judgments on those cases.

National Green Tribunal (NGT)

National Green Tribunal was established for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation of damages to persons and property and for related matters.

Types of Courts



Broadly courts are of 2 types –

Civil - deal with matters of civil nature

Criminal - deal with criminal matters

The framework of the current legal system has been laid down by the Indian Constitution and the judicial system derives its powers from it but the system has been inherited from the British rule that preceded independence. In India, we have courts at various levels – different types of courts, each with varying powers depending on the tier and jurisdiction bestowed upon them. They form a hierarchy with the Supreme Court of India at the top, followed by High Courts of respective states with District and Sessions Judges sitting in District Courts and Magistrates of Second Class and Civil Judge (Junior Division) at the bottom.



The normal trend of the judiciary system is to start any general dispute in the lower court which is then escalated to the higher courts. The judgments can be challenged in the higher courts if the parties to the cases are not satisfied. The process of escalation is systematic.

Supreme Court of India

Supreme court considered as guardian of constitution of India is highest level of court established under chapter IV of Part V of constitution of India. The Supreme Court of India consists of 26 Judges (including the Chief Justice of India). The judges hold office until they attain the age of 65 years.



- ✓ It has exclusive and original power to hear the cases between CG and SG or SG and SG.
- ✓ It also has original but not exclusive power for enforcement of Fundamental Rights conferred in constitution through writ jurisdiction.
- ✓ It also has appellate jurisdiction.
- ✓ It can exercise extra ordinary jurisdiction to hear any appeal against the order of any court or tribunal through the option of special leave petition (SLP) except the case of tribunal related to Armed Forces.
- ✓ It can withdraw or transfer any case from any High Court.
- ✓ It can review any verdict ordered.
- ✓ Its order is binding on all the subordinate courts across India.
- ✓ It can also provide its opinion on any matter in public interest on a reference made by President.

High Courts

High Court stands at the head of the State's Judicial Administration. There are 21 High Courts in the country, 3 having jurisdiction over more than one State. Among the Union Territories, Delhi alone has a High Court of its own. Other 6 Union Territories come under jurisdiction of different State High Courts. Each High Court comprises a Chief Justice and such other Judges as the President may, from time to



time appoint. The Chief Justice of a High Court is appointed by the President in consultation with the Chief Justice of India and the Governor of the state. The procedure for appointing of the High Courts judges is the same except that the recommendation for the appointment of Judges in the High Court is initiated by the Chief Justice of the High Court concerned. They hold office up to 62 years of age. To be eligible for appointment as a judge, one must be a citizen of India and should have held a judicial office in India for 10 years or must have practiced as an advocate of a High Court or 2 or more such courts in succession for a similar period.



Scope and location of High Courts

Name	Year	Territorial-Jurisdiction	Seat
Allahabad	1866	Uttar Pradesh	Allahabad (Bench at Lucknow)
Andhra Pradesh	1954	Andhra Pradesh	Hyderabad
Bombay	1862	Maharashtra, Goa, Dadra and Nagar Haveli, Daman and Diu	Mumbai (Benches at Nagpur, Panaji and Aurangabad)
Kolkata	1862	West Bengal	Kolkata (Circuit Bench at Port Blair)
Chhattisgarh	2000	Bilaspur	Bilaspur
Delhi	1966	Delhi	Delhi
Guwahati*	1948	Assam, Manipur, Meghalaya, Nagaland, Tripura, Mizoram and Arunachal Pradesh	Guwahati (Benches at Kohima, Aizawl, Imphal, Shillong, Agartala and Itanagar)
Gujarat	1960	Gujarat	Ahmedabad
Himachal Pradesh	1971	Himachal Pradesh	Shimla
Jammu and Kashmir	1928	Jammu and Kashmir	Srinagar and Jammu
Jharkhand	2000	Jharkhand	Ranchi
Karnataka**	1884	Karnataka	Bangaluru
Kerala	1958	Kerala	Ernakulam
Madhya Pradesh	1956	Madhya Pradesh	Jabalpur (Benches at Gwalior and Indore)
Madras	1862	Tamil Nadu and Puducherry	Chennai (Bench at Madurai)
Odisha	1948	Odisha	Cuttack
Patna	1916	Bihar	Patna
Punjab and Haryana	*** 1966	Punjab and Haryana	Punjab and Haryana, Chandigarh
Rajasthan	1949	Rajasthan	Jodhpur (Bench at Jaipur)
Sikkim	1975	Sikkim	Gangtok
Uttarakhand	2000	Uttarakhand	Nainital

* Originally known as Assam High Court, renamed as Guwahati High Court in 1971.

** Originally known as Mysore High Court, renamed as Karnataka High Court in 1973.

*** Originally known as Punjab High Court, renamed as Punjab and Haryana High Court in 1966.

Each High Court has powers of superintendence over all courts within its jurisdiction. It can call for returns from such courts, make and issue general rules and prescribed forms to regulate their practices and proceedings and determine the manner and form in which book entries and accounts shall be kept.

- ✓ Article 226 of Constitution has given the power to the High Courts to issue different writs for the enforcement of Fundamental Rights.
- ✓ It can also hear appeals against the orders of lower courts.
- ✓ As per Article 227 all High courts can practice superintendence over all the courts and tribunals effective within the regional jurisdiction of the High Court.
- ✓ All the High Courts can pronounce punishment for contempt of court.
- ✓ The High Courts are confined to the jurisdiction of State, group of States or Union Territory.
- ✓ The subordinate courts are covered by the administrative power of the High Courts under which they function.

Lower Courts or Subordinate courts

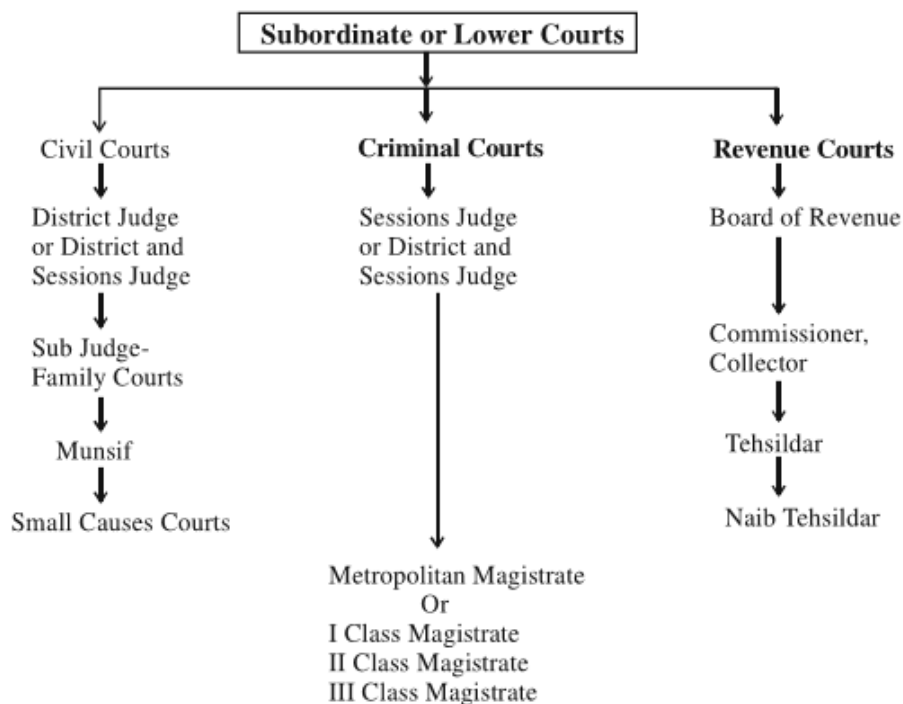
The District Court in India are established by the respective State Government in India for every district or more than one district taking into account the number of cases, population distribution in the district. These courts are under administrative control of the High Court of the State to which the district concerned belongs.

The court at the district level has a dual structure that runs parallel

- ✓ one for the civil side and
- ✓ one for the criminal side.

The civil side is simply called the District Court and is headed by the district judge. There are additional district judges and assistant district judges who are there to share the additional load of the proceedings of District Courts. These additional district judges have equal power like the district judges for the jurisdiction area of any city which has got the status of metropolitan area as conferred by the state government. These district courts have the additional jurisdictional authority of appeal handling over the

subordinate courts in their jurisdiction. The subordinate courts covering the civil cases, in this aspect are considered as Junior Civil Judge Court, Principal Junior and Senior Civil Judge Court, which are also known as Subordinate Courts. All these courts are treated with ascending orders.



The criminal court at the district level is headed by the **Sessions Judge**. Usually there are Additional Sessions Judges as well in the Court to share the workload of the Sessions Judge.

The subordinate courts covering the criminal cases are

- ✓ 2nd Class Judicial Magistrate Court,
- ✓ 1st Class Judicial Magistrate Court, and
- ✓ Chief Judicial Magistrate Court along with
- ✓ family courts

which are established to deal with the issues related to disputes of matrimonial issues only. The status of Principal Judge of family court is at par with the District Judge.

The court of the district judges is the highest civil court in a district. It exercises both judicial and administrative powers. It has the power of superintendence over the courts under its control. The parallel structure of law courts at the district level usually converges at the top and the head of the court has power of trying both civil and criminal cases. Thus he is designated as the District and Sessions Judge. It must also be borne in mind that name of the subordinate courts at the district level is not uniform across the States.

Revenue Courts



There is a government apparatus to deal with revenue matters. These are 'courts' but are not a part of Judiciary because they come under the administration of the State governments. Revenue courts deal with matters pertaining to stamp duty, registration etc.

At the lowest level, we have the 'Tehsildar' or Assistant Tehsildar. Above it is the office of the 'Sub-Divisional Officer' (SDO). Then comes the office of District Collector and above it is the 'Board of Revenue'. The Board of Revenue is the highest decision making body at the State level.

Procedural aspects of working of Civil Courts

1) Jurisdiction

As per **CPC 1908**, the courts shall have jurisdiction to try all suits of a civil nature except suits of which cognizance is either expressly or impliedly barred. The inherent lack of jurisdiction cannot be cured even by consent of parties, which means if the court does not have any jurisdiction at all, the parties cannot subsequently confer it by an agreement. The onus of proving that the court does not have jurisdiction lies on the party who disputes the jurisdiction.

The jurisdiction is basically of 3 types -

- i. Pecuniary:** - Depending on Monetary basis.
- ii. Territorial:** - Depending on Territorial Jurisdiction to ensure smooth and speedy trial of the matter with least inconvenience to the affected parties.
- iii. As to subject matter:** disputes relating to terms of service of government servants go to Administrative Tribunals. For example, Motor Vehicles Act provides for special tribunal for matters under it.

Note: The 1st and fundamental rule governing jurisdiction is that suit shall be instituted in the court of lowest grade competent to try it.

2) Stay

With the object of preventing courts of concurrent jurisdiction simultaneously trying 2 parallel suit in respect of the same matter in issue, CPC has vested inherent power in the court to stay the suit. The pendency of a suit in Foreign Court does not preclude the courts in India for trying a suit founded on same cause of action. The application for stay of suit is maintainable at any stage of the suit. The court does not have option to refuse on ground of delay.

3) Res Judicata and bar to further Suits

Section 11 of the CPC deals with the doctrine of *Res Judicata* that is, bar or restraint on repetition of litigation of the same issues. It is a pragmatic principle accepted and provided in law that there must be a limit or end to litigation on the same issues.



The doctrine underlines the general principle that no one shall be twice vexed for the same cause.

For the applicability of the principle of *res judicata*, the following requirements are necessary:

- There are 2 suits filed at 2 different time.
- Both the matters are substantially the same.
- Parties are the same.
- Previously instituted suit is conclusively decided.
- The court in which previous suit is a competent court.

The doctrine of *res judicata* is based on the following public policy

- i. There should be an end to litigation
- ii. The parties to a suit shall not be harassed for the same matters
- iii. The time of court should not be wasted over the matters that ought to have been and should have been decided in the former suit between the parties.

4) Complaint → Covered in later part

5) Summons → Covered in later part

6) Appearance → Covered in later part

7) Adjournments: Courts have the power to adjourn a case and take it up on a future date. Adjournments frequently sought by the parties contribute significantly to the delays caused in deciding the matters. The granting of adjournments is at the discretion of the court. The rules governing adjournments are considerably strict if applied in their true spirit.

8) Ex-parte Decrees

A decree against the Defendant without hearing him or in his absence/in absence of his defence can be passed under the following circumstances: -

- i. Where any party from whom a written statement is required fails to present the same within the permitted time, the court shall pronounce judgement against him and on pronouncement of such judgement a decree shall be drawn up.
- ii. Where Defendant has not led a pleading, it shall be lawful for the court to pronounce judgement on the basis of facts contained in the plaint, except against person with disability.
- iii. Where the Plaintiff appears and Defendant does not appear when suit is called up for hearing and summons is properly served the court may make an order that suit will be heard ex-parte.

9) Interlocutory Proceedings

The period involved between initiation and disposal of litigation is substantially long. The intervention of the court may sometimes be required to maintain the position as it prevailed on the date of litigation. In legal parlance it is known as "**status quo**". It means preserving existing state of things on a given day. In that context interlocutory orders



are provisional, interim, and temporary as compared to final. It does not finally determine cause of action but only decides some intervening matter pertaining to the cause.

The procedure followed in the court is that the separate application for interim relief is moved at the time of filing of suit or at a subsequent stage. The court either grants the order ex-parte or issues urgent show cause notice and the reply is to be led within short time.

One of the most common interlocutory reliefs sought is that of 'injunction'.

10) Written Statement: Covered in later part

11) Examination of Parties

Examination of parties is an important stage after appearance. At first hearing of the suit the court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement. Such admissions and denials shall be recorded. The examination may be an oral examination.

12) Production of documents

The parties or their pleaders shall produce at or before the settlement of issues, all documentary evidence of every description in their possession or power, on which they intend to rely, and which has not been led in the court or ordered to be produced. Every document which a party is called upon to admit, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of that party or in his reply to the notice to admit documents shall be deemed to be admitted. The court may however at its discretion and for reasons to be recorded, require any document so admitted to be proved otherwise than by such admission.

13) Framing of Issues

The court shall at first hearing, after reading the plaint and written statement ascertain upon what material propositions of facts or law parties are at variance. Issues may be framed from allegations made on oath by the parties or in answer to interrogatories or from contents of documents produced by either party.

14) Summoning and Attendance of Witnesses

On the date appointed by the court and not later than 15 days after the date on which issues are settled parties shall present in court a list of witnesses whom they propose to call either to give evidence or to produce documents.

Where a person to whom summons has been issued either to attend or to give evidence or production of any documents and his deposition or production is material and person has failed to attend without lawful excuse, court may issue orders for arrest either with or without bail. If the witness appears such orders may be withdrawn.

15) Affidavits

The court may at any time for sufficient reason order that any particular fact or facts



may be proved by affidavit or affidavit of any witness may be read at hearing, on such condition, as court thinks reasonable. Affidavit shall contain only such facts as the deponent is able of his own knowledge to prove. The affidavit be properly verified to avoid any dispute at a later stage.

16) Final Argument

After examination and cross examination of witnesses, it allows both the sides to present its case after taking into account the submissions made by the witnesses of the other party and the documents produced by it. It can, therefore, be said to be an opportunity for both the sides to present a summary of their case or defence, as the case may be.

17) Judgement

The statement given by the judge on ground of which a decree is passed. The court after the case has been heard shall pronounce judgement in open court either within 1 month of completion of arguments or as soon thereafter as may be practicable, and when the judgement is to be pronounced judge shall fix a day in advance for that purpose and delay (if any) shall be recorded.

18) Decree and Execution

After the decree is passed the process of execution which involves actual implementation of the order of the court through the process of the court starts the entire process of executing of decree.

Procedural aspects of working of criminal courts

Cr PC 1973 is a procedural Law for conducting a criminal Trial which includes –

- ✓ Manner for collection of evidence
- ✓ Examination of witnesses
- ✓ Interrogation of accused
- ✓ Arrests
- ✓ Safeguards
- ✓ Procedure to be adopted by police and courts
- ✓ Bail
- ✓ The process of criminal trial
- ✓ A method of conviction
- ✓ The rights of the accused of a fair trial by principles of natural justice.

A criminal court is usually set in motion with the registration of a FIR under Cr PC. IPC is primary penal law which applies to all offences.

Type of Criminal Trial

As per Cr. P.C 1973, a criminal trial is of 3 types –

1. Warrant Cases

2. Summon cases
3. Summary Trial

Warrant Cases: The cases which relates to offences punishable with death, imprisonment for life or imprisonment for a term exceeding 2 years. In these cases, trial starts either with filing of FIR in a police station **OR** by filing a complaint before a Magistrate. Later, if the Magistrate is satisfied that the offence is punishable for more than 2 years, he sends the case to the Sessions court for trial. The process of sending it to Sessions court is called "committing it to Sessions court".

Important features of a warrant case are:

1. Charges must be mentioned in a warrant case
 2. Personal appearance of accused is mandatory
 3. A warrant case cannot be converted into a summons case
 4. The accused can examine and cross-examine the witnesses more than once.
 5. The Magistrate should ensure that the provisions of Section 207 are complied with which include the supply of copies such as police report, FIR, statements recorded or any other relevant document to the accused.
- a) **Different Stages of Criminal Trial in a Warrant Case when instituted by the police report**
- FIR
 - Investigation
 - Charges
 - Plea of Guilty
 - Prosecution Evidence
 - Statement of Accused
 - Defence Evidence
 - Judgement
- b) **Stages of Criminal Trial in a Warrant Case when Private Complaint institutes case**
- It may sometimes happen that the police refuse to register an FIR. In such cases one can directly approach the criminal court. On the filing of the complaint, the court will examine the complainant and its witnesses to decide whether any offence is made against the accused person or not. After examination of the complainant, the Magistrate may order an inquiry into the matter by the police and to get him submit a report for the same.
- ✓ After examination of the complaint and the investigation report, the court may come to a conclusion whether the complaint is genuine or whether the prosecution has sufficient evidence against the accused or not. If the court does not find any sufficient material through which he can convict the accused, then the court will dismiss the complaint and record its reason for dismissal.
 - ✓ After examination of the complaint and the inquiry report, if the court thinks that the prosecution has a genuine case and there are sufficient material and evidence



with the prosecution to charge the accused then the Magistrate may issue a warrant or a summon depending on the facts and circumstances.

Summons Cases

Those cases in which an offence is punishable with an imprisonment of fewer than 2 years is a summons case. A summons case doesn't require the method of preparing the evidence. Nevertheless, a summons case can be converted into a warrant case by the Magistrate if after looking into the case he thinks that the case is not a summons case.

Important points about summons case

1. A summons case can be converted into a warrant case.
2. The person accused need not be present personally.
3. The person accused should be informed about the charges orally. No need for framing the charges in writing.
4. The accused gets only one opportunity to cross-examine the witnesses.

Stages of Criminal Trial in a Summons Case

- ✓ Pre-Trial
- ✓ Charges
- ✓ Plea of guilty
- ✓ Plea of guilty and absence of accused
- ✓ Prosecution and Defence evidence
- ✓ Judgement

Summary Trial

Cases which generally take only one or two hearings to decide the matter comes under this category. The summary trials are reserved for small offences to reduce the burden on courts and to save time and money. Those cases in which an offence is punishable with an imprisonment of not more than 6 months can be tried in a summary way. The point worth noting is that, if the case is being tried in a summary way, a person cannot be awarded a punishment of imprisonment for more than 3 months.

Stages of Criminal Trial in Summary Cases

- 1) The procedure followed in the summary trial is similar to summons-case.
- 2) Imprisonment up to 3 months can be passed.
- 3) In the judgement of a summary trial, the judge should record the substance of the evidence and a brief statement of the finding of the court with reasons.

Appellate Forum

The system of Appeal provides an opportunity to correct judicial orders which otherwise would operate unjustly. Indian legal system has made sufficient provisions



for appeal both under CPC as well as Cr. P.C.

Under CPC, an appeal may be an appeal from order or an appeal from decree. The appeal has to be preferred within prescribed limitation period before the appellate court. The limitation period for appeal to High Court is 90 days and appeal to District Court is 30 days. If the period of limitation is expired, then application for condonation of delay also is required to be moved.

Even Cr. PC contain elaborate provisions on appeal against a judgement or order of criminal courts. District and Sessions Court and High Courts are the most common appellate forums.

Supreme Court is the appellate court of last resort and enjoys very wide plenary and discretionary powers in the matters of appeal

Reference

Sec 395 of Cr. PC, empowers a Court subordinate to the High Court to make reference to High court in following conditions –

- 1) The case pending before it must involve a question as to validity of any Act, Ordinance or Regulation. A mere plea raised by a party challenging the validity of an Act is not sufficient to make a reference to the High Court unless the Court itself is satisfied that a real and substantial question as to validity of the Act is actually involved for the disposal of the case.
- 2) Secondly, the Court should be of the opinion that such Act, Ordinance Regulation, as the case may be, is invalid or inoperative but has not been so declared by High Court or by the Supreme Court.
- 3) While making a reference to the High Court, the Court shall refer to the case setting out its opinion and reasons for making a reference.

Review – Covered in later part

Revision – Covered in later part





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GENERAL PRINCIPLES OF DRAFTING AND RELEVANT SUBSENTATIVE RULES



INTRODUCTION

Drafting, in legal senses means an **act of preparing legal documents** like agreements, contracts, deeds etc. To understand the drafting, the **relation/nexus between law, facts and language** have to be thoroughly understood.

IMPORTANCE OF DRAFTING AND CONVEYANCING

- ❖ For obtaining **legal consultations**,
- ❖ For carrying out **documentation departmentally**,
- ❖ For **interpretation** of the documents

WHICH WILL LEAD IN: -

- ❖ **Better interaction** while seeking legal advice from the legal experts
- ❖ Laying down **rights and obligations** of the parties.
- ❖ **Better communication**,
- ❖ Extraction of **more information**,
- ❖ Arriving on **workable solutions**, and
- ❖ Settlement of the draft documents, engrossment and execution thereof,

DRAFTING -IT'S MEANING

It may be defined as the **synthesis of law & fact in a language form**. All three characteristics **rank equally** in importance. Drafting is **Collection & Placing** of all aspects of a matter in a **logical, simple**



& lucid manner so that the content can be understood without confusion.

In other words, legal drafting is the **crystallization** and **expression** in definitive form of a **legal right, privilege, function, duty, or status**. It is the development and **preparation of legal instruments** such as constitutions, statutes, regulations, ordinances, contracts, wills, conveyances, indentures, trusts and leases, etc.

It **requires serious thinking** and **prompt actions** to collect, consolidate and co-ordinate the above facts in the form of a document. Thus, it is often said that, a proper understanding of drafting cannot be realized unless a relation between law, fact and language is fully understood and accepted.

The process of drafting **operates in two planes**: the **conceptual** and the **verbal**. Besides seeking the right words, the draftsman seeks the **right concepts**. Drafting, therefore, is **first thinking and then composing**.

Conveyancing

Section 205 of the Law of Property Act, 1925

Section 2(10) of Indian Stamp Act, 1899

Section 5 of TOPA, 1882



*Technically speaking, Conveyancing is the art of drafting of deeds and documents whereby **land or interest in land** i.e. **immovable property**, is **transferred** by one person to another; but the drafting of commercial and other documents is also commonly understood to be included in the expression*

Thus, conveyance is an act of Conveyancing or transferring any property whether movable or immovable from one person to another permitted by customs, conventions and law within the legal structure of the country. As such, deed of transfer is a conveyance deed which could be for movable or immovable property and according to the Transfer of Property Act, 1882, transfer may be by sale, by lease, by giving gift, by exchange, by will or bequeathment. But acquisition of property by inheritance does not amount to transfer under the strict sense of legal meaning.



Difference between Drafting and Conveyancing (Dec 2008)

Drafting	Conveyancing
Drafting is the way and the manner of preparation of any document . Thus, drafting gives General Meaning synonymous to preparation of Drafting of any documents.	Conveyancing is the way and manner of preparation of only those documents which are related to transfer Of property .
Wider term as it covers all type of documents.	Narrower than drafting
E.g. Arbitration agreement, Service Agreement, Receipt etc	E.g. Sale Deed, Mortgage Deed etc.



Difference between conveyancing and contract**(June 2006, Dec 2014, June 2009, Dec 2011)**

Conveyancing	Contract
Art of drafting docs relating to transfer of property.	Agreement enforceable by law.
No promise & title in respect of property already passed	It consist of reciprocal promises & each party is bound to perform
It doesn't create any right of action , however it alters the existing rights	It creates a right of action in favour of the parties. In case of breach → no. of remedies will be available to parties
Governed by provisions of TOPA, 1882	Governed by Indian Contract Act, 1872

GENERAL PRINCIPLES OF DRAFTING ALL SORTS OF DEEDS AND CONVEYANCING AND OTHER WRITINGS: (Dec 2007)

Following rules should also be followed while drafting the documents:

Fowlers' five rules of drafting (Dec 2005)	<p>To be DIRECT, SIMPLE, BRIEF, VIGOROUS AND LUCID."</p> <p>The principle referred to above may be translated into general in the domain of vocabulary as follows:</p> <ul style="list-style-type: none"> ❖ Prefer the familiar word to the farfetched (familiar words are readily understood). ❖ Prefer the concrete word to the abstract (concrete words make meaning more clear and precise). ❖ Prefer the single word to the circumlocution (single word gives direct meaning avoiding adverb and adjective). ❖ Prefer the short word to the long (short word is easily grasped). ❖ Prefer the Saxon word to the Roman (use of Roman words may create complications to convey proper sense to an ordinary person to understand). ❖ Always prefer active voice to the passive voice in the drafting of documents.
Sketch or scheme of the draft document	<p>It is always advisable to sketch or outline the contents of a document before taking up its drafting suggested by <i>Mr. Davidson</i>,</p> <p>"The first rule on which a draftsman must act is this-that before his draft is commenced, the whole design of it should be conceived, else his draft will be confused and incoherent, many things will be done which ought not to be done and many left undone which ought to be done.</p>
Skelton draft and its self-appraisal	After the general scheme of the draft has been conceived, the draftsman should note down briefly the matters or points which he intends to incorporate in his intended.





Special attention to be given to certain documents	<p>Certain documents require extra care before taking up the drafting. Further, in all the documents where transfer of immovable property is involved through any of the prescribed legal modes, it is necessary to ensure the perfect title of the transferor to such property proposed to be transferred by causing investigation and searches in relation to such title done through competent lawyers or solicitors in the concerned offices of Registrar of Assurance, local authorities, Registrar of Companies (in the case of the vendor being a corporate unit) etc.</p> <p>In addition, the requisite permissions required under different enactments viz., Income-tax Act, Land Ceiling Laws, Companies Act, 1956, Lessor's consent in the case of leasehold land, or any compliance desired under other Central or State Laws or personal laws etc. should be planned to be obtained in advance and recited in the documents wherever thought necessary.</p>
Expert's opinion	<p>If the draft document has been prepared for the first time to be used again and again with suitable modification depending upon the requirements of each case it should be got vetted by the experts to ensure its suitability and legal fitness if the corporate executive feels it so necessary.</p>

To sum up, the draftsman should bear in mind the following principles of drafting:

- ❖ Documents should be **self-explanatory**.
- ❖ Document should be **clear** to any person who has competent knowledge of the subject matter.
- ❖ **Readily intelligible** to layman.
- ❖ Must **not be ambiguous**
- ❖ **Nothing shall be omitted** and negative sentence should be avoided.
- ❖ Use of **juridical language** should be made.
- ❖ Documents should be divided into **paragraphs**, which should be self-explanatory and should be **properly marked** by use of **Nos. of letters** for clause, sub-clause and paragraphs.
- ❖ **Schedule** should be provided in the documents.
- ❖ The **active voice** is preferable to the passive voice.
- ❖ **Avoid** the use of words of **same sound**.
- ❖ **Avoid** the use of words "**less than**" or "**more than**", instead, he must use "**exceeding**" & "**not exceeding**"
- ❖ Use **simple, shorter** and **Single Words**
- ❖ Avoid **Round about construction** and **unnecessary repetition**.

DO'S & DON'TS

	
<ul style="list-style-type: none"> ❖ Reduce the group of words to single word ❖ Use simple verb for group of words ❖ Avoid round about construction 	<ul style="list-style-type: none"> ❖ Avoid the use of the words with similar sound (Eg. 'End' 'And') ❖ Don't refer the whole clause as such, instead use the number allotted to it.



- | | |
|---|---|
| <ul style="list-style-type: none">❖ Avoid unnecessary repetition❖ Write shorter sentences❖ Express ideas in fewer words❖ Prefer active voice to the passive voice❖ Choose the right word❖ Know exactly the meaning of the words and sentences you are writing❖ Put yourself in place of reader and satisfy yourself about the overall document including its content and interpretation. | <ul style="list-style-type: none">❖ Try to avoid negative in successive phrases and if necessary, incorporate it very carefully.❖ Properly use the word like 'either', 'or' and other like words |
|---|---|

Basic components of deed

Document

Sec 31(18) General Clause Act 1894, "any **matter written, expressed or described**" upon **any substance** by mean of **letter, figure or marks**, which is intended to be used for the purpose of **recording that matter**.

- ❖ A writing:
- ❖ Printed, lithographed, photographed.
- ❖ Map or plan.
- ❖ Inscription, on a metal plate or stone.
- ❖ A caricature is a document.

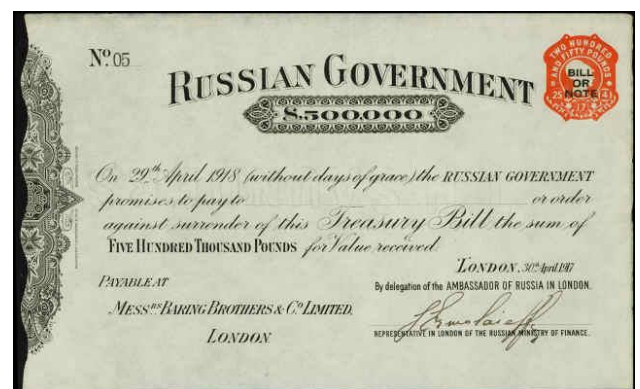


In short, a document is a paper or other material, which provide information, proof or evidence. E.g. → Minutes of meeting.

Instrument

(Sec 2(14) of India stamp Act 1899) and
(Sec 2(b) of Notaries Act, 1952)

- ❖ Every **document**, by which any **right or liability** is to be **created, transferred, limited, extended, extinguished or recorded**.
- ❖ All instruments are documents but all documents need not be instruments. Stamp duty is payable on every instrument but not in case of document
- ❖ E.g.: promissory note.



It includes, Awards made by Industrial Courts, A Will, A decree (sec 1 of interest Act) but it doesn't include Act of Parliament unless there is a statutory definition to that effect in any Act.

Deed: - Deed has no specific definition, it is a solemn document or instrument which is in writing, signed bearing legal seal and delivered.



Important Points

- ❖ Deed has no specific definition.
- ❖ Deed is a solemn document.
- ❖ "All the instruments by which two or more persons agree to effect any right or liability".
- ❖ A formal Writing of a non- testamentary character which purports or operates to create, declare, confirm, assign, limit or extinguish some right, title or interest.
- ❖ It is a written contract or agreement which has been properly signed the legal seal and delivered.

- **All deeds are document. But it is not always that all documents are deed.**
- ***All the deeds are instruments but all the instruments need not be deeds.***
- A deed is a present grant rather than a mere promise to be performed in the future.

Example: - Gift deed, Sale Deed, Deed of Partition, Partnership Deed, Deed of Family Settlement, Lease Deed, Mortgage Deed, POWER OF ATTORNEY, BOND etc.

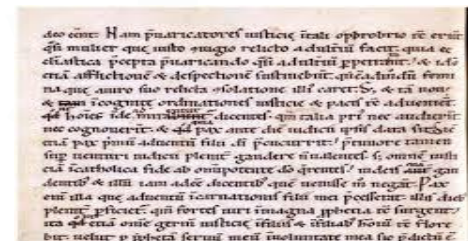
Various kinds of deeds

A good deed is one, which conveys a good title, not one which is good merely in form.

Inclusive	The deed which contains within the designated boundary land expected from operation of deed.
Latent deed	Which is kept for 20 years or more in man's strong box.
Lawful deed	The deed which convey a lawful title or a good title.
Pretended deed	Deed which is prima facie valid.
Voluntary deed	Without any valuable consideration, as it is defined by law.
Warranty deed	Containing on agreement of warranty.
Special Warranty deed	Have the term of general warranty deed only. But warranty title only against those claiming by the greater conveys the described land itself.



- ❖ **Deed Pool:** - Deed between 2 or more persons in which copies are made as there are parties, so that each party may have a copy.
- ❖ **Deed poll:** - A deed in which there is only a single party. E.g. promissory note or power of attorney. Drawn in first person usually.
- ❖ **Deed Escrow:** - A deed, which is signed only by one party until delivered to the other party, will be called as deed escrow. It will be called as deed only after only after signing by the last party till then it is only a mere writing (scriptum)
- ❖ **Indenture:** - A deed in which there are two or more parties. Written in duplicate upon one piece of paper and 2 parts are served so as to leave an indented edge, forging being then, rendered very difficult.



A deed is divided into different paragraphs. Under each part relevant and related information is put in paragraph in simple and intelligible language as explained in the earlier chapter. If a particular part is not applicable in a particular case that part is omitted from the document.

It is usual, but not necessary to begin a deed by giving it a name. The name should be indicative of true content or the correct title.

E.g. **"THIS DEED OF LEASE"** or simply **"THIS DEED"**

- Should be written in capital letters
- Hints the nature of the deed
- Gives a signal to the reader about the contents of the Deed.

❖ **Date & Place**

It is usual to give date and place on which the document is executed and territorial & legal jurisdiction of a documents for the purpose of registration, stamping & for claiming legal remedies. To be mentioned after the name of deed or the end before signature.

EG: - "This 7th day of June 2016 at Nagpur"

❖ **Parties to deed**

Whole detail should be provided so that the parties can be easily identified. While describing the parties, the **transferor should be mentioned first and then the transferee**. Full description of the parties should be given to prevent difficulty in identification.

Order must be as follows:

- ★ Name
- ★ Sir name
- ★ Age
- ★ Occupation
- ★ Address

In case of judicial person such as company, Registered Office must be mentioned after their name. In cases where it is intended that the successor of the parties will also be bound by the deed, it is usual to add a clause after the description of the parties stating the following:

"The parties shall include their heirs, successor, assigns and legal representatives."

❖ **Recitals**

Recitals contain the short story of the property or brief history of motive of making the deed. Begin with the familiar word such as "where as the parties are desirous of coming into agreement."

Recitals are of two types Narrative recitals and Introductory

Which is as follows: -

➤ **Narrative Recitals**

This part relates to the past history of the property transferred and sets out the facts and instrument necessary to show the title and relation to the party to the subject matter of the deed as to how the property was originally acquired and held and in what manner it has developed upon the grantor or transferor. The extent of interest and the title of the person should be recited. It **should be written in chronological order** i.e. in order of occurrence.

➤ **Introductory Recitals**

It is used to explain the **motive or intention behind execution of deed** and placed after narrative recitals. Objective of doing so, is to put the events relating to change of hand in the property.



Recitals should be inserted with great caution because they precede the operative part and as a matter of fact contain the explanation to the operative part of the deed. If the same is ambiguous recitals operate as estoppel. Recital offers good evidence of facts recited therein.

Recitals are not generally taken into evidence but are open for interpretation for the courts. If the operative part of the deed is ambiguous anything contained in the recital will help in its interpretation or meaning. In the same sense, it is necessary that where recitals contain chronological events that must be narrated in chronological order.

Recitals carry evidentiary importance in the deed. It is evidence against the parties to the instrument and those claiming under and it may operate as estoppels.

[Ram Charanv. GirijaNandini].

Recital generally begins with the words "**WHEREAS**" and when there are several recitals instead of repeating the words "Whereas" before each and every one of, them, it is better to divide the recitals into numbered paragraphs.

❖ **Testatum or witnessing clause**

This is the "witnessing" clause, which refers to the **introductory recitals** of the agreement, if any, and also states the consideration and recites acknowledgement of its receipt. It starts with the words "**NOW THIS DEED WITNESSES**".

Where there are more than one observations to be put in the clause the words, "**NOW THIS DEED WITNESSES AS FOLLOWS**" are put in the beginning and then paragraphs are numbered.

❖ **Habendum**

Habendum is a part of deed, which states the interest; the purchaser is to take in the property. Habendum clause starts with the words "**TO HAVE AND TO HOLD**" or "**To have to hold to the use of.....**" Now it is not necessary to express it so. In the modern deeds, however, the expression "to have and to hold" is omitted.

The habendum limits the estate mentioned in the parcels. The transferee is mentioned again in the habendum for whose use the estate is conveyed. Whatever precedes the habendum is called the premises. The parcels or the description of the property usually again included in the premises.

❖ **Exceptions and Reservations Clause**

It refers to admission of certain rights to be enjoyed by the transferor over the property to be agreed by the transferee. The clause generally is signified by the use of words "subject to" in deeds. It is the contractual right of the parties to the document to provide exceptions and reservations, which should not be uncertain, repugnant or contrary to the spirit of law applicable to a particular document or circumstances.

❖ **Covenants and Undertakings**

The term “covenant” has been defined as an agreement under seal, whereby parties stipulates for the truth of certain facts. In **Whasten’s Law Lexicon**, a covenant has been explained as an agreement or consideration or promise by the parties, by deed in writing, signed, sealed and delivered, by which either of the parties, pledged himself to the other than something is either done or shall be done for stipulating the truth of certain facts. Covenant clause includes undertakings also. However they cannot be separated in some cases. “The Parties aforesaid hereto hereby mutually agree with each other as follows.” Such covenants may be expressed or implied.

❖ **Parcels Clause**

This is a technical expression meaning methodical description of the property. It is necessary that in case of non-testamentary document containing a map or plan of the property shall not be accepted unless it is accompanied by the True Copy. Usually the Parcel Clause starts with the words “All Those..... And further or description covers as per the type of property subjected to transfer under the deed. This clause includes words such as: Tenements, Hereditaments, Land, and Water etc.

If property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

If where the property is machinery attached to the earth, the movable parts thereof;

If house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;

If a debt or other actionable claim, the securities therefore (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

If money or other property is yielding income, the interest or income thereof accruing after the transfer takes effect.

“Section 8 Operation of transfer — Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.”

❖ **Testimonium Clause**

Testimonium signifies that the parties to the document have signed the deed. This clause marks the close of the deed and is an essential part of the deed. **“In witness whereof the parties hereto have signed this day on the date above written”.**

❖ **Signature and Attestation Clause**

Signatures of the executants of the documents and their witnesses attesting their signatures follow. If the executants is not competent enough to contract or is juristic person, the person competent person on its behalf must sign deed. For E.g. Company.

Attestation should be done by at least two witnesses who should have seen the executant signing the deed or should have received from the executant personal acknowledgement to his signatures. There is no particular form of attestation but it should appear clearly that



witnesses intended to sign is attesting the witnesses. General practice followed in India is that the deed is signed at the end of the document on the right side and attesting witnesses may sign on the left side. The attesting witness should have put his signature, **amino attestandi**, that he has seen the executant signing the document.

❖ **Endorsements and Supplemental Deeds**

Endorsement means to write on the back or on the face of a document wherein it is necessary in relation to the contents of that document or instrument. The term “endorsement” is used with reference to negotiable documents like cheques, bill of exchange etc. Endorsement is used to give legal significance to a particular document with reference to new facts to be added in it. Endorsement helps in putting new facts in words on such document.

Supplemental deed is a document, which is entered into between the parties on the same subject on which there is a prior document existing and operative for adding new facts to the document. When a deed or document is required to be supplemented by new facts it can be done either endorsement on the prior deed when short writing would be sufficient, or by executing a separate deed described as supplemental deed.

For example, if lessee transfers his right in the lease to another person such transfer may be done by way of endorsement. On the other hand, if the terms of the lease document are to be altered then it becomes necessary to give effect to such alteration through a supplementary deed.

Note: All endorsements or supplemental deed should be stamped depending upon nature of the transaction. E.g. –Stamped as a receipt, Stamped as an agreement.

❖ **Annexure or Schedules**

Particulars about the land or property to be given in the Schedule to be appended to the deed. E.g- A Site Plan or Map Plan showing exact location with revenue no. Mutation No., Municipal No., Survey No., Street No., Ward Sector/Village/Panchayat/Taluka/District etc..... Plot No., etc. so that the demised property could be traced easily.

❖ **Engrossment and Stamping of a Deed**

The draft of document is required to be approved by the parties. Engrossment copied fair on the non-judicial stamp-paper of appropriate value as may be chargeable as per Stamp Act. Note: If a document is not properly stamped, it is rendered inadmissible in evidence nor it will be registered with Registrar of Assurances.

Stamp Duty

Introduction

The primary object of Indian Stamp Act, 1899 is to raise the revenue for States. This has been done by prescribing a stamp duty which is payable on every instrument.

In general, levy of stamp duty is a State subject. However, in certain cases, Parliament has exclusive powers to fix the rates of duty. Bill of exchange, Promissory Notes, Share Transfer Deed, Instrument of Proxy, Letter of Credit, Insurance Policies, etc. are some of such instruments.



IMPORTANT PROVISIONS

Single Transaction Effected By Several Instruments [Sec. 4]	Where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I, for the sale, mortgage or settlement. As regards the other instruments called subsidiary instruments, they shall be chargeable with a duty of Re.1 instead of the duty prescribed for it in that Schedule.
Instruments Relating To Several Distinct Matters [Sec 5]	<p>Any instrument, comprising or related to several distinct matters, shall be chargeable with the aggregate amount of duties with which separate instrument, each comprising or relating to one of such matters, would be chargeable under Indian Stamp Act.</p> <p>Where several distinct matters and transactions are embodied in a single instrument, the instrument is called the multifarious instrument.</p>
Instruments Coming Within Several Descriptions [Section 6]	<p>When an instrument falls within the provisions of two or more Articles in Schedule I, and the instrument does not contain distinct matters, it is to be charged with the highest of the duties, when the duties chargeable are different.</p> <p>It may be noted that the provisions of Section 6 are subject to the provisions of Section 5 i.e., if the instrument is containing the distinct matters, then Section 6 shall not apply because in such situation Section 5 applies.</p>
<p>There are two modes of Payment of stamp duty:</p> <ul style="list-style-type: none">❖ Adhesive Stamps; and❖ Impressed Stamps.	
Meaning of duly stamped:	<p>Duly stamped means that the instrument bears an adhesive or impressed stamp, not less than proper amount and that such stamp has been affixed or used in accordance with law in force in India. [Section 2 (11)]</p> <p>In case of adhesive stamp, the stamps have to be effectively cancelled so that they cannot be used again. Similarly, impressed stamps have to be written in such a way so that it cannot be used for other instrument and the stamp appears at the face of instrument. If stamp is not cancelled, the instrument is treated as unstamped. Similarly, if the stamp duty paid is not adequate, the instrument is treated as not duly stamped.</p>
Timing of Stamping:	<ul style="list-style-type: none">❖ Instruments executed in India must be stamped before or at the time of execution (Sec. 17).❖ Instruments executed outside India can be stamped within three months after it is first received in India (Section 18).❖ However in case of bills of exchange or promissory notes made out of India, it should be stamped by first holder in India before he presents for payment or endorses or negotiates in India. (Section 19)



Who Should Pay Stamp Duty:	Following persons are liable to pay the stamp duty, subject to the contrary provisions, if any, agreed between the parties: <ul style="list-style-type: none">❖ In case of promissory notes and bills of exchange, the maker or the drawer.❖ In the case of mortgage deed, the person executing the instrument i.e., the mortgagor.❖ In the case of insurance, the insurer.❖ In the case of lease, the lessee.❖ In the case of partition deed, parties to partition have to pay stamp duty in proportion to their respective shares in the property.
Consequence of Instruments not duly stamped:	Section 35 provides that if an instrument is not duly stamped, it is not a void instrument. It is only inadmissible in evidence. An objection as to an instrument not being duly stamped must be taken at the trial when the instrument is first tendered in evidence. It is the duty of court to refuse to admit an instrument not duly stamped, whether or not the parties object to its admission.

REGISTRATION OF DOCUMENTS

Introduction:

Registration Act, 1908 provides for registration of certain documents. Following are the purposes or objectives of registration of Documents:

- ❖ To give notice to the world that such a document has been registered and to serve as a source of information regarding the execution of the document and its existence.
- ❖ To prevent fraud and forgery with the purpose of providing good evidence of the genuineness of the written document; and
- ❖ To secure the interest of person dealing with any immovable property where such dealing requires registration.

Section 17 provides that the following documents require compulsory registration:

- ❖ Instruments of gifts of immovable property.
- ❖ Non-testamentary Instruments relating to immovable property of the value of Rs.100/- and above.
- ❖ Following leases of immovable property
 - Lease from year to year basis;
 - Lease from the term exceeding 1 year; and
 - Lease which reserves a yearly rent.
- ❖ Authorities to adopt a son and authorities not conferred by will.

Documents for which Registration is Optional (Section 18)



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Section 18 provides that in respect of the following documents, registration is optional:

- ❖ Wills
- ❖ Other non-testamentary instruments relating to immovable property of the value less than Rs.100/-
- ❖ Lease of immovable property for any term not exceeding 1 year
- ❖ Other documents not required to be registered as per section 17(2). For instance, composition Deed, Share Transfer Deed, etc.

Time Limit for Presentation of Document for Registration:

Documents executed in India [Sections 23 & 25]	<p>Section 23 of Registration Act, 1908 provides that the document must be presented before the Registrar for registration within four months of its execution. However, a will may be presented at any time for registration.</p> <p>Section 25 further provides that the Registrar has got the power to condone the delay in presenting the document for registration up to a period of four months; provided that the applicant satisfies the registration that he has been prevented by sufficient cause or reasons beyond his control in presenting the documents for registration within the prescribed period of four months.</p>
Documents executed outside India [Sections 26]	<p>As per section 26 of the registration Act, where the Registrar is satisfied that the document was executed outside India and it has been presented for registration within four months after its arrival in India, he may accept such documents for registration on payment of proper registration fees.</p>

Effects of Registration of Documents [Section 47]

A registered document operates from the time from which it was intended to operate and not from the date of registration.

A registered document, other than a will, relating to property, takes effect against any oral agreement relating to such property. However, when the oral agreement is accompanied by delivery of possession, then the oral agreement will prevail over the registered document.

Effects of Non-Registration of Documents [Section 49]

A document, which is compulsorily registrable, but not registered, fails to take effect and is void as regards immovable property. It cannot affect any immovable property comprised therein. Further it cannot confer any power to adopt.

An unregistered document cannot be received as evidence of any transaction affecting such



property or conferring such power. However such a document may be received as evidence of a contract in a suit for specific performance or as evidence of part performance of a contract as per section 53A of Transfer of Property Act.

**IMPORTANT CONCEPTS RELATING TO
INTERPRETATION OF DEEDS AND
DOCUMENTS**

Interpretation



Informal Agreements:	<p>In interpretation of informal agreements, the rule to be applied is that of reasonable expectation; that is to say, the agreement is to be interpreted in the sense in which the party who used the words in question should reasonably expect the reader to interpret.</p> <p>However if the intention is not clear, then the confusion will prevail and the other party will not interpret it in the same way as the party drafting the document wanted it to be interpreted.</p>
Formal Agreements:	<p>Where the agreement is formal and written, the following rules of interpretation may be applied:</p> <ul style="list-style-type: none">❖ The document should contain all the terms and conditions preceded by recitals of all relevant and material facts.❖ In cases of uncertainty, it is legitimate to take into account the surrounding circumstances for ascertaining the intention of parties.❖ The cardinal rule is that clear and unambiguous words prevail over any hypothetical considerations or supposed intention.❖ All mercantile documents should receive a liberal construction.❖ If certain words employed in business, or in a particular locality, have been used in particular sense, they must prima facie be construed in technical sense.❖ The ordinary grammatical interpretation is not to be followed, if it is repugnant to the general context.❖ If the main clause is clear and the contingency mentioned in the proviso does not arise, the proviso is not attracted at all and its language should not be referred to for construing the main clause in a manner contradictory to its import.❖ In case of any difference between the preliminary contract and the final contract, the terms of the latter must prevail.❖ The court must interpret the words in their popular, natural and ordinary sense.❖ Two different documents should not be interpreted in the same way unless the language of the document is identical.❖ If something is added in handwritten or such forms, then such additions should prevail over the language in print.❖ If an alteration is made to the deed without the consent of any of the party liable, then such deed is void with prospective effect.





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Secretarial Practice in Drafting Notice, Agenda and Minutes of Company's Meetings

COLLECTIVE DECISION MAKING PROCESS IN COMPANIES- "RESOLUTION"

Despite all these powers, since it is not a natural person, it expresses its will or takes its decisions through natural persons (i.e. directors or members) collectively which is known as "**resolutions.**"

There are 2 collective bodies in the company which take decision through resolutions:

- i. **Board of Directors** – who manage, control and direct the business of the company
- ii. **General body of members** – who ultimately own the company.



SECRETARIAL STANDARD

Secretarial Standards – Meaning

1. Secretarial Standards are the policy documents relating to various aspects of secretarial practices in the corporate sector.
2. These standards lay down a set of principles which companies are expected to adopt and adhere to, in discharging their responsibilities.

Formulator of the Secretarial Standards

ICSI constituted the Secretarial Standards Board (SSB) in the year 2000 for formulating Secretarial Standards. SSB formulates Secretarial Standards taking into consideration the applicable laws, business environment and the best secretarial practices prevalent.

Composition of Secretarial Standards Board (SSB)

SSB having members from following authorities.

1. ICSI members working in Companies as well as in practice
2. Representatives of MCA,
3. Representatives of SEBI
4. Representatives of ICAI
5. Representatives of ICWAI

Scope and Functions of the Secretarial Standards Board

The scope of SSB is to identify the areas in which Secretarial Standards need to be issued by the Council of ICSI and to formulate such Standards, taking into consideration the applicable laws, business environment and best secretarial practices. SSB will also clarify issues arising out of such Standards and issue guidance notes for the benefit of members of ICSI, Corporates and other users.

The main functions of SSB are

1. Formulating Secretarial Standards
2. Clarifying issues arising out of the Secretarial Standards
3. Issuing Guidance Notes
4. Reviewing and updating the Secretarial Standards

Scope of Secretarial Standards

1. The Secretarial Standards do not seek to substitute or supplant any existing laws or the rules and regulations framed there under but, in fact, seek to supplement such laws, rules and regulations.
2. Secretarial Standards that are issued will be in conformity with the provisions of the applicable laws.



3. However, if, due to subsequent changes in the law, a particular Standard or any part thereof becomes inconsistent with such law, the provisions of the said law shall prevail.

Procedure for issuing Secretarial Standards

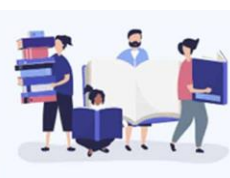
SSB, in consultation with the ICSI council, shall determine the areas in which Secretarial Standards need to be formulated.
↓
SSB may constitute Working Groups to formulate preliminary drafts of the proposed Standards
↓
The preliminary draft of the Secretarial Standard prepared by the Working Group shall be circulated amongst the members of SSB for discussion and shall be modified appropriately.
↓
The preliminary draft will then be circulated to the members of the Central Council as well as to Chairmen of Regional Councils/ Chapters of ICSI, various professional bodies, Chambers of Commerce, regulatory authorities for ascertaining their views.
↓
On the basis of the preliminary draft and the discussion with the bodies/organizations, an Exposure Draft will be prepared and published in the "Chartered Secretary", the journal of ICSI, and also put on the Website of ICSI to elicit comments from members and the public at large.
↓
After taking into consideration the comments received, the draft of the proposed Secretarial Standard will be finalized by SSB and submitted to the Council of ICSI.
↓
The Council will consider the final draft of the proposed Secretarial Standard and finalize the same in consultation with SSB. The Secretarial Standard on the relevant subject will then be issued under the authority of the Council.

SECRETARIAL STANDARDS UNDER THE COMPANIES ACT, 2013

Introduction and Need

The term 'Secretarial Standard' is defined as an explanation to section 205 of the Companies Act, 2013 to mean secretarial standards issued by ICSI constituted u/s 3 of the Company Secretaries Act, 1980 and approved by the Central Government. Thus, for the 1st time, Secretarial Standards have been accorded statutory recognition under the Companies Act, 2013.

The formulation of Secretarial Standards by the SSB and its statutory recognition is a unique and pioneering step towards standardization of diverse Secretarial practices prevalent in the corporate sector. No similar Standards are in existence elsewhere in the world.



Generally, in addition to the Secretarial Standards, the requirements laid down under any other applicable laws and rules and regulations, need to be complied with. However, in case of variations in any provision of the applicable laws and the Secretarial Standards, the stricter provisions need to be complied with.

If, due to subsequent changes in the law, a particular Standard or any part thereof becomes inconsistent with such law, the provisions of the said law shall prevail.

Section 118 (10) of the Companies Act, 2013 requires every company to observe Secretarial standards with respect to Board meetings (SS-1) and General meetings (SS-2).

Also, as per section 205(1) (b), it is the duty of the company secretary to ensure that the company complies with the applicable secretarial standards.

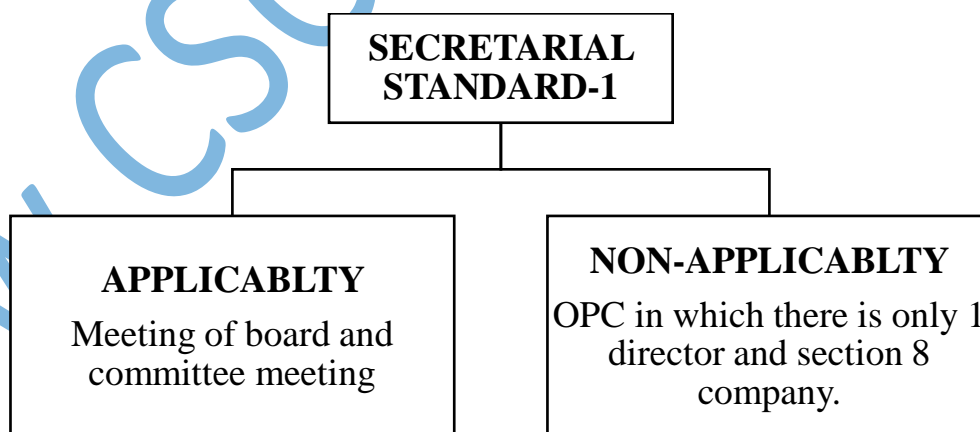
Note: Earlier SS were approved by CG on 10th April 2015 and were published in Gazette on 23rd April 2015. They were supposed to be effective from 1st July 2015 but it was withdrawn on 30th Sept 2017 without effecting the enforceability of SS 1 and SS 2 during the period before such withdrawal.

Now Revised SS-1 and SS-2 are approved by CG on 14th June 2017 which shall be effective from 1st October 2017.

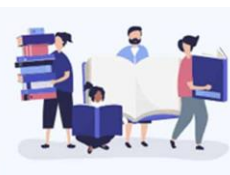
Even Section 121 of the Companies Act, 2013 requires confirmation with respect to compliance of Secretarial Standards in the Report on the AGM.

Section 205 (1) of the Companies Act, 2013 lays down the functions of the Company Secretary which inter-alia include ensuring that the company complies with the applicable Secretarial Standards.

SECRETARIAL STANDARD -1 BOARD MEETING



- Calendar Year is 1st January and ends on 31st December
- National Holiday” means Republic Day i.e. 26th January, Independence Day i.e. 15th August, Gandhi Jayanti i.e. 2nd October and such other day as may be declared as National Holiday by the Central Government



CONVENING A MEETING

Any **Director of a company may, at any time, summon a Board Meeting** and the CS or any authorized person, shall convene Board Meeting, in consultation with the Chairman or in his absence, the MD or in his absence, the WTD, where there is any, unless otherwise provided in the AOA.

DAY, TIME, PLACE, MODE AND SERIAL NUMBER OF MEETING:

- Every Meeting **shall have a serial number.**
- A Meeting may be convened at **any time and any place, on any day (Even on Sunday or any National Holiday).**
- **Even a meeting of Board of Director's adjourned for want of quorum can be held on national holiday.**

NOTICE OF BOARD MEETING

Notice, Agenda and Notes of Agenda in writing of every Meeting shall be given to EVERY DIRECTOR by following ways

- By hand or by Speed Post or by Registered Post or by fax or by Email or by any other electronic mode.
- **In case the company sends the Agenda and Notes on Agenda by speed post or by registered post an additional 2 days shall be added for the service of Agenda and Notes on Agenda.**
- **Where a Director specifies a particular means of delivery of Notice, the Notice shall be given to him by such means. However, in case of a Meeting conducted at a shorter notice, the Company may choose an expedient mode of sending notice.**
- **Proof of sending Notice and its delivery shall be maintained by the company for such period as decided by the Board, which shall be at least 3 years from the date of the Meeting.**
- Notice shall be issued by CS/Director/any other authorized officer.
- **Notice shall be sent even if meeting is held on pre-determined dates or at pre-determined intervals.**
- **Notice on items of business which are in the nature of unpublished price sensitive information may be given at a shorter period of time but only with consent of a majority of the directors, which shall include at least 1 Independent Director.**
- **Any item not included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting.**
- The decision taken in respect of any other item shall be final only on its ratification by a majority of the Directors of the company, unless such item was approved at the Meeting itself by a majority of Directors of the company.

TIME PERIOD FOR ISSUE OF NOTICE

↓	↓
NORMAL NOTICE	SHORTER NOTICE



Notice, Agenda and Notes of Agenda convening a Meeting shall be given **at least 7 days** before the date of the Meeting, unless the Articles prescribed a longer period.

In case the company sends the Notice, Agenda and Notes of Agenda by Speed Post or by registered post, An **Additional 2 Days** shall be Added for the service of Notice.

The Notice, Agenda and Notes on Agenda shall be sent to the Original Director also at the address registered with the company, even if these have been sent to the Alternate Director.

To transact urgent business, the Notice, Agenda and Notes on Agenda may be given at shorter period of time than stated above,

If at least one Independent Director, if any, shall be present at such Meeting.

If no Independent Director is present, decisions taken at such a Meeting shall be circulated to all the Directors and shall be final only on ratification thereof by at least one Independent Director, if any.

In case the company does not have an Independent Director, the decisions shall be final only on Ratification Thereof By A Majority Of The Directors of the company, unless such decisions were approved at the Meeting itself by a majority of Directors of the company

Matter which can't be dealt at a meeting held though Video conferencing ~~unless expressly permitted by the Chairman:~~

- Approval of the annual financial statements;
- Approval of the Board's report;
- Approval of the prospectus;
- Audit Committee Meetings for consideration of accounts; and
- Approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Note: Directors shall not participate through electronic mode in the discussion on certain restricted items. (Earlier, they could do so with express permission of Chairman)

CHAIRMAN OF BOARD MEETING

1. The Chairman of the Board shall conduct the Board Meeting. If no such Chairman is elected or if the Chairman is unable to attend the Meeting, the Directors present at the Meeting shall elect one of themselves to chair and conduct the Meeting, unless otherwise provided in the AOA
2. **If the Chairman is interested in an item of business, he shall, with the consent of the members present, entrust the conduct of the proceedings in respect of such item to any Non-Interested Director with the consent of the majority of Directors present and resume the chair after that item of business has been transacted.**



However, in case of a private company, the Chairman may continue to chair and participate in the Meeting after disclosure of his interest.

3. **If the item of business is a related party transaction, the Chairman shall also not be present at the Meeting, whether physically or through Electronic Mode, during discussions and voting on such items.**
4. In case some of the Directors participate through Electronic Mode, the Chairman and the Company Secretary shall take due and reasonable care to safeguard the integrity of the Meeting by ensuring sufficient security and identification procedures to record proceedings and safe keeping of the recordings. No person other than the Director concerned shall be allowed access to the proceedings of the Meeting where Director (s) participate through Electronic Mode, except a Director who is differently abled, provided such Director requests the Board to allow a person to accompany him and ensures that such person maintains confidentiality of the matters discussed at the Meeting.
5. The Chairman shall ensure that the required Quorum is present throughout the Meeting and at the end of discussion on each agenda item the Chairman shall announce the summary of the decision taken thereon
6. The Chairman of the Board or in his absence, the Managing Director or in their absence, the Managing Director or in their absence, the WTD and where there is none, any Director other than an Interested Director, shall decide, before the draft Resolution is circulated to all the Directors, whether the approval of the Board for a particular business shall be obtained by means of a Resolution by circulation.

FREQUENCY OF MEETING

↓	↓
First board Meeting" should be held within 30 days of Incorporation of Company.	Meetings of the Board of Directors; (Except Small Company, OPC and Dormant co.); The company shall hold. At least 4 Board Meetings in a calendar year. Maximum interval between 2 board meetings 120 days

An adjourned Meeting being a continuation of the original Meeting, the interval period in such a case, shall be counted from the date of the original Meeting.

MEETINGS OF THE INDEPENDENT DIRECTORS:

Where a company is required to appoint Independent Directors under the Act, such **Independent Directors shall meet at least once in a Calendar year.**

QUORUM

- The Quorum for a Meeting of the Board shall be $\frac{1}{3}$ rd or total no. of directors OR 2 Directors whichever is HIGHER. Any fraction contained in the above $\frac{1}{3}$ rd shall be rounded off to the next one.

- Where the Quorum requirement provided in the AOA is higher than 1/3rd of the total strength; the company shall conform to such higher requirement.
- If the number of Interested Directors exceeds or is equal to 2/3rd of the total strength, the remaining Directors present at the Meeting, being not less than 2, shall be the Quorum during such item.
- If there is no Quorum at the adjourned Meeting also, the Meeting shall stand cancelled.
- **Quorum shall be present not only at the time of commencement of the Meeting but also throughout the Meeting.**
- **Directors participating through Electronic Mode in a Meeting shall be counted for the purpose of Quorum, unless they are to be excluded for any items of business under the provisions of the Act or any other law.**
- If a Director is interested in any resolution, he shall either be reckoned for Quorum nor shall be entitled to participate in respect of an item of business in which he is interested. However, in case of a private company, a Director shall be entitled to participate in respect of such item after disclosure of his interest.
- **If the item of business is a related party transaction, then he shall not be present at the meeting, whether physically or through Electronic Mode, during discussions and voting on such item.**

ATTENDANCE REGISTERS

Every Company shall maintain **separate attendance registers** for the Meetings of the Board & for the Meetings of the Committee. The pages of the respective attendance registers **shall be serially numbered**. If an attendance register is maintained in **loose-leaf form**, it **shall be bound periodically at-least once in every 3 years**.

PARTICULARS OF ATTENDANCE REGISTER OF BOARD MEETING

Serial number and date of the Meeting;
Place of the Meeting;
Time of the Meeting;
Names of the Directors and signature of each Director and their mode of presence, if participating through Electronic Mode.
Name and Signature of the Company Secretary and Also of persons attending the Meeting by invitation.
In case of Committee Meeting "name of the Committee" also be mentioned.

The attendance register is open for inspection by the Directors, even after a person ceases to be a Director, he shall be entitled to inspect the attendance register of the Meetings held during the period of his Directorship

SIGNING OF ATTENDANCE REGISTER;

Every Director, Company Secretary who is in attendance and
Every Invitee who attends a Meeting of the Board or Committee thereof shall sign the attendance register at that Meeting.
The attendance register shall be deemed to have been signed by the Directors participating through Electronic Mode, if their attendance is recorded in the attendance register and authenticated by the Company Secretary or where there is no Company Secretary, by the Chairman or by any other Director present at the Meeting, if so authorized by the Chairman and the fact of such participation is also recorded in the Minutes.
The attendance register shall be kept in the custody of the Company Secretary.



The attendance register shall be **preserved for a period of at-least 8 financial years** from the date of last entry made therein and may be destroyed thereafter with the approval of the Board

Where there is no Company Secretary, the attendance register shall be kept in the custody of any other person Director authorized by the Board for this purpose.

PASSING OF RESOLUTION BY CIRCULATION

The Act requires certain business to be approved **only at Meetings of the Board**. However, other **business that requires urgent decisions can be approved by means of Resolutions passed by circulation**. Resolutions passed by circulation are deemed to be passed at a duly convened Board Meeting and have equal authority.

Check whether

- 1. A Resolution proposed to be passed by circulation is sent in draft along with necessary documents, individually to all the Directors including Interested Directors on the same day.**
- The Resolution, if passed, shall be deemed to have been passed on the earlier of:
 - a) The last date specified for signifying assent or dissent by the Directors or
 - b) The date on which assent has been received from the required majority, provided that on that date the number of directors, who have not yet responded on the resolution under circulation, along with the Directors who have expressed their desire that the resolution under circulation be decided at a Meeting of the Board, shall not be one third or more of the total number of directors whichever is earlier and shall be effective from that date, if no other effective date is specified in such Resolution.
- Resolutions passed by circulation shall be noted at a subsequent Meeting of the Board and the text thereof with dissent or abstention, if any, shall be recorded in the Minutes of such Meeting.

MINUTES

- Minutes **shall be recorded** in books maintained for that purpose.
- A **distinct Minutes Book shall be maintained** for Meetings of the Board and each of its Committees.
- The **pages** of the Minutes Books shall be **consecutively numbered**.
- Minutes shall not be pasted or attached to the Minutes Books, or tampered with in any manner.**
- Minutes shall **state**, at the Beginning the **serial number** and **type of the Meeting, name of the company, day, date, venue and time** of commencement and conclusion of the Meeting.
- Minutes shall be written in third person and past tense. Resolutions shall however be written in present tense. Minutes need not be an exact transcript of the proceedings at the Meeting.**
- Within 15 days** from the date of the conclusion of the Board Meeting or Committee Meeting, the **draft Minutes** shall be circulated to all the Directors for their comments.



8. **Proof of sending** draft Minutes and its delivery **shall be maintained** by the company for **at least 3 years** from the date of the Meeting.
9. The Directors, (whether present at the Meeting or not), **shall communicate their comments**, if any, **in writing** on the draft Minutes **within 7 days** from the date of circulation. If no comment from director, the draft minutes shall be deemed to be approved.
10. **If any Director communicates** his comments **after the expiry of 7 days**, if so authorized by the Board, the Chairman shall have the discretion to consider such comments.
11. **A Director, who ceases to be a Director after a Meeting of the Board is entitled to receive the draft Minutes of that particular Meeting and to offer comments thereon, irrespective of whether he attended such Meeting or not.**
12. Minutes shall be entered in the Minutes Book **within 30 days** from the date of conclusion of the Meeting.
13. **A Member of the company is not entitled to inspect the Minutes of the Meetings of the Board.**
14. The Board Report shall include a statement on compliances of applicable Secretarial Standards.
15. In case a Meeting is adjourned, the Minutes shall be entered in respect of the original Meeting as well as the adjourned Meeting. In respect of a Meeting convened but adjourned for want of Quorum, a statement to that effect by the Chairman or in his absence, by any other Director present at the Meeting shall be recorded in the Minutes.

CONTENTS OF MINUTES:

- a) The names of Directors present and their mode of attendance (Physical or Video conference).
- b) If a Director participate through E Mode → his particulars, the location from where and the agenda item in which he participated and wherever required, his consent to sign the statutory registers to be placed in at the Meeting as per the Act.
- c) The name of CS who is in attendance and Invitees, if any, for specific items and mode of their attendance if through E - Mode.
- d) Record of election, if any, of the Chairman of the Meeting.
- e) Record of presence of Quorum.
- f) The names of Directors who sought and were granted leave of absence.
- g) The fact that an Interested Director was not participate in the discussions and did not vote on item of business in which he was interested and in case of a Related Party Transaction such director was not present in the meeting during discussions and voting on such item.



Specimen Notice of a Board Meeting

Name of the Company
Registered Address
CIN - Email- Telephone:
Website:

NOTICE OF (SERIAL NUMBER OF MEETING) BOARD MEETING

Mr.

Director,
New Delhi.

Dear Sir,

1. NOTICE is hereby given that the (serial number of Meeting) Meeting of the Board of Directors of the company will be held on (day of the week), the (date) (month) (year) at (a.m./p.m.) at (Venue)
2. The Agenda of the business to be transacted at the Meeting is enclosed/will follow
3. You may attend the Meeting through Electronic Mode, the details of which are enclosed. In case you desire to participate through such mode, please send a confirmation in this regard to (Name of Company Secretary/ Chairman/other Authorised Person), email, Tel No. within days (time frame) to enable making necessary arrangements.
Kindly make it convenient to attend the Meeting.

Yours faithfully,
For.....Limited/Pvt Limited
(Signature)
(Name)
(Designation)

(Email, phone No.)

Agenda for the (Number) Meeting of the Board of Directors of (Company Name), to be held on (Day), (Date, Month and Year) at (Time) at (Venue)

1. Attendance and Minutes
2. Directors (including, where applicable, Alternate Directors)
3. Related party transactions
4. Shares
5. Share Capital
6. Debentures, Loans and Public Deposits
7. Long term loans from financial institutions/ banks
8. Banking Facilities
9. Investments, Loans and Guarantees
10. Review of Operations
11. Payment of interim dividend



12. Projects
13. Capital Expenditure
14. Revenue Expenditure
15. Auditors, etc.
16. Personnel
17. Legal Matters
18. To approve agreements Restructuring
19. Delegation of Authority
20. Annual Financial Statements
21. Annual General Meeting
22. Miscellaneous matters

Important to note

1. Divide the Agenda into two parts:
 - I. Usual or routine items
 - II. Other items
 - a. Items for approval
 - b. Items for information/noting.
2. For each item of the Agenda an explanatory note should be provided with sufficient details of the proposal, including the proposed Resolution, if any, references to the provisions of the Companies Act and other applicable laws, the Memorandum and Articles of Association, other relevant documents, decisions of previous Board or General Meetings, as necessary.
3. The agenda item should be initiated by the concerned Department and approved by the competent authority as may be decided by the Board.
4. CS should refer to the Agenda of previous Meetings, to see whether any items had been deferred and should consider whether such items are to be included for discussion at the ensuing Meeting.
5. A few extra copies of the Agenda should always be kept available at the Meeting.

NOTES ON AGENDA FOR THE FIRST BOARD MEETING

Item No. 1: To appoint chairman of the meeting:

Item No. 2: To note the certificate of incorporation of the company, issued by the Registrar of Companies.

Item No. 3: To take note of Memorandum and Articles of Association of Company, as registered.

Item No. 4: To note the situation of the registered office of the company.

Item No. 5: To note the appointment of the first directors of the Company

Item No. 6: To read and record the notices of disclosure of interest given by the Director

Item No. 7: To elect chairman, appoint Managing Director and Secretary

Item No. 8: To consider the appointment of first auditors of the company.

Item No. 9: To approve preliminary expenses and preliminary contracts.

Item No. 10: To adopt the common seal of the company.

Item No. 11: To authorise printing of the Share Certificate form.

Item No. 12: To place draft statement in lieu of prospectus.



Item No. 13: To consider plan of action for commencement of business.

Item No. 14: To place copies of agreements entered into prior to incorporation.

Item No. 15: To appoint bankers and to open bank account of the Company.

Item No. 16: To decide payment of sitting fees

Item No. 17: To consider any other matter with the permission of the chair.

Specimen of Resolution

Resolution No. _____

..... (NAME OF COMPANY)

Mr. (Director)

Dear Sir,

Resolution by circulation

The following Resolution is intended to be passed by circulation as per the provisions of Section 175 of the Companies Act, 2013. A note explaining the urgency and necessity for passing the said Resolution by circulation and the supporting papers (if any) are enclosed.

“RESOLVED THAT

(Resolution intended to be passed is to be reproduced)”

None of the Directors are deemed to be concerned or interested in the Resolution.

*Assent / Dissent / Require Meeting

Signature

Name

Date

Kindly indicate your response to the aforesaid Resolution, by appending your signature and the date of signing in the space provided beneath the Resolution and return one copy to the undersigned or by e-mail at the address mentioned below so as to reach us on or before

Yours faithfully,

For

(Name of Company).

Company Secretary

e-mail id:

Address:

Contact No:



SECRETARIAL STANDARD – 2 GENERAL MEETINGS

APPLICABILITY

SS – 2 is applicable to all types of GM of all type of companies **except following**

1. OPC
2. Sec 8 co.
3. Other notified companies

However, sec 8 co. need to comply with the applicable provisions of the act relating to GM.

Note:

1. Principles of SS 2 are applicable mutatis mutandis to meeting of debenture holders and Creditors.
2. **A General Meeting shall be convened by or on the authority of the Board only.**

FREQUENCY OF GENERAL MEETING

AGM

Every Company in each Calendar Year, hold a General Meeting called the AGM.

FIRST AGM:

First AGM within 9 months from the date of closing of 1st Financial Year of the Company. In case of 1st AGM, it is not necessary for the company to hold any AGM in the calendar year of its Incorporation.

Time period of 1st AGM after Incorporation of Company cannot be extended.

SUBSEQUENT AGM:

Subsequent AGM shall be hold EARLIER of followings:

Within 6 months from the end of each FY
OR

Within 15 months from the last AGM.

Extension: Not exceeding 3 Month with the Prior approval of ROC.

EGM:

The Board may also, whenever it deems fit, call an EGM of the Company.

The Board shall, on the requisition of Members who hold, as on the date of the receipt of a valid requisition can call an EGM,

In the case of Company having a Share Capital, not less than 1/10th of the PSC carrying Voting Rights; OR

In the case of a Company not having share capital, not less than 1/10th of total voting power of the Company.

1. If, on receipt of a valid requisition having been made in this behalf, the Board, **within 21 days** from the date of such receipt, fails to call a Meeting on any day **within 45 days** from the date of receipt of such requisition.
2. The requisitionists may themselves call and hold the Meeting **within 3 months** from the date of requisition, in the same manner in which the Board should have called and held the Meeting.



3. Such requisition shall not pertain to any item of business that is required to be transacted mandatorily through postal ballot.

NOTICE

- a. In writing
- b. To every Member, Directors and Auditors, Secretarial Auditor, to Debenture Trustee, if any, and wherever applicable or so required, to other specified persons.
- c. In case of a Nidhi company, Notice may be served individually only on Members who hold shares of **more than Rs. 1000 in face value OR more than 1% of the total PSC** of the company, (**w.i.l**). For other Members, Notice may be served **by a public notice** in newspaper circulated in the district where the Registered Office of the company is situated and by displaying the same on the notice board of the company.

WHERE THE COMPANY HAS RECEIVED INTIMATION OF DEATH OF A MEMBER, Notice shall be sent as under:

- **Where securities are held singly** → To the Nominee of the single holder;
- **Where securities are held jointly and any joint holder dies** → To the surviving 1st joint holder;
- **Where securities are held jointly and all the joint holders dies** → To the Nominee appointed by all the joint holders.
- **In the absence of a Nominee** → To the legal representative of the deceased Member.
- **In case of insolvency of a Member** → To the assignee of the insolvent Member.
- **In case the Member is a company or body corporate which is being wound up** → To the liquidator.
- d. By hand/ordinary post/by speed post/by registered post/by courier/by fax/by e-mail/by any other E-mode.
- e. **If any other particular mode is requested by Member, he shall pay such fees as may be determined by the company in its AGM and the Notice shall be sent to him in such mode.**
- f. If company have a **website**, the Notice shall simultaneously be hosted on the website till the conclusion of the Meeting. In case of a private company, the Notice shall be hosted on the website of the company, if any, unless otherwise provided in the AOA.
- g. Notice shall contain complete particulars of the venue of the Meeting including **route map** and **prominent land mark**, if any, for easy location, **except in case of -**
 - A company in which only its directors and their relatives are members,
 - A wholly owned subsidiary (WOS)
- h. An AGM and a Meeting called by the requisitionists **shall be called** during business hours, i.e., between 9 a.m. and 6 p.m., on a day that is not a **National Holiday**.
- i. AGM shall be held either **at the registered office** of the company or at some other place within the city, town or village in which the registered office of the company is situated, whereas **other General Meetings may be held at any place within India**.
- j. **BUT if called by the requisitionists, it shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.**
- k. In case of a **Government company**, the AGM shall be held at its registered office or any other place **with the approval of the CG**.
- l. Notice and accompanying documents shall be given **at least 21 clear days in advance** of the Meeting. For the purpose of reckoning 21 days clear Notice, the day of sending the



Notice and the day of Meeting shall not be counted. **Further in case the company sends the Notice by post or courier, an additional 2 days shall be provided for the service of Notice.**

- m. In case a **valid special notice** has been received from any member, the company shall give Notice of the Resolution to all its Members **at least 7 days before** the Meeting, **exclusive of the day of dispatch of Notice and day of the Meeting.**
- n. A shorter period of time is allowed, if written consent is given **by physical or electronic means**, by **not less than 95 %** of the entitled Members. The request for consenting to shorter Notice and accompanying documents shall be sent together with the Notice.
- o. Notice of AGM shall **also specify the serial number** of the Meeting.
- p. Notice shall be accompanied, by **an attendance slip** and a **Proxy form** with clear instructions for **filling, stamping, signing** and/ or **depositing** the Proxy form.
- q. A meeting convened upon due notice shall not be postponed or cancelled unless there is a sufficient reason beyond the control of BOD. Such meeting can be reconvened to transact the **original business** after giving **at least 3 days prior intimation** individually or through public (Newspaper) advertisement.

QUORUM OF GENERAL MEETING:

PRIVATE LIMITED:

2 Members Personally Present

PUBLIC LIMITED:

In case of Public Company "Minimum Present of Members required"

- 5 members personally present if the number of Members as on the date of Meeting are up to 1000.
- 15 members personally present if the number of Members as on the date of Meeting are more than 1000 but up-to 5000.
- 30 members personally present if the number of members as on date of the Meeting exceeds 5000.

IMPORTANT PROVISIONS FOR QUORUM OF GENERAL MEETING

- **Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.**
- Presence of a duly authorized representative body corporate, president and governor deemed to be a Member personally present and enjoy all the rights of a Member present in person.
- One person can be an authorized representative of more than one body corporate. Even he will treat as more than one member for the purpose of Quorum but there should be at least one more member personally present.
- **A member who is not entitled to vote on any particular item of business being a related party, if present shall be counted for the purpose of Quorum.**
- **Stipulation of the presence of Quorum doesn't apply with respect to items of business transacted through postal ballot.**
- **Members who have voted by Remote e-voting have the right to attend the General Meeting and accordingly their presence shall be, counted for the purpose of Quorum.**



ADJOURNMENT OF MEETING:

- Meeting shall stand adjourned for want of requisite Quorum.
- A duly convened Meeting shall not be adjourned unless circumstances so warrant.
- A Chairman may also adjourn a Meeting in the event of disorder or other like causes, when it becomes impossible to conduct the Meeting and complete its business.
- A Chairman may adjourn a Meeting with the consent of the Members, at which a Quorum is present, and shall adjourn a Meeting if so directed by the Members.

QUORUM AT ADJOURNED MEETING:

1. If, at an adjourned Meeting, quorum is not present within half hour from the time appointed, the Member present, being not less than 2 in number, will constitute the quorum.
2. If, at an adjourned Meeting, quorum is not present within half hour from the time meeting called by the Requisitionists, the Meeting shall stand cancelled.

NOTICE OF ADJOURNMENT OF MEETING:

IF MEETING ADJOURNED FOR PERIOD MORE THAN 30 DAYS OR SINE DIE

If a Meeting adjourned for a period of ≥ 30 days, a Notice of the adjourned meeting shall be given as if it is a **fresh General Meeting**.

IF MEETING ADJOURNED FOR PERIOD ≤ 30 DAYS:

The co. shall give at least 3 days' prior notice specifying the DAY, DATE, TIME & VENUE of the meeting, to the members either INDIVIDUALLY or by publishing AN ADVERTISEMENT.

IF MEETING ADJOURNED FOR WANT OF QUORUM:

If a Meeting other than an AGM and a requisitioned Meeting, stands adjourned **for want of Quorum**, the adjourned Meeting shall be held on the **same day, in the next week** at the same time and place or on such other day, not being a National Holiday, OR as determined by the Board.

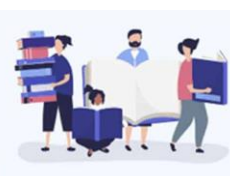
An adjourned AGM, (adjourned for whatever reason), shall not be held on a National Holiday, only if any item relating to filling up of vacancy of a director retiring by rotation is included in the agenda of such adjourned Meeting.

The company shall ensure compliance of the provisions of holding the AGM every year, including adjournment thereof within a gap of not exceeding 15 months from the date of the previous AGM or within such extended period permitted by the ROC.

RESOLUTION TO BE DISCUSS AT ADJOURNED MEETING:

At an adjourned Meeting, **only the unfinished business** of the original Meeting shall be considered. Any Resolution passed at an adjourned meeting would be deemed to have been passed on the date of the adjourned meeting and not on any earlier date.

DISTRIBUTION OF GIFTS:



No gifts, gifts coupons, or cash in lieu of gifts shall be distributed to Member at or in connection with the Meeting.

PRESENCE OF DIRECTOR, COMPANY SECRETARY AND AUDITORS AT GENERAL MEETING

WHO SHALL PRESENT IN GENERAL MEETING ALONG WITH SHAREHOLDERS

DIRECTOR:

Any absenteeism of director shall be explained by Chairman
The Director who attends the General Meeting shall seat with Chairman.

COMPANY SECRETARY:

The CS shall sit with chairman AND shall assist the Chairman in conduction the Meeting.

CHAIRMAN OF COMMITTEE'S

The Chairman of Committee's and any other authorized member of such Committee authorized shall attend the General Meeting.

STATUTORY AUDITOR:

It is mandatory for the Auditor to attend General meeting; Auditor can absent himself if he get exemption from the Company to attend General Meeting OR If his authorized representative attend the General Meeting PROVIDED Authorized representative should also be qualified to be an Auditor.

SECRETARIAL AUDITOR:

It is mandatory for the SA to attend AGM; SA can absent himself if he get exemption from the Company to attend General Meeting OR If his authorized representative attend the General Meeting PROVIDED Authorized representative should also be qualified to be an Auditor.

The Chairman may invite the Secretarial Auditor to attend "Any Other General Meeting".

DUTIES OF CHAIRMAN:

- The Chairman shall ensure that the Meeting is duly constituted.
- The Chairman shall then conduct the Meeting in a fair and impartial manner and ensure that only such business as has been set out in Notice is transacted.
- The Chairman shall regulate the conduct of voting keeping in view the provisions of the Act.
- The Chairman shall explain the objective and implications of the Resolution before they are put to vote at the Meeting.
- In case of public co., the chairman shall not propose any resolution in which he is deemed to be concerned or interested nor shall he conduct the proceedings for that item of business.

PROXY:

- A member entitled to attend and vote is entitled to Appoint Proxy.
- A proxy can't act on behalf of more than 50 members and members holding aggregate more than 10% of the total share capital of the Company carrying voting rights.



However, a member holding more than 10% of total voting right may appoint single proxy for his entire shareholding.

- If a person is appointed as proxy for more than 50 members, he shall choose ANY 50 members and shall confirm the same to company before commencement of specified period for inspection. OTHERWISE, the company shall consider only the 1st 50 proxies received as valid.

SIGNING OF PROXY FORM

WHO WILL SIGN THE PROXY FORM

↓	↓
MEMBER IS INDIVIDUAL BY THE MEMBER, or His attorney duly authorized in writing.	MEMBER IS BODY CORPORATE If the appointer is a body corporate than the instrument of Proxy should be under its seal and shall be signed by the: An officer, or An attorney duly authorized by it.

SOME SPECIAL PROVISIONS ON PROXY

- An instrument of proxy is valid only if it is **duly stamped**.
- Unstamped or inadequately stamped Proxies are **INVALID**.
- The proxy-holder shall **prove his identity** at the time of attending the Meeting.
- If company receive **multiple proxies without date or same date, all such multiple proxies shall be treated as invalid. Otherwise the last dated proxy shall be considered**
- It should be deposit with the Company **at least 48 hours** before the commencement of the Meeting **even on holiday**.
Note: Any provision in the AOA of a company which specifies or requires a longer period for deposit of Proxy than 48 hours before a Meeting of the company shall have effect as if a period of 48 hours had been specified in or required for such deposit.
- Proxy form can be send either **in Person or Through Post**.
- All the Proxies **shall be recorded chronologically** in a register kept for that purpose.
- In case any proxy entered in the register is rejected, the reasons therefor shall be entered in the remarks column.
- **If the AOA so provide, a Member who has not appointed a Proxy to attend and vote on his behalf at a Meeting may appoint a Proxy for any adjourned Meeting, not later than 48 hours before the time of such adjourned Meeting.**

REVOCATION OF PROXY:

- A proxy later in date can revoke the earlier dated proxies.
- Proxy is valid until written notice of revocation has been received by the Company before the commencement of the Meeting or adjourned meeting.
- An undated notice of revocation shall not be accepted.
- In the case of joint membership, a notice of revocation of proxy shall be signed by the same Member, who had signed the proxy.
- When both the Member and Proxy attend the Meeting, the proxy stand automatically revoked.



Inspection of proxies

1. Requisitions for inspection shall be sent **in writing at least 3 days before commencement of meeting.**
2. Proxy list shall be available for inspection during the period beginning 24 hours before the commencement of the Meeting and Ending with the conclusion of the Meeting Between 9 a.m. to 6 p.m.
3. **If meeting is adjourned a fresh requisition is required to be made to inspect the proxy list**

VOTING

1. **Every Resolution shall be proposed by a Member and seconded by another Member.**
2. **Every Listed company other than companies whose equity shares are listed on SME Exchange or on the Institutional Trading Platform and other companies as prescribed shall provide e-voting facility to their Members to exercise their Voting Rights.**
3. The result of the voting along with the scrutinizer's report shall be displayed **for at least 3 days** on the Notice Board of the company at its Registered Office and its Head Office as well as Corporate Office, if any, if such office is situated elsewhere, and also be placed on the website of the company, in case of companies having a website.
4. Every company, which has provided e-voting facility to its Members, shall also put every Resolution to vote through a ballot process at the Meeting. Ballot process may be carried out by distributing ballot/ poll slips or by making arrangement for voting through computer or secure electronic systems. Any Member, who has already exercised his votes through Remote e-voting, may attend the Meeting but is prohibited to vote at the Meeting and his vote, if any, cast at the Meeting shall be treated as invalid. A Proxy can vote in the ballot process.
5. **Nidhis are not required to provide e-voting facility to their Members.**
6. **In case of a private company, a member who is a related party is entitled to vote on such Resolution.**
7. A member who is a related party is entitled to vote on a Resolution pertaining to approval of any contract or arrangement to be entered into by:
 - (a) A Government company with any other Government company; or
 - (b) An unlisted Government company with the prior approval of competent authority, other than those contract or arrangements referred in clause (a)

CONDUCT OF POLL

When a poll is demanded on any Resolution, the Chairman shall get the validity of the demand verified and, if the demand is valid,

- ✓ shall order the poll forthwith, if it is demanded on the question of appointment of the Chairman or adjournment of the Meeting and,
- ✓ In any other case, within 48 hours of the demand for poll.

Each Resolution put to vote by poll shall be put to vote separately. One ballot paper may be used for more than one item.



DECLARATION OF RESULTS

1. The scrutinizer's report **within 7 days** from the last date of the poll to the Chairman who shall countersign the same and
2. Declare the **result of the poll within 2 days of the submission of report** by the scrutinizer, with details of
 - **The number of votes cast for and against the Resolution,**
 - **Invalid votes and**
 - **Whether the Resolution has been carried or not.**

If Chairman is not available, scrutinizer's Report shall be submitted to any authorized person, who shall countersign the scrutinizer's report on behalf of the Chairman.

PASSING OF RESOLUTIONS BY POSTAL BALLOT

1. Every company, **(except a company having ≤ 200 Members)** shall transact items of business as prescribed, only by means of postal ballot instead of transacting such business at a General Meeting.
Note: Ordinary Business shall not be transacted by means of a postal ballot.
2. The Notice shall be accompanied by the postal ballot form with the necessary instructions for filling, signing and returning the same.
3. Notice of the postal ballot shall inform the Members about availability of e-voting facility, if any, and provide necessary information thereof to enable them to access such facility.
4. The postal ballot form shall be accompanied by a postage prepaid reply envelope addressed to the scrutinizer.
5. A single postal ballot Form may provide for multiple items of business to be transacted.
6. A Resolution passed by postal ballot shall not be rescinded otherwise than by a Resolution passed subsequently through postal ballot
7. No amendment or modification shall be made to any Resolution circulated to the Members for passing by means of postal ballot.

WHEN A POSTAL BALLOT FORM SHALL BE CONSIDERED INVALID

- **Any form used other** than one issued by the company.
- It has **not been signed by or on behalf of the Member**
- **Signature** on the postal ballot form **doesn't match** the specimen signatures with the company
- It is **not possible to determine** without any **doubt the assent or dissent of the Member;**
- Neither assent nor dissent is mentioned;
- Any competent authority has given directions in writing to the company to freeze the Voting Rights of the Members.
- The envelope containing the postal ballot form is received after the last date prescribed
- It is received from a Member who is in arrears of payment of calls.
- It is defaced or mutilated in such a way that its identity as a genuine form cannot be established



MINUTES

Every company shall keep Minutes of all Meetings. Minutes kept in accordance with the provisions of the Act **evidence** the proceedings recorded therein. Minutes help in understanding the deliberations and decisions taken at the Meeting.

IMPORTANT PROVISIONS

1. A distinct Minutes Book shall be maintained for Meetings of the Members of the company, creditors and others as may be required under the Act. The pages of the Minutes Books shall be consecutively numbered.
2. Minutes of Meetings, if maintained in loose-leaf form, shall be bound periodically at least once in every 3 years.
3. Minutes shall state, at the beginning the Meeting, name of the company, day, date, venue and time of commencement and conclusion of the Meeting.
4. Minutes of AGM shall also state the **serial number** of the Meeting.
5. Minutes shall record the names of the Directors and the Company Secretary present at the Meeting.
6. The CS shall record the proceedings of the Meetings. If there is no Company Secretary, any other authorized person shall record the proceedings.
7. Minutes shall be written in 3rd person and past tense. Resolutions shall however be written in present tense. **Minutes need not be an exact transcript of the proceedings at the Meeting.**
8. Minutes shall be entered in the Minutes Book **within 30 days** from the date of conclusion of the Meeting.
9. Minutes of a General Meeting shall be signed and dated by the Chairman of the Meeting or in the event of death or inability of that Chairman, by any Director who was present in the Meeting and duly authorized by the Board for the purpose.
10. The Chairman shall initial each page of the Minutes, sign the last page and append to such signature the date on which and the place where he has signed the Minutes.
11. If the Minutes are maintained in electronic form, the Chairman shall sign the Minutes digitally.
12. Minutes of all Meetings shall be preserved permanently in physical or in electronic form.
13. Minutes Books shall be kept in the custody of the CS or any authorized Director.
14. A company **may maintain** its Minutes **in physical or in electronic form.**
15. Minutes Books shall be kept at the Registered Office of the company.

Resolutions

- ✓ Resolutions for items of business which are likely to affect the market price of the securities of the company shall not be withdrawn.
- ✓ Further, any resolution proposed for consideration through e-voting shall not be withdrawn.
- ✓ A Resolution passed at a Meeting shall not be rescinded otherwise than by a Resolution passed at a subsequent Meeting.
- ✓ Modifications to any Resolution which do not change the purpose of the Resolution materially may be proposed, seconded and adopted by the requisite majority at the



Meeting and, thereafter, the modified Resolution shall be duly proposed, seconded and put to vote.

- ✓ No modification to any proposed text of the Resolution shall be made if it in any way alters the substance of the Resolution as set out in the Notice. Grammatical, clerical, factual and typographical errors, if any, may be corrected as deemed fit by the Chairman.
- ✓ No modification shall be made to any Resolution which has already been put to vote by Remote e-voting before the Meeting.

Reading of Reports

The qualifications, observations or comments or other remarks, if any, mentioned in the Auditor's Report on the financial transaction or Secretarial audit report issued by PCS, which have any adverse effect on the functioning of the company shall be read at the AGM and attention of the Members present shall be drawn to the explanations/ comments given by the Board of Directors in their report.



PRACTICAL ASPECTS OF DRAFTING RESOLUTIONS AND MINUTES

Resolutions (Important Points)

1. All resolutions, should be drafted in clear and distinct terms.
2. All essential facts are included in the resolution
3. Immaterial and meaningless words or phrases should not be included in resolutions.
4. Reference to documents approved at a meeting should be clearly identified
5. Resolutions must indicate the relevant provisions or sections of the Act and the Rules pursuant to which they are being passed.
6. If a resolution is one which requires the approval of the Central Government or confirmation of the National Company Law Tribunal/Court, this must be stated in the resolution.
7. A resolution must indicate when it will become effective.
8. A resolution must confine itself to one subject matter and two distinct matters should not be covered in one resolution.
9. A resolution should be crisp, concise and precise and should be flexible enough to take care of eventualities.
10. Lengthy resolutions shall be divided into paragraphs and should be arranged in their logical order having regard to the subject matter of the resolution.
11. Resolution use to be closed within "....." (inverted quomas)
12. It use to begin with "RESOLVED THAT....."
13. In case of resolution passed at general meeting, it shall be specifically mentioned in the notice convening the meeting that whether it is Ordinary resolution or Special resolution.
14. For filing forms with ROC and other authorities, authorize a person

Resolution passed in General Meeting

Matters requiring sanction by Ordinary Resolution (Unless otherwise specified in the AOA)

- i. To change name applied by furnishing wrong or incorrect information [Section 4(5)(ii)]
- ii. To rectify the name of the company [Section 16(1)];
- iii. After the Capital Clause of MOA for Limited Company having share capital [Section 13]
- iv. Conversion of unlimited company into limited company [Section 65]
- v. Acceptance of public deposit [Section 73(2)]
- vi. Authorize a representative to participate in a general meeting [Section 113(1)]
- vii. Appointment of auditor [Section 39]
- viii. Removal of a Director [Section 169(1)]
- ix. Company to have Board of directors [Section 149]
- x. Appointment of directors [Section 152]
- xi. Appointment of managing or whole time director [Section 196(4)]
- xii. Re – appointment of retiring director
- xiii. Remuneration of director [Section 197]
- xiv. Related Party Transaction in certain companies or above certain threshold limit [Section 188(1)]

Matters requiring Special Resolution



1. Alteration of AOA under entrenchment [Sec 5(3)]
2. Shifting of Registered Office outside local limit [Sec 12(5)]
3. Alteration of MOA [Sec 13(1)]
4. Change in object clause where money raised from public through prospectus and still has unutilized amount out of the money so raised [Sec 13(8)]
5. Conversion of private company into public company and vice versa [Sec 14(1)]
6. Conversion of private company into OPC
7. Variation in the terms of a contract referred to in the prospectus or objects for which the prospectus was issued [Sec 27(1)]
8. Issue of Global Depository Receipt [Sec 41]
9. Variation of Shareholders rights [Sec 48(1)]
10. Issue of sweet equity shares [Sec 54(1)]
11. Issue of share capital under ESOS [Sec 62(1)(b)]
12. Issue of share capital to any person other than members or employees [Sec 62(1)(c)]
13. Issue of convertible debenture [Sec 62(1)(c)]
14. Reduction of Share Capital [Sec 66(1)]
15. Funding of purchase of share by trust for benefit of employees [Sec 67(3)]
16. Buy back of shares other than through Board Resolution [Sec 68(2)]
17. Issue of Convertible Debenture [Sec 71(1)]
18. Place of keeping registers and returns other than registered office [Sec 94(1)]
19. Removal of auditor before expiry of term [Sec 140(1)]
20. Appointment of more than 15 directors [Sec 149(1)] and
21. Re- appointment of retiring independent director [Sec 149(10)]
22. Specify a lesser number of companies in which a director may be a director [Sec 165(2)]
23. Exercise of restricted powers by Board [Sec 180(1)]
24. Approval of certain non – cash transaction with directors [Sec 192(1)]
25. Appointment of MD or WTD or manager who has attained age of 70 [Sec 196(2)]
26. Appointment of MD or WTD or manager on certain terms [Sec 197(4)]
27. Request for investigation of affairs of the Company [Sec 210(1)]
28. Removal of the name of the company from the Register of Companies [Sec 248(2)]
29. Resolution for winding up of company by Tribunal [Sec 271(1)]
30. Applicability of Table – F of Schedule – I on company registered under Part – I of Chapter – XXI [Section 371(3)]

Matters requiring Special Notice

- i. Resolution for appointment of an auditors other the retiring auditor at an AGM [Section 140(4)].
- ii. Resolution at an AGM to provide that a retiring auditor shall not be re-appointed [Section 140].
- iii. Resolution to remove a director before the expiry of his period of office [Sec 169(2)]
- iv. Resolution to appoint another director in place of the removed director [(Section 169(5)]





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DRAFTING AND CONVEYANCING RELATING TO VARIOUS DEEDS AND AGREEMENT

AGREEMENT:

An agreement, which is enforceable by law, is called a contract. Generally, when a contract is reduced to writing, the document itself is called an agreement.

FORM OF CONTRACT

There is **no particular form** prescribed but they **must fulfill all the essential requirements** of a valid contract under the law applicable to the contract. If the law requires any particular category of contracts to be in writing or to be registered, these formalities must be complied with. It may be hand written, type written or printed. It may be in brief or in detail.

It is essential that companies in both domestic and international contracts should incorporate precise and comprehensive terms and conditions relating to the subject matter and performance of the contract. In sale-purchase contracts well defined provisions relating to the quality and quantity of the goods, the shipment period, price (C.I.F./C&F/F.O.B etc.), delivery, port of shipment and of destination packing and marketing, mode of payment, insurance, brokerage/commission etc. should also be stipulated.

IMPORTANT POINTS TO BE CONSIDERED WHILE DRAFTING CONTRACTS

Description of Parties to the Contract:	Full description with Name, status, address & registered office (if co.). In case of an individual, father's name and in case of a company, the place where registered office is situated be also given. In case of firms and companies the particulars of persons representing them be invariably given including details of particulars of the firm.
Legal Nature of the Contract:	Whether it is a sale/purchase contract or a commercial agency contract or a contract for technical assistance and advice or building construction and erection contract, etc. so as to avoid any doubt as regards the nature of the contract and the legal position of the parties there under.
Licenses and	It is desirable to provide particularly in international trade contracts



Permits:	as to which party would be responsible for obtaining export/import licences and the effects of delay, refusal or withdrawal of a license by Government authority, etc. It is generally the commercial practice to provide that each party to the contract may obtain the requisite licenses in its own country.
Shipment of the Goods:	It is desirable to stipulate precise particulars regarding the rights and duties of the parties towards shipment of the goods, i.e., the time, date and port of shipment, name of the ship and other ship particulars. It may also be stipulated as to whether and up to what time the shipment may be delayed by the seller. Sometimes a penalty is provided for delay in shipment according to the time of delay.
Documentation:	In modern business transactions, it is sometimes necessary for the seller to supply detailed specifications, literature, etc. relating to the goods particularly. If the goods are of scientific or technical nature. It is also desirable to provide that the technical and confidential information contained in the documentation to be kept confidential by the buyer and that it will not be transmitted by him to a third-party without the permission of the seller.
Guarantee:	Sometimes the goods sold are of such a nature that the buyer insists for guarantee regarding their use and performance for a particular period. Under a guarantee clause, the seller is held responsible for the defects appearing in the goods during the period of the guarantee. The seller is usually given an option to remove the defects in the goods either by replacement or by repair.
Passing of the Property and Passing of the Risks:	It is very important to provide for the exact point of time when the title or the property in the goods and the risk will pass from the seller to the buyer. This is important to ascertain as to whether the seller or the party will be responsible for the damage or loss to the goods during transit at a particular point of time.
Amount, Mode and .Currency of Payment:	Modes of payment may be on D/A or D/P basis or it may be a Letter of Credit or otherwise as per the agreement of the parties. One of the most important matter which needs to be provided in international contracts relates to the exchange rate.
Force Majeure:	Majeure or excuses for non-performance. This provision defines as to what particular circumstances or events beyond the control of the



	seller would entitle him to delay or refuse the performance of the contract, without incurring liability for damage. It is usual to list the exact circumstances or events, like strike, lockout, riot, civil commotion.
Proper Law of Contract:	When both the parties to a contract are resident in the same country, the contract is 'governed by the laws of the same country. However, in international contracts, the parties are subject to different legal systems and, therefore, they have to choose a legal system which will govern the rights and duties of the parties. It is necessary to stipulate the proper law of contract in international contracts. Especially that which legal system to be followed.
Settlement of Disputes and Arbitration:	It is usual to provide for an arbitration clause in the contract, particularly under the auspices of an arbitral institution. A suitable arbitration clause may be provided by the parties by mutual agreement. It is also desirable to provide for the mode of appointment of arbitrator and also for the venue of the arbitration in the clause.

Where Company is a Party to an Agreement

Any agreement on behalf of the company can be signed by any director, officer or any other person so specifically or generally authorized by the Board of directors. The putting of seal of the company on agreements entered on behalf of the company is governed by the provisions in the Articles of Association of the company and/or by BR. However, non-putting of seal or an agreement may not invalidate the agreement if it has been properly executed.

If a document purported to be sealed or signed on behalf of the company is proved to be forged, it does not bind the company. But the company may be stopped from disclaiming document as a forgery, if it has been put forward as genuine by an official acting within his actual, usual, or apparent authority

[**Naguneri Peace Memorial Cooperative Urban Bank Ltd. v. AlameluAmmal**].

TERMS AND CONDITIONS IN THE AGREEMENT TO SELL/PURCHASE



- a) The vendor shall have a marketable title in the property agreed to be sold/ purchased and that the vendor shall produced the title deeds relating to the property to the purchaser for his inspection or in any other manner.
- b) If the property, agreed to be sold is a part of a larger property, an agreement as to retention of a particular or all the title deeds to the property by a party should be arrived at and incorporated in the agreement to sell/purchase.
- c) If the property is subject to any prior charge or encumbrance should be properly mentioned.
- d) The mode of payment of the price or the balance thereof, if some earnest money or deposit has been paid, should also be stipulated in the agreement. Liability liable to pay rates, rents, taxes or other imposts during execution of deed.
- e) The parties should agree as to the point of time of possession of the property to pass.
- f) The parties should also agree as to who shall bear the cost and expense of execution and registration and in which ratio.
- g) If any broker is involved in the transaction, the agreement should clearly spell out if any brokerage is payable, and by whom and at what rate, and at what point of time.
- h) Any amount of Brokerage or commission if payable.

FORMAT OF AGREEMENT OF SALE OF HOUSE PROPERTY

THIS **SALE AGREEMENT** executed on this _____ day, 15th day of March, 2015, at _____ between:

Mr. Amitabh Bacchan son of Mr. Harvansh Rai Bacchan residing at Mannat villa (hereinafter called the vendor) **OF THE ONE PART** which expression shall include their respective heirs, executors, administrators, legal representatives and assigns unless repugnant to the context

AND

Ms. Jaya Bhaduri daughter of Mr. Arvind Bhaduri resident at _____ (hereinafter called the purchaser) **OF THE OTHER PART**, which expression shall include their respective heirs, executors, administrators, legal representatives and assigns unless repugnant to the context

WHEREAS the vendor is the sole and absolute owner of the property more fully set out in the Schedule hereunder

AND WHEREAS it is agreed that the vendor shall sell and the purchaser shall purchase the said property for a sum of Rs25, 00,000 (Rupees twenty-Five Lakhs) free of all encumbrances.



NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. The price of property is fixed at Rs. 25, 00,000 (Rs. Twenty-five lakhs) free from all encumbrances & liabilities.
2. The purchaser has paid to the vendor this day, a sum of Rs10, 00,000 (Rs. Ten Lakhs) by way of earnest money for the due performance of the agreement, the receipt whereof the vendor doth hereby admit and acknowledge.
3. The agreement shall be performed within 6 months from the date hereof and it is agreed that the time fixed herein for performance shall be of the essence of this agreement.
4. The purchaser shall pay to the vendor the balance sale price of Rs15,00,000 (Rupees Fifteen Lakhs) before registration of the conveyance deed.
5. The vendor shall hand over all the title deeds of the property to the purchaser or an advocate nominated by him within 7 days from the date of this agreement for scrutiny of title and the opinion of the vendor's advocate regarding title to the property shall be final and conclusive. The purchaser shall duly intimate the vendor about the approval of title within 7 days after delivering the title deeds to him or to his advocate.
6. If the vendor's title to the property is not approved by the purchaser, the vendor shall refund the purchaser the earnest money received by him under the agreement and on failure of the vendor to refund the same within 10 days, he shall be liable to repay the same with interest thereon at the rate of 5% per annum.
7. If the purchaser commits a breach of the agreement, he shall forfeit the earnest amount paid by him to the vendor.
8. If the vendor commits a breach of the agreement, the vendor shall not only refund to the purchaser the amount received by him as earnest money, but shall also pay to the purchaser an equal sum by way of liquidated damages.
9. Any disputed arising under this agreement shall be referred to a single arbitrator to be appointed by the parties.
10. The parties aforesaid hereto hereby mutually agree with each other.

In witness whereof both the parties have set their respective hands to the agreement of sale/purchase on the day, month and the year above written, in the presence of the following witnesses:

Witnesses:

(1) Name:

Father's Name:

Address:

Signature:

Vendor



(2) Name:

Father's Name:

Address:

Signature:

Purchaser

**Annexure:
Schedule of Property**

House No..... situated in.....

On its North is.....

South is.....

East is.....

West is.....



BUILDING CONTRACTS

Building contracts, being legal documents, have to be drawn in accordance with the provisions of the Indian Contract Act. Such an agreement must have all the essential ingredients of a contract.

SPECIMEN OF A BUILDING CONTRACT

THIS BUILDING AGREEMENT is executed on this Sunday, 11th day of March 2015 at _____ by and between:

AA Ltd., a company incorporated under the Companies Act, 1956 or 2013, having its Registered Office at _____ acting through Shri Praveen Choudhary, its Company Secretary, (hereinafter called "the builder"), which term shall, unless repugnant to the context, include its legal representatives, of the one part

AND

Shri Mohan Lal son of Shri Sohan Lal resident of _____ (hereinafter called "the owner"), which term shall, unless the context otherwise admits, include his heirs, executors, administrators, legal representatives, nominees and assigns, of the other part.

WHEREAS the owner has a plot of land measuring 1500 sq. ft. situated at Ramdaspath (**as specified in Schedule I**) duly registered in his own name with the rights, title and interest therein absolutely vesting in him;

AND WHEREAS the owner has requested the builder to build a bungalow on the said piece of land according to the plan approved by the Municipal authorities, of the area.

AND WHEREAS the builder has agreed to build the desired bungalow on the terms and conditions as contained in this agreement.

NOW THIS AGREEMENT HEREBY WITNESSES AS FOLLOWS

1. The builder will build and complete the bungalow within 12 months from the date of execution hereof in a thorough manner and with the best material and work as specified in Schedule II hereof.
2. Subject to the conditions hereinafter contained, the owner will pay to the builder a sum of Rs. 50,00,000 (Rs. Fifty Lakhs only) as combined cost of completion of the construction of the bungalow including interiors as specified in Schedule II as per specifications of the architect of the owner.

The payment will be made in following manner:

- ✓ Construction up to plinth level – 10% of the total contract amount.
 - ✓ Completion of walls up to roof level – 15% of the total contract amount.
 - ✓ Completion of roof slab of the entire structure of the bungalow – 30% of the total contract amount.
 - ✓ Fixing of shutters of doors, windows, completion of wooden almirahs, pelmets and all other wood work – 20% of the total contract amount.
 - ✓ Finishing of the entire construction and fixing of electrical and sanitary fittings – 15% of the total contract amount.
 - ✓ After receipt of Completion Certificate from the Municipal authorities - Balance amount of the contract money.
3. It is expressly, agreed between both the parties that time is the essence of this agreement.
 4. The builder will do and perform all works incidental to the proper execution and completion of the bungalow.
 5. The builder will permit the owner, his representatives and his architect to have access to the works while the same are under construction and to inspect the same so as to make sure that the construction work is being done according to sanctioned plan and materials are being used as per specifications given by the architect.
 6. While the bungalow is in the course of construction and until the owner takes over the same, all materials used or to be used in the construction, shall remain at the builder's risk.
 7. The owner will not be entitled to take possession of the bungalow until the entire amount is paid within the time stipulated hereinabove.
 8. The owner shall make payments of all the amounts in respect of the said bungalow towards water and electricity deposits etc.
 9. It is agreed by the owner that any amount that will be due and payable to the builder as mentioned in this agreement shall be treated as a charge on the bungalow till such time the same is paid in full.
 10. If the owner requires any additional or extra items of work to be carried on by the builder in the bungalow, other than the above specified works, the builder should be informed by the owner in advance and the cost and/or difference of cost for such items of work as per rates mutually agreed upon should be paid by the owner to the builder in advance.

In Witness Whereof, the parties afore-mentioned have signed this deed in token of acceptance of the terms thereof.

Witnesses:

(1) Name:
Father's Name:
Address:
Signature:

Owner



(2) Name:
Father's Name:
Address:
Signature:

Builder

SCHEDULE I

Details of the plot of land upon which the bungalow is to be built by the builder for the owner:

Plot No..... measuring..... situated at _____
Street.....
Road.....
Bounded on East.....
West.....
North.....
South.....
Within the district of.....

Schedule II

Details of the interiors
Foundation and super structure
Flooring
Almirah, doors and windows
Electricals
Water supply
Kitchen
Other details



COMMERCIAL AGENCY CONTRACTS

Business conducted through the agency of independent agents appointed for the purpose. Who will locate customers for the principal's goods and in certain conditions would have an implied authority to deal with the goods of the principal, allow credit terms to customers and receive payment from the customers on behalf of the principal. The rights and duties of the principal and his agent abroad would be governed by the contract of agency concluded between them. Commercial agency contracts exhibit certain peculiar characteristics of their own and their terms and conditions are substantially different from those of a sale purchase or other trade contracts.

Provisions to be taken care of

- ✓ Date of commencement or termination of the agency.
- ✓ The goods or products to be covered by the agency.
- ✓ The contractual territory.
- ✓ The nature of the agency (sole or exclusive agency, etc.)
- ✓ The rate and basis of commission payable.
- ✓ Conditions regarding the reimbursement of expenses incurred by the agent; payment of commission on orders and commission on repeat orders.

NOTE:

1. The commission may be calculated on the gross amount or the net amount of the invoice. The currency of payment of the commission and the rate of exchange applicable also be mentioned.
2. Permission of the Reserve Bank of India may be required for fixing the rate and remittance of the commission to foreign agents.

Whether the agent may or may not make binding agreements on behalf of the principal. It is usual to provide in the agency contracts that the agent shall guarantee certain minimum sales turnover over a given period.

The duties of the agent –

- Not to divulge confidential information of the principal to 3rd-parties.
- Not to make secret profits or accept bribes.
- To use all reasonable diligence.
- Disclose all material facts and
- Be accountable to the principal for all monies received by him on behalf of the principal.



If the agreement is between the parties of different countries, it is essential to ensure that nothing contained in such a contract shall be repugnant to imperative provisions of the law of any country in which such a contract or any part thereof has to be carried into effect.

Del - Credere agency:

There is a special type of agency, which combines agency with guarantee. This is known as del-Credere agency. It is an arrangement where the agency is combined with guarantee. Del Credere agent is one who, for an extra remuneration undertakes the liability to guarantee the due performance of the contract by the buyer. By reason of his charging a Del Credere commission he assumes responsibility for the solvency and performance of the contract by the vendee and thus indemnifies his principal against loss. He therefore gives an additional security to the seller, but he does not shift the responsibility of payment from the buyer to the seller. A commission Del-Credere is the premium or price given by the principal to the agent for guarantee, which presupposes a guarantee.

A del-Credere agent like any other agent is to sell according to the instructions of his principal, to make such contract as he is authorized to make for his principal and be bound, as soon as he receives the money, to hand it over to the principal. He is distinguished from other agents simply in this sense that he guarantees that those persons to whom he sells, perform the contracts, which he makes with them.

A SPECIMEN OF AN AGENCY CONTRACT

THIS AGENCY AGREEMENT, executed on this Thursday, 20th day of March, 2015 at ____ by and between:

Mr. Shahid Kapoor son of Mr. Pankaj Kapoor, resident of _____ hereinafter called as 'the principal', which term shall, unless repugnant to the context, include its legal representatives of the one part

And

Mr. Saif Ali Khan, son of Mr. Patodi Khan, resident of _____ herein after called 'the agent' which term shall, unless repugnant to the context, include its legal representatives of the other part.

WHEREAS the principal is proposing to appoint the agent for carrying out the work on such terms and condition more specifically described in this agreement.



AND WHEREAS, the agent after having considered the proposal of the principal has agreed to act as agent of the principal on the terms and condition as contained in this contract.

NOW THIS DEED WITNESS AS FOLLOWS:

1. That the agent is hereby appointed the sole agent of the principal for Nagpur (Hereinafter called "the agency town") for the purpose of making sales of the principal's goods for a term of 5 years commencing from the date hereof on the terms and conditions set forth hereunder.
2. That the agent shall not, while selling the principal's goods make any representation in the trade or give any warranty other than those contained in the principal's printed price list.
3. That the agent shall be allowed to deduct and retain as his agency commission with himself 6% of the list price of all goods sold on behalf of the principal.
4. The agent shall keep a record of all sales and shall regularly remit to the principal on each Saturday all sums received by the agent in respect of such sales less his agency commission.
5. All sales shall be made for cash against delivery of goods unless the principal's consent in writing to give credit to any particular purchaser be in any case first obtained and in the case of such credit sales the principal may direct for such increase in the price of his goods over and above the current list price of the principal.
6. That the agent shall not make purchases on behalf of nor in any manner pledge the credit of the principal without the consent in writing of the principal.
7. That the agent shall, at the expense of the principal, take on rent and occupy for the purpose of the agency, suitable premises with prior approval of the principal and shall keep insured for full value against all available risks, all the goods entrusted to his custody by the principal under this agreement and on request, shall produce to the principal, receipts, for the rent, rates and taxes of the said premises and for the premiums on insurance policies showing that the same have been paid on or about their respective due dates. That the agent shall bear all expenses relating to or incidental to the said agency.
8. That the agent shall, in all his commercial dealings and on documents and on the name-plate or letterhead indicating his place of business, describe him as selling agent for the principal.



9. That all goods shall be sold by the agent for delivery at agent's place or business but the agent shall, at his own expense, have the right to deliver goods to purchasers at their places of business.
10. That in the event of any dispute arising out of or in relation to or touching upon the agreement, the same shall be decided by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996.
11. That the principal shall be entitled to terminate this agreement by one month's notice in writing to the agent in the event of his ceasing to carry on the said business of the principal.

In Witness Whereof the parties have signed this deed on the day, date and year mentioned above in presence of following witnesses:

Witness 1

Sd/-
Principal

Witness 2

Sd/-
Agent

SOLE SELLING AGREEMENT—WHERE A COMPANY IS PRINCIPAL

If in the above mentioned agreement of sole selling agency, the principal is a company, then as per provisions of Companies Act, one more clause must be added as under:

“This agreement ceases to be valid if it is not approved by the shareholders of the principal in first general meeting held after the date of this agreement”.

The above provisions are mandatory and if the directors enter into sole selling agreement without the above condition, the appointment is void ab-initio. Therefore, the shareholders cannot ratify such an agreement.

[Shalagram]hajharia v. National Co. Ltd.,]

Collaboration Agreement

When two parties enter in contract for technical know-how, technical design, drawings, training of technical personnel, research or development or such other things, they are said to be collaboration in a desired venture.

In general, the word collaboration means a co-operation agreement between a party within India and a party situated abroad. Such agreements are also known as foreign collaboration Agreements.

Guidelines for entering into Foreign Collaboration Agreements:

1. **Investments** → Value of shares to be acquired by the parties involved in collaboration.
2. **Lump sum payment** →
 - 1/3rd to be paid after the agreement has been approved by the CG.
 - 1/3rd transfer of technical documents.
 - 1/3rd on the commencement of commercial production.
3. **Royalty** → On the basis of (net ex-factory selling price – excise duty & cost of imported components), rate of royalty may be 3% to 5%, depending on the nature & extent of the technology involved.
4. **Duration of agreement** → Normal 8 yr. maximum 10 yr.
Governments approve usually 5 yr. from DOC of commercial production not exceeding 8 yr. in total from the date of Agreement.
5. **Renewal or extension of agreement** → Extension of its period on merit.
6. **Remittances** → On the basis of prevailing exchange rates.
7. Sub licensing need not to normally impose any restriction subject to the CG's approval.
8. **Exports** → No foreign collaboration agreement shall be allowed to contain any restriction on the free export to all countries.
9. **Procurement of cap. Goods etc.** → The Indian collaborator must be free to have control over pricing facility and selling arrangements.
10. **Technicians** → As approve by the Reserve Bank of India.
11. **Training** → Adequate facilities for training of Indian technicians for R&D.
12. **Consultancy** → It should be from Indian co. At least prime consultant should be an Indian company in special circumstances.
13. **Brand name** → No insistence on the use of foreign brand names on products from sale in India, no objection for use of name on products to be exported to other countries.
14. **Applicable Law** → For resolving the disputes, which may arise.
15. Approval of Central Government.



A Specimen Collaboration Agreement

THIS AGREEMENT executed this..... day of..... by and between:

XYZ Ltd., a Foreign Company incorporated in the United Kingdom and having its registered office at _____ hereinafter called the U.K. Company of the ONE PART and the term unless repugnant to the context otherwise shall also includes its executor or any other person authorized by it on its behalf.

AND

ABC Ltd., a company incorporated in India and having its registered office at _____ hereinafter called the Indian company of the OTHER PART and the term unless repugnant to the context otherwise shall also includes its executor or any other person authorized by it on its behalf.

WHEREAS the Indian company has been incorporated having for its object the manufacture and production of _____;

AND WHEREAS the Indian company has already constructed factory buildings, installed plant and machinery and commenced manufacture and production of _____;

AND WHEREAS the Indian company with a view to improve still further the quality of the commodities manufactured and to increase production are desirous of procuring the latest technique and know-how relates to the manufacture of the above-said commodities;

AND WHEREAS the Indian company therefore approached the U.K. company who have considerable experience in the line of manufacture engaged in by the Indian company, and requested them to extend to them necessary technical assistance in that behalf;

AND WHEREAS the U.K. company has agreed to extend technical assistance and to furnish to the Indian company for improvement of their business the requisite know-how in the form of designs, plans, engineering drawings, technical advice and also to supply technicians to advice for improvement of the existing factories, machineries and plant and also to provide to the Indian personnel necessary technical training to enable them to successfully handle and exploit the technical know-how to be imparted to the Indian company subject to the terms and conditions set out hereunder:

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:



1. In consideration of the remuneration paid by the Indian company to the U.K. company as described hereinafter the U.K. company shall supply to the Indian company:
 - Technical advice and know-how for the purpose of improving or adding to the existing factories and installing additional plant and machineries if necessary for the manufacture of.....;
 - Further the necessary plans, factory-design and layouts, charts and drawings, documentation and other forms of technical know-how for the said purpose;
 - Render advice in the matter of purchase of the further plant and machinery suitable and necessary for the factory;
 - Lend the services of their technicians to assist the Indian company in carrying out the improvement to the factories and for installing additional plants and machinery;
 - Provide technicians from their own staff to attend at the Indian company's factory in India whenever necessary;
 - Impart technical training to selected Indian personnel at their works in England or in their associated companies, to enable them to operate the machinery and plant to be installed and to exploit the imported technical know-how to the best advantage;
2. Advise the Indian company, promptly and to the best of their ability, in connection with any technical or manufacturing problems or difficulties, which the Indian company may refer to it during the continuance of this agreement.
3. For technical know-how and data supplied by the U.K. company to the Indian company as above, the Indian company shall make a lump sum payment of Rs..... to the U.K. company phased as follows:
 - 1/3rd on approval of the agreement by the Central Government;
 - 1/3rd, on the U.K. company supplying the Indian company necessary charts, plans, engineering drawings, documentation and other technical data and know-how, which shall be done within 15 days from the date of approval, of this agreement by the Central Government;
 - The balance 1/3rd in three equal annual installments thereafter after commencement of production.
4. This Agreement shall be in force for a period of 5 years at the first instance, subject to extension for a further period of 5 years by mutual agreement and subject to approval by the Central Government.
5. The Indian company may but not bound to use foreign brand names on their products for internal sale or on products to be exported.
6. There shall be no restriction on the Indian company exporting their products to foreign countries.



7. The Indian company shall not have the right to pledge, mortgage or assign or to sub-license the technical know-how, data, engineering designs, layouts etc. to other parties, without the consent in writing of the U.K. Company.
8. There shall be no restraint on the Indian company having their own arrangements for procurement of raw materials, purchase of spares and components and for pricing their products and the sale thereof.
9. Technicians who may be deputed by the U.K. company to the Indian company to advise and assist the Indian company under this agreement shall be paid their salary, travelling expenses and boarding and lodging by the Indian company.
10. The Indian company shall likewise bear all the expenses of the persons sent by them to the U.K. Company for training in their works.
11. The parties hereto mutually agree that they will each inform the other of any new development in design or methods of manufacture which they respectively may discover during the continuance of this Agreement in so far as such new developments are applicable to the products manufactured by the Indian company.
12. On the expiry of the period prescribed herein or of extended period provided in clause 3 (supra) or upon the termination of this agreement for any reason the Indian company shall return to the U.K. company all copies of information data or material sent to it by the U.K. company under this Agreement and then in its possession and shall expressly refrain from communicating any such information, technical data or material received by it hereunder to any person, firm or company whatsoever.

In Witness Whereof the parties hereto have signed this Agreement this _____ day of 2013 in the presence of the following:

WITNESSES:

For XYZ

Ltd

sd/-

1.

2

For ABC Ltd.

sd/-

SPECIMEN JOINT VENTURE AGREEMENT

THIS AGREEMENT IS MADE on 8th day of 2015 by and between:

AMCO INC. Incorporated under the appropriate laws of the United States of America having its office at 5 Seventh Street, New York of the ONE PART and the

term unless repugnant to the context otherwise shall also includes its executor or any other person authorized by it on its behalf.

AND

INCO LTD. a company registered under the Companies Act, 1956 having its office at 99, Chowring Road Calcutta 700071 of the OTHER PART and the term unless repugnant to the context otherwise shall also includes its executor or any other person authorized by it on its behalf.

WHEREAS AMCO INC. (hereinafter referred to as AMCO) carries on business as manufacturer of and dealer and exporter in Computers, Computer Hardware and Software and has worldwide market and intends to extend its market here in India and elsewhere.

AND WHEREAS INCO LTD. (hereinafter referred to as INCO) carries on business as manufacturer of, dealer in and exporter of Computer Software and intends to expand its business in India and abroad.

AND WHEREAS AMCO and INCO intend to co-operate in manufacturing/dealing in and exporting Computers, Hardware and Software in India and abroad for mutual benefit by setting up a new company.

NOW THESE PRESENTS WITNESSETH AND THE PARTIES HEREBY AGREE AS FOLLOWS:

1. A Joint-stock company would be formed under the name and style of Indo-American Company Pvt. Ltd. under the Companies Act 1956 having its Registered Office at 99 Chowringhee Road, Calcutta 700 071.
2. AMCO and three of its nominees and INCO and three of its nominees would be the subscribers to the Memorandum and Articles of Association of the said company to be incorporated.
3. The shareholding in the Share Capital of the said company to be incorporated would be in equal proportions between AMCO and INCO.
4. The Memorandum and Articles of Association of the company proposed to be incorporated would be settled in mutual consultation and the same would govern the rights and obligations of AMCO and INCO in relation to the said proposed company.
5. AMCO will be allotted shares in the said new company partly in cash and partly towards the cost of plant, machinery and equipment to be supplied by AMCO to the new company and in consideration for assignments by AMCO of its Patent Rights, Trade Marks, Trade Names and Licenses in favor of the new company to be incorporated. The consideration for allotment of shares to AMCO would also include the supply and transfer of technical formula, new



inventions, secret processes, technical information concerning the production, manufacturing, testing, specifications, instructions and information as to the manufacture of, development, use and servicing, maintenance and improvement of quality of Computers, Hardware and Software and generally in connection with the successful carrying on of the said business by the said new company to be incorporated.

6. Will furnish necessary technical assistance and expertise to the new company for assembling, installation, start-up and for smooth running of the manufacturing and selling processes as might be required by the new company from time to time.
7. Will furnish to the new company all other technical assistance and advice in relation to the operation of the plant and machinery, repairs thereof, testing facilities, training facilities and Research & Development facilities should be arranged for, provided and continued for successful running of the business of the new company.
8. The shares that would be allotted by the new company should not be transferred by either AMCO or INCO within a period of five years from the date of allotment and thereafter if any of the parties intends to transfer any share then the same shall be offered first to the other party at a price to be determined by a Valuer to be appointed by mutual agreement and in absence by application to the Indian Chamber of Commerce.
9. The new company will manufacture Computers, Hardware and Software and allied accessories and products and the same would be marketed in India and exported to other countries under the Trade name or Brand name made available by AMCO and by any other name and shall obtain new Trade Mark and obtain Patents for further and better manufacturing, selling and exporting the new company's products.
10. This agreement is made subject to obtaining approvals of the Indian Government and other concerned authorities.
11. In the event certain additions or alterations are required under this agreement due to imposition of certain terms and conditions by Government of India or appropriate authority granting the approval shall be incorporated in this agreement by way of a supplemental agreement and if required the Memorandum and Articles of Association of the new company would also be in conformity with such directions or approvals of the appropriate authorities.

IN WITNESS WHERE OF the parties hereto have signed, sealed and delivered these presents on the day, month and year first above-written in the presence of;

Witnesses

1
Ltd.

2

Sd/-
For INCO Ltd.
Sd/-

ARBITRATION AGREEMENT

Meaning of Arbitration	Arbitration can be defined as the means by which the parties to dispute consent to get same settled through the intervention of a third person, called arbitrator, without having recourse to a court of law.
Essential Ingredients of an Arbitration Agreement	There should be a valid and binding agreement between the parties. Parties should intend to refer present or future disputes to arbitration. Such agreement may be contained as a clause in a contract or in the form of a separate agreement. Such an agreement must be in writing and includes an exchange of letters, telex, telegrams or other means of communication which provide a record of such arbitration agreement.
Appointment of Arbitrator	The person who is appointed to determine the difference or disputes is called the Arbitrator or Arbitral Tribunal. The parties to an Arbitration Agreement are free to choose the arbitrator, which may be a Sole Arbitrator or number of arbitrators but never an even number. Where the arbitration agreement does not provide for the number of arbitrators then the dispute shall always be referred to the Sole Arbitrator. Where the arbitrator appointed by the parties fails to perform his duties then as per Section 11 of the Arbitration and Conciliation Act, 1996, arbitrator is appointed by the Chief Justice of the High Court concerned or his designate Judge. In Konkan Railway Corporation Ltd. v. Rani construction Pvt. Ltd., it was held that an order passed under Section 11 of the Arbitration and Conciliation Act, 1996 by the Chief Justice or his designate inot an adjudicatory order and thus, the same cannot be challenged by way of Special Leave Petition under Article 136 of Constitution of India.
Arbitral Award	Award means the decision of the Arbitrator. An award may be defined as the final and binding decision of dispute by a forum created by an agreement of the parties to the dispute. Further, the term arbitral award includes an interim award.
Form and Contents of	The arbitral award must be in writing, It must state the reasons unless otherwise agreed by the parties.



Arbitral Award	It must be dated and signed by the arbitrators. It must state the place of arbitration. A signed copy of the arbitral award must be delivered to each of the parties to the reference.
Limitation period for Arbitral Award	There is no specific period provided under the Arbitration and Conciliation Act, 1996 to pass an arbitral award. However, as per the legislative policy, the arbitrator should pass the award within a reasonable period.
Registration of Award	The award which deals with immovable property of the value of Rs. 100 or more requires registration.
Stamp Duty on Arbitration Award	The stamp duty on the arbitration award passed by an arbitrator is payable as per Article 12 of Sch 1 of India Stamp Act, 1899. The rate of stamp duty varies from State to state.

Legality of an arbitration agreement of the parties on the subject matter already pending in the court

The existence of an arbitration agreement before the case is brought to court is not essential and parties can enter into an arbitration agreement during pendency of proceeding before the court. This view was established in *Anand Gajapathi Raju v. PVG Raju*, where during the pendency of the appeal before Supreme Court, all the parties entered into an arbitration agreement and agreed to refer their dispute to a retired Supreme Court Judge as Sole arbitrator. The agreement was in the form of an application and had been signed by all the parties. It was held that the agreement need not already be in existence; the phrase 'which is the subject of an arbitration agreement does not necessarily require that the agreement must already be in existence before the action is brought in the Court – the phrase also connotes an arbitration agreement being brought into existence while the action is pending. The court further stated that the arbitration agreement satisfied the requirements of section 7 and that of the language of section 8 is peremptory. It is therefore obligatory for the court to refer the parties to arbitration in terms of their agreement.

ARBITRATION AGREEMENT

THIS AGREEMENT is made at Nagpur on Saturday 21st day of April 2015 by and between:

Mr. X. _____ of _____ age _____ residing at _____, hereinafter to be called as 1st party and the expression unless repugnant to the context otherwise shall also include his legal heir, power of attorney, executor thereof.

AND

Mr. Y..... of residing at Here in after to be called as 2nd party and the expression unless repugnant to the context otherwise shall also include his legal heir, power of attorney, executor thereof.

WHEREAS by an Agreement (Building contract) dated 2007 entered into between the parties hereto, the Party of the First Part entrusted the work of constructing a building on his plot of land situated at to the Party of the Second Part on the terms and conditions therein mentioned.

AND WHEREAS the Party of the Second Part has commenced the construction of the building according to the plans sanctioned by the Municipal Corporation and has completed the construction to the extent of the 1st floor level.

AND WHEREAS the Party of First Part has certain payments to the Party of the Second Part on account but the Party of the Second Part is pressing for more payments which according to the Party of the First Part he is not bound to pay and, therefore the work has come to a standstill.

AND WHEREAS the said agreement provides that in the event of any dispute or difference arising between the parties the same shall be referred to arbitration of a common arbitrator if agreed upon and the provisions of the Arbitration & Conciliation Act, 1996, shall govern the Arbitration.

AND WHEREAS the parties have agreed to refer all the disputes regarding the said contract to Mr..... Architect, as common Arbitrator and have proposed to enter into this Agreement for reference of the disputes to the sole arbitration of the said Mr.

NOW IT IS AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. That the following points of dispute arising out of the said agreement dated.... are hereby referred to the sole arbitration of the said Mr. For his decision and award.



The points of dispute are:

- a) Whether the Party of the Second Part has carried out the work according to the sanctioned plans and specifications.
 - b) Whether the Party of the Second Part has delayed the construction.
 - c) Whether the Party of the Second Part is overpaid for the work done up now.
 - d) Whether Party of the First Part is bound to make any further payment over and above the payments made up to now for the work actually done.
 - e) All other claims of one party against the other party arising out of the said contract up to now.
2. The said Arbitrator shall allow the parties to file their respective claims and connotations and to file documents relied upon by them within such reasonable time as the Arbitrator may direct.
 3. The said Arbitrator shall give hearing to the parties either personally or through their respective Advocates but the Arbitrator will not be bound to take any oral evidence including cross examination of any party or person.
 4. The said Arbitrator shall make his Award within a period of 4 months (four months) from the date of service of a copy of this agreement on him any of the parties hereto provided that, the Arbitrator will have power to extend the said period from time with the consent of both the parties.
 5. The Arbitrator will not make any interim award.
 6. The award given by the Arbitrator will be final and binding on the parties hereto.
 7. The Arbitrator will have full power to award or not to award payment of such costs of and incidental to this arbitration by one party to the other as he may think fit.
 8. The provisions of the Arbitration & Conciliation Act, 1996, shall govern the Arbitration.

IN WITNESS WHEREOF the parties herein have set their hands the day, date, month and year above mentioned in the presence of –

Witness

1

sd/-
1st party

2

sd/-
2nd party

ARBITRAL AWARD



In the matter of the Arbitration and Conciliation Act, 1996 and in the matter of an Arbitration Agreement dated _____ between _____ S/o, aged _____, R/o _____ and _____ S/o, aged _____, R/o _____.

This is the award of the Arbitral Tribunal made this _____

WHEREAS in pursuance of an agreement and/or submission in writing dated the _____ day of _____, _____ and made between the above named parties, the said _____ and _____ referred to us, for decision and award the matters in dispute and difference between them (state the matters in difference). Now we have heard and examined the parties and considered the pleadings and all allegations and counter-allegations made by them against each other and also all books, papers, writing and other evidence produced before us.

Now, we have duly considered the matter referred to us, do hereby make our award as follows:

We award:

That _____

That _____

Dated the _____ day of _____, _____

Sd/-
Arbitrator

GUARANTEES

Contract of Guarantee	A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the 'surety'; the person in respect of whose default the guarantee is given is called the "principal debtor"; and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written.
Purpose of a Guarantee	The primary idea of a guarantee or surety-ship is, an undertaking to indemnify the creditors in case the principal debtor does not fulfil his promise; the contract of guarantee in that sense is a contract to indemnify.



Form of a Guarantee	The law does not require a contract of guarantee to be necessarily in writing. It may be either oral or in writing. It may be express or it may even be implied. It might be even inferred from the course of conduct of the parties concerned. However, whatever may be the form of the contract, it must be satisfactorily proved. Like any other contract, a contract of guarantee must be supported by consideration. It is, however, not necessary that the consideration should flow from the creditor and be received by the surety. Consideration between the creditor and the principal debtor is a valid and good consideration for the guarantee given by the surety.
Construction of a Guarantee	The terms of a guarantee must be strictly construed. The surety receives no benefit and no consideration. He is bound, therefore, merely according to the proper meaning and effect of the written engagement that he has entered into. In construing a guarantee, the principle is that a guarantee will only extend to a liability precisely answering the description contained in the guarantee.
Type of Guarantee	
Continuing Guarantee	A guarantee which extends to a series of transactions is called a "continuing guarantee", and it may be revoked by the surety at any time as to future transactions, by notice to the creditor.
Fidelity Guarantee	A guarantee, guaranteeing an employer against misconduct of an employee or to answer for the debt or default of another, is called a fidelity guarantee".
Counter Guarantee	A guarantee given by the principal debtor to the surety providing him continuing indemnity against any loss or damage that the surety may suffer on account of default on the part of the principal debtor is called as "Counter guarantee".
Performance Guarantee	A guarantee which ensures the contracted performance of another person and under which the surety undertakes to compensate the person in whose favour the guarantee is given in the event of failure on the part of the person on whose behalf the guarantee is given is known as "performance guarantee".
Bank guarantee	A bank guarantee is a guarantee given by a bank on behalf of its client or account holder to another person with whom the client has entered into a contract to perform some job or to do and call upon the bank to pay the guarantee amount in the event of the contingency, mentioned in the guarantee, happening or not happening, as the case may be.
Consideration	Anything done, or any promise made, for the benefit of the



for a Guarantee	principal debtor may be a sufficient consideration to the surety for giving the guarantee.
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SPECIMEN DEED OF GUARANTEE FOR THE PERFORMANCE OF A CONTRACT

THIS DEED OF GUARANTEE made on This Thursday, 23rd day of March 201_ by and between:

Shri Son of Shri..... resident of..... (Hereinafter called "the Guarantor"), which expression shall, unless repugnant to the context, include his heirs, legal representatives, assigns thereof of the one part

AND

Shri....., son of..... resident of..... (Hereinafter called "the Principal), which expression shall, unless repugnant to the context, include his heirs, legal representatives, assigns etc., of the other part.

WHEREAS BY AN AGREEMENT DATED..... made between Shri..... son of Shri..... resident of..... etc., therein referred to as "the Contractor", of the one part and the said..... Shri..... herein referred to as "the Principal", of the other part, it was inter alia agreed by and between the parties as follows:
(Here state the nature of the work to be done by the Contractor);

AND WHEREAS the said work was entrusted to the Contractor upon the Guarantor having agreed with the Principal as to its guarantee of performance by the Contractor and to indemnify and keep indemnified the Principal against all losses, damages, costs, charges and expenses arising out of performance or non-performance thereof.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. The Guarantor will see that the Contractor (unless relieved from the performance by operation of any clause of the contract or by statute or by virtue of the decision of any tribunal or court of competent jurisdiction, shall carry out,



execute and perform the contract without any exception or reservation and in case he commits any breach thereof, the Guarantor will indemnify and keep indemnified the Principal and his estate against all losses, damages, costs, expenses or otherwise which he may suffer or otherwise incur by reason of any act, negligence, default or error in judgment on the part of the Contractor in performing or non-performing the contract.

2. In case of any dispute or difference as regards the quantum of such losses, damages, costs, charges or expenses, the same shall be decided by reference to arbitration of one architect or engineer if the parties so agree or otherwise to two architects or engineers, one to be appointed by each, whose decision shall be final and binding on all parties.

In witness whereof, the parties hereto have hereunto set and subscribed their respective hands and seals the day, month and the year first above-written.

Signed, sealed and delivered in the presence of

WITNESSES

1.

Sd/-
Guarantor

2.

sd/-
Principal

OUTSOURCING AGREEMENTS

Outsourcing is the contracting out of a company's non-core, non-revenue producing activities to specialists. It differs from contracting in that outsourcing is a strategic management tool that involves the restructuring of an organization around what it does best - its core competencies.

Two common types of outsourcing are Information Technology (IT) outsourcing and Business Process Outsourcing (BPO). BPO includes outsourcing related to accounting, human resources, benefits, payroll, and finance functions and activities. Knowledge Process outsourcing (KPO) includes outsourcing related to legal, paralegal, and other highly skilled activities.

A good outsourcing agreement is one, which provides a comprehensive road map of the duties and obligations of both the parties - outsourcer and service provider. It minimizes complications when a dispute arises.



Before finalizing an outsourcing agreement, the terms should be thoroughly discussed and negotiated to avoid any misunderstanding at a later stage. It is advisable to consult a lawyer before finalizing any outsourcing agreement.

A Specimen of Outsourcing Agreement for Converting Hard Copies of a Book in a Compact Disc (CD)

This Agreement for the conversion of the book titled Intellectual Property Protection in India is executed on Wednesday 21st day of March 2015 by and between

The Golden Law Publishing Co. Pvt. Ltd. having their Office at represented by Mr. Manager, Golden Law Publishing Co. Pvt. Ltd. (hereinafter referred to as 'the GLP Pvt. Ltd.') which expression shall, unless repugnant to the context, include its legal representatives, assigns thereof
AND

M/s Bluetec Web Services Pvt. Ltd, a Company registered under the Companies Act having their office at and represented by Mr. Director, M/s Bluetec Web Services Pvt. Ltd, (hereinafter referred to as the M/s Bluetec Pvt. Ltd.) which expression shall, unless repugnant to the context, include its legal representatives, assigns thereof

WHEREAS the GLP Pvt. Ltd. has published the book Intellectual Property Protection in India it has decided to convert the hard copies of above mentioned book into a soft copy version by getting the book digitized and thereafter put the contents of the book in a CD (Compact Disc) along with a Search Engine. The GLP Pvt. Ltd. floated a tender for this book vide tender document with closing date2007 and after evaluating the bids of various parties, the GLP Pvt. Ltd. has decided to award the project to M/s Bluetec Pvt. Ltd. on the following terms and conditions:

NOW THIS DEED WITNESSES AS FOLLOWS:

1. M/s Bluetec Pvt. Ltd. would perform the job of digitization (of the relevant portions marked for digitization) of the book including Data punching / Scanning, OCR Validation, Proof-reading (at an accuracy level of 99.9%), Tagging according to search parameters, Linking, Indexing etc.
2. M/s Bluetec Pvt. Ltd. would be developing a search engine as per the GLP's requirement. The search engine would be licensed to the GLP Pvt. Ltd. for its perpetual use. The GLP Pvt. Ltd. would further be free to use this Search



Engine for any purpose and would not be liable to pay to M/s Bluetec Pvt. Ltd. any additional amount for such usage.

3. The copyright of the contents of the CD, marketing rights and all other rights pertaining to the said CD would solely vest with the GLP Pvt. Ltd.
4. M/s Bluetec Pvt. Ltd. undertakes to complete the assignment within a period of 100 days from the date of execution of this agreement.
5. After the completion of the job M/s Bluetec Pvt. Ltd. would give sufficient training including technical aspects (relating to the features of the search engine developed by the M/s Bluetec Pvt. Ltd. to the people deputed by the GLP Pvt. Ltd. to facilitate to use the search engine independently. The training must be up to the satisfaction of the GLP Pvt. Ltd. in all aspects.
6. M/s Bluetec Pvt. Ltd. would hand over the digitized contents of the book to the GLP Pvt. Ltd. after the completion of the job.
7. The total project cost to be paid to M/s Bluetec Pvt. Ltd. would be as follows.
 - Cost of developing the Search Engine – Rs..... (Rupees..... only)
 - Digitization cost for each page (in hard copy) – Rs..... per page
 - Conversion cost for each page (in soft copy) – Rs..... per page
 - Total cost of each CD including the manual, jewel case, packing, printing and security features.
8. It is to be noted that the original CD lot would be of 750 CDs only.
9. For the purpose of page count, 50% or more coverage would be treated as one full page and less than 50% would be ignored and would not be taken in counting.

In Witness Whereof the parties hereto have set their respective hands to the agreement on the day, month and the year mentioned herein above.

Witnesses

1.

for GLP pvt. Ltd
sd/-

2.

for Bluetech Pvt. Ltd.
sd/-

SERVICE AGREEMENTS

Contents of a Service contracts are drafted in the same way as other agreements.



Service Contract:	<p>The terms of employment should be definitely fixed and clearly expressed and nothing should be left to presumptions. They are required to be both affirmative (describing the acts and duties to be performed) as well as negative (putting restrictions on the acts of the employee during and/or after the term of employment). It is therefore necessary to make provision for</p> <ul style="list-style-type: none">➤ The time or period of employment;➤ The remuneration and other perquisites, if any, including pay, allowances, commission, rent-free house, conveyance, etc;➤ Duties of employment;➤ Powers of the employee;➤ Leave and the terms on which it will be granted;➤ Modes and grounds of determining the employment during the term; and➤ Restrictive covenants, if any.
Period of Service:	<p>This may be definite or indefinite. If no period is fixed or an indefinite period is stated, e.g., "so long as the parties respectively please", the contract is terminable by a reasonable notice on either side. What is a reasonable notice varies in different cases, according to the characters of the employment and the general custom, from 15 days to six months, When no term is fixed, it is always proper to provide for determination by notice, In such a case, and also in case option of determination is reserved during the term, the period of notice should be settled and expressed in the agreement.</p>
Remuneration:	<p>Remuneration may be fixed monthly salary, or fees or commission, or salary as well as fees or commission. Sometimes in business firms, employees are allowed a share in the profits in addition to a fixed salary. All these should be clearly provided</p>
Leave:	<p>Conditions and grounds on which, and the period for which leave may be granted as well as allowance payable during leave should be stated. In the case of Government servants engaged on contract, the leave rules applicable to permanent Government Servants in general may be applied but as there are different rules for different classes of Government Servants those applicable should be clearly referred to, or if they are not lengthy, they may be embodied in the agreement in the form of a covenant.</p>
Determination of	<p>The grounds for determination of employment should be clearly expressed in the agreement. The grounds on which the employment</p>



Employment:	may be determined during the term are generally misconduct, negligence, or want of medical fitness.
Restrictive Covenants:	It is usual to include restrictive covenants in the agreement such as that the employer will not undertake any other work or service or that he will not divulge the employer's secrets or make improper use of his trade secrets or information about the employer's affairs.
Effect of Labour Laws:	Many Acts have been passed by the Central or State legislatures relating to the conditions of employment of teachers and other employees of aided schools and colleges and of universities, and of workers in factories and commercial establishments, for e.g. the Factories Act, the Industrial Employment (Standing Orders) Act, the Payment of Wages Act, the Workmen's Compensation Act etc. In drawing up a service contract for such an employee, the provisions of the relevant Acts must be kept in view. Any term of contract contrary to the statutory provisions will be null and void, as it is not open to an employee to contract out of the safeguards provided by the legislature for his protection.

SPECIMEN AGREEMENT OF EMPLOYMENT OF MANAGER OF A BUSINESS CONCERN

AN AGREEMENT made on this..... day of..... by and between

AB, etc. (hereinafter called the "employer") which expression shall, unless repugnant to the context, include his heirs, legal representatives, assigns thereof of the one part

AND

CD, etc. (hereinafter called the "manager") which expression shall, unless repugnant to the context, include his heirs, legal representatives, assigns thereof of the other part

WHEREAS

1. The employer wants to appoint a suitable person to work as manager for his business concern; and
2. CD, the party of the other part, has agreed to serve as manager of the employer for his business concern.



NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

1. The manager shall work as such for a term of..... years from the day of..... at..... or any other place as desired by the employer.
2. The manager shall give his whole time and attention to the said business and shall use his best endeavor to improve and expand the same and shall in all respects diligently and faithfully obey and observe all lawful orders and instructions of the employer in relation to the conduct of the said business and shall not without his consent divulge any secrets or dealing thereto.
3. The manager shall keep at the place of business at..... proper books of account showing all goods and moneys received and delivered and disbursed by him with necessary particulars of all such transactions and shall duly account for all moneys belonging to the employer and coming into the hands or power of the manager and shall forthwith pay the same to the employer or his bankers for the time being except only such moneys as the manager shall be authorized by the employer to retain for immediate requirements of the said business.
4. Either party hereto may terminate the engagement of the manager at any time before the expiration of the said term of.....years on giving or sending by registered post to the other party three calendar months, notice in writing, such notice to be given or sent in the case of the employer to his house at and in case of the manager to his place of business or residence provided by the employer and on the expiration of the said three months from the date of giving or posting such notice, the said engagement shall terminate provided that the employer may terminate the said engagement at any time on payment of three months' pay in advance in lieu of such notice as aforesaid.
5. If the manager at any time willfully neglects or refuses or from illness or other cause becomes or is unable to perform any of the duties under this agreement, the employer may suspend his salary (and sum by way of percentage) during such neglect, negligence or inability as aforesaid and may further immediately terminate the engagement of the manager without giving any such notice or making such payment or salary in advance as hereinbefore provided.
6. The manager will at his own expense find and provide two respectable sureties to the amount of Rs..... each for his good conduct and for the due performance by him of this engagement and if he fails to do so for a period of three months from this date, the employer may terminate his services forthwith.

In witness whereof, the parties hereto have hereunto set and subscribed their respective hands and seals the day, month and the year first above-written.



RENEWAL OF TERM OF SERVICE OF AN EMPLOYEE

(Either on old terms or new terms)

AN AGREEMENT made on this..... day of..... by and between

AB, etc. (hereinafter called the “employer”) which expression shall, unless repugnant to the context, include his heirs, legal representatives, assigns thereof of the one part

AND

CD, etc. (hereinafter called the “manager”) which expression shall, unless repugnant to the context, include his heirs, legal representatives, assigns thereof of the other part

WHEREAS the said CD has served the said AB as..... under an agreement between the parties hereto dated the.....;

AND WHEREAS the term of the said CD’s engagement under the said agreement having expired on the....., it has been agreed that the said AB shall re-engage, the said CD upon the terms and conditions hereinafter appearing (or, upon the terms and conditions contained in the said agreement dated the.....).

NOW THIS DEED WITNESSES AS FOLLOWS:

(1) The said CD shall serve the said AB as..... for one year from the.....

(2)

(3) etc.

or, 2. The terms and conditions of the said agreement shall be the same as are contained in the aforesaid agreement of the parties dated..... in so far as they may be applicable to the employment under this agreement and all the terms and conditions contained in the said agreement shall be deemed to have been incorporated in this agreement).

IN WITNESS WHERE OF etc.

E – CONTRACTS

Ecommerce is the selling and purchasing of goods and services using technology. These are basically the contracts analyzed with e – commerce and other transactions taking place in the digital environment.



The principles and remedies as are applicable to traditional contracts are also applicable to e – contracts. These are born out of the need for speed, convenience and efficiency. In the electronic age, the whole transaction can be completed in seconds, with both the parties simply affixing their digital signatures to an electronic copy of the contracts.

The contracts formed through electronic media are treated as the general contracts and their formation and acceptance are governed as per Indian contract Act, 1872. Similarly, the Indian evidence act, 1872 deals with the presumption as to e-records, providing the electronic records as evidence in the disputed matter. However, the conventional law relating to contracts is not sufficient to address all the issues that arise in electronic contracts and thus in India the information Technology Act solves some of the peculiar issues that arise in the formation and authentication of electronic contracts.

Essentials of E- contracts

- a) An offer or proposal by one party and acceptance of that offer by another party resulting in an agreement consensus-ad- idem.
- b) An intention to create legal relations or an intent to have legal consequences.
- c) The agreement is supported by lawful consideration.
- d) The parties to contract are legally capable of contracting.
- e) Genuine consent between the parties.
- f) The object and consideration of the contract is legal and is not opposed to public policy.
- g) The terms of the contract are certain.
- h) The agreement is capable of being performed i.e., it is not impossible of being performed.

TYPES OF E-CONTRACTS

1. The Click-wrap or Web-wrap Agreements.
2. The Shrink-wrap Agreements.
3. The Electronic Data Interchange or (EDI).

CLICK WRAP AGREEMENT

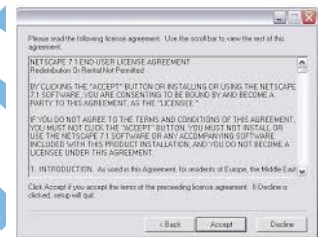
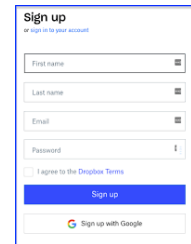
These are the agreements, which we generally come across while surfing internet such as “I AGREE” to the terms or “I DISAGREE” to the above conditions. A click-wrap agreement is mostly found as part of the installation process of



software packages. It is also called a “click through” agreement or click-wrap license.

TYPES OF CLICK WRAP AGREEMENT

1. **Type and Click** where the user must type “I accept” or other specified words in an on-screen box and then click a “Submit” or similar button. This displays acceptance of the terms of the contract. A user cannot proceed to download or view the target information without following these steps.
2. **Icon Clicking** where the user must click on an “OK” or “I agree” button on a dialog box or pop-up window. A user indicates rejection by clicking “Cancel” or closing the window. Upon rejection, the user can no longer use or purchase the product or service. A click wrap contract is a “take-it-or-leave-it” type of contract that lacks bargaining power.

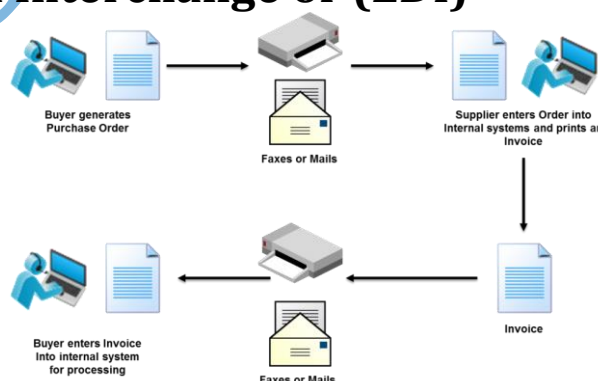


The Shrink-wrap Agreements

Shrink wrap contracts are license agreements or other terms and conditions which can only be read and accepted by the consumer after opening the product like CD ROM of software. The terms and conditions are printed on the cover of CD ROM. Sometimes additional terms are imposed when in such licenses appear on the screen when the CD is downloaded to the computer. The user has right to return if the new terms and conditions are not to his liking.



Electronic Data Interchange or (EDI)



These contracts used in trade transactions which enables the transfer of data from one computer to another in such a way that each transaction in the trading cycle (for example, commencing from the receipt of an order from an overseas



buyer, through the preparation and lodgment of export and other official documents, leading eventually to the shipment of the goods) can be processed with virtually no paperwork. Here unlike the other two there is exchange of information and completion of contracts between two computers and not an individual and a computer.

On-Line Shopping Agreement

Suppose Kerry Ltd. wants to offer online shopping services to its customers. Kerry would tie-up with manufacturers of books, toys, clothes etc. and offer their products for sale through its website. Some of the products could be stocked in Noodle's warehouses while others could be stocked with the manufacturers. Additionally, visitors can post reviews, comments, photos etc on the Kerry website. Kerry would need to enter into a contract with all its potential customers "before" they place an order for a product using Kerry services.

This contract must serve the following purposes:

- Outline the scope of services provided by Kerry Ltd.
- Restrict Kerry's liabilities in case there is any defect in the products sold through the Kerry website.
- Outline the duties and obligations of the customer.
- Grant suitable license to the customer to use the Kerry website.
- Restrict Noodle's liabilities in case of loss or damage suffered by the customer as a direct or indirect result of the Kerry website.

IMPORTANT POINTS IN REGARD TO E-CONTRACTS

Customer's relationship with Kerry	The contract must specify that by using the Kerry website, the customer becomes subject to the terms of a legal agreement between the customer and Noodle. Customers must be informed that they must be of legal age to enter into the contract.
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Acceptance of the terms of the contract	The contract must clearly lay down that a customer cannot use the Kerry website unless he agrees with the terms of the contract. The customer can usually indicate his acceptance by clicking on an "I Accept" link or checking an "I Accept" checkbox.
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Copyright	The contract should clearly state that all content included on the Kerry website, such as text, graphics, logos, button icons, images, audio clips, digital downloads, data compilations, and software, is the property of Kerry Ltd.
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Customers	The contract should clearly lay down the duties and obligations of
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duties and obligations

the customer. Amongst others, the customer must:

- Not overload Noodle's systems.
- Not download or modify the Kerry website.
- Collect and use any product listings, descriptions, or prices.
- Download or copy account information by data gathering and extraction tools.
- Not frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form).
- Not use any "hidden text" utilizing Noodle's name or trademarks.

License from Noodle

The contract should specify that Kerry is giving the customer a limited, revocable, and nonexclusive right to create a hyperlink to the home page of Kerry so long as the link does not portray Noodle, or its products or services in a false, misleading, derogatory, or otherwise offensive matter. The contract must also specify that Kerry is giving the customer a personal, worldwide, royalty-free, non-assignable and non-exclusive licence to use the software provided as part of the Kerry website. The contract must clarify that this licence is for the sole purpose of enabling the customer to use the Kerry website. The contract must forbid the customer from the following acts in respect of the said software:

- copying,
- modifying,
- creating a derivative work of,
- reverse engineering,

Decompiling or otherwise attempting to extract the source code. The contract must mention that the customer cannot assign, sub-license or transfer his rights to use the Kerry software.

Reviews and comments

The contract should clearly mention that the reviews, comments, photos etc. posted by customers should not be illegal, obscene, threatening, defamatory, invasive of privacy, infringing of intellectual property rights, or otherwise injurious to third parties.

It should also be mentioned that such content should not consist of or contain software viruses, political campaigning, commercial solicitation, chain letters, mass mailings, or any form of "spam." It should also be stated that a customer who posts content grants to Kerry Ltd non-exclusive, royalty-free, perpetual, irrevocable, and fully sub licensable right to use, reproduce, modify, adapt, publish,



translate, create derivative works from, distribute, and display such content throughout the world in any media.

The contract must also state that the customer posting the content indemnifies Kerry against all legal action and claims resulting from the said content

Risk of loss

Kerry has a shipping contract with various courier companies to deliver the products to the customers. The contract should clearly state that once the products are handed over to the courier company, Kerry's liability ends.

Pricing

The contract should clarify how the prices listed on the Kerry's website are computed. **The various options could be:**

- The listed price represents the full retail price listed on the product itself,
- The listed price is suggested by the manufacturer or supplier,
- The listed price is estimated in accordance with standard industry practice, or
- The listed price is estimated in accordance with the estimated retail value for a comparably featured item offered elsewhere.

Prohibitions

The contract must specifically prohibit the following:

- Using "deep-link", "page-scrape", "robot", "spider" etc to access, acquire, copy or monitor any portion of the service.
- Reproducing the navigational structure or presentation of the service.
- Circumventing the navigational structure or presentation of the service.
- Attempting to gain unauthorized access to any portion or feature of the service.
- Harvesting or collecting user names, email addresses or other member identification information.
- Probing, scanning or testing the vulnerability of the service.
- Tracing information relating to other users.
- Agreeing not to use any device, software or routine to interfere or attempt to interfere with the proper working of the service or any transaction being conducted on the service, or with any other person's use of the service.
- Using the service for any unlawful purpose.



Applicable Law	The contract should mention the city / state and country whose law will prevail in this contract. The courts having exclusive jurisdiction over the disputes should also be mentioned. Conditions relating to arbitration of disputes may also be mentioned.
Limitation of liability	<p>The contract must clearly mention that Kerry Ltd (and its subsidiaries, affiliates, licensors etc.) will not be liable to the customer for:</p> <ul style="list-style-type: none">➤ Access delays or interruptions to the Kerry web site.➤ The loss of registration or processing of an order.➤ The unauthorized use of the customer's account with Noodle.➤ Deletion of, failure to store, or failure to process or act upon email messages sent by customers to Kerry staff. <p>Errors taking place with regard to the processing of the customer's orders.</p> <ul style="list-style-type: none">➤ Any direct, indirect, incidental, special consequential or exemplary damages incurred by the customer pursuant of his use of the Kerry website.➤ Any loss of profit, any loss of goodwill or business reputation, any loss of data suffered, cost of procurement of substitute goods or services, or other intangible loss incurred by the customer pursuant of his use of the Kerry's services.➤ Any loss or damage incurred by the customer as a result of relationship or transactions with advertisers using the Noodle website.➤ Changes in or cessation of the Kerry's services.➤ Customer's failure to keep his account information, passwords etc. secure and confidential.
Exclusion of warranties	<p>The contract must clearly mention that the customer expressly understands and agrees that his use of the services is at his sole risk and that the services are provided "as is" and "as available". The contract must expressly disclaim all warranties and conditions of any kind (express and implied).</p> <p>It must also be mentioned clearly that Kerry (its subsidiaries, affiliates, licensors etc.) do not represent or warrant to that:</p> <ul style="list-style-type: none">➤ The Kerry's services will meet the customer's requirements,➤ The Kerry's services will be uninterrupted, timely, secure or free from error,➤ The information provided by or through the Kerry's services



will be accurate or reliable, and

- That defects in the operation or functionality of the Noodle services will be corrected.

Ending the relationship between Kerry and the customer

The contract must lay down that the customer can terminate the contract by closing his accounts with Noodle.

Kerry must retain the right to terminate the contract under the following circumstances:

- The customer breaches any provision of the contract.
- The customer acts in a manner that clearly shows his intention to breach a provision of the contract.
- Kerry is required by law to terminate the contract.
- The provision of the services to the customer is no longer commercially viable.



PAST EXAM QUESTIONS

Short note on:

- Q1) Components of an award. (Dec'05)
- Q2) Del-Creder agency (Dec'10, June'09)
- Q3) Arbitration award (Dec'10)
- Q4) Arbitration agreements (Dec'12)
- Q5) Collaboration agreement (June'14)
- Q6) Types of e-contracts (June'14)

Distinguish between

- Q7) Counter guarantee & fidelity guarantee (Dec'09)
- Q8) Lease & license (Dec'11)
- Q9) Counter guarantee & performance guarantee & fidelity guarantee (June'12)
- Q10) Mention important guidelines for entering into foreign collaboration agreement.
- Q11) Hypothecation is an extended form of pledge. Explain the statement and make suggestions for improvement in the law of hypothecation citing case law. (June'12)
- Q12) Formation of e-contracts, being paperless, lies outside the fowler's rules of drafting. (Dec'14)
- Q13) In a contract if the material terms of agreement are clear & specific omission of minor or basic details will not invalidate the agreement. (June'14)
- Q14) An arbitration award is required to be registered. (June'15)
- Q15) What are e-contracts? Discuss important points with regards to drafting of e-contracts. (June'15)
- Q16) Explain in brief the essentials of hypothecation agreements. Draft a specimen agreement on behalf of a firm excel & co. to hypothecate goods to execute fixed loan from Rich bank. (June'15)





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DRAFTING AND CONVEYANCING RELATING TO VARIOUS DEEDS AND AGREEMENTS-II

Promissory Note:

A promissory note is defined under sec 4 of Negotiable Instrument Act, 1881 as 'an instrument in writing containing an unconditional undertaking, signed by the maker to pay a certain sum of money only to or to the order of a certain person or to the bearer of instrument' For Example: Mr. Ramdev BaBa signs instrument in the following manner.

- I promise to pay Sanju Baba Rs. 1500- it will be a promissory note.
- I owe you Rs. 1500 – is not be considered as promissory note.



Parties to promissory note:

The maker: → The person who makes or executes the note promising to pay the amount stated therein

The payee → One to whom the note is payable.

The holder: → Either a payee or some other person to whom he may have endorsed the note.

Essential of promissory note: to be a promissory note, an instrument must possess the following essentials:

- ☞ It must be in writing. An oral promise to pay is not sufficient.
- ☞ The promise or undertaking to pay must be unconditional
- ☞ The maker must sign the promissory note in token of an undertaking to pay to the payee or his order.
- ☞ The maker must be a certain person and the payee must also be certain
- ☞ The sum payable must be certain and payment must be in legal money and the promissory note must be properly stamped and must contain the place and date on which it is made.
- ☞ It must be properly stamped in accordance with the provisions of the Indian Stamp Act. Each stamp must be duly cancelled by maker's signature or initials.

Note: - Not mentioning the date and place will not invalidate promissory note.

Promissory note payable on demand

On demand I, Mr. _____, aged about _____, son of Mr. _____, resident of _____ and Mr. _____, aged about _____, son of Mr. _____, resident of _____ do hereby jointly and severally promise to pay a sum of Rs. _____ (in words) with interest at _____ % p.a. until the payment of value received.

Dated and delivered at _____ this _____, the _____ day of _____ 2019.

Place:

Date:

sd/

Maker 1

sd/-



Promissory note in consideration of Loan

In consideration of loan of Rs. _____ (in words) advanced by Mr. _____, aged about _____, son of Mr. _____, resident of _____, I, Mr. _____, aged about _____, son of Mr. _____, resident of _____, do hereby promise to repay the loan amount of said Rs. _____ with interest at 4% p.a. to the said Mr. _____ or order.

Dated and delivered at _____ this _____, the day of _____ 2019.

Place:

Date:

sd/-
Maker

DEEDS OF POWER OF AUTHORITY

INTRODUCTION:

A definition of power of attorney is also contained in Section 2(21) of the Indian Stamp Act, 1899 which reads as follows:

"Power of Attorney" includes any instrument (not chargeable with fee under the law relating to Court fees for the time being in force) empowering a specified person to act for and in the name of the person executing it".



In terms of Section 1A of the Powers-of-Attorney Act, 1882 as amended by the Powers-of-Attorney (Amendment) Act, 1982, a power of attorney includes an instrument empowering a specified person to act for and in the name of the person executing it. It is always kept by the attorney.

A power of attorney executed for the purpose of a specific act is called a "special power of attorney". It is also called a "particular power of attorney". A specific act is meant to imply either a specific act or acts related to each other as to form one judicial transaction, such as all the acts necessary to perfect a mortgage or a sale of a particular property. A power of attorney executed for the purpose of generally representing another person, or for performing more than one act, is called a 'general power of attorney'.

Since the donee of a power of attorney is an agent of the donor, it is essential to know about the law of agency. Several matters concerning agency are dealt with, not in the Powers-of-Attorney Act, but in the Indian Contract Act, 1872 (sections relating to agency). Important amongst these are:

- ❖ Who may execute a power;
- ❖ Who may become an attorney;
- ❖ when is a power terminated; and
- ❖ Whether a power coupled with interest is revocable.



Who can Execute Power of Attorney?

Section 2 of the Powers-of-Attorney Act, 1882 in its operative part provides that the donee of a power of attorney may execute or do any assurance, instrument or thing in his own name and signature, and an instrument or thing so executed or done shall be as effectual in law as if it had been executed or done "by the donee of the power in the name and with the signature and seal of the donor thereof". Simply stated, the section provides that the signature of the agent will be deemed to be the signature of the principal.

Section 5 of the Powers-of-Attorney Act, 1882, relating to married women's power to execute a power of attorney provides that a married woman of full age shall, by virtue of this Act, have power, as if she were unmarried, by a non-testamentary instrument, to appoint an attorney on her behalf, for the purpose of executing any non-testamentary instrument or doing any other act which she might herself execute or do; and the provisions of this Act relating to instruments creating powers-of-attorney, shall apply thereto.

Form of Deed of Power of Attorney

Powers of attorney are executed in the form of Deed Poll, usually in the first person. It is unilateral document. It begins either as - "KNOW ALL MEN BY THESE PRESENTS THAT I, ETC." or "BY THIS POWER OF ATTORNEY, I, ETC.". Generally, the operative words making the appointment are introduced directly without any recitals. If recitals become necessary, they should be added after the words "KNOW ALL MEN BY THESE PRESENTS" thus "THAT WHEREAS etc.", and after recitals the operative part is introduced thus "Now I, the said AB, etc., hereby appoint, etc., or the deed may be drafted with the heading "THIS POWER OF ATTORNEY is made on the, etc., then adding the recitals, the operative part is introduced thus "NOW THIS DEED WITNESSES THAT I APPOINT, ETC.".

Duration of Power of Attorney	Unless expressly or impliedly limited for a particular period, a general power of attorney will continue to be in force until expressly revoked or determined by the death of either party. In the case of a company, the power of attorney executed by the directors ceases to be operative as soon as an order for winding up is made as the directors cease to function. A special power of attorney to do an act is determined when the act is done. In case it is desired that the power should continue for a particular period or until a certain event happens, an express provision to that effect should be made in the deed itself.
Revocable and Irrevocable Power of Attorney	<p>A power of attorney executed in favour of a person can always, at the discretion of the donor thereof, be revoked. As we have seen earlier, the donee of a power of attorney is an agent of the donor. If a donee himself has an interest in the matters covered by the power of attorney, which forms the subject matter thereof, the power of attorney in the absence of express contract cannot be terminated to the prejudice of such interest. In other words, agency coupled with interest cannot be terminated without the consent of the other party (Section 202 of the Indian Contract Act, 1872).</p> <p>Therefore, a power of attorney executed, in which the donee himself has an interest, is irrevocable. Such irrevocable powers of attorney are executed in favour of the financial institutions by a company who offer financial assistance to the latter. Through such irrevocable powers of attorney, powers are given to the financial institutions for executing a security document for securing the financial assistance in the event of a company failing to execute such a document by a certain date. A draft of the irrevocable power of attorney is given at Annexure III. Such a power of attorney will need registration.</p>
Stamp Duty on Power of Authority	Power of attorney is liable to stamp duty under the provisions of the Indian Stamp Act, 1899. Duty varies from State to State. If a power of attorney is executed in a foreign country; it should be stamped within three months of its being received in India. If it is not so stamped



	within the period of three months of its being brought to India, then the same will be deemed to be unstamped and cannot be acted upon.
Registration of Power of Attorney	<p>Registration of a power of attorney is not compulsory. Section 4 of the Powers-of- Attorney Act, 1882 provides that it may be deposited in the High Court or District Court within the local limits of whose jurisdiction the instrument is with an affidavit verifying its execution, and a copy may be presented at the office and stamped as the certified copy and it will then be sufficient evidence' of the contents of the deed.</p> <p>In certain cases, registration of power of attorney may become compulsory under Section 17 of the Indian Registration Act, 1908. Thus, a power which authorizes the donee to recover rents of immovable property belonging to the donor for the donee's own benefit is an assignment and requires registration under clause (b) of Sub-section (1) of Section 17 of the Registration Act. Similarly, a power of attorney which creates a charge on the immovable property referred to therein in favour of the donee of the power requires registration.</p> <p>In other cases, a mere general power of attorney, even though it deals with immovable property, need not be registered (<i>Kochuvareed v. Mariappa</i>,) since it does not come under any of the documents specified in the Indian Registration Act as requiring registration.</p>

GENERAL POWER OF ATTORNEY

TO ALL TO WHOM THESE PRESENTS SHALL COME

KNOW ALL MEN BY THESE PRESENTS THAT I A.B s/o B. C. aged 40 yrs. r/o 123, MG Road, Indore, state as follows:-

WHEREAS I am personally unable to attend to the managerial and other affairs with respect to my property No 555, AB Road, Indore, so I, do hereby nominate and appoint Sh..... S/o..... R/o..... as my true and lawful Attorney to act for and on my behalf and I authorize and empower him to do the following acts, deeds and things on my behalf:-

To lease, and rent the aforementioned property.

To demand, collect the rent due on the aforementioned property.

To manage and control my aforesaid property including collection of monthly rents, from the tenants and issuance proper stamped receipts acknowledging the rent received.

To make applications, affidavits, documents etc., to the Govt. Dept and any other concerned authorities, required for the managing of the aforesaid property and to do all other acts, deeds and things in respect thereof.

To effect and carry out necessary repairs, additions, etc., in the said property as and when may be desired, and for this purpose obtain all the necessary permissions and/or sanctions, necessary from any appropriate authority.

To deal with Govt. deptt. and other local bodies for the purpose of any essential facilities or amenities required to be provided in the building. He can sign all papers and documents etc. for this purpose.



To pay all the taxes, Municipal levies and other taxes, which may be, required to be paid.
To file any objections with Govt. deptt. or other local body of Government for any purpose related with said property.

To engage valuer/Architects and/or to engage any Advocate or Attorney for the purpose and or file or institute and legal action I court for the fulfillment of the purpose.

AND GENERALLY TO DO ALL other acts, deeds and things, which my said attorneys may deem fit and proper for the maintenance, upkeep of my property.

Provided that the said attorney shall not sell or transfer the ownership of the property to any person.

Provided further that the said attorney shall keep true accounts of all activities performed by virtue of this power of attorney.

AND

I hereby agree and undertake to confirm and ratify all and whatsoever my said attorney shall do or purport to do by the virtue of this power of attorney.

IN WITNESS WHERE OF this deed is signed by me at _____ on this _____ day of _____
(Signature of the giver)

EXECUTANT

WITNESSES:

1.
Name and Address of Witness 1

2.
Name and Address of Witness 2

SPECIMEN FORMS OF SPECIAL POWER-OF-ATTORNEY

(a) Power-of-Attorney to Present Document for Registration

BY THIS POWER OF ATTORNEY I, AB of etc., do hereby appoint CD of, etc., my attorney for me and on my behalf to appear for and represent me before the Sub-Registrar of..... of all times as may be necessary and to present before him for registration the..... deed dated the..... day of..... made between, etc., to admit the execution of the said deed by me (*if necessary to admit the receipt of consideration*), to do any act, deed or thing as may be necessary to complete the registration of the said deed in the manner required by law and when it has been returned to him after being duly registered, to give proper receipt and discharge for the same.

And I, the said AB, do hereby agree and declare that all acts, deeds and things done, executed or performed by the said CD shall be valid and binding on me to all intents and purposes as if done by me personally which I undertake to ratify and confirm whenever required.

Signed, sealed and delivered

Witnesses

Sd/-
AB

LETTERS OF AUTHORITY

Letters of authority is nothing but a power of attorney. They are executed on plain paper and not on stamp paper. Letters of authority are usually issued for collecting some documents or papers, dividend interest etc. on behalf of another. By and large, the law relating to the powers of attorney will apply to letters of authority.

Will



Will means the legal declaration of the intention of a testator with respect to his property, which he desires to be carried into effect after his death. (Sec 2(h)) of Indian Succession Act, 1925

'Codicil' means an instrument made in relation to a will and explaining, altering or adding to its dispositions and is deemed to form part of the will. Sec 2(d) of Indian Succession Act, 1925

Essential characteristics of will:

- The document must be in accordance with the requirements laid down under the Indian Succession Act i.e. executed by a person competent to make a will and attested as required under the Act.
- The declaration should relate to the properties of the testator, which he wishes to bequeath
- The declaration must be to the effect that it operates after the death of the testator
- It is revocable during the life time of the testator. Any clause in the will stating that the testator cannot revoke; it will render the will void.

Important points in connection with a Will:

Who can make a will:

Every person of sound mind and not being a minor may dispose of his property by will. Every person who is deaf or dumb or blind can make a will provided they are able to know what they do by it. Further, a person who is ordinarily insane may make his will during the interval in which he is of sound mind.

However, no person can make a will while he is in a state of mind arising from intoxication or from illness or from any other cause such that he does not know what he is doing.

Testamentary disposition is personal; it cannot be delegated to any other person. Thus, a testator cannot confide to another, the right to make a will for him.

Type of will

Privileged will:	Any soldier being employed in an expedition or engaged in actual warfare or an airman so employed or engaged or any mariner being at sea, may, if he has
-------------------------	--



	completed the age of eighteen years, dispose of his property by will in the manner provided in sec 66. Such wills are called as privileged wills. Privileged wills may be made orally and may not always be in writing. If written in handwriting of testator, it need not be signed or attested. It is governed by sec 65 & 66 of the Indian succession Act.
Unprivileged will:	Wills prepared by a person other than the persons giving privileged will are known as unprivileged will. Such wills are required to be in writing, signed by testator and attested by the two witnesses (except those made by mohammedans). It is governed by section 63 of Indian Succession Act.
Language & Registration:	<p>Preparation of a will does not require any specific legal language. Any form of writing, printing or type writing may be applied.</p> <p>However, the language should be as simple as possible and free from technical words and easily intelligible to a layman.</p> <p>Registration of a will is not mandatory, it is optional. However, a registered will has certain advantages.</p>
Attestation:	<p>The will must be attested by two or more witnesses. Each witness must have seen the testator sign or affix his mark to the will and each witness must sign the will in the presence of the testator.</p> <p>However, it is not necessary that all the witnesses must be present at the same time and no particular form of attestation is necessary.</p>
Construction of will:	<p>There are two cardinal principles in the construction of wills, deeds and other documents and will. The first is those clear and unambiguous dispositive words are not to be controlled/qualified by any general expression or intention.</p> <p>The second is to use Lord Denhman's language, that technical word or words of known legal imports must have their legal effect even though the testator uses inconsistent words, unless those inconsistent words are of such a nature as to make its meaning perfectly clear.</p>
Principles to be followed:	<p>Cardinal Maxim: this maxim is to be observed to ascertain the intentions of the testator. This intention has to be primarily gathered from the document which is to be read as a whole. (Gnambal Ammal V.T.Raju Iyer)</p> <p>Relevant considerations: In construing the language of a will, the courts are entitled and bound to bear in mind other matters than merely the words used. They must consider the surrounding circumstances, position of the testator, family relationship and many such things. The court is entitled to put itself into the testator's arm chair. (venkatanarasimha V. parthasarthy)</p>
Avoidance of Intestacy:	If two constructions are reasonably possible and one of them avoids intestacy while the other involves it, the court would certainly be justified in preferring that construction which avoids intestacy. (Kasturi V. Ponnammal)



	Effects should be given to every disposition: It is one of the cardinal principles of construction of will that as much as legally possible, effect should be given to every disposition contained in the will unless the law prevents effect being given to it. (Rampali V. Chando) Later part or last word to prevail in case part irreconcilable or there is repugnancy: if the several parts of the will are absolutely irreconcilable, the part that is later has to prevail. In case of repugnancy, the last word in the will shall prevail. (CIT V. sugar mills association)
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Other important points

Probate:	Probate is a certificate granted under the seal of competent court, certifying the will as the will of the testator and granting the administration of the estate of the deceased in accordance with that will to the executor named under the will.
Letter of administration:	In case where the testator has failed to appoint an executor under a will or where the executor is appointed by refuses to act, letter of administration can be obtained from the court of competent jurisdiction. Letter of administration is always necessary where a person governed by the Indian succession Act dies intestate.

Points to be kept in mind while drafting the will:

Will is a most solemn document. It is also a sacred one as by it a dead man entrusts to the living the carrying out of his wishes and desire. The following points may be incorporated while drafting the will:

1. Mention the name and address of the testator
2. Mention of the fact that the testator is making the will voluntarily and in sound disposing state of mind.
3. Details of the persons who would be entitled to the properties on intestacy.
4. Details of the procedure of making bequests.
5. Use of clear and unambiguous language.
6. Avoidance of conflict with the rule of law

Short Form of a Will

This is the last Will of mine, *AB, etc.*, made this the ____ day of ____ at ____ which cancels my will dated ____ made in favor of ____ now deceased.

WHEREAS I had made a Will on ____ bequeathing all my property in favor of ____, my ____ (state relationship).

AND WHEREAS the said ____ died on ____ leaving behind ____

NOW I DECLARE THAT:

1. I hereby revoke my former Will dated, ____ in favour of ____ aforesaid.
2. I bequeath all my properties to ____ my ____ (state relationship) absolutely.

3. I bequeath the following annuities to commence from the date of my death and to be paid in monthly installments:

- i. To my daughter CD, etc., an annuity of Rs_____ to be paid during her life ;
- ii. To my nephew EF, etc., an annuity of Rs_____ for his life.
- iii. To my old servant GH, etc., an annuity of Rs_____ during his life.

In witness whereof I the said AB have signed this Will here under the day and year first written above.

Sd.
AB

Simple Will Giving All Property to Wife

I, AB, etc hereby revoke all former Wills and codicils made by me and declare this to be my last Will whereby I bequeath and devise all my movable and immovable property whatsoever to my wife, CD and appoint her sole executrix of this Will.

IN WITNESS WHEREOF. I have signed this Will hereunder on the.....day of.....

(Sd.).....
(AB)

Signed by the above-named testator in our presence at the same time and each of us has in the presence of the testator signed his name hereunder as an attesting witness.

- 1.....
- 2.....

Will by a Hindu in Favor of Family

This is the last Will of mine, AB, etc., a Hindu, made this_____ the..... day of Voluntarily and while in sound state of mind.

WHEREAS I am now 70 years old and have been keeping indifferent health for a past few months;

AND WHEREAS I am possessed of considerable movable and immovable properties more particularly described in the schedule annexed hereto which are my self-acquired properties and which were acquired without any detriment to the ancestral property or to the family funds and I have the absolute powers of disposal over the same ;

AND WHEREAS I am anxious to make necessary arrangements in respect of the enjoyment of my properties after my life-time so that unnecessary misunderstanding and consequential wasteful litigation between the members of my family may be avoided. Therefore, I am executing this last Will and testament of mine of my own free will voluntarily without any compulsion or pressure of any person and with a sound disposing mind and declare as follows:

1. I hereby revoke all former Wills and codicils made by me at any time heretofore.
2. I have my wife CD, two daughters EF and GH and two sons KL and MN who will be entitled to succeed to my properties under law in the normal course. But my daughters are all married and they are living separately with their husbands. They have been properly and well provided for during their marriage. They are therefore not given any share in my properties under this Will.

3. I bequeath the property bearing No..... described as item No. 1 in the Schedule hereto to my first son *KL* absolutely to be held and enjoyed by him with full and absolute powers of alienation.
4. I bequeath the property bearing No..... described as item No. 2 in the Schedule hereunder to my second son *MN* absolutely to be held and enjoyed by him with full and absolute powers of disposal.
5. I bequeath to my wife *CD* the property bearing No..... and described as item No. 3 in the Schedule hereto absolutely to be held and enjoyed by her with full and absolute power of alienation.
6. Any assets, movable or immovable, which might be omitted from being mentioned in this Will or which may hereafter be acquired by me shall be taken by my wife and the two sons aforesaid in equal shares absolutely.
7. Though I have bequeathed no share in my properties to my daughters aforesaid, as a token of love and affection for them I hereby direct my two sons *KL* and *MN* that each one of them will pay to each one of my daughters a sum of Rs..... and this sum shall be a charge on the properties allotted to my above sons respectively hereto.
8. All the jewellery and ornaments, gold and silver, will belong to my wife absolutely and my sons or daughters aforesaid will have no right to the same.
9. I hereby appoint my two sons *KL* and *MN* as the joint executors under this Will.

IN WITNESS WHEREOF I, the above-named testator have signed this Will hereunder the day and year first written above.

(Sd.).....
(AB)

Signed by the above-named *AB* in our presence at the same time and each of us has in the presence of the testator signed his name hereunder as an attesting witness.

1.....
2.....

SCHEDULE OF PROPERTY

1.....
2.....
3.....

Relinquishment Deed

A release or relinquishment deed is an instrument whereby a person renounces a claim upon another or against any specified property, which he is or may be entitled to enforce.

When considered from the point of view of the person in whose favor the transaction operates, it is a 'release', when considered from the point of view of the releaser, it may be said to be a 'relinquishment'

A release must be in writing signed by all the releasers. It can be drafted as a deed poll or as a deed. If it drafted as a deed then all releasers and all persons having an interest in the claim or property should be made parties.

If the deed is required to be registered, it should be attested by at



least two witnesses. In other cases, one witness may attest it.

SPECIMAN FORMS

DEED OF RELEASE BETWEEN TWO PARTNERS ON DISSOLUTION OF PARTNERSHIP

THIS RELEASE is made on the..... day of..... BETWEEN AB,etc., (hereinafter called the "one party") of the first part AND CD, etc. (hereinafter called the "other party") of the second part.

WHEREAS the said AB, and CD, were carrying on in partnership the business of.....and the said business was wound up and the partnership dissolved by deed, dated.....executed by the said parties;

AND WHEREAS the winding up of the said business was entrusted to the arbitration of EF of..... and he after realizing the debts and calling in the property and assets of the said business and after paying all creditors and liquidating all the liabilities apportioned the shares of the parties, giving to the said AB a sum of Rs..... and to the said CD the sum of Rs..... ;

AND WHEREAS the parties for mutual safety are desirous of executing this deed of release so that all future disputes in regard to the said partnership or the business may be set at rest.

NOW THEREFORE THIS DEED WITNESSES that in pursuance of the said mutual desire the said AB hereby releases the said CD and also that the said CD hereby releases the said AB from all sums of money, accounts, proceedings, claims and demands whatsoever which either of them at any time had or has up to the date of the said dissolution against the other, in respect of or in relation to the said partnership or the business of the said partnership.

IN WITNESS WHEREOF the said AB, and the said CD have hereto at signed on the day and the year first above-mentioned.

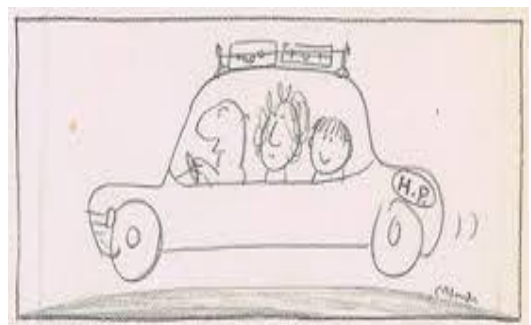
Witnesses

Hire-Purchase Deed

Introduction

A contract of hire is a contract of bailment and is governed by the provisions of Chapter IX of the Indian Contract Act, 1872 and provisions of Sales of Goods Act 1930

The Hire-Purchase Act, 1972 passed by the Parliament received the assent of the President on June 1972 and was to have come in force on September 1, 1973, but operation was postponed *sine die* by a Notification in the *Gazette of India* on 30th August, 1973.



The provisions of the Hire-Purchase Act, 1972, although the Act has not been enforced as law, still provide ample guidance and the same should be adhered to in providing a legal cover to the transaction of hire-purchase.

Some of the important aspects of the Act, relevant to hire-purchase agreements, are given below:

- (1) Every hire-purchase agreement shall be:
 - (a) in writing, and
 - (b) signed by all the parties thereto.
- (2) A hire-purchase agreement shall be void if not in writing and signed.
- (3) Where the hire-purchase is associated with a contract of guarantee, the hire-purchase agreement shall be signed by the surety also, and if the hire-purchase agreement is not so signed, the hire-purchase agreement shall be voidable at the option of the owner

The essential terms of hire purchase agreement are

- a. a clause by which the owners agree to let and hirer agrees to hire the goods; and
- b. a clause giving to the hirer a right to determine the hiring or return the goods; and
- c. a clause giving the hirer a right or option to purchase the goods for a nominal sum at the end of the hiring.

Minimum payment Clause:

It is usual to provide the minimum payment clause, which provides that in the event of the determination of the agreement by the hirer or the owner, the hirer shall be liable to pay 50% of the total price after deduction of the installments already paid by the hirer.

Stamp duty and registration:

A deed of hire purchase is liable to stamp duty as an agreement under Article 5 of the Indian Stamp Act, 1899. Registration is not compulsory.

Type of Hire Purchase Agreements:

The hire purchase agreement broadly takes one of the two forms:

- 1) When the owner is unwilling to look to the purchaser of goods to recover the balance of the price and the financier obtains the hire purchase agreement from the customer under which the latter becomes owner of the goods on payment of all the installments and exercising his option to purchase.
- 2) In the other type of hire purchase, the goods are purchased by the customer, who in consideration of executing a hire purchase agreement remains in possession of the goods, subject to the liability.

Generally, there is also a guarantor who signs the agreement as a surety.

AGREEMENT FOR HIRE PURCHASE

THIS AGREEMENT made this..... day of..... by and between:

Mr. A son of Mr. B residing at _____ (hereinafter called the owner) **OF THE ONE PART** which expression shall include his respective heirs, executors, administrators, legal representatives and assigns unless repugnant to the context
AND

Mr. C son of _____ resident at _____ (hereinafter called the hirer) **OF THE OTHER PART**, which expression shall include their respective heirs, executors, administrators, legal representatives and assigns unless repugnant to the context

WHEREAS, the owner is engaged in the business of manufacturing..... and has agreed to let to the hirer..... and the hirer has agreed to take on hire the said goods more particularly described in the Schedule A hereto for the term of..... years from..... 2013 on the terms hereby agreed to between the owner and hirer as follows:

NOW THIS AGREEMENT DO HEREBY WITNESSES AS FOLLOWS:

1. The hirer shall pay to the owner on the execution of this agreement the sum of Rs..... the hire for the first month and on the first day of every calendar month or year during the hiring the sum of Rs..... by way of hire for the said goods, or shall pay the rent specified in Schedule-B hereto and payable without demand on the day therein mentioned.
2. The hirer shall at any time during the hiring have the option of purchasing the said goods for Rs..... and in that event the hirer shall receive credit for all sums previously paid by him under the preceding clause. Until a purchase shall have been affected and the price fully paid the said goods shall remain the property of the owner.
3. During the hiring tenure the hirer will:
 - a) Not sell, pledge, hypothecate, charge or in any manner encumber the goods or part with possession of the said goods or any of them;
 - b) Not without the consent in writing of the owner, remove the said goods or any part thereof from the premises of the hirer at..... and shall keep the owner informed forthwith of any change in address or shift of place;
 - c) Will not lend or transfer the goods to any other person without the previous sanction in writing of the owner;
 - d) Will keep the goods in good order and condition and will, on the expiry of years or earlier termination of this agreement, return the same to owner in the same condition in which it has been lent, reasonable wear and tear excepted, and all loss or damage due to breakage or any other cause shall be made good by hirer at his own cost;
 - e) Pay all taxes, fees, duties, fines, registration charges, other expenses, payable in respect of the assets - when the same shall become due;
 - f) Permit the owner or his authorized agent or nominee at all reasonable times to inspect and examine the condition of the said goods;



Drafting - II

- g) Shall keep the goods insured against all losses or damage by fire, tempest or theft upto the value of Rs..... with an Insurance Company to be approved by the owner and shall punctually pay all premia and produce to owner when so required the receipts for the last premium payable and keep the insurance alive during the continuance of the agreement. If the said hired goods is injured or destroyed by fire or lost by theft all moneys received in respect of such insurance shall be paid forthwith to the owner and the hirer shall pay to the owner all sums of money received in respect of such insurances who shall apply such money in making good the loss by replacement of such damaged part or parts or the entire goods of similar description and value whereupon such substituted part or parts or goods shall become subject to this agreement in the same manner as the original goods;
- h) In case of default by hirer in payment of any insurance premium as mentioned in sub-clause (g) or the charges mentioned in sub-clause (e) above, the owner may pay the same or any part thereof and any sum so paid by them shall be reimbursed by the hirer together with interest thereon at the rate of 15% p.a. from the date of payment by the owner;
- i) The hirer shall indemnify the owner against claims by third parties arising by accident caused by user of the asset until the determination of this agreement;
- j) The hirer shall not use or permit or suffer the asset to be used in contravention of any statute and regulations for the time being in force or otherwise in any way contrary to law excepting as permitted under this agreement.
4. The hirer shall forthwith intimate the owners any change of address of the hirer and of the address of the premises where the asset is kept and shall further more forthwith notify the owner in writing of any loss or damage to the said asset.
5. If the hirer shall make default in the punctual payment in full, of the said monthly hire or in the observance or performance of any of the provisions of this agreement, on his part to be observed and performed the hiring shall immediately determine (specify here other conditions stipulated by the owner).
6. At the termination of this agreement either at the instance of the hirer or the owner, the hirer shall pay to the owner by way of compensation for depreciation of the said article such sum as with the amount previously paid for hire shall make up a sum equal to not less than one half of total amount payable under the agreement.
7. Any time or other indulgence granted by the owner shall not prejudice or affect his strict rights under this agreement.

IN WITNESS WHEREOF the parties to this DEED have put and subscribed their respective hands in presence of witnesses on this day of in the year at

Witnesses

1

sd/
owner

2

sd/
Hirer



SCHEDULE A
(Above referred to)

Family settlement Deeds

Introduction

A family arrangement is an agreement between members of the same family, intended to be generally and reasonable for the benefit of the family property and avoiding unwanted litigations.

Family arrangements are governed by principles, which are not applicable to dealings between strangers. The Supreme Court has generally taken a broad view of the matter and leaned heavily in favor of upholding such arrangement. According to Supreme Court, a family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of few, is undoubtedly a milestone in the administration of social justice.

In *Kale V. Dy. Director of consolidation*, the SC has laid down the following propositions to put the binding effect and the essentials of a family settlement in a concretized form:

The family settlement must be a bona fide one so as to resolve the family dispute by fair and equitable distribution.

The said settlement must be voluntary and should not be induced by fraud, coercion writing. The members who may be parties to the family arrangement must have some title, claim or interest in the property, which is acknowledged by the parties to the settlement.

The family arrangement is final and binding on the parties to the settlement.

Even if a party has no title, but under the arrangement, a family member if relinquishing his portion in the property to such a party, then the title of such party will be assumed and the family arrangement will be upheld.

A family arrangement, which is for the benefit of the family generally, can be enforced in court of law provided there was an occasion for effecting family arrangement and that it was acted upon. (*Lakshmi Perumallu v. Krishnavenarna*)



Specimen form Settlement of Family Business

This Deed of Family Arrangement is executed on this in the year 2013 by and between:

AB S/o MN aged years, occupation R/o (hereinafter called as the first party)

And

CD S/o XM aged years, occupation and R/o (hereinafter called as the second party)

WHEREAS

(1) The first party has started and carried out the business and undertaking described in Schedule 'C' by his own initiative and efforts with his own capital and funds.

(2) The second party, who is son of the pre-deceased son of the first party and residing with him under the care and parentage of the first party and assisting him in conduct of the aforesaid business for which he was being paid share in profit. The second party thus having contributed his labour and skill for the development of the business rendered valuable services for the same and rendered himself entitled for an equal share in the said business. It has been settled and decided to distribute the business amongst the parties so also the properties. The first party shall hold the share in business and properties described in Schedule 'D' and the second party shall hold the share in business and properties described in Schedule 'E'.

(3) The movable and immovable properties, which is also described in Schedule 'C' have been acquired by the first party out of the funds of the said business in his name and for his use and benefits.

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. The second party shall hold, own and possess as full and absolute owner of the business and properties described in Schedule 'E' without any demand or claim by the first party any account whatsoever for which, he has expressly granted, conveyed, transferred and assigned by the first party.

2. The business and properties have been distributed amongst the parties to this deed. It is hereby decided and declared that the first party hereinafter shall hold, own and possess as full and absolute owner of the business and properties described in Schedule 'D' and the second party shall not interfere in the same and he has relinquished his rights in the said part of business and properties described in Schedule 'D'.

IN WITNESS WHEREOF the parties to this DEED have put and subscribed their respective hands in presence of witnesses on this day of in the year at

Witnesses

- 1.
- 2.

Signatures
First Party
Second Party



PAST EXAM QUESTIONS

Q1 Write short notes on:

- Power of attorney & letter of authority
- Irrevocable power of attorney
- Principle governing the construction of a power of attorney

(June'09)
(Dec'13, June'12)
(Dec'12)

Q2 Distinguish between:

- Probate & letter of administration
- Privileged will & unprivileged will

(Dec'14, June'15)
(Dec'14)

Q3 Every person of sound mind, not being minor may dispose off his property by a will. Comment.

(June'14)

Q4 In the light of judicial pronouncement, discuss the following:

- Relevant consideration in constructing a will.
- The court is entitled to put itself into the testator's armchair.
- A family arrangement can be enforced in a court of law.
- In case of repugnancy in a will, last word shall prevail.

(June'14)
(June'15)
(June'15)
(June'15)





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DRAFTING AND CONVEYANCING RELATING TO VARIOUS DEEDS AND AGREEMENTS-III

INTRODUCTION

Sale of immovable property is governed by the provisions of Transfer of Property Act, 1882. Chapter-III of the said Act deals with the sale of immovable property exclusively.

Section 4 of the said Act defines sale as

A transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.



ESSENTIAL REQUIREMENTS OF SALE OF IMMOVABLE PROPERTY:

The following are the essential requirements of sale of an immovable property:

- ❖ Transfer of ownership in exchange of price paid or promised or part paid or part promised.
- ❖ Parties to transaction of sale are known as seller and buyer.
- ❖ Subject-matter of sale is immovable property which is sold by seller and purchased by buyer.
- ❖ Delivery of possession of property to the buyer by seller may be made as under:
 - Property of the value of less than Rs. 100/- may be transferred merely by delivery of physical possession;
 - Property of the value exceeding Rs. 100/- may be transferred under a written instrument known as 'Sale Deed' which should be registered under the Registered Act, 1908.
- ❖ Sale of immovable property attracts stamp duty under the Indian Stamp Act.

RIGHTS AND LIABILITIES OF BUYER AND SELLER:

Section 55 of the Act prescribes the rights and liabilities of buyer and seller.

The seller under Sub-section (1) is bound to

- (a) Disclose to the buyer any material defect in the property or in his title to such property.
- (b) To give title documents to buyer for investigation of sellers titles to the property under transaction of sale,
- (c) To answer the question put to him by the buyer and provide all necessary information to him in regard to the property.
- (d) To execute the conveyance document on payment of consideration money in favor of the buyer,
- (e) Pay all public dues on the property till the date of conveyance and take due care as a man of ordinary prudence to protect the title of the property till it is passed on to the genuine buyer.



The buyer is also duty bound under the provisions of the Act to do the following things-

- ❖ To disclose to seller the interest of the seller in the property of which he is aware and believes that the seller is not aware and this information is likely to affect the price of the property.
- ❖ To pay or tender the purchase money to the seller or such person as he directs, where the ownership of property has passed to buyer he has to bear the full responsibility including any loss to the property etc.
- ❖ To pay public dues from the date of transfer of ownership of the property.

Some of the important conditions which a draftsman should bear in mind while drafting a Sale Deed are very precisely noted below:

Lawful Consideration and Object	The property must be purchased as a part of legal transaction having paid the consideration as required under the provisions of the Indian Contract Act, 1872 for a valid contract. Besides, the objectives for which the property is being purchased by the company should be lawful i.e., not forbidden by law, not to defeat the provisions of any law, not to be fraudulent, not to involve or impart injury to the person or property of another and should not be regarded by the court of law as immoral or opposed to public policy.
Competence of Person to Transfer	For a company, the test of competence to enter into a transaction of sale or purchase is that its Board of Directors should authorise a person under the resolution passed in their meeting held in conformity with the Articles of Association and having object clause to sell or purchase immovable property under its Memorandum of Association. In case the other party is an individual who is either selling to the company or purchasing from the company any land or immovable property such individual should be considered competent to transfer if it fulfils the necessary conditions prescribed under the Indian Contract Act, 1872 viz. (i) Should be of the age of majority, (ii) Be of sound mind; (iii) Not be disqualified from contracting by any law to which such individual is subjected.
Transfer of All Interest - in the Property	All interests which a transferor is capable of passing in the property as legal incident of the transfer should be explained in the document, for example, if it is transfer of land, the easements annexed thereto, the rents



	of profits thereof, things attached thereto etc.
Absolute Transfer	The transfer should be free of any conditions or limitations which may inhibit the other party to make full use of the property in exercise of legal rights.
Absolute Interest in the Property	The interest being transferred in the property should not be conditional which may restrict full enjoyment of the property by the transferee.
Justification for Transfer	Cogent reasons for the transfer be given so as to establish <i>bona fide</i> base for the transaction and to avoid eventualities of fraud and multiple litigation therefrom.
Protection of Creditors' Interest	Law protects creditors' interest in the transferred property. In drafting of Sale Deed this point should be accommodated if the circumstances so warrant.
Enforcement of Rights Attached to Property on Valid Transfer	If a transferee is aware of such rights attached to the property and the transfer is gratuitous then the person can enforce such rights against transferee. But this could be avoided if the transferee has no notice about such rights attached to property and also has paid full consideration for the transaction.
Property to be Free from Conditions	The property being transferred should be free from any rights or obligations which a third person can enforce legally against transferee for enjoying any benefits.
Transfer in Good Faith and with Full Authority	Where the property is transferred by a person not to be the real owner, it is necessary to make such transfer valid for the transferor should have the authority to transfer and he must exercise this authority in good faith.
Protection for Defective Title	Law protects the transferee who acquires the immovable property under good faith and for <i>bona fide</i> consideration but by any circumstance unknown to him is rendered to have defective title, Section 51 of the Transfer of Property Act, provides such protection to <i>bona fide</i> transferees acquiring properties in good faith.



Precautions	The draftsman should know beforehand that the property under transfer is free from encumbrances and no litigation questioning such property or rights or interest connected therewith is pending in any court. To avoid fraudulent transfers, the draftsman should ensure that the title to such property has been investigated by competent advocate and he has certified the title free from any encumbrance whatsoever.
--------------------	--

Sale by liquidator of a Company in Voluntary Liquidation

In case of sale by liquidator of a company in voluntary liquidation, liquidator acts as one of the party (Seller) on behalf of the company under liquidation. In such an agreement, the reference of the special resolution passed by the company should also be given in the recitals.

SALE BY LIQUIDATOR OF A COMPANY IN VOLUNTARY LIQUIDATION

Liquidation means winding of the company and Liquidator is the officer appointed to conduct the winding up of a company. Winding up is a proceeding by means of which the dissolution of a company is brought about and in the course of which its assets are collected and realized and applied in payment of its debts and when these are satisfied, returning to its members the sums which they have contributed to the company or paying them other moneys due to them in their character of members.

SPECIMEN FORMS FOR DEEDS OF SALE OF IMMOVABLE PROPERTY

THIS SALE DEED made on the..... Day of.....2013 by and between:

AB, etc., (hereinafter called "the vendor") of the one part and the term unless repugnant to the context otherwise shall also include his legal heir, POA thereof.

AND

CD, etc, (hereinafter called "the purchaser") of the other part and the term unless repugnant to the context otherwise shall also include his legal heir, POA thereof.

Put Recital (both Narrative and introductory)

THIS DEED OF SALE WITNESSES AS FOLLOWS:

1. In consideration of the sum of Rs..... paid by the purchaser to the vendor on the..... day of..... (the receipt of which the vendor hereby acknowledges) the vendor as owner hereby transfers to the purchaser by way of sale ALL that pucca house standing on the land measuring meters by 10 meters fully described in the schedule hereto annexed and thereon shown with its boundaries colored red TO HOLD the same to the purchaser as absolute owner.
2. The vendor hereby covenants with the purchaser as follows:
 - a. The said premises shall be quietly entered into and upon and held and enjoyed and the rents and profits received there from by the purchaser without any interruption or



disturbance by the vendor or any person claiming through or under him and without any lawful disturbance or interruption by any other person whomsoever;

- b. The vendor will at the cost of the person requiring the same, execute and do every such assurance or thing necessary for further more perfectly assuring the said premises to the purchaser, his heirs or assigns as may reasonably be required;
- c. The interest hereby transferred subsists and the vendor has power to sell the same;
- d. The property hereby sold is free from encumbrances.

3. PROVIDED ALWAYS and it is hereby agreed that wherever such an interpretation would be requisite to give the fullest possible scope and effect to any contract or covenant herein contained the expressions "the vendor" and "the purchaser" hereinbefore used include their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF the parties hereto have signed this Deed of Sale on the date mentioned against their respective signatures.

Witness 1

Vendor

Witness 2

Purchaser

The schedule herein referred to
(Description of the property)

DEED OF SALE BY A CERTIFIED GUARDIAN OF A HINDU MINOR

THIS DEED OF SALE is made on 08th Day of March, 2015 at (Place) by and between

Mr. A, Son of Mr. B, Residence of _____ hereinafter called as 'Vendor' of the one part
(Which expression shall, unless repugnant to the context, include his legal heirs, executors, administrators, representatives and assigns)

AND

Mr. C, Son of Mr. Y, Residence of _____ hereinafter called 'Purchaser', of the other part
(which expression shall, unless repugnant to the context, include his legal heirs, executors, administrators, representatives and assigns).

WHEREAS by an order made by the District Judge of _____ in case no. under Act, the said Mr. A was appointed as a certificated guardian of Mr. X. who was then and is still now a minor.

AND WHEREAS by an order date _____ made by the District judge of _____, the said and Mr. A was authorized to sell the lands and tenements belonging solely and exclusively to the said minor on terms there under contained and the said order is still in full force.

AND WHEREAS in pursuance of the said order, the said Mr. A as such certificated guardian has contracted with the said Mr. C for absolute sale of the said property more particularly



described in the annexure to this deed.

NOW THIS DEED OF SALE HEREBY WITNESSETH AS UNDER:

1. That the price of the property is fixed at Rs. _____ (rupees _____) free from all encumbrances.

That the Purchaser has paid to the vendor and the Vendor hereby acknowledges the receipt of a Sum of Rs. _____ (Rupees _____) as full consideration towards this deed on _____ (Date).

That for consideration as aforesaid and by virtue of the aforesaid order of the District Court, the Vendor do hereby grant, convey, sell, transfer and assure as certificated guardian of said minor, the said property and every part thereof to the use of the said Purchaser, to have and to hold the same absolutely and forever

In Witness Whereof The Vendor And The Purchaser have set their respective hands to the agreement of sale/purchase on the day, month and the year above written in the presence of the following witnesses

Witnesses:

1

Vendor

2

Purchaser

Annexure:

Schedule of Property

Municipal no./Ward no./Plot no./Khasra No.: CTS No.:

Location:

Street name:

Police Station:

Tehsil/Taluka/Sub-district:

Plot no.

Situated in

CTS No.

On its North is

On its South is

On its East is

On its West is

SALE OF JOINT FAMILY PROPERTY BY HUF OUT OF LEGAL NECESSITY:

In case of co-owners of undivided property, all the co-owners join in as parties (Seller) to the agreement. Such property sale may be due to some legal necessity such as to pay off heavy liabilities, business closure etc.

Such specific clauses will have to be incorporated in the agreement at appropriate place whereas the rest of the agreement remains the same.

DEED OF SALE OF JOINT FAMILY PROPERTY FOR LEGAL NECESSITY

THIS DEED OF SALE is made on 08th Day of March, 2015 at (Place) by and between

Mr. A, Son of Mr. B, Residence of _____ for self and as a Karta representing all other coparceners Viz. his sons named Mr. X, Mr. Y and Mr. Z, all constituting a Joint Hindu undivided family (hereinafter referred to as 'Vendor' of the first part) which expression shall, unless repugnant to the context thereof, include the legal heir and legal representatives of the Co-parceners thereof)

AND

Mr. D, Son of Mr. P, Residence of _____ hereinafter called 'Purchaser' of the other part (which expression shall, unless repugnant to the context, include his legal heirs, executors, administrators, representatives and assigns thereof).

WHEREAS the said joint family for several part owned and still owns and possesses inter alia the lands, hereditaments and premises described in Schedule -A hereto as party

AND WHEREAS the said joint family also carried on and still carries on the business as dealers and suppliers of _____ at _____ under the name and style of _____

AND WHEREAS the aforesaid business suffered huge losses of its capital and reserves estimated at Rs. _____ in the year _____ due to outbreak of fire at its godown situated at _____ on the day of _____

AND WHEREAS the joint family could not also pay its income tax and other capital and revenue liabilities of the said business aggregating to Rs. _____ and its business debts are outstanding at Rs. _____

AND WHEREAS the said joint family has at present and in foreseeable future no source of funds available nor any other means or resources to make up the deficit except by sale of one of its properties.

AND WHEREAS in the circumstances aforesaid the said Mr. A for self and as Karta of the said joint family has by an agreement agreed with the said Mr. D for sale of the property for the sum of Rs. _____

AND WHEREAS such sale is to the interest and for the benefit of the said joint family and its estate



AND WHEREAS the said Mr. D, after bona fide and independent enquiry, is satisfied about the clear title of the property as well as present financial condition of the family and the debts and liabilities which results in the necessity for such sale.

(Include common terms and conditions in case of sale of property)

IN WITNESS WHEREOF THE VENDOR AND THE PURCHASER have set their respective hand to the agreement of sale/purchase on the day, month and the year above written in the presence of the following witnesses:

Witnesses:

1: Name of Witness

Father's name
Address

(Signature)

Vendor

(Signature)

2 : Name of Witness

Father's name
Address

(Signature)

Purchaser

(Signature)

Schedule A:

Schedule of Property

Municipal no./Ward no./Plot no./Khasra No.:

Location:

Street name:

Plot no. _____ Situated in _____ CTS No. _____

On its North is _____

On its South is _____

On its East is _____

On its West is _____

Police Station: Tehsil/Taluka/Sub-district:

**A SPECIMEN OF DEED OF SALE BY LIQUIDATOR OF A COMPANY IN
VOLUNTARY LIQUIDATION**

THIS SALE DEED is made on the 16th day of March 2015 by:

Voluntary liquidator of ABC Co. Ltd., (in voluntary liquidation) (hereinafter called "the vendor") of the one part, in favour of Shri..... son of Shri....., Occupation....., resident of..... (Hereinafter called "the purchaser") of the other part, under the terms and conditions mentioned below:

WHEREAS by a special resolution passed by the shareholders of..... Co. Ltd., at an Extraordinary General Meeting held on the..... day of....., of which notice as

prescribed by law had been duly given, and it was resolved that the company be wound up voluntarily;

AND WHEREAS the said vendor was appointed its voluntary liquidator on..... the notice whereof was duly submitted to the Registrar of Companies..... as prescribed by law, on the..... Day of.....;

AND WHEREAS in a meeting of the shareholders of the said company held in accordance with the provisions of the Companies Act, 1956, it was resolved that the properties mentioned in the Schedule annexed hereto be sold by the vendor after publishing a notice for sale in..... and....., daily newspapers twice within a period of a fortnight, and pursuant to such resolution, the vendor had duly advertised the sale of the said properties in the issues of..... Dated..... Respectively and issues of..... Dated..... Respectively and pursuant thereto have received offers, the highest whereof was that of the said purchaser;

AND WHEREAS the said vendor agreed to sell and the said purchaser agreed to purchase the said properties on the terms and conditions mentioned herein and incorporated in an agreement to sell dated..... Between the said vendor and the said purchaser.

NOW THIS DEED OF SALE WITNESSES AND IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

That pursuant to the agreement and in consideration of the sum of Rs 25,00,000 (Rs. Twenty five Lakhs) paid by the purchaser before the Sub-Registrar, on presentation of this Deed of sale for registration thereof (the receipt whereof the vendor hereby acknowledges) the vendor hereby transfers by way of sale and conveys on behalf of the said company all those items of the property mentioned more particularly in the Schedule attached hereto, unto the said purchaser, his heirs and assigns to have and to hold the same absolutely and forever.

In Witness Whereof the parties aforementioned have signed this Deed of Sale on the date, month and the year aforementioned.

Witness: 1.

Vendor

Witness: 2.

Purchaser

SALE OF BUSINESS AND ASSIGNMENT OF GOODWILL

Wharton's Law lexicon defines goodwill as the advantage or benefit which is required by a business, beyond mere value of the capital stock, funds or property employed therein, in consequence of the general public patronage and encouragement which It receives from constant or habitual customers.



Supreme Court of India in *Khushal/ Khengar Shah v. Khorshedbanu*, AIR 1970 SC 1147, had opined goodwill of a business as an intangible asset being the whole advantage of the reputation and connections formed with the customers together with the circumstances which make the connections durable. It is that component of the total value of the undertaking which is attributable to the ability of the concern to earn profits over a course of years because of its reputation, location and other features.

A SPECIMEN OF DEED OF SALE OF A BUSINESS AND ASSIGNMENT OF GOODWILL

THIS INDENTURE made the..... day of..... by and between:

AB of, etc. (vendor), of the one part,

AND

CD of, etc. (purchaser) of the other part

WHEREAS the said AB has been carrying on the trade and business of, etc. etc., at premises No..... under the name and style of.....

AND WHEREAS the said AB has contracted with the said CD for the sale to him of all his stock-in-trade and other assets and goodwill of the said trade of and the business in entirety as a going concern together with all book debts and other debts and all rights and benefits of all pending contracts, orders, securities, etc., full particulars whereof are contained in the books of the said business and all money due and payable to the said AB on account there for whether adjusted or unadjusted subject however to all contracts, orders and engagements which are still to be executed or for which the said AB is otherwise liable; at and for the sum of Rs..... upon the terms hereinafter mentioned;

AND WHEREAS the said AB has delivered to the said CD the books of account and other books relating to the said business containing full particulars of the debts, respectively due and owing to and from the said AB and also the particulars of the contracts and engagements to which he is liable in respect of the said business.

NOW THIS DEED OF SALE WITNESSES THAT

In pursuance of the said agreement and in consideration of the sum of Rupees..... paid by the said CD to the said AB (the receipt whereof the said AB hereby admits and acknowledges), and also in consideration of the covenants and conditions there under contained to be observed and performed on the part of the said CD the said AB do hereby and hereunder grant, convey, sell, transfer, assign and assure unto and to the use of the said CD all that the trade or business carried under the name and style of..... at premises No..... with ALL beneficial interest and goodwill of the said AB, in the said trade and business of, etc., so carried on by him as aforesaid, and also all the books and other debts now



due and owing to him on account of the said trade and the business and all securities for the same, and also all contracts and engagements and benefits and advantages thereof which have been entered into with the said AB and also all the stock-in-trade goods, fixtures, articles and things which, at the date of this deed, belong to the said AB on account of the said trade and business, and all the rights, title and interest of the said AB to and in the said premises; TO HAVE AND TO HOLD the same to the said CD absolutely.

AND THAT THE SAID AB does hereby covenant with the said CD that he, the said AB, will not at any time hereafter, either by himself or in collaboration with any other person or persons, or as a partner or as a director of any limited company carry on the said trade and business of, etc., within a radius of..... miles of, etc.

AND THAT the amount and particulars of the debts respectively due and owing to and from the said AB on account of the said trade and business and the particulars of the contracts and engagements to which he is liable with respect to the said trade and business, are correctly stated in the books of account and other books delivered by the said AB to the said CD.

AND FURTHER THAT the said AB will pay or cause to be paid all and every sum to the said trade and business in excess of the amount or amounts which by the said books appear to be so due and owing.

AND FURTHERMORE THAT the said AB has good right, full power, absolute authority and title to grant, convey, sell, transfer, assign and assure the trade or business of " _____ " unto and to the use of the said CD in the manner hereunder indicated together with the benefit of the tenancy according to the nature and tenure of the contract.

AND THIS INDENTURE ALSO WITNESSES THAT the said AB do hereby irrevocably nominate, appoint and constitute the said CD as his attorney for him and in his name to do, execute and perform all acts, deeds, and things as shall be necessary or requisite to carry on the said business as his successor and for that purpose to represent him before all appropriate authorities and in all courts of law and to sue for, recover, realise and to give good valid discharges for all moneys due and payable to him on account of or in connection with the said trade or business hereby assigned and appropriate the same for his use and purposes.

IT IS FURTHER AGREED THAT the names of the parties hereto shall, unless inconsistent with the context, include as well the heirs, administrators or assigns of the respective parties as the parties themselves.

IN WITNESS, etc.

Signed, sealed and delivered

.....AB

.....CD

DEEDS OF MORTGAGES, LICENSE AND LEASE

MORTGAGE:



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Sec 58 of TOPA:- A mortgage is a transfer of interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of a loan, existing or future debt or the performance of an acknowledgement, which may give rise to pecuniary liabilities.

Note:- The Transfer of Property Act, 1882 deals with the mortgage of immovable property alone.

It does not deal with movable at all. Therefore, it cannot be regarded as forbidding the mortgage of movable property. A mortgage of movables, such as plant and machinery, stock in trade, policy is perfectly a valid transaction even though the possession is not delivered and the mortgage is only a hypothecation. The hypothecation of movables is increasingly resorted to in the case of borrowings by companies for financing and implementation of its various investment proposals.



The transferor in the case of a mortgage is called a 'mortgagor' and the transferee as 'mortgagee', the principal money and interest of which payment is secured for the time being are called the 'mortgage money' and the instrument, if any, by which a transfer is effected is called a "mortgage deed".

TYPES OF THE MORTGAGES:

The following are different kinds of mortgages in effect in India:

Simple Mortgage	In a simple mortgage, the mortgagor without delivering possession of the mortgaged property binds himself personally to pay the mortgage money and agrees expressly or impliedly that if he fails to pay the debt and interest in terms of the mortgage deed, the property will be sold and the proceeds applied in payment of the mortgaged money.
Mortgage by Conditional Sale	In a mortgage by conditional sale, the property is sold subject to the condition that on default in payment of the mortgaged money on a certain date the sale shall become absolute or that on such payment the sale shall become void or on such payment the buyer shall transfer the property to the seller. Possession of the property shall be with the mortgagee.
Usufructuary Mortgage	In this mortgage, the mortgagor delivers possession of the mortgaged property to the mortgagee who retains the possession until the satisfaction of the debt. The mortgagee will take the usufruct in lieu of the interest or part payment of the principal or partly in payment of interest or partly in part payment of the principal. The mortgagor is not personally liable to pay the debt and the mortgagee is not entitled during the term of the mortgage to demand his mortgage money.
English	In an English mortgage, a mortgagor binds himself to repay the mortgaged money on



Mortgage	certain date and transfers the mortgaged property absolutely to the mortgagee subject to the proviso that he will re-transfer it to the mortgagor upon payment of the mortgaged money as agreed.
Mortgage by Deposit of Title Deeds	<p>Mortgage by deposit of title deeds is called in English law as equitable mortgage. It is an oral transaction and no documents like Deed of Mortgage is required to be executed. No written acknowledgement is required for creating this mortgage. It is however, prudent to have a record of transaction to avoid difficulties to establish the creation of the mortgage. In this case, a Memorandum of Mortgage by deposit of title deeds is prepared by the mortgagee to secure the specific mortgage money.</p> <p>The main characteristics of this type of mortgage are as under:</p> <ul style="list-style-type: none"> ❖ Debt even time barred, present and future advances are covered under the equitable mortgage. In other types of mortgage, future advances are not covered. ❖ Delivery of title deeds is required to be made in Bombay, Madras and Calcutta and other specified towns to which the facility is extended by State Government from time to time through Gazette notification. ❖ It is not necessary for creation of mortgage that the property be located in the specified town or the company making deposit should have its registered office in that town. ❖ This deposit can be made by the company through its nominee or agent duly authorized. ❖ Intent to create security by deposit of title deeds should be present at the time of such deposit in the mortgagor. ❖ Neither ownership nor possession of the property passes to the mortgagee under the equitable mortgage.
Anomalous Mortgage:	Anomalous Mortgage is a combination of any of the above forms of mortgage or any mortgage other than those set out above.

WHO CAN BE MORTGAGOR AND MORTGAGEE?

Any living person, company, or association or body of individuals, who has an interest on immovable property, can mortgage that interest. In the case of a company mortgage of the property should be duly authorized by 'Object Clause' of the Memorandum of Association and approved by a resolution of the Board of directors.

Any person capable of holding property may take a mortgage unless he is disqualified by any special law from doing so. A minor may be a mortgagee but as he cannot enter into a contract, the mortgage should not involve any covenants by him.

Generally, the mortgage is associated with immovable property; immovable property includes –

1. Lands,
2. Benefits arising out of the land and
3. A thing attached to it BUT

Does not include

1. standing timber,
2. growing crops or
3. grass.

When the principal money secured is 100/- or more a mortgage other than a mortgage by deposit of title deeds, can be effected only by a Registered instrument signed by the mortgagor and attested by at



least two witnesses.

Equitable mortgage is preferred by the lenders/banks/creditors as well as the commercial enterprises because of the inherent advantages viz.

- To save time and avoid inconvenience of documentation, and registration;
- To minimize cost of creating mortgage and cost of borrowed funds by saving stamp duty;
- To maintain secrecy of the debt transaction;
- It is a cut short method and skips many formalities like compliance of Section 230A of Income-tax Act, 1961, and 293(1)(a) of the Companies Act.

Rights of Mortgagee	<ul style="list-style-type: none">❖ Rights to sell→If borrower fail to return the loan in the time then the mortgagee has the right to sell property of the mortgagor, but the same can only be sold through auction subject to approval from the court.❖ Right to recover shortfall→In the case the amount to be-recovered falls short after selling property, mortgagee shall have the right to recover the balance due.❖ Refusal to deal→Mortgagee shall have the right to get a foreclosure decree from the court.
Liabilities of Mortgagee	<ul style="list-style-type: none">❖ Property should be protected to the best possible extend.❖ No alteration to the property.❖ Proper Insurance Cover against the property.❖ All taxes, revenues levied by government should be paid.
Rights of mortgagor	<ul style="list-style-type: none">❖ Right to redeem the property on the payment of due.❖ Rights to claim damages in the case property in possession of Mortgagor.❖ Rights to lease the property in case the property is in possession of Mortgagor.
Liabilities of Mortgagor	<ul style="list-style-type: none">❖ Liability to pay taxes, revenues levied by government in the case the property in the custody of Mortgagor.

Drafting of Deed of Mortgage

- A deed of mortgage may be drafted either as a **Deed Poll** on behalf of the mortgagor in favour of the mortgagee
- Or as a **deed** between the mortgagor and mortgagee as parties.
- In the case of an equitable mortgage, as we have seen earlier, it is prudent to execute a memorandum referred to the deposit of title deeds to secure a specific mortgage money.

Deed of Simple Mortgage

THIS DEED of Mortgage made the..... day of..... 2013, by and between

‘AB’ of..... etc. (hereinafter called “the Mortgagor”), of the One Part

AND



'CD' of, etc. (hereinafter called the "Mortgagee"), of the Other Part.

WHEREAS the Mortgagor is absolutely seized and possessed of or otherwise is well and sufficiently entitled the property intended to be hereby mortgaged which is free from all encumbrances and attachments.

AND WHEREAS the Mortgagee has agreed to lend and advance a sum of Rs..... to the Mortgagor at his request upon having the repayment thereof, with interest at the rate hereunder stated and secured in the manner hereinafter expressed.

NOW THIS DEED WITNESSES, that in pursuance of the said agreement and in consideration of the sum of Rs. _____ paid to the Mortgagor by the Mortgagee simultaneously with the execution of these presents the receipt whereof the Mortgagor do hereby admit, acknowledge and confirm, the Mortgagor do hereby agree with the Mortgagee that the Mortgagor will on or before the _____ day of..... 2013, pay or cause to be paid to the Mortgagee the sum of Rs..... with interest for the same in the meantime at the rate of Rs..... per cent, per annum, such interest to be paid monthly and every month on the 7th of each following month without any delay or default.

AND THIS DEED FURTHER WITNESSETH that as a security for the repayment of the said loan with interest, the said 'AB' do hereby charge, assure and mortgage, by way of simple mortgage, upto and in favour of the said 'CD' all property specifically described in the Schedule hereto annexed, and charge and assure the same by way of security for the repayment of the said sum of Rs. together with interest thereon at the rate of..... per cent, per annum;

AND THE Mortgagor does hereby agree and covenant with the Mortgagee that he will pay or cause to be paid to the Mortgagor the principal sum aforesaid, together with the interest then due, on or before the..... day of..... 2013, without delay or default; parties that in case the said sum of Rs..... with interest thereon at the stipulated rate is not paid within the time and in the manner as aforesaid, it shall be lawful for the Mortgagee to enforce this mortgage and to cause the property or any portion sold and appropriate the proceeds towards satisfaction of the mortgage debt provided, however, that in the event of any short-fall or deficiency, i.e. should the claim be not then satisfied, the Mortgagee shall be entitled to recover the balance personally as against the Mortgagor who shall be entitled to redeem the said mortgage at his option by payment of the amount of mortgage debt inclusive of interest at any time before the..... day of..... 2013.

AND THIS INDENTURE FURTHER WITNESSETH that the Mortgagor do hereby covenant with the Mortgagee that notwithstanding any act, deed or thing here before done, executed, performed or suffered to the contrary, the Mortgagor has good title, full power and absolute authority to charge, assure and mortgage the said property in the manner hereunder effected and that the same is free from all encumbrances and attachments.

IN WITNESS WHEREOF the parties herein under have set their hands on the day and year hereinabove mentioned.

Witnesses:

1.

MORTGAGOR

2.

MORTGAGEE

DEED OF MORTGAGE BY CONDITIONAL SALE

THIS DEED of Mortgage made the..... day of..... 2013, by and between

'AB' of..... etc. (hereinafter called "the Mortgagor"), of the One Part
AND

'CD' of..... etc. (hereinafter called "the Mortgagee"), of the Other part

WITNESSES that in consideration of the sum of Rs..... paid to the Mortgagor by the Mortgagee (the receipt whereof the Mortgagor hereby acknowledges) the Mortgagor do hereby grant, transfer, convey, assign and assure to the Mortgagee ALL that etc. To Have and To Hold the same absolutely and for ever subject to the condition hereby expressly declared, namely, that if and when the Mortgagor shall repay or cause to be repaid the said sum of Rs..... with interest thereon at the rate of..... per cent per annum on or before..... day of..... 2013, time for which purpose shall be deemed as essence of contract then and in such an event the sale hereby effected shall stand void and shall be of no effect to all intents and purposes and the Mortgagee shall at the costs of the Mortgagor reconvey and retransfer the said property and every part thereof as then existing to the Mortgagor provided, however, that if the Mortgagor shall fail and/or neglect to repay the said sum with interest at the said rate on or before the said date, or any portion thereof the sale hereby effected shall become absolute and the Mortgagee shall be entitled to foreclose the mortgage when and in such an event the Mortgagee shall be the absolute owner of the property freed and discharged from all the right of equity of redemption of the Mortgagor.

AND IT IS HEREBY FURTHER AGREED AND DECLARED that notwithstanding anything hereinbefore contained the Mortgagor shall remain in possession of the said property and pay all rents, cess, taxes, rates and other impositions which are now or may hereafter be imposed on the said property and in case the Mortgagor fails and/or neglects to make such payments on or before the due date of payments therefor, the Mortgagee shall be at liberty to pay the same and add such sum or sums to the principal money hereby secured which shall carry\ interest at the aforesaid rate. And that the Mortgagor do hereby covenant with the Mortgagee that he has good title to the property and absolute authority and power to transfer the same in the manner hereinbefore indicated and that the property is free from all encumbrances and attachments whatsoever.

IN WITNESS WHEREOF the parties herein under have set their hands on the date and year hereinabove mentioned.

Witnesses: Signed, sealed and delivered

1.

MORTGAGOR 'AB'



2.

The Schedule above referred to

DEED OF ENGLISH MORTGAGE

THIS MORTGAGE made the..... day of....., 2013, by and between

'AB' of, etc. (hereinafter called the "Mortgagor") of the One Part,

AND

'CD' of, etc. (hereinafter called the "Mortgagee") of the Other Part.

WHEREAS the Mortgagor is absolutely seized and possessed or is otherwise well and sufficiently entitled to an absolute estate of inheritance or an estate equivalent thereto free from encumbrances to the lands, hereditaments..... fully mentioned and described in the Schedule hereto AND whereas the Mortgagor having occasion to borrow a sum of Rs..... approached the Mortgagee which the Mortgagee has agreed to lend and advance on having repayment thereof with interest at..... per cent per annum and secured by a conveyance by way of mortgage of the said property.

NOW THIS INDENTURE WITNESSETH that in consideration of the sum of Rs..... this day paid to the said 'AB' by the said 'CD' (the receipt whereof the said 'AB' hereby acknowledges), the Mortgagor hereby agrees with the covenant to pay to the Mortgagee on the..... day of..... the sum of Rs..... with interest thereon in the meantime at the rate of Rs..... per cent per annum computed from the date of this deed such interest to be paid monthly and every month on the 15th of every current month.

NOW THIS INDENTURE also witnesses that for the consideration aforesaid the said 'AB' as the beneficial owner, do hereby grant, transfer convey unto and to the use of the said 'CD' all that etc. (describe the property): TO HAVE AND TO HOLD the same absolutely and for ever PROVIDED ALWAYS that if the Mortgagor shall pay or cause to be paid the sum of Rs..... with interest thereon, on the..... day of....., according to the foregoing agreement in that behalf, the Mortgagee, his heirs, representatives or assigns shall, at the request and costs of the Mortgagor, his heirs, representatives or assigns, reconvey to him or them as he or they shall direct, the said property. AND THAT the Mortgagor do hereby covenant unto the Mortgagee that the Mortgagor has absolute title to the land, hereditaments, messages and premises hereby granted and conveyed and that the Mortgagor has good right, full power, absolute authority and indefeasible title to grant, convey, transfer, assign and assure the same unto and to the use of the Mortgagee in the manner hereinbefore indicated and further the Mortgagor and all persons having lawfully or equitably any estate or interest in the same shall at all time hereafter during the continuance of the security do execute or perform or cause to be done, executed and performed all such further or other acts, deeds and things as may be reasonably required for further and more perfectly assuring the same unto and in favour of the Mortgagee.



Provided, however, and it is further agreed by and between the parties that if the Mortgagor commits any default in payment of the principal amount on the due date or any three installments of interest, whether they have been demanded or not it shall be lawful for the Mortgagee to institute a suit for sale and to have a Receiver appointed over the mortgaged property.

in witness whereof the parties herein under have set their hands on the date and year hereinabove mentioned in the presence of:

Witnesses:

1.
2.

'AB'
'CD'

FURTHER CHARGE

Sometimes the mortgagee advances further sums of money to the mortgagor on the same security and on the same condition. The deed executed to secure the advance of further sums of money is called "Deed of Further Charge". The deed so executed would make a reference to the first mortgage and would also set out the new loan/s, terms of its/their repayment and would make the principal and interest further charged on the same security to be endorsed in the same manner as per the original mortgage.

Deed of Further Charge

This Further Charge made the..... day of..... 2013, Between 'A' of..... etc. (hereinafter called "the borrower" which expression shall also, where the context so admits, include persons entitled to redeem the security) of the One Part and 'B' of..... etc. (hereinafter called "the mortgagee") of the Other Part.

WHEREAS by a mortgage deed dated..... the property mentioned therein and described in the Schedule attached hereto was mortgaged by the borrower with the mortgagee and the sum of Rs..... remains to the mortgagee on the security of the said mortgage but all interest for the same has been paid upto the date of this Deed.

AND WHEREAS the mortgagee has agreed to advance to the borrower the further sum of Rs..... upon terms and conditions and secured in the manner hereinafter appearing.

NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration of the sum of Rs..... now paid by the mortgagee to the borrower the receipt whereof the borrower hereby acknowledges:

1. The borrower hereby covenants with the mortgagee to pay to the mortgagee on the..... day of..... 2013 next the sum of..... principal amount with interest at the rate

of..... per cent per annum, and if the said moneys are not paid on the aforesaid date, to pay interest at the said rate until payment.

2. The borrower as beneficial owner hereby declares that all and singular the property mortgaged under the aforesaid deed dated..... and more particularly described in the schedule attached hereto shall be security, and stand charged with the payment to the mortgagee of the sum of Rs..... the present advance with interest at the rate of..... per cent per annum, from the date of execution of these presents as well as the sum of Rs..... due on the recited mortgage together with interest thereon and shall not be redeemable until on payment to the mortgagee of the sum of Rs..... and the present deed.

3. It is further agreed and declared that the provisions contained in the mortgage deed dated..... shall operate and take effect in like manner for securing payment of the money hereby secured as if the same had formed part of the money secured by the said recited mortgage.

IN WITNESS WHEREOF the parties herein under have set their hands on the date and year hereinabove mentioned.

Witnesses:

1.
2.

MORTGAGOR
MORTGAGEE

Note: Stamp duty chargeable on a deed of further charge is provided for by Article 31 of the Indian Stamp Act

Memorandum of Mortgage by Deposit of Title Deeds

Memorandum that this..... day of..... 2013, 'AB' of, etc. (the mortgagor), as beneficial owner, has deposited with 'CD' of, etc. (the mortgagee), the original title deeds comprised in the Schedule A hereto, relating to the premises belonging to the said 'AB' and situate at..... etc., described in Schedule B with intent to create a charge thereon for securing repayment to the said 'CD' of the sum of Rs..... this day lent and advanced by the said 'CD' to the said 'AB' on demand with interest for the same from this date at the rate of Rs..... per cent per annum. The said 'AB' do hereby undertake as and when required by the said 'CD' to execute and register at the costs of the said 'AB' a legal mortgage in such form and containing such covenants and provisions as he may reasonably require.

Dated this..... day of..... 2013.

Sd/-
Mortgagor

The Schedule A

Description of the Title Deeds deposited.

The Schedule B

Description of the Property.



Mortgage by a Limited Company in favour of a Bank for Securing the Amount due on Cash Credit Account

THIS MORTGAGE made the..... day of..... 2013, at _____ by and between:

‘AB’ a Limited Company, having its Head Office at..... (hereinafter called “the borrower”) of the One Part

AND

The..... Bank Limited, having its Head Office at..... (hereinafter called “the Mortgagees”) of the Other Part.

WHEREAS the borrowers are a Limited Company having their Head Office at..... and are carrying on the business of Sugar Manufacturers at their factory known as..... and situate at..... in the State of.....

AND WHEREAS the borrowers are absolute owners of the said factory free from encumbrances.

AND WHEREAS the borrowers have a cash credit account with the mortgagees for the purposes of their business.

AND WHEREAS the mortgagees have already granted and may hereinafter grant accommodation to the borrowers, and it has been agreed that all moneys now owing and which shall hereafter become owing on the said cash credit account or otherwise from the borrowers to the mortgagees should be secured in the manner hereinafter appearing.

NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration of the mortgagees granting the aforesaid accommodation to the borrowers.

1. The borrowers hereby covenant with the mortgagees that the borrowers will on demand pay to the mortgagees the balance which shall be owing on the said cash credit account or any other account or for bills or drafts accepted, paid or discounted or advances made for the accommodation of the borrowers upto the limit of Rs..... together with interest at the rate of..... per cent per annum from the date of the said load or advance until payment.

2. The borrowers as beneficial owners hereby mortgage their property known as..... Sugar Mill, situate at..... together with all the machinery, engine, boiler etc., and buildings, land attached and appurtenant thereto, and more particularly described in the schedule attached hereto as security for payment of the mortgagees of all principal moneys and interest at the aforesaid rate and other moneys hereby secured.

3. The borrowers further covenant with the mortgagees that all accessories to the mortgaged property shall be liable for the amount due under this Deed from the borrowers to the mortgagees.

4. The borrowers hereby further covenant with the mortgagees that the borrowers will during the continuance of this security keep the mortgaged property in good and substantial repairs and insured against loss or damage by fire for Rs..... in General Insurance



Corporation of India in the name of the mortgagees, and will duly and punctually pay all premiums and other moneys necessary for effecting and keeping up such insurance. And if default shall be made by the borrowers in keeping the mortgaged property in good and substantial repairs or in effecting or keeping up such insurance, the mortgagees may repair (with power to enter upon the mortgaged premises for that purpose and without becoming liable as mortgage in possession) or may insure and keep the same insured in any sum not exceeding Rs..... and that all moneys expended by the mortgagees under this provision shall be deemed to be properly paid by them.

5. The borrowers further covenant with the mortgagees that the borrowers shall not lease the mortgaged property for any term exceeding one year or accept, surrender of any existing lease without the previous consent in writing of the mortgagees.

6. And it is hereby further agreed and declared that if the borrowers fail to pay the mortgage money with interest as agreed upon, the mortgagees shall be entitled to realise their dues by sale of the mortgaged property and, if the sale proceeds thereof are insufficient to satisfy the mortgagees' dues, to recover the balance from the person and other property of the mortgagors.

7. It is hereby further agreed and declared that if interest for any two instalments remains in arrears, the mortgagees shall be entitled to have a Receiver appointed of the mortgaged property.

8. Provided always that if the borrowers shall pay to the mortgagees the sum of Rs..... or the amount due on said account with interest thereon from the date hereof at the stipulate rate, the mortgagees will at any time thereafter at the request and cost of the borrowers execute a receipt of the mortgage amount or a deed of redemption and surrender the premises before mortgaged to the borrowers.

9. By a Resolution of the Board of Directors of the 'AB' Company Limited dated..... Mr..... one of the Directors has been authorised to execute this Deed on behalf of the Company.

In witness whereof the parties hereunder have set their hands on the date and year hereinabove mentioned.

The Schedule above referred to containing description of the machinery and plant, and all buildings and land appertaining thereto.

For and on Behalf of 'AB Co. Ltd.',
Sd/-
Director

For and on Behalf of the..... Bank Ltd.,
Sd/-
Secretary



Deed of Redemption or Re-conveyance of Mortgaged Property by the Mortgagee in favour of the Mortgagor

THIS DEED is made the..... day of..... 2013 by and between

'A' of etc. (hereinafter called "the mortgagee") of the One Part

AND

'B' of etc. (hereinafter called "the mortgagor") of the Other Part.

WHEREBY by a mortgage deed dated..... the property mentioned in that deed was mortgaged by the said 'B' in favour of the said 'A' to secure payment of the amount of Rs..... with interest @..... per cent per annum.

NOW THIS DEED OF RECONVEYANCE WITNESSETH:

That in consideration of all principal moneys and interest secured by the said mortgage deed dated..... having been paid, the receipt whereof the said 'A' hereby acknowledges. The said 'A' as mortgagee hereby redeems or re-conveys unto the said 'B' all the property comprised in the said mortgage deed to hold the same up-to and to the use of the said 'B' as absolute owner discharged from all principal money and interest secured by and from all claims and demands under the aforesaid mortgage deed.

SPECIMEN DEED OF SIMPLE MORTGAGE

THIS MORTGAGE DEED executed on the 15th day of March, 2015, at _____ between:

Mr. Amitabh Bachan son of Mr. Harvansh Rai Bachan residing at Mannat villa (hereinafter called the mortgagor) of the one part (which expression shall include their respective heirs, executors, administrators, legal representatives and assigns unless repugnant to the context)

and

Ms. Jaya Bhaduri daughter of Mr. Arvind Bhaduri resident at _____ (hereinafter called the mortgagee) of the other part, (which expression shall include their respective heirs, executors, administrators, legal representatives and assigns unless repugnant to the context)

WHEREAS the property is free from all encumbrances and attachments and mortgagor is absolutely entitled to mortgage the property situated at _____ (more particularly described in the scheduled annexed herewith)

AND WHEREAS the mortgagee has agreed to lend and advance a sum of Rs. _____ to the mortgagor on the terms and conditions of repayment along with the interest rate hereinafter mentioned.

NOW THIS DEED WITNESSETH AS FOLLOWS:

The mortgagor do hereby agree with the mortgagee that the mortgagor will on or before the end of Dec, 2015 pay or cause to be paid to the mortgagee the sum of Rs. _____ with interest @ 5% p.a.

APPOINTMENT OF RECEIVER UNDER MORTGAGE

Under Section 69A of the Transfer of Property Act, a mortgagee having the right to exercise the power to sell is entitled to appoint by writing signed by him or on his behalf a Receiver of the income of the mortgaged property or any part thereof. Any person who has been named in the mortgage deed and is willing and able to act as a Receiver may be appointed by a mortgagee. If any person has been so named or if the person or persons are not capable and unwilling to act or are dead, the mortgagee may appoint any person to whose appointment the mortgagor agrees. Failing such an agreement the mortgagee shall be entitled to apply to the Court for appointment of a Receiver and any person appointed by the Court shall be deemed to have been duly appointed by the mortgagee.

The powers and functions of the Receiver have been set out in the Section and the Receiver is required to apply all money received by him as follows:

- i. in discharge of all rents, taxes, land revenue, rates and outgoings whatever affecting the mortgaged property;
- ii. in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is Receiver;
- iii. in payment of his commission, and of the premiums on fire, life or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee;
- iv. in payment of the interest falling due under the mortgage;
- v. in or towards discharge of the principal money, if so directed in writing by the mortgagee.

RELEASE AND RECONVEYANCE OF MORTGAGED ASSETS

Release of any of the mortgaged assets or re-conveyance of the mortgaged property could be done by a registered document in case the mortgage has been created in the form other than equitable mortgage by deposit of title deeds by a registered deed of mortgage.

In those cases where release or re-conveyance of mortgaged property covered under equitable mortgage is sought by the mortgagor, the same could be done by releasing the relevant title documents and re-depositing the remaining title deeds by rewriting the memorandum for creation of equitable mortgage. On redemption of equitable mortgage all the title deeds could be released by the mortgagee to the mortgagor by personal hand delivery and against accountable receipts from the mortgagor.

LICENCE

Chapter VI of the Indian Easements Act, 1882 (hereinafter referred to as 'The Act') contains the statutory provisions governing licenses. This chapter comprises of Sections 52 to 64. In States where the aforesaid Act does not apply, Courts rely upon English Law and the principles of the Act also {**Sohan Lal Naraindas v. Laxmidas Reghunath**}

Section 52 of the Indian Easements Act, 1882 defines



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where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful and such right does not amount to an easement or an interest in the property, the right is called a license".

A license may be granted by anyone in the circumstances and to the extent in and to which he may transfer his interest in the property affected by the license (Section 54). The grant of license may be expressed or implied from the conduct of the grantor, and an agreement which purports to create an easement, but is ineffectual for that purpose, may operate to create a license. (Section 54)

**SPECIMEN DEED OF LICENSE FOR USE OF WALL OF A BUILDING FOR PUBLICITY AND
ADVERTISEMENT OF GOODS ETC.**

THIS DEED OF LICENSE is made on 08th Day of March, 2014 at (Place) by and between

Mr. A, Son of Mr. B, Residence of _____ hereinafter called as 'Licensor' of the one part (Which expression shall, unless repugnant to the context, include his heirs, executors, administrators, representatives and assigns thereof)

And

X, Son of Mr. Y, Residence of _____ hereinafter called 'Licensee' of the other part (which expression shall, unless repugnant to the context, include his heirs, executors, administrators, representatives and assigns thereof).

WHEREAS the said Licensee has applied to Licensor for the use of the eastern outside wall of his building being situated at _____ for the purpose of utilizing the same for publicity and advertisement of his goods for a period of 2 (Two) years.

AND WHEREAS the said Licensor has agreed to grant the license on the terms of conditions hereinafter mentioned.

**NOW THIS DEED OF LICENSE WITNESSES AND IT IS HEREBY AGREED AND DECLARED
AS FOLLOWS:**

1. The Licensee shall be entitled to use the eastern outside wall of the aforesaid premises for the purpose of advertisement of his goods by colored signs, marks, letters or other representations for a period of 2 (two) years from the date of this
2. The Licensee agrees to limit the advertisement to the dimensions not exceeding and the advertisement should not be contrary to any regulations of the Municipality.
3. The Licensee agrees to pay to the Licensor a sum of Rs. _____ as advertisement charges per month in advance within 5th day of every month.
4. The Licensee agrees to execute all necessary repairs or pay adequate compensation to Licensor if the outer wall or the plaster thereof is damaged on account of default or negligence on the part of the licensee.



5. The Licensee agrees to bear all the charges, taxes and impositions on account of such advertisement.
6. The Licensor is entitled to revoke the license anytime within the said period of two years in the event of failure to pay the charges or taxes by the Licensee.

In witness whereof the licensor and the licensee have set their respective hands to the agreement of sale/purchase on the day, month and the year above written in the presence of the following witnesses:

Witnesses:**1: Name of Witness**

Father's name
Address

(Signature)

Licensor

(Signature)

2 : Name of Witness

Father's name
Address

(Signature)

Licensee

(Signature)

KINDS OF LICENSE:

License may be of two types namely a bare license and a license coupled with a grant of interest.

- ☞ **A bare license** merely gives the licensee the right lawfully to do something on that property, which it would otherwise have been unlawful for him to do. A bare license is non heritable.
- ☞ **When a license is coupled with a grant** for raising permanent structure on the land the license is permanent and heritable.

License when transferable:	A license ordinarily carries with it the incident of non-transferability. A license cannot be transferred by the licensee or exercised by his servants or agents. The only exception to this rule is that, unless a different intention is expressed or necessarily implied, a license to attend a place of public entertainment may be transferred by the licensee. (Section 56 of the Act)
Revocation of license :	<p>The revocation of license may be expressed or implied.</p> <p>The general rule is that subject to the agreement between the parties, all licenses are revocable at the will of the licensor. However, following are 2 exceptions to this rule:</p> <ul style="list-style-type: none">❖ A license which is coupled with a transfer of property and such transfer is in force, and❖ A license acting upon which the licensee has executed a work of permanent character and incurred expenses in the execution cannot be revoked.

SECTION 62 OF THE ACT PROVIDES THAT A LICENSE IS DEEMED TO BE REVOKED:

- ❖ When, for a cause proceeding the grant of it, the grantor ceases to have an interest in

- the property affected by the license;
- ❖ the licensee releases it, expressly or impliedly, to the grantor or his representative;
 - ❖ where it has been granted for a limited period or acquired on condition that it shall become void on performance or non-performance of a specified act, and the period expires, or the condition is fulfilled;
 - ❖ where the property affected by the license is destroyed or by superior force so permanently altered that the licensee can no longer exercise his right;
 - ❖ where the licensee becomes entitled to the absolute ownership of the property affected by the license;
 - ❖ Where the license is granted for a specified purpose and the purpose is attained or abandoned, or becomes impracticable;
 - ❖ Where the license is granted to the licensee as holding a particular office. employment or character, and such office, employment or character ceases to exist;
 - ❖ where the license totally ceases to be used as such for an unbroken period of twenty years, and such cessation is not in pursuance of a contract between grantor and the licensee;

REGISTRATION AND STAMP DUTY:

- A mere deed of license need not be registered unless any right, title or interest in immovable property of the value of Rs. 100 or more is created, declared, assigned, limited or extinguished. (Section 17, Registration Act, 1908)
- If a license is contained in any deed such as in a deed of sale or lease, no separate stamp duty is required in respect of the covenants relating to the license, but if a separate deed is executed it will be chargeable with the same duty as an agreement under **Article 5, Schedule I of the Indian Stamp Act, 1899.**

Lease, License and Rental Agreements

The license is not a lease. The lease and the license both are different. The word "License" under Section 52 of the Indian Easement Act, 1882 is a grant by one person to another or to a definite number of persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

A lease of immovable property as per Section 105 of the Transfer of Property Act is a transfer of a right to enjoy such property. It may be for a specified period, express or implied. The price or payment of money is usually referred to as the "rent".

In a Leave and License Agreement, the juridical possession of the premises is deemed to remain with the licensor and the licensee is said to be in constructive possession of the said premises. Thus, a leave and License does not create any interest in the premises in favour of the licensee but gives the licensee the mere right to use and occupy the premises for a temporary period.

A Rental Agreement between the landlord and tenant sets down the terms which will be followed while the tenant lives in the rental unit. Month-to-Month Agreement is commonly called a "Rental Agreement", This agreement is for an indefinite period of time, with rent usually payable on a monthly basis. The agreement itself can be in writing or oral, but if any type of fee or refundable deposit is being paid, the agreement must be in writing.



LEAVE AND LICENSE

The word "leave" has many meanings. In Leave and License Agreements, it is used to indicate "permission". The occupancy is in essence a permission granted by the landlord or owner to use and occupy the property concerned.

Leave and License Agreements are preferred by the parties to get out of the rigours of landlord-tenant relationship. Many types of agreements are made for the occupation of property like lease deeds, lease or tenancy agreements, rental agreements etc. Despite these agreements, most owners prefer to give their premises on leave and, license basis rather than tenancy or lease basis. The process of eviction of tenants is generally difficult. The law is tilted in favor of the tenant for various purposes. Generally it is being witnessed that a person having a vacant apartment will never rent it out fearing what if the tenant decides not to vacate and makes the apartment his own. That is why tenancy has been put on the backburner and Leave and License is now the most popular option.

Mention should be made that the practice of entering into "Leave and License Agreements" was adopted in Mumbai. In Mumbai, the provisions contained under the then Bombay Rents Hotel and Lodging House Rates Control Act, 1947, popularly known as the "Bombay Rent Act" were considerably in favor of the tenants. Further, Tenancy or Lease Agreement had to be stamped and registered. Even if the Agreements were duly stamped and registered, the eviction of tenants was still a very tough and time consuming procedure.

Lease and License: Distinction

The cardinal distinction between a lease and a license is that In a lease there is a transfer of interest in the premises, whereas in the case of a license there is no transfer of interest, although the licensee acquires a right to occupy the premises. When premises are given out on lease or tenancy basis the legal possession of the premises in these cases is also deemed to be transferred to the lessee and tenant respectively.

Whether an agreement to occupy the premises between the landlord and tenant is allowed to occupy was an agreement to lease or an agreement of leave and license has been a subject of many Supreme Court & High Court rulings. In a number of judgments various High Courts as well as the Apex Court have distinguished the lease and the license.

In Khalil Ahmed Bashir Ahmed v. Tufelhussein Samasbhai Sarangpurwala, 1988 SCC 155, the Supreme Court has held:

"In order to determine whether a document created a license or a lease the real test is to ascertain the intention of the parties i.e. whether they intended to create a license or a lease. If the document creates an interest in the property entitling the transferee to enjoyment, then it is a lease; but if it only permits another to make use of the property without exclusive possession, then it is a license."

Factors to be considered while giving out Premises on Leave & License Basis:

In deciding whether to give out premises on leave & licenses basis some of the factors to be considered as follows:

Possession:	In a leave and license agreement, the owner is deemed to be in legal or judicial possession of the premises and the licensee is in constructive possession of the premises.
Income Tax:	In a leave and license agreement the owner has to pay the applicable rate of tax.
Municipal Tax:	In a leave and license agreement the Municipal Authorities may charge taxes as applicable in the area, and if, there is a security deposit amount sometimes the Municipal Authorities may calculate a notional interest on the securities deposit amount and charge tax thereon.

A Specimen of Leave and License Agreement

THIS AGREEMENT is made on Saturday 21st March 2015, between:

Mr. Prasoon Gupta s/._____ resident of _____ age _____ (hereinafter called as Licensor) and includes his legal heir, assignee, executor etc.

And

Ms. Rushikesh Sashtri D/. of _____ resident of _____ age _____ (hereinafter called as Licensee) and includes her legal heir, assignee, executor etc.

WHEREAS the Licensor is the owner of a piece of land at..... bearing Survey No ... with a building consisting of floor having built up area of about Square feet.

AND WHEREAS the Licensee has approached the licensor with a request to allow the Licensee to temporarily occupy and use a portion of the..... floor of the said building, admeasuring about square feet for carrying on his business, on leave and license basis until the Licensee gets other more suitable accommodation.

AND WHEREAS the Licensor has agreed to grant leave and license to the Licensee to occupy and use the said ground floor portion of the said building and which portion is shown on the plan hereto annexed by red boundary line on the following terms and conditions agreed to between the parties hereto;

NOW IT IS AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS..

1. The Licensor hereby grants leave and license to the Licensee to occupy and use the said portion of the ground floor/..... floor of the said building of the Licensor (hereinafter referred to as the Licensed Premises) for a period of eleven months from..... The Licensee agrees to vacate the said premises even earlier if the Licensee secures any other accommodation in the locality where the said premises are situated.
2. The Licensee shall pay to the Licensor a sum of Rs..... per month (calculated at the rate of Rs..... per square foot) as License fee or compensation to be paid in advance for each month on or before the..... day of each month.
3. All the Municipal taxes and other taxes and levies in respect of the licensed premises will be paid by the Licensor alone.
4. The electric charges and water charges for electric and water consumption in the said licensed premises will be paid by the Licensee to the authorities concerned and the Licensor will not be responsible for the same. For the sake of convenience a separate electric and water meter if possible will be provided in the said premises.
5. The Licensee will be allowed to use the open space near the entrance to the Licensed premises and shown on the said plan by green wash for parking cars during working hours of the



Licensee and not for any other time and no car or other vehicle will be parked on any other part of the said plot.

6. The licensed premises will be used only for carrying on business and for no other purpose.
7. The Licensee shall not carry out any work of structural repairs or additions or alterations to the said premises. Only such alterations or additions as are not of structural type or of permanent nature may be allowed to be made by the Licensee inside the premises with the previous permission of the Licensor.
8. The Licensee shall not cause any nuisance or annoyance to the people-in the neighborhood or store any hazardous goods on the premises.
9. If the Licensee commits a breach of any term of this agreement then notwithstanding anything herein contained the Licensor will be entitled to terminate this agreement by fifteen days' prior notice to the Licensee.
10. On the expiration of the said term or period of the License or earlier termination thereof, the Licensee shall hand over vacant and peaceful possession of the Licensed premises to the Licensor in the same condition in which the premises now exist subject to normal wear and tear. The Licensee's occupation of the premises after such termination will be deemed to be that of a trespasser.

IN WITNESS WHEREOF the parties hereto have put their hands the day and year first hereinabove written.

Witness1

sd/

Licensor

Sd/

Licensee

Witness 2

LEASE

According to Section 105 of the Transfer of Property Act, 1882, a lease of immovable property is a transfer of a right to enjoy property. It is the method of acquiring the right to use equipment or real property for consideration.

SUB-LEASE

A sub-lease is demise by a lessee for lesser term than he himself has. Every lessee, however short his term may be, makes a sub-lease unless he is refrained by the contract of the tenancy from subletting. If the demise is for the whole term or for a period beyond the term, it amounts to assignment. If the lessee divests himself he becomes a stranger to the demised property and he has no right to have possession delivered up to him. It is true that a covenant against subletting will restrain the assignment, but a mere covenant against subletting does not prohibit under letting a part of the premises. As long as the lessee remains in possession he may permit another person to use the demised premises without committing a breach of covenant, namely not to assign, underlet or part with the possession of the demised premises.

Specimen Lease Agreement for Plant & Machinery

THIS DEED OF LEASE is made on Monday 08th Day of March, 2015 by and between



Mr. A, Son of Mr. B, Residence of _____ hereinafter called as 'Lessor' of the one part (Which expression shall, unless repugnant to the context, include his heirs, executors, administrators, representatives and assigns) and

Mr. X, Son of Mr. Y, Residence of _____ hereinafter called 'Lessee' of the other part (which expression shall, unless repugnant to the context, include his heirs, executors, administrators, representatives and assigns).

WHEREAS the Lessor is the rightful owner and in possession of Equipment described in Schedule A annexed hereto.

AND WHEREAS the Lessee approached the Lessor to give the aforesaid equipment on lease for a period of _____ months subject to extensions if any _____

AND WHEREAS the Lessor has agreed to lease the Equipment to the Lessee on the terms and conditions hereinafter mentioned.

NOW THIS DEED OF LEASE WITNESSES AND IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

1. **Lease:** The Lessor hereby agrees to give on lease the equipment to the Lessee.
2. **Period:** The Lessee shall take the equipment for its use on lease for the term to commence from the date of payment by the lessor and to terminate at the end of _____
3. **Rental:** In consideration of the lease, the Lessee shall pay to the lessor, lease rent at the rate of _____ per month within 7 days of such rent becoming payable. In case of delay, the Lessee will pay along with monthly rent a flat 5% penalty charges on the monthly rent.
4. **Warranties:** The Lessee has made the selection of Equipment based upon its own judgment prior to taking it on lease and the Lessee expressly declares that it has not relied upon any statements or representations made by the Lessor. The Lessor shall not be responsible for any repairs, service or defects in the Equipment or operation thereof.
5. **Title:** No right, title or interest in the Equipment shall pass to Lessee by virtue of this deed. Lessee also agrees and undertakes not to sell, assign, sublet, pledge, hypothecate or otherwise encumber any interest in this Agreement or Equipment.
6. **Indemnity:** The Lessee agrees to comply with all the laws, regulations and orders relating to the possession, operation and use of the Equipment and agrees to Indemnify the lessor and keep him indemnified and hold him safe and harmless and undertakes to defend the lessor against any and all claims, costs, expenses, damages and liabilities.
7. **Inspection:** Lessee will cause the Equipment to be operated in accordance with manufacturer's manuals or instructions. The Lessor shall have the right from time to time to inspect the equipment during normal business hours to confirm the existence, condition and proper maintenance of the Equipment.
8. **Insurance:** The Lessee shall obtain and maintain for the entire term of this agreement, at his own expense, comprehensive insurance against loss or destruction or damage to the Equipment.
9. **Other Assurances:**

- a. The lessee shall provide annual audited accounts to the Lessor, if asked, during the term of this Deed.
 - b. Lessee irrevocably agrees to proportionately increase the lease rent in the event of increase in local taxes on the property or related and consequential charges.
10. **Surrender:** Upon expiration or termination of the lease, the lessee shall deliver to the lessor the said Equipment at such a place as Lessor may specify in good repairable condition and working order.
11. **Notices:** Any notice or demands required to be given herein shall be given to parties hereto in writing and by post or by hand delivery at the address herein set forth.
12. The captions in this Agreement are for convenience only and shall not define or limit any of the terms thereof.
13. **Arbitration:** All disputes, differences, claims and questions arising during the term of this agreement shall be referred to the arbitration of two arbitrators, one to be appointed by each party.

In witness whereof the lessor and the lessee have set their respective hands to the agreement of sale/purchase on the day, month and the year above written in the presence of the following witnesses:

Witnesses:

1: Name of Witness

Father's name

(Signature)

Lessor

Address

(Signature)

2 : Name of Witness

Father's name

(Signature)

Lessee

Address

(Signature)

Schedule A : Description of the Equipment

Year of Make _____

Technical Specifications _____

Operating instructions _____

Safety Instructions _____

Lease Agreement with Lessor, Lessee and Bank as Financing Party

THIS LEASE AGREEMENT is made on 08th Day of March, 2015 at (Place) by and between

The ABC Company Limited, a Company registered under the Companies Act, 2013 and having their office at represented by their Director, Mr. A (hereinafter called as 'Lessor') which expression shall unless repugnant to the context thereof include its Legal representatives and assigns thereof and



The XYZ Company Limited, a Company registered under the Companies Act, 2013 and having their office at _____ represented by their Director, Mr. X (hereinafter as 'Lessee') which expression shall unless repugnant to the context thereof include its representatives and assigns thereof
Limited, a Banking Company having their office at _____ represented by Head Mr. M (hereinafter called as 'Bank') which expression shall unless to the context thereof include its Legal representatives and assigns thereof

WHEREAS under an Agreement for Hypothecation dated _____ executed by the lessor company in favour of the Bank, the Bank granted to the lessor a sum of Rs. _____ as an by way of advance in current account to enable the lessor an equipment for the purpose of leasing secured by hypothecation

AND WHEREAS the Bank will allow the lease of the equipment to the lessee on provided the terms and conditions set under this agreement are complied with.

AND WHEREAS with a view to record the conditions hereinbefore provided, the parties hereto have agreed to enter into an agreement.

NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED AND DECLARED BY AN BETWEEN PARTIES AS FOLLOWS

1. The lessor company hereby covenants with the Bank that the Lessor Company has not received any rent/hire charges as advance from the lessee company.
2. The lessee company hereby confirms that the said equipment is subject to the hypothecation charges in favour of the Bank.
3. The lessor company hereby authorizes the lessee company to pay all the relevant charges directly to the Bank
4. The lessor and Lessee hereby jointly declare and confirm that the Bank is entitled to inspect the said equipment, during business hours, as and when necessary.
5. The lessee company hereby also confirms and declares that if the lessee company fails to pay rent/hire charge to the Bank in terms of these resents, the Bank will be at liberty to take possession of the said equipment if the bank so desires to protect the interest of the Bank.
6. The lessee company hereby agrees that the said equipment will bear the seal "Hypothecated with MNO Bank".
7. The lessee company hereby agrees to pay duly and punctually al the rents/hire charges to the bank.
8. It is hereby expressly agreed and declared by and between the parties hereto that all the terms, conditions and covenants herein contained shall override the terms, conditions and covenants contained in the Agreement for Hypothecation and the Agreement for Lease dated to the extent the same are inconsistent.

IN WITNESS WHEREOF the parties hereunder have set their hands through the authorized representatives on the date and year hereinabove mentioned.

Witnesses:

1: Name of Witness

Father's name

(Signature)

Lessor



Address

(Signature)

2 : Name of Witness

Father's name

(Signature)

Lessee

Address

(Signature)

Schedule A**Surrender of Leases**

Surrender of lease is not a transfer but mere yielding up by the lessee of his interest under the lease to the lessor by mutual agreement. It is in effect merger of the estate of the lessee into the reversion. It is not a transfer or an assignment of any right or estate within the meaning of Section 5 of the Transfer of Property Act (**Makhanlal v. Nagendranath**). The person who surrenders is called the surrenderor and the person to whom surrender is made is called the surrenderee. Surrender must be made with clear intention to yield up as mere non- payment of rent for years together or abandonment of the site does not amount to surrender (**Misri Lal v. Durga Narain**). A Requisition Order by the Government does not amount to any surrender (**Torabai v. Padan Chand**). It may be expressed or implied. Except in a case of some special kinds of lease as required by special Act, no writing or registration is necessary. Surrender may be oral, if accompanied by delivery of possession.

REGISTRATION AND STAMP DUTY:

Section 107 of the Transfer of Property Act, 1882 and Section 17(1)(d) of the Registration Act, 1908 require that all leases from year to year, or for a term exceeding a year, or reserving a yearly rent must be registered. Other leases, if governed by the Transfer of Property Act, must be registered except that Local Government may direct them to be made by unregistered instruments. (Proviso to Section 107)

For the stamp duty of a lease, including an under-lease or sub-lease and agreement to let or sub-let, Article 35 of the Indian Stamp Act, 1899 is to be followed:

LICENCE	LEASE
<ul style="list-style-type: none">❖ A personal non-heritable right.❖ Creates no interest in the licensee.❖ Non assignable.❖ Always permissive and normally revocable.❖ Not exclusive user.❖ A positive right.❖ Remedy for breach is damages.❖ No notice necessary to terminate relationship.	<ul style="list-style-type: none">❖ An heritable right in rem.❖ Interest created in the lessee.❖ Usually assignable.❖ Permissive but not normally❖ Revocable.❖ Exclusive user.❖ A positive right.❖ Denial of lessor's title results in forfeiture.



❖ Instrument granting right does not require registration.	❖ Specially enforceable.
❖ Does not entitle licensee to sue strangers in his own name.	❖ Notice necessary to terminate relationship.
❖ A licensee does not qualify for a vote.	❖ Instrument creating right requires registration.
❖ Not liable for rents.	❖ Can sue in his own name.
❖ User not liable for public nuisance.	❖ May qualify for a vote.
	❖ Liable.

CHARGE

Meaning of charge- general	A charge is created when immovable property of one person is made security for the payment of money to another. No interest in the property is transferred. The concept of charge is regulated by the provisions of transfer of properties act, 1882 which are applicable to a simple mortgage.
Meaning of charge - as per companies act	<p>A charge is a security, given for securing loans or debentures. The security may be provided either by way of mortgage, hypothecation and pledge.</p> <p>Thus, charge is a general concept and it covers each and every mode of creating the security on the assets of the company, for the purpose of securing the repayment of any debt due by a company.</p>

KINDS OF CHARGE

A charge on the property of the company as a security for debentures may be of the following kinds, namely:-

- ❖ Fixed or specific charge
- ❖ Floating charge

Fixed or specific charge: a charge is fixed or specific when it is made specifically to cover assets, which are ascertained and definite or are capable of being ascertained and defined, at the time of creating charge e.g. land, building, or heavy machinery. A fixed charge, therefore, is against security of certain specific property, and the company loses the right to dispose off that property as unencumbered.

Floating charge: a Floating charge is a charge on a class of assets present and future, which in the ordinary course of business is changing from time to time and leaves the company free to deal with the property as it sees fit until the holders of charge take steps to enforce their security. A floating charge is not attached to any definite property but covers property of a fluctuating type e.g. stock in trade, debtors, etc. and is thus necessarily equitable. Crystallization of floating charge

A floating charge attached to the company's property generally remains dormant till it crystallizes or becomes fixed. The company has a right to carry on its business with the help of assets having a floating charge till the happening of some event, which determines this right. On crystallization, the floating charge converts itself into a fixed charge on the property of the company.



PLEDGE	HYPOTHECATION
<p>Pledge is a contract whereby some article or goods is deposited, with a lender of money or promise, as security for the repayment of a loan or performance of a promise. The person who deposits the goods is called the pledgor or pawnor and the person with whom the goods are deposited is called the pledgee or pawnee.</p> <p>It may be noted that pledge is also a kind of bailment or it is a particular species of bailment. It means that pledge is that kind of bailment in which the purpose is to secure the repayment of any debt or performance of promise. Thus, pawnor in a pledge is equivalent to bailor in a bailment and similarly, pawnee in a pledge is equivalent to bailee in a bailment.</p>	<p>Hypothecation is a form of transfer of property in goods. Hypothecation agreement is a document by which legal property in goods passes to the person who lends money to them, but the possession does not pass. This form of transfer is not regulated in India by any statute. Neither TOPA, 1882 nor the Indian contract act 1872, nor the sale of goods act 1930, recognize the non possessory hypothecation of movables and the rights and remedies of the parties are regulated by the courts according to the general law of contract.</p> <p>In hypothecation, there must be an intension of the parties to create a security on the property on which the money has been lent. If that intention can be established, equity gives effect to it.</p>

A floating charge crystallizes and the security becomes fixed in the following cases:-

- ❖ When the company goes into liquidation;
- ❖ When the company ceases to carry on the business;
- ❖ When the creditors or debenture holders take steps to enforce their security
- ❖ On the happening of the event specified in the deed.

Lease Agreement with Lessor, Lessee and Bank as Financing Party

THIS LEASE AGREEMENT is made on 08th Day of March, 2015 at (Place) by and between

The ABC Company Limited, a Company registered under the Companies Act, 2013 and having their office at represented by their Director, Mr. A (hereinafter called as 'Lessor') which expression shall unless repugnant to the context thereof include its Legal representatives and assigns thereof

AND

The XYZ Company Limited, a Company registered under the Companies Act, 2013 and having their office at represented by their Director, Mr. X (hereinafter as 'Lessee') which expression shall unless repugnant to the context thereof include its representatives and assigns thereof and Bank Limited, a Banking Company having their office at represented by Head Mr. M (hereinafter called as 'Bank') which expression shall unless to the context thereof include its Legal representatives and assigns thereof

WHEREAS under an Agreement for Hypothecation dated _____ executed by the lessor



company in favour of the Bank, the Bank granted to the lessor a sum of Rs. _____ as and by way of advance in current account to enable the lessor to purchase equipment for the purpose of leasing secured by hypothecation.

AND WHEREAS the Bank will allow the lease of the equipment to the lessee on provided the terms and conditions set under this agreement are complied with.

AND WHEREAS with a view to record the conditions hereinbefore provided, the parties hereto have agreed to enter into an agreement.

NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED AND DECLARED BY AN BETWEEN PARTIES AS FOLLOWS

1. The lessor company hereby covenants with the Bank that the Lessor Company has not received any rent/hire charges as advance from the lessee company.
2. The lessee company hereby confirms that the said equipment is subject to the hypothecation charges in favour of the Bank.
3. The lessor company hereby authorizes the lessee company to pay all the relevant charges directly to the Bank
4. The lessor and Lessee hereby jointly declare and confirm that the Bank is entitled to inspect the said equipment, during business hours, as and when necessary.
5. The lessee company hereby also confirms and declares that if the lessee company fails to pay rent/hire charge to the Bank in terms of these presents, the Bank will be at liberty to take possession of the said equipment if the bank so desires to protect the interest of the Bank.
6. The lessee company hereby agrees that the said equipment will bear the seal "Hypothecated with MNO Bank".
7. The lessee company hereby agrees to pay duly and punctually al the rents/hire charges to the bank.
8. It is hereby expressly agreed and declared by and between the parties hereto that all the terms, conditions and covenants herein contained shall override the terms, conditions and covenants contained in the Agreement for Hypothecation and the Agreement for Lease dated to the extent the same are inconsistent.

In witness whereof the parties hereunder have set their hands through the authorized representatives on the date and year hereinabove mentioned.

Witnesses

1

2

sd/

Lesssor



sd/
Lessee

(Schedule A)

Hypothecation Agreement

It is a form of transfer of property in goods. It is a document by which property in goods passes to the person who lends money on them but the possession does not pass. This form of transfer is not regulated in India by any statute.

Hypothecation is an extended form of pledge. In hypothecation, there must be an intention of the parties to create a security on the property on which the money has been lent.

Hypothecation is mostly resorted to by banks & Financial Institutions for securing their loans and limits of working capital, guarantees etc.

Hypothecation agreement usually covers moveable machinery, equipment, stock, raw material etc. As there is no statute governing hypothecation and thus the principles of equity and justice are followed by the court.

A Specimen Agreement to Hypothecate Goods to Secure Fixed Loan

The Manager,
.....Bank,
.....
.....
Sir,

In consideration of your Bank advancing to me/us on loan the sum of Rs..... I/We hereby agree to hypothecate and hold under lien to the Bank as security for the repayment as per Schedule hereto of the principal amount of the loan and payment of interest on demand at.....% per annum subject to a maximum of.....% per annum above Bank Rate.

The goods so to be held by me/us under lien to the Bank I/We declare to be my/our absolute property, and to be stored in my/our godowns at..... I/We hereby agree to furnish you at the close of business on the last day of each English calendar month so long as any money remains due in respect of the said loan with a full and correct statement of particulars of all goods so held under lien to the Bank, with the market value thereof respectively on that day.

All goods from time to time held by me/us under lien to the Bank in terms of this agreement shall be kept separate and apart from all other goods in my/our possession, and no moneys shall be borrowed by me/us from any company, firm or person on the security of such goods stored in the same godown in a way that such other goods may be mixed with the goods held under lien to the Bank nor shall



I/We do any other act by means of which the Bank's lien on the goods so held shall be in any way impaired or affected.

It is understood that I/We are at liberty, from time to time in the ordinary course of business, to sell all or any of the goods from time to time held under lien to the Bank under this agreement provided that no such sale shall reduce the value of the goods held under lien below the amount of my/our said debt to the Bank plus the margin of..... per cent. In case of any goods held under lien to the Bank reducing the value of the goods held under this lien to less than the amount of my/our said debt to the Bank plus such margin, the proceeds of such sale, as soon as the same are received, shall be paid into the bank in part satisfaction of the said loan and shall in the meantime be held as specifically appropriated to payment of the amount due by me/us on the security.

I/We empower you or any one from time to time authorised by you on behalf of the Bank to enter the godowns in which the goods held under lien to the bank under this agreement shall be from time to time stored, for the purpose of inspecting and taking an account of the said goods.

I/We further empower you or anyone authorized by you as aforesaid so long as any money advanced by the bank under this agreement remains unpaid, to take possession of any goods from time to time held by me/us under lien to the Bank under this agreement and or any promissory notes or bazaar chits held by me/us in respect of any of the goods which may have been sold in such manner as you may think fit and on so taking possession to exercise on behalf of the Bank all the rights of a Pawnee under the Indian Contract Act and failing payment of the amount under this loan on....., to sell and realize the said goods and promissory notes or bazaar chits. No notice to me/us of such sale shall be necessary, and I/We hereby agree to waive any such notice.

I/We agree to accept the Bank account of such sale signed by the Manager, Accountant or other duly authorized officer of the Bank as sufficient proof of the correctness of the amount realized by the Bank and the charges and expenses incurred in connection with such realization, and

I/We hereby further agree to sign all documents, furnish all information and do all acts and things necessary for the purpose of enabling the Bank to sell any goods or realise any promissory notes or bazaar chits of which you shall so take possession. I/We undertake to keep all held under lien to the Bank under this agreement, insured against fire to their full value, and to produce and deposit the policies with the Bank any time on demand and to hold all moneys which may become payable under any such policies in trust for the Bank so long as any money shall remain due in Bank's name or to appropriate floating policies for the time being affected by the Bank towards insurance of the said goods and in either case to debit the said loan with relative premiums. It is understood that the Bank's lien on the goods, so held under this agreement shall extend to any other sum or sums of money for which I/we or any other of us either separately or jointly with any other person or persons may be or become indebted or liable to the bank on any account.

Schedule of securities referred to in the agreement

.....

Schedule of installments for the repayment of the loan amount

.....

Yours faithfully,
For A B C Ltd.
(.....)
Managing Director,
New Delhi



Dated.....

PAST EXAM QUESTIONS

- Q1 Necessary Clauses in a sublease deed. (dec'10)
- Q2 What is the difference between 'mortgage' and 'lease' from the point of view of drafting of an agreement? (Dec'10)
- Q3 Write a short note on:
- Release & re-conveyance of mortgaged assets
 - Usufructuary mortgage
 - Mode of transfer of actionable claim
 - Surrender of lease
- Q4 In the light of judicial pronouncements, discuss the following:
- A lease is a transfer of a right for use of equipment/real property for a consideration. (Dec'14)
 - Goodwill of a business as an intangible asset. (June'15)





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DRAFTING AND CONVEYANCING RELATING TO VARIOUS DEEDS AND AGREEMENTS- III

INTRODUCTION:

An assignment is a form of transfer of property and it is commonly used to refer the transfer of an actionable claim or a debt or any beneficial interest in movable property. A transfer of an actionable claim is usually called an assignment thereof.

Section 3 of the Transfer of Property Act, 1882 defines an actionable claim as:

"Actionable claim means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of moveable property or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent."

The term assignment is, however, of wider import. It is well settled that a transfer of property clearly contemplates that the transferor has an interest in the property, which is sought to be conveyed.

Mode of transfer of actionable claim (Sec 130)

- (1) The transfer of an actionable claim whether with or without consideration shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorized agent, and shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not;
- (2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings, and without making him a party thereto."

Every notice of transfer of an actionable claim must be in writing signed by the transferor or his agent duly authorized in this behalf, or in case the transferor refuses to sign, by the transferee or his agent, and must state the name and address of the transferee.

(Transfer of Property Act, 1882, Section 131).

ASSIGNMENT OF BUSINESS DEBT

A sum due is the same thing as a debt due. It may be now payable or will become payable in future by reason of a present obligation. There must be an existing obligation to pay a sum of money now or in future. It includes book debts, debts due on a bond, provident fund, arrears of rent, amount due on settlement of account between principal and agent, master and servant, wages which have accrued due, money due under an insurance policy, claim to money



deposited for the due performance of a duty, surplus left with the vendee of property, etc. A debt is property. It is an actionable claim and is heritable and assignable and it is treated as property under the Transfer of Property Act, 1882 and is known as "actionable claim".

Consideration (Sec 130)	An assignment of an actionable claim may be with or without consideration. Passing of the property in the assigned property does not depend on the payment of consideration. The question of payment of consideration is in fact one between the assignor and the assignee.
Liability of Transferee of an actionable claim	Section 132 of Transfer of Property Act provides that the transferee of an actionable claim shall take it subject to all the liabilities and equities to which the transferor was subject in respect thereof at the date of transfer.
Warranty of Solvency of a Debtor (Sec 133)	Solvency of the debtor at the time of transfer is to be taken into account for purposes of warranty by the transferor.

DEED OF ASSIGNMENT OF BUSINESS DEBTS

THIS DEED OF ASSIGNMENT is made on this 08th Day of March, 2015 at (Place) by and between:

Mr. A, Son of Mr. B, Residence of _____ hereinafter called as 'Assignor' of the one part (Which expression shall, unless repugnant to the context, include his heirs, executors, administrators, representatives and assigns)

AND

Mr. X, Son of Mr. Y, Residence of _____ hereinafter called 'Assignee' of the other part (which expression shall unless repugnant to the context, include his heirs, executors, administrators, representatives and assigns).

WHEREAS the Assignor has been from some time, carrying on the business of _____ under the name and style of _____

AND WHEREAS in the course of the business, several persons, whose complete details are given in the schedule annexed hereto, have become debtors to him for the sums of money set opposite their respective names.

AND WHEREAS the assignor has contracted with the assignee for the absolute sale to him of the said business debts at _____ and for the sum of Rs. _____ (Rupees _____) on the terms and conditions hereinafter mentioned.

NOW THIS DEED OF ASSIGNMENT HEREBY WITNESSETH AND IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

1. The Assignor acknowledges the receipt of the sum of Rs. _____ Received from the Assignee.
2. In consideration of the receipt of the money as mentioned in clause 1, the assignor in the capacity as a beneficial owner, does hereby transfer, sell and assign to the use of the said assignee, all the several said debts and sums of money specified in the Schedule annexed herewith which are

now due and payable to the assignor.

3. The assignor does hereby covenant with the assignee that all the several debts are lawfully due to him and the parties by whom they are payable are alive.
4. The assignor shall at all times execute and perform all such and other acts, deeds, things or writings as may be reasonably required for realization of the said debts or assuring them in favour of the assignee.

In witness whereof the assignor and the assignee have set their respective hands to the deed of assignment on the day, month and the year above written in the presence of the following witnesses:

Witnesses:

1: Name of Witness

Father's name (Signature)
Address

Assignor
(Signature)

Name of Witness

Father's name (Signature)
Address

Assignee
(Signature)

**ASSIGNMENT OF SHARES IN A COMPANY
(Section 44 of the Companies Act, 2013)**

"The shares or other interest of any member in a company shall be moveable property, transferable in the manner provided in the articles of the company."

A "share" in a company is a right to a specified amount of the share capital of the company, carrying with it certain rights and liabilities, while the company is a going concern and in the winding up. It represents the interest of the holder measured for purposes of liability and dividend by a sum of money.

A company cannot refuse to transfer shares except as provided by its articles. It is well settled that unless the articles otherwise provide, a shareholder has a free right to transfer his shares to whom he chooses. It is not necessary to look to the articles for a power to transfer, since that power is given by the Act. It is only necessary to look to the articles of association to ascertain the mode of transfer and the restrictions upon it.

DEED OF ASSIGNMENT OF SHARES IN A COMPANY

THIS DEED OF ASSIGNMENT is made on this 08th Day of March, 2015 (Place) by and between:

Mr. A, Son of Mr. B, Residence of _____ hereinafter called as 'Assignor' of the one part (Which expression shall, unless repugnant to the context, include his heirs, executors, administrators, representatives and assigns) and



Mr. X, Son of Mr. Y, Residence of _____ hereinafter called 'Assignee' of the other part (which expression shall unless repugnant to the context, include his heirs, executors, administrators, representatives and assigns).

WHEREAS the Assignor holds the _____ (no.) of fully paid Equity shares of Company Limited bearing consecutive no _____ to _____ (both inclusive).

AND WHEREAS the assignor has contracted with the assignee for the assignment of the said Equity Shares for the sum of Rs. _____ (Rupees _____) on the terms and conditions hereinafter mentioned to hold the same to the assignee absolutely.

AND WHEREAS the assignee hereby agrees to take the said Equity Shares subject to terms and conditions hereinafter mentioned.

NOW THIS DEED OF ASSIGNMENT WITNESSES AND IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

The Assignor acknowledges the receipt of the sum of Rs. _____ received from the, Assignee.

In consideration of the receipt of the money as mentioned in clause 1, the assignor in the capacity as a beneficial owner, does hereby transfer, sell and assign to the use of the said assignee _____ (no.) of fully paid Equity Shares of Company Limited as described aforesaid.

In witness whereof the assignor and the assignee have set their respective hands to the deed of assignment on the day, month and the year above written in the presence of the following witnesses:

Witnesses:

1: Name of Witness

Father's name _____ (Signature)
Address _____

Assignor

(Signature)

Assignment of Policies of Insurance

Policies of Insurance are principally of two types:

- (1) Insuring risk to life of a person and
- (2) Covering various risks relating to goods.

An insurable interest in the subject matter insured is a right, which is capable of assignment. An insurance policy may be transferred by assignment unless it contains terms expressly prohibiting assignment.

It must be assigned before death in the case of life insurance policy and it may be assigned either before or after loss in the case of a marine or goods policy. An assured who has no insurable interest in the subject matter insured cannot assign.



A Specimen of Deed of Assignment of Policy of Life Assurance

THIS ASSIGNMENT made this..... day of.....by and between
AB, son of....., resident of..... (hereinafter known as "the assignor") of the one part
AND
CD, son of..... resident of.....(hereinafter known as "the assignee") of the other part.

WHEREAS a policy of assurance being No..... for Rs.....(Rupees.....) was issued by the Life Insurance Corporation of India on the life of the assignor on the.....day of.....to be paid to the assignor or to his executors, administrators or assigns after his death, subject to the annual premium of Rs.....;

AND WHEREAS the said AB has agreed to transfer and assign to the said CD the said policy of assurance of a sum of Rs.....(Rupees.....);

THIS DEED WITNESSES that in consideration of the sum of Rs.....(Rupees.....) the receipt whereof the said AB hereby acknowledges, the said AB as beneficial owner, hereby transfers and assigns unto and to the use and for the benefit of CD the hereinbefore recited policy of assurance, and the sum of Rs.....(Rupees.....) hereby assured and all the other moneys, benefits and advantages to be had, recovered or obtained under or by virtue of the said policy:

TO HOLD the same unto and to the use of the said CD absolutely, subject to the conditions as to payment of future premiums and otherwise to be henceforth observed in receipt of the said policy:

AND the said AB hereby covenants with the said CD that he, the said AB, shall not do, or knowingly suffer anything to be done, whereby the said policy may be rendered void or voidable or the said CD or his heirs, executors, administrators or assigns may be prevented from receiving the said sum of Rs..... (Rupees.....) or any benefit there under.

IN WITNESS WHEREOF the assignor and the assignee do here to affix their respective signatures on the day, month and the year stated above.

Witness:

Witness:

Assignor

Assignee

Assignment of Patents

Patent is a right granted under the Patents Act to the grantee for the exclusive privileges of making or selling a new invention or process protected under the Patent. The Act confers upon the patentee, the right to safeguard his property in the patent and sue the person who infringes upon his patent right.

If the patent is assigned, Section 69 of the Patent Act deals with such situations, it states that If any person becomes entitled by assignment, transmission or operation of law to a patent or to a share in a patent, then in such



a case assignee shall apply in writing in the prescribed manner to the Controller for the registration of his title.

SPECIMEN DEED OF ASSIGNMENT OF PATENT

THIS DEED OF ASSIGNMENT is made on this 08th Day of March, 2015 at (Place) by and between

Mr. A, Son of Mr. B, Residence of _____ hereinafter called as 'Assignor' of the one part (Which expression shall, unless repugnant to the context, include his heirs, executors, administrators, representatives and assigns)

AND

_____ Company Limited, a company incorporated under the Companies Act, 2013 on _____ with Authorized Share Capital of _____ divided into _____ Equity shares of Rs. _____ Each, hereinafter called as the 'Assignee' of the other part (which expression shall, repugnant to the context, include its authorized representatives and assigns)

WHEREAS the assignor has invented a process for the manufacture of _____ which was duly registered and entered in the Register of Patents bearing no. _____ dated _____ and duly sealed in the patent office.

AND WHEREAS the assignee has its own manufacturing facility and is desirous to manufacture the product using the patented process and approached the assignor assignment of the patent and assignor has agreed to assign the patent.

AND WHEREAS it has been agreed between the parties to the Deed that the consideration for the aforesaid assignment is agreed at _____ (Rupees _____) to be satisfied by allotment of _____ fully paid Equity Shares to the assignor.

NOW THIS DEED OF ASSIGNMENT HEREBY WITNESSETH AND IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

1. Board of Directors of the assignee company has approved the allotment of the aforesaid _____ fully paid Equity Shares to the Assignor as a consideration for the assignment.
2. The 'Assignor covenants with the assignee that he has not assigned or otherwise dealt the said patent and that his title to the said patent subsists and he has done nothing to prejudice the Assignee to use the patent exclusively.
3. The Assignor further covenants with the Assignee that he shall join the Company in applying to the appropriate authority at the expense of the Assignee, for extension of the said patent.
4. The Assignor further covenants that if during the term of the patent and during the operation of the assignee as a going concern, the assignor makes further inventions or improvements in respect of the invention, he will disclose the same to the company and explain the new method of discovery to the company and apply for patenting such new invention at the cost of the company.

IN WITNESS WHEREOF THE ASSIGNOR AND THE ASSIGNEE have set their respective hands or through authorized representatives to the deed of assignment on the day, month and the year above written in the presence of the following witnesses:

Witnesses:

1. Name of Witness

Father's name (Signature)

Assignor

Address
(Signature)

2. Name of Witness

Father's name (Signature)

Assignee

Address
(Signature)

Assignment of Trade Marks

A trademark is a visual symbol in the form of a word, device or a label applied to articles of commerce. Thus, with the help of trademark, goods manufactured or dealt in by other persons are distinguished.

By virtue of the affixture of trademark, the person who sells his goods under the particular trademark acquires an exclusive right subject to certain conditions, to the use of the mark in relation to such goods.

A trademark is a property, but its precise nature differs substantially from other forms of property with which most people are familiar. It is not necessary that the trademark chosen by a trader should be the result of inventive skill or intellectual labour.

Section 37 of the Trade Marks Act, 1999, deals with the power of registered proprietor of a trade mark to assign his rights in the trade mark.

Section 38 states that, subject to the provisions of this chapter, a registered trade mark shall be assignable and transmissible, whether with or without the goodwill of the business concerned.

Section 39 states that an unregistered trademark shall not be assignable or transferable except along with the goodwill of the business concerned.

SPECIMEN DEED OF ASSIGNMENT OF A REGISTERED TRADE MARK

This deed is made on this 7th Day of March, 2014 at _____ by and between

Mr. Alok Nath son of Mr. Parlok Nath, Resident of _____ hereinafter called "assignor" of the other part (which expression shall unless repugnant to the context, include his heirs, executors, administrators, representatives and assigns).

AND

Mr. Som Nath, son of Mr. Om Nath, resident of _____ hereinafter called 'assignee' of the other part (which expression shall unless repugnant to the context, include his heirs, executors, administrators, representatives and assigns)

WHEREAS the said assignor is the owner of a trade Mark number _____ duly registered in the register of trade mark maintained by the trade marks registration office at _____



AND WHEREAS the assignor has agreed to assign the aforesaid Trademark for exclusive use and benefit of the assignee at total consideration of Rs. _____ on the following terms and conditions.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. The Assignor acknowledges the receipt of the sum of Rs. _____ received from the Assignee.
2. In consideration of the receipt of the money as mentioned in clause 1, the assignor in the capacity as a beneficial owner, does hereby transfer and assign for the use and benefit of the Assignee the hereinbefore mentioned trademark.
3. The Assignor hereby covenants with the assignee that he will not infringe or use a mark identical with the Trade Mark hereby assigned nor use another trademark nearly resembling it as to be likely to deceive or cause confusion.
4. The assignor further covenants that he shall, at the cost of Assignee do all the acts and things as may be required for ensuring the aforesaid assignment.

In witness whereof the assignor and the assignee have set their respective hands to the deed of assignment on the day, month and the year above written in the presence of the following witnesses:

Witness:

1. Name of Witness

Father's name

(Signature)

Assignor
(Signature)

- 2 : Name of Witness

name (Signature)

Assignee
(Signature)

ASSIGNMENT OF COPYRIGHTS

Section 14 of the Copyright Act, 1957 defines "copyright" as an exclusive right subject to the provisions of the Act to do or authorise the doing of any of the acts stated thereunder in respect of a work or any substantial part thereof with regard to original literary dramatic, musical and artistic works; the cinematograph films and sound recording. The rights granted under Section 14 of the Act relate to reproduction, publication, performance, production, translation, making film or sound recording, selling or giving on hire film or sound recording, communicate film or sound recording to public and to make adaptation of the copyright work.



Section 18 of the Act deals with the assignment of copyrights. The Section lays down:

“(1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof;

Provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence.



(2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly.

A Specimen of Deed of Assignment of Copyright of a Book

THIS DEED OF ASSIGNMENT made this..... day of..... between..... (hereinafter called the "author") of the first part and Messrs..... carrying on the business of publishers at..... (hereinafter called the "publishers") of the second part.

WHEREAS the author is entitled to the copyright of the book known as.....;

AND WHEREAS the publishers approached the author for assignment thereof, which the author has agreed to do on the terms and conditions hereunder contained.

NOW THIS DEED OF ASSIGNMENT WITNESSES AS FOLLOWS:

1. In consideration of an subject to the covenants on the part of the publishers as hereinafter contained, the author does hereby grant, convey, transfer, sell, assign and assure unto and to the use of the publishers all that copyright as defined in Section 14 of the Copyright Act, 1957, of the book entitled..... on the subject of..... to have and hold the same as absolute owners thereof for the full term of copyright as prescribed by law.
2. The publishers shall so long as the said work or any adaptation, modification or translation thereof is published and sold, submit to the author twice every year once during the month of January and the other during the month of June, a statement of account showing details of copies printed, published, held in stock and sold or disposed of (Except otherwise by sale of damaged or destroyed copies) and of the profits, if any, earned there under.
3. The publishers shall pay or cause to be paid to the author or his nominee or nominees a royalty at the rate of..... per cent on the sale proceeds of the copies of the work or adaptations or translations thereof that may be actually published and as disclosed in the statement of account referred to in clause (2). No royalty shall be payable on any copies of the work that may be damaged or destroyed or disposed of otherwise than by regular sale.
4. That the publishers shall also pay to the author half the net profits earned by them, if any, from any transfer, sale or assignment of any of the rights comprising the copyright or from grant of any interest or license therein: provided that the publishers shall not be entitled to and shall not do or cause anything to be done in derogation of the author's rights, particularly the right to royalty reserved hereunder.
5. That the author does hereby agree to revise the work and bring it up to date or otherwise modify, alter, adapt or translate it or get it translated whenever reasonably required by the publishers provided also that the publishers will not normally require the author to do so more than once in two years; provided further that in case the author shall fail and/or neglect, and/or refuse, to revise, modify, alter, translate the work or get it translated as and when reasonably required by the publishers, they shall be at liberty to get the same done on his account by any person or persons of their choice after due notice to the author and deduct all costs, charges and expenses out of moneys payable to the author: provided also that in selecting the person proposed to revise, modify, alter,



adapt or translate the work and in fixing the remuneration to be paid there for, the author's wishes, if any, shall so far as possible, be respected by the publishers.

6. That the author has delivered (or shall deliver within a period of.....) the manuscript of the said work to the publishers.

7. That the author does hereby declare that the work of which the copyright is being hereunder assigned is entirely the original work of the author and that the same does not in any manner whatsoever violate or infringe any existing copyright or any other right of any other person or other persons; and further that it does not contain anything which may be considered as obscene, libellous, scandalous or defamatory.

8. The author hereby agrees to indemnify and keep the publishers indemnified against all claims, demands, suits and other actions and proceedings, if any, that may be instituted or taken and also against all damages, costs, charges, expenses which the publishers shall or may suffer, on account of printing, publication or sale of the said work or any part thereof, or by reason of such printing, publication and/or sale being an infringement of some other person's copyright or other rights in the work or by reason of its containing anything which may in any sense be obscene, libellous, scandalous or defamatory.

9. The publishers shall print and publish the work or cause the same to be printed and published as soon as practicable within a period of twelve months from the date of this contract, and in default thereof, the author may, by a notice in writing, call upon the publishers to print and publish the work within two months of the receipt of the said notice; and if the publishers shall still fail and/or neglect to print and/or publish the work within the said period, save and except in so far as they are prevented from doing so by circumstances beyond their control, the author shall be at liberty to rescind the contract on giving a notice to that effect to the publishers when the copyright shall revert fully to the author and all the rights of publishers shall as from that date stand determined.

10. That in case of a dispute or difference arising between the parties touching the meaning, construction, interpretation, breach or fulfilment or non-fulfilment of the terms of these presents or any clause or condition thereof, the same shall be referred to the decision and arbitration of two arbitrators, one to be nominated by each party and in case of difference of opinion between the two arbitrators to an umpire to be nominated by the arbitrators before the commencement of the reference; and the award of such arbitrators, as the case may be, shall be final and binding on both the parties and this clause shall be deemed as of submission within the meaning of the Arbitration & Conciliation Act, 1996 and its statutory modification and re-enactment.

11. That the words "author" and "publishers" or "parties" used hereinabove shall unless there be something contrary to the context, include their respective heirs, survivors, successors, representatives, executors, administrators and assigns and successors in business.

in witness whereof the parties hereto have executed these presents on the date, month and the year hereinbefore mentioned in the presence of the witness.

Witness:

Witness:

Author

Publisher



ASSIGNMENT OF BUSINESS AND GOODWILL AND OTHER RIGHTS AND INTERESTS

Goodwill is an intangible asset. It is easy to describe but difficult to define. It represents the value to a business attaching to all the factors, internal and external, which enable it to earn a differential return of profit on the capital employed; that is, a better return than that which arises in other comparable businesses, having regard to the nature, size, location and risk inherent in such a business, and which is capable of being enjoyed by a successor.



Goodwill has been variously defined by different commercial pundits. Some definitions are: "The goodwill of a business is the advantage, whatever it may be, which a person gets by continuing to carry on, and being entitled to represent to the outside world that he is carrying on a business, which has been carried on for some time previously."

- ❖ "The attractive force which brings in custom."
- ❖ "The benefit of a good name, reputation and connection of a business."
- ❖ "The one thing which distinguishes an old-established business from a new business at its first start."
- ❖ "The monetary measurement of the benefits attaching to the ownership of a successful business."
- ❖ "The capitalized value attaching to the differential profit-capacity of a business."

"The whole advantage, whatever it may be, of the reputation and connection of the firm which may have been built up by years of honest work orgained by lavish expenditure of money." Goodwill is an intangible, but not necessarily a fictitious asset, representing the value - however difficult its appraisalment may be - to its owner, of benefits arising from the business in question, such as the sole right to enjoy the profits of the business, and, where goodwill has been acquired, the sole right of succession to the advantages of the business which have been built up in the past. Goodwill arises mainly:

- (a) by personal reputation of the owners;
- (b) by reputation of the goods dealt in;
- (c) by site monopoly or advantage;
- (d) by access to sources of supply, e.g., large quotas;
- (e) for patent and trade-mark protection;
- (f) effectiveness of publicity;
- (g) reputation of the first's goods and methods;
- (h) relationship between firm and personnel; and
- (i) growth element.

- ❖ The purchaser of goodwill acquires the trade marks, patents, copyrights etc. of the business as well as the benefits of contacts and all the benefits accruing from the location, reputation, connections, organisation and other exceptional features of the business. The purchaser will seek to express the sum payable in terms of the compound or capitalised value of an annuity of future differential or "super" profits that is those profits in excess of the marginal return normally arising.
- ❖ No formula can be laid down for the accurate measurement of the value of goodwill, and in practice a purchaser will be prepared to pay a sum representing a number of years' purchase of recent annual average profits, e.g. three years' purchase, according to the estimated worth to the buyer of the future earning capacity of the business, the risk of the discontinuance or diminution in true profits being duly considered.



Partnership (Section 4 of the Partnership Act, 1932)

An association of two or more like-minded persons formed with a common objective to establish a lawful business house of their choice with the idea of earning profits. All partners of a firm mutually agree to share all profits and losses of the business amongst them according to their predetermined shares/proportions fixed by them in the partnership agreement.



Partnership requires three elements –

- ❖ An agreement entered into by all persons concerned;
- ❖ Distribution of the profits of business; and
- ❖ Management of the business by all or anyone or more of them acting for all,

A partnership agreement usually makes provisions for the duration of the partnership or for its determination. Where no such provision is made the partnership is "partnership at will"

Who can be Partners?

- Only natural and legal persons (*Duli Chand Vs. CIT*).
- Must be competent to contract.
- A firm or a Hindu Undivided Family is not a legal person and cannot enter into partnership with any person.
- When the Karta of a Joint Hindu Family enters into a partnership with strangers the other members of the family do not ipso facto become partners (**Firm Bahgat Ram vs. comm. Of excess profit tax**).

A minor cannot be a partner in a firm but, with the consent of all the partners, he can be admitted to the benefits of partnership (Section 3D). He is entitled to share in the profits and his share is liable for the acts of the firm, but he is not personally liable. He cannot be made liable for the losses of the firm. Within six months of attaining majority or obtaining knowledge of his admission, whichever is later, the minor may elect to become or not to become a partner in the firm.

Two partnership firms cannot enter into partnership as such but its partners can certainly form a new partnership. However, a partnership firm may be a member of an association or company licensed under Section 8 of the Companies Act, 2013. The limited company of which a firm may be a member should be one formed for promoting Commerce, Art, Science, Religion, Charity or any other useful object without any profit making motive. On dissolution of the firm, its membership of the association or company shall cease.


Maximum Number of Partners in a Firm	As per provisions of Section 464 of the Companies Act, 2013 there cannot be more than 100 partners in a firm established for carrying any business for profit. However as per rule 10 of companies (Misc) Rules 2014, the limit is 50 members. A partnership firm having more than the maximum prescribed limit of partners shall be illegal.
Registration	It is optional. Consequences of non-registration of a partnership firm are set out in Section



of Partnership Firm (Sec 58)	69 of the Partnership Act. An unregistered firm cannot enforce a right or claim arising out of a contract against any third party. However, if the firm obtains registration on the date of institution of the claim against third person, the said claim or right would be perfectly maintainable. Since the blow of the consequences of non-registration is very severe, it is advisable to get the partnership registered under the Partnership Act, 1932 immediately on its incorporation.
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Points to be kept in mind while executing partnership Deed

- ❖ Name and place of business.
- ❖ Duration of the partnership.
- ❖ Shares of each partnership in the profits and losses of the business.
- ❖ The management of the business.
- ❖ Nature of principal work agreed to be carried on in partnership,
- ❖ Number of partners and initial capital employed by each one of them,
- ❖ Provision and the manner for raising future capital, if required,
- ❖ Work distribution, if any, of each of the partners,
- ❖ Obligation of partners who are members of a partnership firm,
- ❖ Operation of Bank Accounts,
- ❖ Withdrawal by partners.
- ❖ Accounting system of the business.
- ❖ Whether place of business belongs to partnership or any individual partner.
- ❖ Division/Devolution of goodwill of the business in case of dissolution of partnership.
- ❖ Distribution of assets and liabilities amongst partners at the time of dissolution.
- ❖ Provisions for bringing in or admitting new partners.
- ❖ The remaining partners, whether his heirs will take his place, or the partnership will continue the effect of the death of a partner, or it will stand dissolved.
- ❖ Provision for resolving disputes relating to partnership if arises amongst the partners. If all partners agree to settle their partnership disputes through the intervention of some named person who may act as an arbitrator for them or even otherwise by arbitration, it is always advisable to include an arbitration clause in the partnership stating that all disputes that may arise between the partners will be resolved by reference to arbitrator under the provisions of the Arbitration and Conciliation Act, 1996.

Introduction of a New Partner (Sec 31) 	Introduction of a new partner in the existing partnership brings in a change in the constitution of the firm. A new partner cannot be admitted to the existing partnership except with the consent of all the existing partners of the firm but subject to any contract to the contrary between such partners. The person so admitted as a new partner in the existing partnership shall not be liable for any act of the firm already done.
Retirement and Expulsion of Partners (Sec 32 and 33)	A partner may retire from a firm with the consent of all other partners. If the terms of the agreement so provide, a partner may retire by notice to the other partners. In a partnership at will also a partner can retire by giving notice in writing to all the other partners of his intention to retire. A partner can be expelled from a firm by a majority of the partners where such a power is conferred by the agreement between the partners and the power is exercised in good faith.

Nomination It is quite common in partnership agreement to insert a clause and nominate a



of Successor: successor who has a right to be declared and admitted as partner in the event of death or retirement of a partner.

However, in CIT V. Govindram Sugar Mills, Supreme Court held that the nomination is not effective in case of partnership firm consisting of two partners only as it stands dissolved on the death of a partner.

DEED OF PARTNERSHIP BETWEEN TWO PARTNERS

THIS INDENTURE OF PARTNERSHIP is made on this 08th Day of March, 2015 at (Place) by and between

Mr. A, Son of Mr. B, Residence of _____ hereinafter called as 'Partner 1' of the First Part (Which expression shall, unless repugnant to the context, include his heirs, executors, administrators, representatives and assigns thereof)

AND

Mr. X, Son of Mr. Y, Residence of _____ hereinafter called as 'Partner 2' of the Second Part (Which expression shall, unless repugnant to the context, include his heirs, executors, administrators, representatives and assigns thereof)

WHEREAS the parties hereto decided to form a Partnership and commence business of trading in (Product X) in the City of _____

AND WHEREAS the Parties decided to enter into a written instrument of Partnership on such terms and conditions hereinafter mentioned.

NOW THIS INDENTURE OF PARTNERSHIP WITNESSES AND IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

1. The Partnership firm will be known by the name of 'AX Trading' (hereinafter referred to as Partnership firm) and will have its place of business at _____.
2. The rent, taxes, duties, repairs and other expenses in respect of the aforesaid place of business shall be paid out of the partnership.
3. The duration of the firm shall be for a period of 36 months beginning from the month of this Deed. The parties may mutually agree for the extension on the expiry of the aforesaid period of 36 months.
4. The Capital of the firm for the time being is fixed at Rs. 10,00,000 (Ten Lakhs) to be contributed by equally by both the partners i.e. Rs. 5,00,000 (Five Lakhs) to be contributed by Partner A and Rs. 5,00,000 (Five Lakhs) to be contributed by Partner X.
5. The partners shall distribute net profits and bear the losses in the equal ratios.
6. The Partners shall be entitled to withdraw out of the net profits, money not exceeding Rs. _____ in each month adjustable against the accounts of each partner.
7. No apprentice, clerk or servant shall be employed or dismissed without the consent of all the partners.
8. The firm shall regularly maintain, in the ordinary course of business, a true and correct account of all its incoming and outgoing and also its assets and liabilities.



9. A Partner in his individual capacity can deal in goods or purchase materials or take loan not exceeding Rs. 1,00,000. Any dealing exceeding this limit will need the prior consent of both the partners.
10. The Partnership firm shall open an account with MNO Bank at its _____ branch and the said account shall be operated jointly by the partners.
11. Every partner shall be entitled to dissolve the partnership in the event of other committing breach of the conditions herein coveted.
12. On the bankruptcy of any partner, the partnership shall terminate.
13. Upon the determination of the partnership, a full and general account of its valuation shall be taken of its property and assets and liabilities, the debts should be realized and the liabilities should be paid. The net remaining cash will be divided equally amongst the partners.
14. Any dispute or doubt in connection with the partnership shall be referred to arbitrator one to be chosen by each of the partners. In the event of non-agreement amongst two arbitrators, the arbitrators may appoint a third arbitrator.

IN WITNESS WHEREOF THE PARTNERS have set their respective hands to the indenture of partnership on the day, month and the year above written in the presence of the following witnesses

Witnesses:

1. Name of Witness

Father's name (Signature)

A

Address (Signature)

2. Name of Witness

Father's name (Signature)

X

Address (Signature)

DEED EXTENDING PERIOD OF A PARTNERSHIP

THIS DEED OF AGREEMENT is made the..... day of..... 2013 BETWEEN A.B., C.D. and E.F. AND WITNESSES as follows:

That each of the said A.B., C.D. and E.F. do hereby agree with the others of them, jointly and severally, in the manner following, that is to say:

That the said A.B., C.D. and E.F. will remain and continue partners together in the said trade or business of..... for the further term of..... years to be counted from the..... Day of..... 2007 the day on which the original deed of partnership shall expire, upon such and the same terms and conditions, and with, under and subject to such and the same covenants, provisions and agreements as are expressed and contained in the said original deed of partnership to which this agreement is appended, and to which the said partners hereto, their respective legal representatives would have been subject or liable, if the said deed of partnership and the partnership thereby created, and the several covenants, declarations, provisions and agreements therein mentioned and contained\ had been made or entered into for the term of ten years instead of the term of five years.

IN WITNESS whereof the said A.B., C.D. and E.F. have hereto at..... by way of a supplementary deed executed these presents on the day and the year first above mentioned and appended the same to the original deed of partnership, deed.....



WITNESSES:

Sd/- A.B.

Sd/- C.D.

Sd/- E.F.

ANNEXURE III

DEED OF AGREEMENT OF ADMISSION INTO FIRM OF A NEW PARTNER

THIS DEED OF AGREEMENT is made on this 08th Day of April, 2015 at (Place) by and between

Mr. A, Son of Mr. B, Residence of _____ hereinafter called as 'Original Partner 1' of the First Part (Which expression shall, unless repugnant to the context, include his heirs, executors, administrators, representatives and assigns thereof)

AND

Mr. X, Son of Mr. Y, Residence of _____ hereinafter called as 'Original Partner 2' of the _____ First Part (Which expression shall, unless repugnant to the context, include his heirs, executors, administrators, representatives and assigns thereof)

AND

Mr. E, Son of Mr. F, Residence of _____ hereinafter called as 'New Partner' of the Other Part (Which expression shall, unless the context admits otherwise, include his heirs, executors, administrators, representatives and assigns)

WHEREAS the Original Partners carried on the business in the name of 'AX Trading' and are bound as such under the partnership deed executed on 08th day of March, 2015 hereinafter referred to as Original Partnership Deed.

AND WHEREAS the New Partner is desirous of being admitted as a partner in the aforesaid firm and invest a sum of Rs. 10,00,000 AND the Original Partners are willing to admit him as an additional partner.

NOW THIS DEED WITNESSES AND IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

1. The Partners continue to remain partners as per the terms and conditions mentioned in the Original Partnership Deed in all respect as far as applicable except as varied by this agreement.
2. The new name of the firm will be 'AXE Trading'.
3. The new partner shall bring in Rs. 5,00,000 (Rupees Five Lakhs) towards Goodwill and Rs. 5,00,000 (Rupees Five Lakhs) towards capital contribution.
4. The capital mentioned in the Original Partnership Deed shall hereafter be changed to the sum of Rupees 15,00,000 (Rupees Twenty Lakhs) and the partners shall have the equal share in the partnership firm i.e. Rs. 5,00,000 (Rupees Five Lakhs) each.
5. The profits and losses of the partnership shall continue to be borne by the partners equally.

IN WITNESS WHEREOF THE PARTNERS have set their respective hands to the agreement for admission of new partner on the day, month and the year above written in the presence of the following witnesses:

Witnesses:

1. Name of Witness



Father's name	(signature)	A (signature)
2. Name of witness Father's name	(signature)	X (signature)
3. Name of witness Father's name	(signature)	E (signature)

DISSOLUTION OF PARTNERSHIP FIRM

Dissolution of firm may take place either with the intervention of the court or without intervention of the court.

Dissolution **without the intervention** of the court may take place in the following cases :

- By an agreement between the parties
- By adjudication as insolvent of all partners or all partners but one
- By the business of the firm becoming unlawful
- By notice in writing in case of partnership at will



Dissolution **with the intervention** of the court may take place in the following cases :

- When the partner has become of unsound mind
- One of the partner has become permanently incapable of performing his duties as partner
- One of the partner is guilty of misconduct or is willfully and persistently committing breach of the agreement relating to the firm.
- When the business of the firm cannot be carried on except at a loss
- On any other grounds, which render it just and equitable that, the firm should be dissolved.

DEED OF DISSOLUTION OF PARTNERSHIP

THIS DEED OF Dissolution of Partnership is made on this 8th Day of May, 2015 at (Place) by and between

Mr. A, Son of Mr. B, Residence of ____ - hereinafter called as ' Partner 1' (Which expression shall, unless repugnant to the context, include his heirs, executors, administrators, representatives and assigns)

AND

Mr. X, Son of Mr. Y, Residence of ____ hereinafter called as 'Partner 2' (Which expression shall, unless repugnant to the context, include his heirs, executors, administrators, representatives and assigns)

AND

Mr. E, Son of Mr. F, Residence of ____ hereinafter called as 'Partner 3' (Which expression shall, unless repugnant to the context, include his heirs, executors, administrators, representatives and assigns)

WHEREAS the partners under a deed of partnership dated 08th March, 2015 as amended on 08th April, 2015 made between them formed themselves into a business firm and carried on business under the name and style of 'AXE Trading.'

AND WHEREAS it has been mutually decided between the parties that the said partnership shall be dissolved and the said trade and business shall be wound up and the stock in trade, assets and credits should be realized and called in



NOW THIS DEED WITNESSES AND IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

1. The Partnership between the said partners shall be determined and stand dissolved with effect from the date of this agreement. And the parties hereto singly or jointly shall not carry on the business of the said firm of AXE Trading under the said name and style for a period of 5 years from the date of the dissolution.
2. The partners shall sign the notice of dissolution and advertise the same in the official gazette and shall also intimate the fact of the dissolution to the Registrar of Firms.
3. Within 30 days after the dissolution of the partnership, a full and general account shall be made by the parties or by such other person as may be appointed for this purpose whose decision shall be binding and final on the partners.
4. Cost of the dissolution shall be deemed to be liability of the partnership and paid from the funds of the partnership.
5. In case the winding up shows a loss or the assets of the partnership are insufficient to meet the liabilities and debts, then the partners shall pay such losses in proportion to their contribution to the capital.

In witness whereof the partners have set their respective hands to the agreement FOR admission of new partner on the day, month and the year above written in the presence of the following witnesses:

Witnesses:

- | | | |
|--------------------|-------------|-------------|
| 1. Name of witness | | |
| Father's name | (signature) | A |
| | | (signature) |
| Address | | |
| 2. Name of witness | | |
| Father's name | (signature) | X |
| | | (signature) |
| Address | | |
| 3. Name of witness | | |
| Father's name | (signature) | E |
| | | (signature) |
| Address | | |

NOTICE OF DISSOLUTION OF PARTNERSHIP FOR INSERTION IN NEWSPAPER

NOTICE IS HEREBY GIVEN THAT the partnership subsisting between us the undersigned Mr. A, Mr. X and Mr. E carrying on the business in the name and style of AXE Trading has this day been dissolved by mutual consent. All debts due to an owing by the said late firm will be received and paid by Mr. A.

Dated:

Signature:

A

X

E



TRUST DEEDS

Sec 3 of Indian Trust Act 1882 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.

The person who reposes or declares the confidence is called the 'author of the trust'. The person who accepts the confidence is called the 'beneficiary'. Subject matter is called trust property, or the trust money and the person who manages the property is called Trustee (author himself can be called as Trustee)

"The trust is the confidence and the confidante is the trustee."

The breach of any duties imposed on the trustee by any law for the time being in force is called 'breach of trust'.



Objects of Trust	Section 4 of the Indian Trusts Act, 1882 provides that the object of the trust must be lawful. The purpose of the trust is lawful unless it is: <ul style="list-style-type: none"> i. Forbidden by law, or ii. Is of such a nature that, if permitted, it would defeat the provisions of any law, or iii. Is fraudulent, or iv. Involves or implies injury to the person or property of another, or v. The Court regards it as immoral or opposed to public policy.
Public and Private Trusts	In a public trust the beneficiary is the general public or a specified section of it. In a private trust the beneficiaries are defined and ascertained individuals. In a public trust the beneficial interest is vested in an uncertain and fluctuating body of persons. The nature of the trust may be proved by the evidence of dedication or by user and conduct of parties. Where a trust is created for the benefit of the members of the settlor's family, it is a private trust and not a public trust. Every charitable trust is only a public trust as benefit to the community at large or to a section of the community is of the essence of a valid charitable trust. But a religious trust need not necessarily be a public trust as there can be a private religious trust also.
Trusts among the Hindus and the Muslims	Though Hindu religious and charitable endowments sometime partake of the nature of trusts, the Indian Trusts Acts does not apply to them. Property can be dedicated to the beneficiary either by giving it to the trustee and executing a trust in the usual way or by directly dedicating it to the beneficiary. Though wakfs are trusts, the Indian Trusts Act does not apply to wakfs under the Muslim Law. However, it is open to a Muslim to create a secular trust of a public and religious character. Such a trust would be governed by the Indian Trusts Act, 1882.
Creation of Trust	A trust in respect of immovable property can be declared only by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered OR By the will of the author of the trust or of the trustee. A trust in respect of movable property can be made either by a declaration as above or by the transfer of the ownership of the property to the trustee (Section 5). In places where the Indian Trusts Act, 1882 does not apply a trust of immovable property may be created orally if the author of trust is himself the trustee and consequently no



transfer of the property is involved, and all that is required is only a declaration of trust (Madanji v. Tribhuwan).

The deed creating a trust should contain in reasonable certainty, among others, the following:

- ❖ An intention to create a trust
- ❖ The purpose of the trust;
- ❖ The beneficiaries;
- ❖ Names of the trustee/s;
- ❖ Trust property;
- ❖ Unless the author is himself a trustee transfer of the legal ownership of the property to the trustee; and,
- ❖ Duties, rights and liability of the settler, trustee and the beneficiary.

The deed may also provide for; re-imbursement of expenses incurred' by the trustee(s) in connection with the discharge of his/their duties as a trustee(s) and also all expenses properly incurred in or about the execution of the trust for the realization, preservation or benefit of the trust' property-or the protection or the support of the beneficiary.

Acceptance of Trust	Acceptance of trust by trustee may be either express, e.g. by executing the deed of trust or by verbal assent, or inferred from conduct, e.g. by entering into possession of the property and on the duties as trustee. But it is always safer to have the deed of trust executed by the trustee also.
Registration and Stamp Duty	A trust in relation to movable or immovable property which is declared by a non-testamentary instrument must be registered, irrespective of the value of the property. Deeds of wakf or of religious and charitable endowments must be registered if they relate to immovable property worth Rs. 100 and upwards. A trust declared otherwise than by a will is chargeable to stamp duty under Article 64, Schedule I of the Indian Stamp Act, 1899. The stamp duty varies from State to State.
Revocation and Extinction of Trusts	A trust cannot be revoked unless <ul style="list-style-type: none">❖ All the beneficiaries consent;❖ A power of revocation has been reserved in the deed; and❖ In case of a trust for payment of debts, it has not been communicated to the creditors.

If the trust property is to be applied for the author's own benefit the trust can be revoked. A power of revocation may with advantage always be reserved in the deed. The declaration of trust for creating provident fund, pension fund, superannuation fund, gratuity fund etc. should be irrevocable.

A trust is extinguished:

- ❖ When its purpose is completely fulfilled; or
- ❖ When its purpose becomes unlawful; or
- ❖ When the fulfillment of its purpose becomes impossible by destruction of the trust property or otherwise; or
- ❖ When the trust, being revocable, is expressly revoked.

A SPECIMEN DEED OF REVOCATION OF A TRUST

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THIS DEED is made on the.....day of..... by and between:

A.B. etc. (hereinafter called "the Settlor") of the one part

AND

C.D. etc. (hereinafter called "the Trustee") of the other part.

WHEREAS by a deed of trust dated..... the Settlor transferred him property specified therein to the Trustee upon trust to sell the same and with the proceeds of the sale to pay the debts due from the Settlor to the several creditors named in the said deed;

AND WHEREAS the trust created as aforesaid has not yet been communicated to any of the aforesaid creditors;

AND WHEREAS the Settlor now desires to revoke the said trust and to make other arrangements for the discharge of his aforesaid debts.

NOW THIS DEED WITNESSES that the Settlor hereby revokes the trust created by the aforesaid deed of trust.

IN WITNESS WHEREOF parties have signed this deed on the..... day of.....

Signed by.....

In the presence of.....

and of.....

Debenture Trust Deeds

Companies in the course of their normal business borrow funds by various modes, one such mode being the issue of debentures. An issue of debentures is usually secured by a trust deed, whereunder movable and immovable properties of the company are mortgaged in favour of the trustees for the benefit of the debenture holders. The trust deed so created, as in the case of a trust, should specify all the details which have been mentioned earlier.

In addition, the usual important conditions of debenture trust deeds may be stated as follows:

1. The trust deed usually gives a legal mortgage on block capital and a floating security on the other assets of the company in favour of the trustee on behalf of the debenture holders.
2. The trust deed gives in detail the conditions under which the loan is advanced.
3. The trust deed should specify in some detail the remuneration payable to the trustee, their duties and responsibilities in relation to the trust property. Section 71(7) of the Companies Act, 2013 specifically provides that any provision contained in a trust deed for securing an issue of debentures, which has the effect of exempting a trustee or indemnifying him against any liability for breach of trust shall be void.
4. It also gives in detail rights of debenture holders to be exercised through the trustees in case of default by the company in payment of interest and principal as agreed upon.

The duty chargeable on a debenture is provided for by Article 27, Schedule I of the Indian Stamp Act, 1899. The stamp duty varies from State to State. But when a trust-deed accompanying a series of debentures is duly stamped, no stamp is necessary to be affixed on the debentures if they are expressed to be issued in terms of the said trust deed.



The debenture trust deed is registrable and can be registered with the Registrar of Assurances at the place where the registered office of the company is situated or at the place where a part of the immovable property proposed to be given in the mortgage is situate or at the metropolitan cities, namely, Delhi, Bombay, Calcutta and Madras.

DRAFT TRUST DEED - (PROVIDENT FUND)

DECLARATION OF TRUST is made this 08th Day of March, 2015 at (Place) by and between

ABC Company Limited, a company incorporated under the Companies Act, 2013 having its registered office at _____, hereinafter called as the 'Company' of the One Part, which expression shall, unless repugnant to the context, include its legal representatives, assigns and liquidators thereof, herein represented by Mr. A, Director of the company.

AND

Mr. X, Son of Mr. E, Residence of _____ and Mr. Y, Son of Mr. F, Residence of _____ and Mr. Z, Son of Mr. G, Residence of _____, hereinafter called as the 'Trustees' of the other Part, which expression shall, unless repugnant to the context, include their respective legal heirs and nominees thereof.

WHEREAS the Company intends to create a Provident Fund for the benefit of the employees

AND WHEREAS it is necessary to execute a declaration of trust in respect of the contribution of the company and of the members to the fund.

THIS DEED WITNESSETH AND IT IS HEREBY AGREED AND DECLARED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. That the above named persons, namely (1) Mr. X, (2) Mr. Y and (3) Mr. Z are hereby appointed as the trustees for administering the provident fund of the company and the income thereof as provided in the Provident Fund Rules of the Company in force for the time being.
2. Definitions:
 - a. 'Fund' means Provident fund constituted
 - b. 'Member' means an employee of the company subscribing to the fund
 - c. 'Subscription' means any sum credited by or on behalf of a member out of his salary to his individual account but does not include interest.
 - d. Salary includes dearness allowance and commission (if terms of employment allows).
3. The trust shall not be revocable except with the consent of all the members of the fund.
4. The money constituting the fund shall be invested by the Trustees in such manner as may be specified in the Income Tax Rules.
5. Composition of Trustees:
 - a. The number of trustees at all times shall be 3 (three)
 - b. One of the trustees shall be nominated by Board of Directors
 - c. Nominee of the Board of Directors shall be chairman of the Trust
 - d. The nominee of the Board of Directors shall hold office until a new representative is appointed by the Board of Directors to take his place.
 - e. Other trustees shall be elected by ballot by members and shall hold office up-to 3 years.
6. The trustees may meet together for the dispatch of the business, adjourn or otherwise regulate their meetings as they think fit. The Chairman and an elected trustee shall form quorum.
7. The Board of Trustees shall be authorised to delegate any of their powers to such person as thought fit from time to time.



8. The fund shall be exclusively managed and administered by the Trustees in accordance with the rules.
9. The trustee shall have power to employ any person or persons to do any work for the trust as may be required from time to time.
10. Every member shall subscribe to the funds at the rate of 10% of his monthly salary and such percentage shall be deducted from his salary.
11. Monthly contribution payable by the company in respect of each member shall be equal to the subscription payable by each member.
12. Subject to the previous approval by the Commissioner of Income Tax, the trustees shall, with the approval of the Board of Directors be competent to alter the rules of the provident fund.
13. The trustee shall furnish a statement of Provident Fund account to each member at such intervals not exceeding 12 months.
14. The accounts of the Provident Fund trust shall be made for each year and shall be duly audited by the auditors appointed by the trustees with the approval of Board of Directors of the Company.
15. There shall be annual meeting of the trustees after the close of the year and the accounts shall be presented and passed at such meeting.
16. All matters and procedures not specified here shall be regulated by such rules as the trustee may make in that behalf, after consulting with Board of Directors.

IN WITNESS WHEREOF the parties hereto have put their respective hands (through authorised representative) on the date, month and year above written in the presence of the following witnesses.

Witnesses:

4. Name of witness

Father's name

(signature)

(signature)

Address

5. Name of witness

Father's name

(signature)

(signature)

GIFT

Section 122 of the Transfer of Property Act, 1882 defines Gift as the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee and accepted by or on behalf of the donee. Such acceptance must be made during the lifetime of the donor while he is still capable of giving. If the donee dies before acceptance, the gift is void.



Section 125 provides that the gift of a thing to two or more donees of which one does not accept it is void as the other cannot accept the whole.

Section 126 prescribes the circumstances when a gift may be suspended or revoked. The donor and donee may agree that on the happening of any specified event, which does not depend on the will of the donor, a gift shall be suspended or revoked.

Gift in India are regulated by personal laws, usages and customs. Under Hindu law, a gift once completed is binding upon the donor and he cannot revoke it unless it was obtained by fraud or undue



influence. However, Section 126 cannot be applied to Muslims. Thus, except under certain special circumstances, a Muslim can revoke a gift even after delivery of possession.

Deed of Gift

The gift deed should be drafted as a deed of transfer with recitals if necessary. There is no consideration involved in gift; as such no mention is required to be made of the same in the gift deed. However, the words 'Natural Love and Affection' are outstanding achievements in social life.

Stamp duty and Registration →

Stamp duty is payable on gift deed as is payable on the conveyance as per the amount of property as mentioned in the deed or as per market of such property whichever is greater.

Gift deed of immovable property requires compulsory registration.

SPECIMEN DEED OF GIFT FOR LOVE AND AFFECTION

THIS DEED OF GIFT is made on this 08th Day of March, 2015 at (Place) by and between:

Mr. A, Son of Mr. B, Residence of _____ hereinafter called as Donor, the one part (Which expression shall, unless repugnant to the context, include his heirs, executors, administrators, representatives and assigns) and

Mr. X, Son of Mr. A, Residence of _____ hereinafter called 'Donee' of the other part (which expression shall unless repugnant to the context, include his heirs, executors, administrators, representatives and assigns).

WHEREAS the donor is the owner of the property described in the Schedule and out of his paternal love and affection for his son, the donee, is desirous of making a gift of the said property to the donee at the time of his marriage.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. In consideration of the natural love and affection of the donor for the donee, the donor transfers to the donee free from encumbrances ALL the property described in the Schedule TO HOLD the same to the donee absolutely for ever.
2. The donee accepts the transfers.

IN WITNESS WHEREOF, etc.,

The Schedule above referred to

Signed, sealed and delivered

AB
CD

(2) Deed of Gift of Property for Particular Purpose

THIS GIFT is made the..... day of..... by and between

AB of, etc. (hereinafter called "the Donor") of the one part,

AND

CD of, etc. (hereinafter called "the Donee") of the other part.



WHEREAS the donee intends to start a school in his village..... for the education of girls AND whereas the donor is desirous of donating the land fully mentioned and described in the Schedule hereto to be used as a site for the said School.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said pious wish and desire and as a patron of the proposed school to be started by the donee, the donor do hereby and hereunder freely and voluntarily grant, convey, transfer, give, assign and assure unto and to the use of the donee and his successor ALL THAT, etc., etc., to be used solely and exclusively for the purpose of a site for construction and accommodation of the proposed girls' school TO HAVE AND TO HOLD the same so long as the same shall be used and occupied as a site and/or building of the school AND THAT the donee accepts the gift of the said property hereunder made solely and exclusively for the purpose hereinbefore indicated subject to the condition hereunder provided.

THIS INDENTURE FURTHER WITNESSETH that it is expressly agreed and understood by and between the parties that this gift of land will stand *ipso facto* revoked in the event the land hereunder given is not used for the purpose of the intended school for which the same is given within a period of one year from the date of these presents or in the alternative the said school is abolished or shifted elsewhere or amalgamated with some other institution when and in all or any such event or events the land with all buildings and structures, if any erected thereon, shall revert to and revest in the donor or his heirs, executors, administrators and representatives and shall form part of his former estate as if this deed of gift was never executed nor intended. And it is further agreed by and between the parties that in case the land is acquired by the Government, the donee or his successors, including any person or persons managing the school, shall invest the compensation money to be awarded in purchase of another land or building to be used solely and exclusively for the school unless otherwise directed by any court of competent jurisdiction. The estimated value of the property is Rs.....

IN WITNESS WHEREOF the donor has executed this deed of a gift and delivered the same to the donee who has also executed the same in token acceptance thereof the day, month and year first above written.

The Schedule above referred to

Signed, sealed and delivered

AB
CD



PAST EXAM QUESTIONS

- Q1 Three partners, Aman, Bhuvan and Chaman, decided to dissolve their firm named ABC & Co., by mutual consent. However, Aman agreed to continue the business in his own name, as a sole proprietor, and all the other partners agreed to this. Draft a notice of dissolution of ABC & Co. for insertion in a national newspaper. (Dec'10)
- Q2 Draft a specimen deed of sale of a business and assignment of goodwill. (June'13)
- Q3 Author of the trust. (Dec'10)
- Q4 Santosh and Swamy are the partners in a partnership firm 'Santswam'. In view of mounting losses in the business, they decided to wind-up the business and dissolve the said firm. They require you to provide a release deed for dissolution of the firm. Prepare the release deed. (June'15)
- Q5 A partnership dissolution deed may be written on a plain paper. Its registration is not compulsory. No format is prescribed for it. Illustrate through a specimen deed of dissolution of a partnership firm.
- Q6 In the light of judicial pronouncements, discuss the following:
- Q7 A transfer of an actionable is usually called an assignment.
- Q8 While drafting a deed of assignment of goodwill in the sale of business, goodwill ought to be specifically calculated in unassailable figures or arbitrarily fixed.
- Q9 In dissolution of the firm, jural relation between all the partners, *inter se*, is snapped. Comment. (June'14)
- Q10 Distinguish between:
- ✓ Public trust & private trust (June'07, Dec'12)
 - ✓ Partnership & trust (June'09)
 - ✓ Revocation & extinction of trust (June'14)
 - ✓ Registration of partnership firm under Income Tax Act 1961 & Registration of partnership firm under Indian Partnership act 1932 (Dec'12)





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DRAFTING OF AGREEMENTS UNDER COMPANIES ACT

PROMOTER

The word 'Promoter' has not been defined by the Companies Act, 1956 but a definition of the word promoter has been added in the Companies Act, 2013.

As per Section 2(69) of the Companies Act, 2013, Promoter" means a person –

- a) Who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
- b) Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- c) In accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;

Generally Promoter of a company is a person who does the necessary preliminary work in connection with the formation and the establishing of the company. It is Promoters only who conceives an idea, develops it, formulates a scheme or project and takes all the necessary steps for the formation of a company to implement the project or the scheme.

Before the company is registered by the Registrar promoters continue to be known as promoters. They gather funds for meeting the expenses in connection with the formation of the company and spend them, which are known and designated as "*preliminary expenses*" and a provision is made in the articles of association of the company authorizing the company and its directors to reimburse promoters the preliminary expenses incurred by them, and also a provision for the formalization of the contracts which the promoters of the company had entered into with third parties prior to the company coming into existence. Promoters usually enter into contracts with the prospective directors, solicitors, bankers, brokers, underwriters, auditors, secretary, manager and with those who offer to sell land, plant, machinery equipment etc. for implementing the proposed project. Such contracts are known as "*promoters' contracts*" which are not binding on the company because the company had not come into existence when they were entered into with third parties by the company's promoters. However, as a matter of practice, the company, on its incorporation enters into fresh contracts with the third parties on the lines of the promoters' contracts, which then become binding on the company.

PROMOTERS' CONTRACT – PRE-INCORPORATION CONTRACTS

Companies Act, 2013 does not contain any provisions about Promoter's Contract. The promoters of a company usually enter into contracts to acquire some property or right for the company, which is yet to be incorporated; such contracts are called *preliminary or pre-incorporation contracts*. The promoter's generally enter into such contracts as agents for the company about to be formed. The legal position is that since presence of two consenting parties is necessary for a contract, and the company before incorporation is a non-entity, the promoters cannot act as agents for the company, which has yet to come into existence. As such, the company is not liable for the acts of the promoters done before its incorporation.

When the company comes into existence, it is not bound by the pre-incorporation contracts even when it takes the benefit of the work done on its behalf. However, the third party against the company may successfully claim specific performance of a contract between a third party and the promoters, when the company enters into possession of the property on the faith of the promoters' contract.

Similarly, the company, after incorporation, cannot enforce any contract made before its incorporation, which means the company cannot sue the other party to the contract if the other party fails to carry out the contract. Promoters remain personally liable on the contract.

A company also cannot ratify a contract entered into by the promoters on its behalf before its incorporation. Therefore, it cannot by adoption or ratification obtain the benefit of the contract purporting to have been made on its behalf before it came into existence, as ratification by the company when formed is legally impossible. The doctrine of ratification applies only if an agent contracts for a principal who is in existence and who is competent to contract at the time of the contract by the agent. Where a contract is made on behalf of principal known to both parties to be non-existent, the contract is deemed to have been entered into personally by the actual maker, i.e. the agent. A company may, if it desires, enter into a new contract, after its incorporation, with the other party which is known as **novation of promoter's contracts**; and if it makes a fresh contract in terms of the preliminary contract, the liability of the promoters comes to an end and if it does not make a fresh contract within a limited, period of time, either of the parties may rescind the contract. The essential feature of novation is that the right under the original contract is relinquished and a new right referable to a new contract is created. The substituted contract must, in order to affect a Novation, be enforceable one.

The pre-incorporation agreements entered into by the promoters acting on behalf of the intended company with third party cannot always be avoided for various reasons. These agreements affect the operations of the incorporated company.

SPECIMEN OF PROMOTER'S CONTRACT FOR THE PURCHASE OF LAND

THIS AGREEMENT is made on this 08th Day of November 2014 at (Place) by and between:
Mr. A, Son of Mr. B, Residence of _____ hereinafter called as 'Promoter' of the one part (Which expression shall, unless repugnant to the context, include his legal heirs, executors, administrators, representatives and assigns thereof)
and
Mr. X, Son of Mr. Y, Residence of _____ hereinafter called as 'Vendor' of the Second Part (Which expression shall, unless repugnant to the context, include his legal heirs, executors, administrators, representatives and assigns thereof)



WHEREAS the promoters have been engaged for quite some time in the past in promoting and forming a company to be known as ABC limited which name is made available to the Promoter by the Registrar of Company _____ and consequent upon which the other formalities are in process.

AND WHEREAS the Memorandum and Articles of Association of the proposed ABC Limited empowers the company and its directors to enter into Fresh agreement similar to the agreement entered into by the promoters for the purchase of land, plant, machinery, equipment and such other agreements)

AND WHEREAS Vendor is the absolute owner of the Industrial plot of land measuring and situated at (hereinafter referred to as 'Industrial Plot') more particularly described in the Schedule A annexed hereto.

AND WHEREAS the Promoters are desirous to buy the said plot of land for the proposed Company to set up an industrial unit on its incorporation.

NOW IT IS AGREED AND DECLARED BY AND BETWEEN THE PARTIES AS FOLLOWS :

1. That the Vendor shall sell and the promoter shall purchase the Industrial Plot in consideration of the payment by the promoters on the date of this agreement of the sum of Rs. _____ and the balance of Rs. _____ on the date of the registration of the conveyance deed before the sub-registrar of assurance.
2. The Vendor shall satisfy the promoters about the title of the aforesaid Industrial Plot within one month of the execution of this agreement and the promoter or his representative will be entitled to ask for such information as may be necessary and the vendor shall be bound to allow inspection of the title deeds relating to the plot of land at his place.
3. The parties shall complete the transaction of the sale within six month of the date of this agreement if the promoter is satisfied about the title.
4. The parties shall bear the expenses of sale equally. Taxes and other expenses shall be borne by the vendor.
5. The vendor shall deliver actual possession of the plot of land to the promoters or the company on the date of payment of the balance amount as aforesaid and on the registration of the conveyance deed.

In Witness whereof the parties have set their respective hands to this agreement on the day, month and the year above written in the presence of the following witnesses:

Witnesses:

Name of Witness

Father's name

(Signature)

A

(Signature)

Address

Name of Witness

Father's Name

(Signature)

X

(Signature)

Address



MEMORANDUM OF ASSOCIATION:

MOA is a document, which sets out the constitution of the company and is therefore the foundation on which the structure of the company is built. It defines the scope of the company's activities and its relations with the outside world.

FORM OF MEMORANDUM OF ASSOCIATION:

Table	Applicability
Table A	Applicable in case of companies limited by shares.
Table B	Applicable in case of companies limited by guarantee not having a share capital.
Table C	Applicable in case of companies limited by guarantee having a share capital.
Table D	Applicable to unlimited companies not having a share capital.
Table E	Applicable to unlimited companies having a share capital.

ARTICLES OF ASSOCIATION:

Section 2(5): Article means Articles of Association of the Company as originally framed or altered from time to time or applied in pursuance of any previous company law or of this Act.

Section 5(1) states that the Articles of the Company shall contain the regulations for management of the company. The Articles of Association are its bye laws or rules and regulations that govern the management of its internal affairs and the conduct of its business.

It should be noted that neither the Articles nor the Memorandum can authorize the company to do anything so as to contravene any of the provisions of the Act.

FORM OF ARTICLES OF ASSOCIATION

Table	Applicability
Table F	Applicable in case of companies limited by shares
Table G	Applicable in case of companies limited by guarantee and having a share capital
Table H	Applicable in case of companies limited by guarantee and not having a share capital.



Table I	Applicable to unlimited companies and having a share capital
Table J	Applicable to unlimited companies and not having a share capital

A company may adopt all or any of the regulations contained in the model articles applicable to such company.

A company may draft its own set of articles in conformity with the Companies Act, 2013 and the model forms given or it may adopt Table F or such other table as may be applicable. If articles are not registered, the concerned table automatically becomes applicable and if Articles are registered, Table will apply only to the extent provisions are not there in the articles.

CONTENTS OF ARTICLES OF ASSOCIATION:

Share capital, rights of shareholders, variations of these rights, payment of commission, share certificates etc.

- ❖ Lien on shares
- ❖ Calls on shares
- ❖ Transfer/Transmission of shares
- ❖ Forfeiture of shares
- ❖ Alteration of capital ➤ Buy Back of shares
- ❖ General meeting/Voting rights/proxy/Board of Directors
- ❖ KMP
- ❖ Common Seal
- ❖ Dividend and reserves
- ❖ Accounts
- ❖ Winding up
- ❖ Such other aspects relating to internal working/management
- ❖ Notice And Related details

ESSENTIAL FEATURES OF NOTICE OF MEETINGS:

The essential features of notice are as follows:

- ❖ The notice must fairly and intelligently convey the purpose for which the meeting is called. It should not be misleading or equivocal. A benevolent construction is not to be applied in construing the notice.
- ❖ The notice must not be contingent or conditional
- ❖ The notice must be frank, open, clear, satisfactory and free from 'trickiness'.
- ❖ Any resolution not covered by the notice cannot be validly passed by the meeting
- ❖ Except in case of a special resolution, it is not necessary that the actual resolution passed at the meeting should be identical with the resolution specified in the notice.
- ❖ Notices are not to be construed with excessive strictness; substantial compliance with the articles is sufficient. Notices are to be construed as a businessman would construe them.

UNDERWRITING AND BROKERAGE AGREEMENTS



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Underwriting is an insurance against risk. The issues are by and large underwritten to ensure that all the shares or debentures issued are taken up and thus the required capital is raised.

Section 40 permits a company to pay certain commission and prohibits the payment of all other commissions, discounts etc.

A company may pay commission to any person for his procuring or agreeing to procure subscription whether absolute or conditional for any shares or debentures of the company if articles authorize the payment of commission.

In case of Shares the commission paid doesn't exceed 5% of the issue price or the amount authorized by article whichever is less however in case of other securities, e.g. Debentures 2.5% of the price at which issue price or the amount or rate authorized by the articles whichever is less.

Rule 13 of companies (prospectus and allotment of securities) Rules, 2014, a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the following conditions:

- The payment of such commission shall be authorized in the company's AOA.
- The commission may be paid out of proceeds of the issue or the profit of the company or both
- The rate of commission shall not exceed 5% in case of shares and 2.5% in case of debentures or the rate as per AOA, which ever is less
- The prospectus of company shall disclose:-
- The name of underwriters
- The rate and amount of the commission payable to the underwriters and
- The number of securities, which is to be underwritten or subscribed by the underwriters absolutely or conditionally.
- There shall not be paid commission to any underwriter on securities which are not offered to the public for subscription
- A copy of the contract for the payment of commission is delivered to the ROC at the time of delivery of the prospectus for registration.

UNDERWRITING CONTRACT

THIS UNDERWRITING CONTRACT is made on this 08th Day of March 2015 at (Place) by and between

ABC Limited, a Company incorporated under the Companies Act, 2013 having its registered office at and carrying on the business as underwriters (hereinafter called as 'Underwriters' of the first part), which expression shall, unless repugnant to the context, include its legal representatives and assigns thereof, herein represented by Mr. C, Director of the company.

AND

XYZ Limited, a Company incorporated under the Companies Act, 2013 having its registered office at and coming up with a public issue (hereinafter called as 'Company' of the other part) which expression shall, unless repugnant to the context, include its legal representatives and assigns thereof, herein represented by Mr. X, director of the company.

WHEREAS the company is about to offer for public subscription an issue of 2,00,000 equity shares of Rs. 100 each in accordance with the terms of draft prospectus, a copy of which is annexed hereto.

AND WHEREAS the Underwriters have shown their willingness to underwrite the whole of the aforesaid issue.



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NOW IT IS HEREBY AGREED AS FOLLOWS:

1. Underwriters agree to completely underwrite the issue of 2,00,000 equity shares of Rs.100 each.
2. Underwriters agree to fulfill their underwriting liability within 10 days from the close of the subscription list by applying for the remaining or all the shares as the case may be.
3. The responsibility of the underwriters shall cease if public subscribes all the shares.
4. The company shall pay to underwriter a commission at the rate of 3% of the nominal value
5. The agreement is to be irrevocable on part of the underwriters
6. Underwriters will give consent on demand to include their name as underwriters in the prospectus or other document in connection with the issue

In witness whereof the parties have put their respective hands (through authorized representative) on day and year first herein above written in terms of the resolution passed in its board of directors in the presence of following witness:

Name of witness

Father's name
Address

(signature)

For ABC limited
Director

Name of witness

Father's name
ADDRESS

(signature)

For XYZ LIMITED
DIRECTOR

Annexure: draft prospectus



CONTRACT OF APPOINTMENT WITH MANAGING DIRECTOR

Section 2(54) of the Companies Act, 2013 → “Managing Director” means “a director who, by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its Board of directors is entrusted with substantial powers of management of the affairs of the company, and includes a director occupying the position of a managing director, by whatever name called.”

While drafting a contract of appointment, the following points have to be taken care of:

The person who is being appointed as managing director must be a director of the company; and He must be entrusted with substantial powers of management.

Usually the articles of association of companies empower the Board of directors to appoint one or more of the directors as managing director(s) and fix their remuneration subject to the provisions of Sections 196, 197, 198, 199, 200 and other applicable provisions of the Act and Rules make thereunder. The Board of directors while appointing a director as managing director, critically examines the draft agreement prepared by the secretary for the appointment of the managing director and after having approved the same with or without any modification, authorizes one of its directors to sign and execute for and on behalf of the company, the agreement for the appointment of the managing director. It should, therefore, be made sure that the person executing the agreement on behalf of the company is duly authorized by the Board of directors in this regard.

Being an agreement, such a contract must have all the other essential ingredients of a contract under the Indian Contract Act, 1872, namely,

- i. Free consent of parties;
- ii. Competence to contract;
- iii. For a lawful consideration;
- iv. With a lawful object; and
- v. Are not expressly declared to be void in the act (section 10).

Section 11 of the Contract Act lays down that “every person is competent to contract who is of the age of majority, according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.”

Section 12 of the said Act provides that a person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests. A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Section 14 of the Contract Act, consent is said to be free when it is not caused by –

- ❖ Coercion;
- ❖ Undue influence;
- ❖ Fraud;
- ❖ Misrepresentation; or
- ❖ Mistake.



SPECIMEN AGREEMENT OF SERVICE AS A MANAGING DIRECTOR OF THE COMPANY

THIS AGREEMENT is made on this 08th Day of March, 2015 at (Place) by and between:

XYZ Limited, a Company incorporated under the Companies Act, 2013 having its registered office at _____ herein represented by its Director Mr. Z, hereinafter referred to as 'Company' (Which expression shall, unless repugnant to the context, include its legal representatives and assigns thereof)

AND

Mr. T, Son of Mr. Y, Residence of _____ hereinafter called as 'Managing Director' of the Second Part (Which expression shall, unless repugnant to the context, include his legal heirs, executors, administrators, representatives and assigns thereof)

WHEREAS the Company intended to appoint a Managing Director to look after the business.

AND WHEREAS the company after screening various applications and conducting interviews has decided to appoint Mr. T as the Managing Director of the Company

AND WHEREAS the Company and the Managing Director have agreed to decide on the terms and conditions of service by entering into this agreement.

NOW THIS AGREEMENT HEREBY WITNESSETH AS FOLLOWS:

1. The company hereby appoints Mr. T as the Managing Director of the company for a term of 5 years with effect from _____ and subject to such approvals as may be required.
2. The Managing Director shall exercise and perform such powers and duties as the Board of Directors of the Company shall, from time to time, determine.
3. Apart from the other powers, Managing Director shall be entitled to exercise the following powers:
 - To open and operate bank account in the name of the company and in the best interest of the company
 - To borrow money for the purpose of the working of the company not exceeding Rs. 5,00,000 in a financial year.
 - To incur capital expenditure upto a sum of Rs. 5,00,000 in a financial year.
 - To engage employees and other servants for the company at a basic salary not exceeding Rs. 8000 per month.
 - To institute, defend, prosecute, appear or appeal, refer to arbitration and do such related things for and on behalf of the company from time to time.
4. The company shall pay the Managing Director a salary at Rs. 12,00,000 per month. In addition to the salary, entertainment expenses, travelling expenses and out of pocket expenses shall be reimbursed on actual basis.
5. Any dispute or difference arising between the parties shall be referred to the arbitration. The venue of the arbitration shall be _____ unless otherwise agreed in writing.

In witness whereof the parties have put their respective hands on the day and year written herein in terms of the resolution passed in its board of Directors in the presence of the following witnesses:

1 : Name of Witness

Father's name

(Signature)

A (Signature)



Address

2 : Name of Witness

Father's name

(Signature)

T (Signature)

Address

3 : Name of Witness

Father's name

(Signature)

For XYZ Company Private Limited

Address

Company Secretary

Annexure: Schedule 1

CONTRACT OF APPOINTMENT WITH MANAGER

Section 2(53) of the Companies Act, 2013 defines "Manager" as an individual who, subject to the superintendence, control and direction of the Board of directors, has the management of the whole, or substantially the whole, of the affairs of the company, and includes a director or any other person occupying the position of a manager, by whatever name called, and whether under a contract of service or not.

The above definition highlights the following points, which must be borne in mind by the secretary while drafting an agreement for the appointment of a manager:

- ❖ A manager has to be an individual only;
- ❖ A manager has the management of the whole, or substantially the whole, of the affairs of the company;
- ❖ A manager functions subject to the superintendence, control and direction of the Board of directors of the company;
- ❖ A manager may be under a contract or not.

If, for the appointment of a manager, an agreement is not drawn and executed, then the secretary must draft a detailed Board resolution approving the appointment of a manager, making it very clear that the manager shall have the management of the whole or substantially the whole of the affairs of the company, and shall function under the superintendence, control and direction of the Board of directors, which means that he shall act under the directions of the Board, his actions shall be subject to the scrutiny and supervision of the Board and finally the Board shall direct the manager in his day-to-day management of the affairs of the company. As against a managing director, who is entrusted by the Board of directors with substantial powers of management, a manager by virtue of his appointment has the power of management. A managing director after the powers of management have been entrusted to him performs his day-to-day functions independently according to the mandate of the Board, whereas a manager acts under the superintendence, control and direction of



the Board. Keeping the above subtleties between the two managerial personnel in view, the secretary shall proceed to draft an agreement for the appointment of a manager.

CONTRACT OF APPOINTMENT WITH SECRETARY

The position of Secretary in a company is a very important one. He is the person who acts as liaison between the Board of Directors and the shareholders on the one hand, with the Departmental Division heads and with the world at large on the other hand. Every information from various departments, divisions, branches, executives, departmental heads, shareholders, creditors, debtors, bankers, financial institutions, Government departments and others concerned with the company converges in his office. He gathers all the information, arranges it in a useful manner, furnishes it with explanations etc. on the company's long-term policies and short-term plans as formulated by the Board of directors to the concerned persons. He collects, arranges and presents the desired/required information to the Board on the progress in the implementation of the various decisions of the Board so that whenever and wherever some corrective or preventive actions are to be taken, the same is to be taken in time by the Board.

The Company Secretary is expected to be expert in all the aspects of corporate management viz., Company Law and Practice Income-tax Law and Practice, Excise, Sales tax, Import and Export and Industrial Licensing Law and Practice, various types of insurance-covers, Patents, Trade Marks, Design and Copyright Law and procedure, Industrial Law, Shops and Commercial Establishments Law and Essential Commodities Act and the Orders issued there under, drafting of various corporate documents, reports etc. and, accounts, audit, banking and finance.

The Board of Directors does the appointment of a Company Secretary and he functions at the pleasure of the Board. He acts under the Board's instructions but at the same time he is adviser to the Board in all-corporate matters. Therefore, the relationship between the Board and the Company Secretary has to be very cordial and there must be perfect understanding between the two, particularly with the Chairman/Managing director, executive director and other Chief Executive Officers.

Usually the appointment of a Company Secretary is made by an appointment letter signed and issued by the Chief Executive Officer, who may be the managing director, executive director, whole-time director etc. under specific authority of the Board.

This letter is an offer by the company to the prospective Company Secretary and when he accepts the same it become a binding contract between him and the company and their relationship is governed by the terms and conditions thereof. "Company secretary", according to Section 2(24) of the Companies Act, 2013 means a company secretary as defined in clause (1) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed to perform the functions of company secretary under this Act. The Government of India has formulated the Companies (Appointment and Qualifications of Secretary) Rules, 1988.

As per Section 205(1) of the Companies Act, 2013, the functions of the company secretary shall include, –

- a) To report to the Board about compliance with the provisions of this Act, the rules made there under and other laws applicable to the company;
- b) To ensure that the company complies with the applicable secretarial standards;
- c) To discharge such other duties as may be prescribed.

Therefore, even if the letter of appointment of a Company Secretary or an agreement between the company and the Company Secretary is silent on those statutory duties and functions, a Company Secretary is bound by law to perform them strictly. Therefore, the letter of appointment or the agreement need not detail all those duties. Usually it contains the fact of offer by the company, the date on or before which he is required to join the service of the company, his salary and 'perks', his answerability to the Board of Directors and/or other senior executives of the company, his relationship with other departmental heads, his leave eligibility and other benefits, commitment on his part not to divulge the secrets of the company, so on and so forth.

A SPECIMEN OF THE LETTER OF OFFER TO THE PROSPECTIVE COMPANY SECRETARY

Name and Address of the company

Ref. No.

Date: _____

Mr.....

.....

Dear Sir,

I have been directed to advise you that the Board of Directors of the company have decided to appoint you as Secretary of the company and the said assignment is hereby offered to you. You are requested to join the service of the company on or before..... and contact the undersigned so that you may be introduced to the concerned persons before you start functioning.

1. You will be considered to have been appointed with effect from the day you actually join duty.
2. The company shall pay to you a monthly basic salary of Rs..... in the time scale of pay of Rs..... with other allowances as are applicable to other employees of the company in the same time scale of pay,
3. You will enjoy other benefits like the medical expenses reimbursement, leave travel allowance, bonus etc. as may be permissible under the company's service rules.
4. You shall be allowed casual leave/sick leave/festival holidays, weekly off days and earned leave as per rules of the company.
5. You will be on probation for a period of six months and on your services during the said probation period being found satisfactory the Board of Directors may consider you for confirmation in the said post.



6. During the period of your probation, the company without any notice may terminate your services and you may also leave the service of the company at twenty-four hours' notice. On confirmation, however, the contract of employment may be terminated by either party by giving the other, thirty days' written notice or paying thirty days' salary in lieu thereof.
7. The company may terminate your services even after confirmation without giving you any notice if you are found by the Board of Directors of the company not performing your assigned duties and your statutory duties properly and to the satisfaction of the Board.
8. As Company Secretary you shall be exclusively responsible:
 - a) For complying with all the provisions of the Companies Act and the various Rules framed there under and other laws applicable to the company;
 - b) Maintaining all the statutory and non-statutory essential registers, books, files, records, papers etc.;
 - c) Preparing and filing with the Registrar of Companies and other concerned authorities the required reports, returns, documents, papers etc. complete in all respects and within the prescribed periods of time; and
 - d) For carrying out the instructions, directions and advice of the Board of Directors of the company given to you from time to time.
 - e) Ensuring the adherences of applicable secretarial standards.
9. You shall devote your whole time and attention to the work of the company during your tenure as Company Secretary and shall work with due diligence and using your abilities to your best. You shall obey the orders of the Board of Directors of the company. You shall do your best to promote the interest of the company and shall faithfully serve the company.
10. You shall not disclose to any unauthorized person during your employment as Secretary of the company an information obtained by you in relation to the business and corporate policies of the company with special reference to the company's policy regarding the issue of rights shares, bonus shares, time and quantum of payment and/or declaration and payment of dividends from time to time.

Please convey your acceptance of the offer and the terms and conditions attached thereto by signing the carbon copy of this letter and returning the same to the company within a period of seven days from the receipt hereof.

Thanking you.

Yours truly

For _____ Ltd.

(.....)

Managing Director

I accept the above offer of the post of Company Secretary with all the terms and conditions attached thereto and shall join on.....



(.....)

Company Secretary

COMPROMISE, ARRANGEMENTS AND SETTLEMENTS

During its lifetime a company may find it necessary to reorganize itself. Such a re-organization may be for many reasons. When a company is financially weak, it wishes to reach a compromise with its members and/or creditors. It may wish to take over the business of another running but endangered company. It may wish to restructure its share capital.

Sections 230 to 237 of the Companies Act, 2013 provide various methods of company reorganization or reconstruction. The various terms used for reorganization are arrangement, reconstruction, amalgamation, merger, take-over, etc. They are distinct terms but they have many common features and to a great extent they overlap. The expression “arrangement” is of wider import and includes reconstruction and amalgamation.

“Arrangement” has been defined in explanation to section 230(1) of Companies Act, 2013 as including a reorganization of share capital of the company by the consolidation of shares of different classes, or by the division of shares into shares of different classes, or by both these methods.

“Arrangement” has a wider interpretation and includes reconstructions and amalgamations.

“Reconstruction” has not been defined in the Act. A reconstruction normally entails the transfer of an undertaking to another company, consisting substantially of the same shareholders with a view to its being continued by the transferee company, and usually resorted to for achieving one or more of the following objects:

- ❖ For the purpose of raising fresh capital by issuing partly paid shares in the new company in exchange for fully shares in the old company, and calling up the balance on new shares as and when required;
- ❖ For extending the company's objects;
- ❖ For reorganizing or rearranging the capital structure and the rights of members as between themselves; and
- ❖ For effecting a compromise with creditors, or the allotment to them of shares or debentures in settlement of their claims.

A reconstruction may, however take place, without the promotion and incorporation of new company, by compromise with members involving alterations of various rights between each class, usually also involving the writing down of the amount of share capital (as in a reduction of capital, which is a special form of reconstruction) and by a compromise with creditors (including debenture holders).

Amalgamation usually covers a situation where two or more companies join forces either under the name of one of them or in a new company formed for the purpose. This is a blending of two or more existing undertakings into one, the shareholders of each company becoming substantially the shareholders in the company, which is to carry on the blended undertakings.



Amalgamation will usually require the consent of the directors of both the companies and may also be described as “Merger”. On the other hand, the word “take-over” is usually used to describe the acquisition by one company of sufficient number of shares in another company so as to give the purchaser company control over that company.

Amalgamations and take-overs are resorted to for any one or more of the following purposes:

- ❖ For saving overheads and working expenses and for improving efficiency in the management, production and marketing by reason of unified control;
- ❖ For reduction or elimination of competition, and sometimes for securing the advantages of vertical combination by an amalgamation of companies to secure a linking of different stages or processes of production back to raw materials and forward to the finished product; and
- ❖ For obtaining greater facilities possessed by one large company, as compared with a number of smaller companies, for raising additional capital, for buying raw materials, etc. and for securing better credit facilities on the most favourable terms, and, what is, of increasing importance now a days, for carrying out research work on a large and coordinated scale and basis.

The memorandum of association of almost every company permits it to amalgamate with another company. In case there is no such provision, it will be necessary to alter the memorandum before any scheme of amalgamation is drawn up.

“ARRANGEMENT”

As per the provisions of company law, when a compromise or arrangement (the word compromise implies the existence of some dispute, but the word arrangement is of wider application) is proposed between a company and

- ❖ Its creditors or any class of them; or
- ❖ Its members or any class of them,

Then the court may, on the application of the company, or any creditor or member, or, if the company is being wound up, the liquidator, order a meeting to be called of the creditors or class of creditors, or of the members or class, of members, as the case may be.

The compromise or scheme of arrangement will then be binding upon:

- ❖ All the creditors or class of creditors;
- ❖ The members or class of members;
- ❖ The company; and
- ❖ In the case of a company being wound up, upon the liquidator and contributories.

PROVIDED THAT:

- ❖ It is approved by a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members as the case may be, present and voting in person or by proxy; and
- ❖ It is sanctioned by the court

PROCEDURE

REGULATORY FRAMEWORK OF MERGER AND AMALGAMATION



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- Companies Act 2013: - Chapter XV Comprising Sec 230 to 237 is a complete code itself.
- Companies (Compromise, Arrangement and Amalgamation) Rules, 2016
- National Company Law Tribunal Rules, 2016

Power to compromise or make arrangements with creditors and members [Sec 230]

(1) Where a compromise or arrangement is proposed –

- between a co. and its creditors or any class of them; or
- between a co. and its members or any class of them

The NCLT may on application in of

- ♦ Company
- ♦ Creditor/member
- ♦ Liquidator (in case of winding up)(appointed under Co. Act or IBC)

Order a meeting to be called, held and conducted in such manner as the NCLT directs

Note: -

1. Application to be filed in NCLT 1 along with
2. A notice of admission in Form No. NCLT-2
3. An affidavit in Form No. NCLT-6
4. A copy of scheme
5. Disclosure related to basis on which each class of members or creditors has been identified for the purposes of approval of the scheme.
6. Fee as prescribed in the Schedule of Fees in Rules.

If applicant is more than one company, they may file Joint application.

If applicant is not company a copy of the notice of admission and of the affidavit shall be served on the company, or, where the company is being wound up, on its liquidator, not less than 14 days before the date fixed for the hearing of the notice of admission.

(2) Disclosure to be made along with application in Affidavit.

- a. **all material facts** relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company and the pendency of any investigation or proceedings against the company;
- b. **Reduction of share capital** if any, included in the compromise or arrangement (C&A);
- c. **Any scheme** of corporate debt restructuring (CDR) consented to by at least 75% of the secured creditors in value, including—
 - i. A **Creditor's Responsibility Statement (CRS)** in the **Form CAA 1**;
 - ii. **Safeguards for the protection** of other secured and unsecured creditors;
 - iii. **Report by the auditor** that the fund requirements of the company after the **CDR** as approved shall conform to the liquidity test based upon the estimates provided to them by the **BOD**;
 - iv. If company proposes to adopt the **CDR guidelines** specified by the RBI, a **statement to that effect**; and
 - v. A **valuation report** in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.

Note: Here CDR means a scheme that restructures or varies the debt obligations of a company towards its creditors.



Directions at hearing of the application

Rule 5 of Co. (CAA) Rules 2016

Upon hearing the application u/s 230, the NCLT shall, unless it thinks fit for any reason to dismiss the application, give such directions as it may think necessary in respect of the following matters:-

- a) Determining the class or classes of creditors or of members whose meeting or meetings have to be held for considering the proposed compromise or arrangement; or dispensing with the meeting or meetings for any class or classes of creditors in terms Sec 230(9);
- b) Fixing the time and place of the meeting or meetings;
- c) Appointing a Chairperson and scrutinizer for the meeting or meetings to be held, as the case may be and fixing the terms of his appointment including remuneration;
- d) Fixing the quorum and the procedure to be followed at the meeting or meetings, including voting in person or by proxy or by postal ballot or by voting through electronic means;
- e) Determining the values of the creditors or the members, or the creditors or members of any class, as the case may be, whose meetings have to be held;
- f) Notice to be given of the meeting or meetings and the advertisement of such notice;
- g) Notice to be given to sectorial regulators or authorities as required u/s 230(5);
- h) The time within which the chairperson of the meeting is required to report the result of the meeting to the NCLT; and
- i) Such other matters as the NCLT may deem necessary.

(3) A notice of meeting shall be sent in Form No. CAA.2 by the chairman of meeting or other authorised person to

- i. all the creditors or class of creditors and
- ii. to all the members or class of members and
- iii. the debenture-holders of the company,

Individually at the registered address by registered post or speed post or by courier or by email or by hand delivery or any other mode at least **1 month** before the date fixed for the meeting, **accompanied by –**

- i. a statement disclosing the details of the compromise or arrangement,
- ii. a copy of the valuation report, if any, and
- iii. explaining their effect on creditors, KMP, promoters and non-promoter members, and the debenture-holders and
- iv. the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and
- v. such other matters as may be prescribed:

Deemed service of Notice: → at the expiration of 48 hours after the letter containing the same is posted

Note:- Such notice and other documents shall also be placed on the website of the company, if any, and in case of a listed company, these documents shall be sent to SEBI and SE where the securities are listed, for placing on their website and shall also be published in newspapers in prescribed manner:

Advertisement of the notice of the meeting



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Rule 7 of Co. (CAA) Rules 2016

The notice of the meeting shall be advertised in **Form No. CAA.2** in at least 1 English newspaper and in at least 1 vernacular newspaper having wide circulation in the State in which the registered office of the company is situated, or such newspapers as NCLT directs and shall also be placed, not less than 30 days before the date of meeting, on the website of the company (if any) and in case of listed companies also on the website of the SEBI and the RSE where the securities of the company are listed:

Provided that where separate meetings of classes of creditors or members are to be held, a joint advertisement for such meetings may be given.

Provided further that where the notice is issued by way of advertisement, it shall indicate the time within which copies of the C&A can be obtained by concerned persons free of charge from the R.O. of company.

(4) Notice shall provide that Voting can be done in the meeting either by themselves or through proxies or by postal ballot within 1 month from the date of receipt of such notice:

Provided that any objection can be raised only by persons holding not less than 10% of the shareholding or having outstanding debt amounting to not less than 5% of the total outstanding debt as per the latest audited financial statement.

(5) Notice in form NO. **CAA.3** along with all the documents shall also be sent to

- i. the CG,
- ii. the IT authorities,
- iii. the RBI,
- iv. the SEBI,
- v. the ROC,
- vi. the respective SE,
- vii. the Official Liquidator,
- viii. the CCI, if necessary, and
- ix. such other sectoral regulators or authorities

By registered post or by speed post or by courier or by hand delivery at the office of the authority.

Which are likely to be affected by the C&A and shall require that representations, if any, to be made by them shall be made within a period of **30 days** from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.

Rule 6(3): → The notice of the meeting shall be accompanied by a copy of the scheme and a statement disclosing the following details if not already included in the said scheme:-

(i) Details of the order of the NCLT directing the calling, convening and conducting of the meeting:-

- (a) Date of the Order;
 - (b) Date, time and venue of the meeting.
- (ii) Details of the company including:
- (a) CIN or GLN of the company;
 - (b) PAN;
 - (c) Name of the company;
 - (d) DOI;



- (e) Type of the company (whether public or private or OPC);
 - (f) Registered office address and e-mail address;
 - (g) Summary of main object as per the MOA; and main business;
 - (h) Details of change of name, R.O. and objects of the company during the last 5 years;
 - (i) Name of the DSE, if applicable;
 - (j) Details of the capital structure of the company including authorised, issued, subscribed and paid up share capital; and
 - (k) Names of the promoters and directors along with their addresses.
 - (iii) If the scheme relates to more than 1 company, the fact and details of any relationship subsisting between such companies who are parties to such scheme, including holding, subsidiary or of associate companies;
 - (iv) the date of the BM at which the scheme was approved by the BOD including the name of the directors who voted in favour of the resolution, who voted against the resolution and who did not vote or participate on such resolution;
 - (v) Explanatory statement disclosing details of the scheme including:-**
 - a. Parties involved;
 - b. In case of M&A, appointed date, effective date, share exchange ratio (if applicable) and other considerations, if any;
 - c. Summary of valuation report (if applicable) including basis of valuation and fairness opinion of the registered valuer, if any, and the declaration that the valuation report is available for inspection at the registered office of the company;
 - d. Details of capital or debt restructuring, if any;
 - e. Rationale for the compromise or arrangement;
 - f. Benefits of the compromise or arrangement as perceived by the Board of directors to the company, members, creditors and others (as applicable);
 - g. Amount due to unsecured creditors.
 - (vi) Disclosure about the effect of the compromise or arrangement on:
 - a. KMP;
 - b. directors;
 - c. promoters;
 - d. non-promoter members;
 - e. depositors;
 - f. creditors;
 - g. debenture holders;
 - h. deposit trustee and debenture trustee;
 - i. employees of the company;
 - (vii) Disclosure about effect of compromise or arrangement on material interests of directors, KMP and debenture trustee.
- Note:** → The valuation report shall be made by a registered valuer or by an independent merchant banker registered with SEBI an independent CA in practice having a minimum experience of 10 years.
- (viii) Investigation or proceedings, if any, pending against the company under the Act.
 - (ix) Details of the availability of the following documents for obtaining extract from or for making or obtaining copies of or for inspection by the members and creditors, namely:
 - a. Latest audited financial statements of the company including CFS;
 - b. Copy of the order of NCLT;
 - c. Copy of scheme;
 - d. Contracts or agreements material to scheme;



- e. the certificate issued by Auditor of Co. to the effect that the accounting treatment, if any, proposed in the scheme is in conformity with the prescribed AS under Section 133 of the Companies Act, 2013; and
- f. Such other information or documents as the BOD believes necessary and relevant for making decision for or against the scheme;
- (x) Details of approvals, sanctions or **NOC**, if any, from regulatory or any other authorities required, received or pending for the proposed scheme.
- (xi) A statement to the effect that the persons to whom the notice is sent may vote in the meeting either in person or by proxies, or where applicable, by E voting.

Voting (Rule 9)

The person who receives the notice may within one month from the date of receipt of the notice vote in the meeting either in person or through proxy or through postal ballot or through electronic means to the adoption of the scheme of compromise and arrangement.

Note:

Shareholding → The shareholding of the members of the class who are entitled to vote on the proposal

Outstanding debt → All debt owed by the company to the respective class of creditors that remains outstanding as per the latest audited accounts, or if such accounts is **more than 6 months old**, as per provisional financial statement not preceding the date of application by **more than 6 months**.

Rule 10 Regarding Proxies

- (1) Voting by proxy shall be permitted if a proxy in the prescribed form duly signed by the person entitled to attend and vote at the meeting is filed with the company at its RO not later than 48 hours before the meeting.
- (2) Where a body corporate which is a member or creditor of a company authorises a proxy, a copy of the resolution of the BOD authorising such person to act as its representative at the meeting, and certified to be a true copy by a director, the manager, the secretary, or other authorised officer of such body corporate shall be lodged with the company at its **R.O. not later than 48 hours** before the meeting.
- (3) No person shall be appointed as a proxy who is a minor.
- (4) The proxy of a member or creditor blind or incapable of writing may be accepted if such member or creditor has attached his signature or mark thereto in the presence of a witness who shall add to his signature his description and address which are in the handwriting of the witness and such witness shall have certified at the foot of the proxy that all such insertions have been made by him at the request and in the presence of the member or creditor before he attached his signature or mark.
- (5) The proxy of a member or creditor who does not know English may be accepted if it is executed in the manner prescribed in the preceding sub-rule and the witness certifies that it was explained to the member or creditor in the language known to him, and gives the member's or creditor's name in English below the signature.
- (6) If, at meeting, majority of persons **representing 3/4th in value of the creditors, or members**, agree to any C & A and if such compromise or arrangement is sanctioned by NCLT by an order, the same shall be binding on the company, all the creditors or members or, in case of a company being wound up, on the liquidator and the contributories of the company.

- (7) An order made by NCLT shall provide for all or any of the following matters —
- If C&A provides for conversion of pref. shares into Eq. shares, such shareholders shall have an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable;
 - Protection of any class of creditors;
 - if the C&A results in the variation of the shareholders' rights, it shall be given effect to under the provisions of section 48;
 - if the C&A is agreed to by the creditors, any proceedings pending before the BIFR shall abate;
 - such other matters including exit offer to dissenting shareholders,

Provided that no C&A shall be sanctioned by the NCLT unless a certificate by the company's auditor has been filed with the NCLT to the effect that the accounting treatment, if any, proposed in the scheme of C&A is in conformity with the prescribed AS.

(8) The order of the NCLT shall be filed with the ROC by the company within a period of 30 days of the receipt of the order.

(9) The NCLT may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least 90% value, agree and confirm, by way of affidavit, to the scheme of C&A.

(10) C&A related to any buy-back of securities shall be sanctioned by the NCLT only if such buy-back is as per provisions of section 68.

(11) Any C&A may include **takeover offer** made in prescribed manner as may be:

Provided that for listed companies, takeover offer shall be as per the SEBI regulations.

(12) Aggrieved party may apply to NCLT for grievances related to takeover offer of companies other than listed companies in prescribed manner and the NCLT may, on application, pass such order as it may deem fit.

Note: Sec 66 shall not apply to the reduction of share capital effected in pursuance of the order of the NCLT under this section.

PAST EXAM QUESTIONS

- Q1 State in brief the law regarding promoters' contract. Draft a specimen promoters' contract for the purchase of an industrial plot for setting-up an industrial unit of the proposed company PMQ Ltd.
- Q2 Rise Ltd. wants to engage Kapil as its managing director. The Chairman of the company wants you to prepare and submit to him a draft specimen agreement of service with Kapil as a managing director of the company. Draft the same and also mention the precautions you will take while drafting the above agreement. (June'15)
- Q3 A civil suit for removal of directors for malfeasance is maintainable if the articles of association provide for civil suit instead of the companies act 2013 provisions. (Dec'11)

Q4 Short notes on:

- a) Replication
- b) Pre-incorporation contract

(dec'10)

(June'13)

(June'14)

Q5 Examine the following:

Q6 Slump sale agreement as defined under IT Act 1961

Q7 Significance of MOA as the foundation of the corporate structure

Q8 In the light of judicial pronouncement, discuss the following:

(Dec'13)

Q9 In view of limited precedential value of many high court's decisions, it is difficult to come to clear & crisp answers as to the enforceability of shareholder's agreement.





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PLEADINGS

INTRODUCTION

In the today's scenario pleading system in our country is based on the provisions of the civil procedure code, 1908 supplemented from time to time by rules in that behalf by high court of states. There are rules of the Supreme Court and rules by special enactments as well.

Pleadings generally mean either a plaint or a written statement. The main objective behind formulating the rules of pleadings is to find out and narrow down the controversy between the parties.

Plaints and complaints are nearly synonyms. In both, the expression of grievances is predominant. However, traditionally, the word 'plaint' is used for Civil Court and the word 'complaint' is used for criminal court.

Provisions relating to pleadings in civil cases are meant to give each side intimation of the case of the other so that it may be met to enable courts to determine what is really at issue between parties, and to prevent deviations from the course which litigation on particular cause of action must take (*Ganesh Trading v. Mojiram*).



The whole object of pleading is that each side may be fully alive to the questions that are about to be argued in order that they may have an opportunity of bringing forward such evidence as may be appropriate (*Lakshmi Narayan v. State of Bihar*).

The fundamental rule of pleadings is contained in provisions of Order 6 Rule 2 of the Civil Procedure Code, which enjoins:

1. "Every pleading shall contain only a statement in a concise form of the material facts on which the party pleading relies for his claim or defence as the case may be, but not the evidence by which they are to be proved.
2. Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively each allegation being, so far as is convenient, contained in a separate paragraph.
3. 3. Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

Deficiency in pleading: if parties are related to each other and know everything. Parties understood the case and led the evidence accordingly. Deficiency in pleading would not affect case of the plaintiff. (kailash Chandra v. Vinod)

PLAINT STRUCTURE

A suit is instituted by filing a plaint, which is the first pleading in a civil suit. It is a statement of the plaintiff's claim and its object is simply to state the grounds upon, and the relief in respect of which he seeks the assistance of the court.



Order VII of the Civil Procedure Code, 1908 deals with plaint. As per Order VII, R.1 CPC, every plaint must contain the following things:

- a) the name of the Court in which the suit is brought;
- b) the name, description and place of residence of the plaintiff;
- c) the name, description and place of residence of the defendant, so far as they can be ascertained;
- d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;
- e) the facts constituting the cause of action and when it arose;
- f) the facts showing that the Court has jurisdiction;
- g) the relief which the plaintiff claims;
- h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and

WRITTEN STATEMENT

It is incumbent on the defendant to file his defense in writing. If the defendant fails to file written statement, the court may pronounce judgment against him or may under **Order 8, Rule 10**, make such order in relation to the suit as it deems fit.

When the defendant appears and files a written pleading by way of defense, his pleading should conform to all the general rules of pleading as are applicable to application or petition.

A subsequent pleading filed by the plaintiff, either in reply to a defendant's claim of set off, or with leave of the court, in answer to defendant's pleas in defense, is also called a "written statement" (also called Replication or Rejoinder). All the rules relating to defendant's written statement apply, *mutatis mutandis* to such written statement of the plaintiff also.

Considerations before Drafting a Written Statement

Before proceeding to draft a written statement, it is always necessary for a pleader to examine the plaint very carefully and to see:

- Whether all the particulars are given in it and whether the whole information that he requires for fully understanding the claim and drawing up the defense is available.
- If any particulars are wanting, he should apply that the plaintiff be required to furnish them before the defendant files his written statement.
- For instance, if two defendants, executants of a bond, are sued on the bond, and their plea is one of satisfaction, they can file a joint written statement.

(1) Formal Portion of Written Statement:

(2) Body of the Written Statement: The rest of the written statement should be confined to the defense.

Forms of Defence: A defense may take the form of defense:

- ❖ A "traverse or denials", one has to deny the averment of plaint/petition, which are incorrect,



perverse or false. If any averment are not denied specifically it is assumed to have been admitted by other party.

- ❖ A **"confession and avoidance"** or "special defense", where he admits the allegations but seeks to destroy their effect by alleging affirmatively certain facts of his own, as where he admits the bond in suit but pleads that it has been paid up, or that the claim is barred by limitation, or that of
- ❖ **"An objection in point of law"** (which was formerly called in England "a demurrer"), e.g., that the plaint allegations do not disclose a cause of action, or that the special damages claimed are too remote.
- ❖ Another plea may sometimes be taken which merely delays the trial of a suit on merits. Eg: a plea that the hearing should be stayed or that the suit is not properly framed or that there is some defect in the cause of action and the case cannot be decided unless the defects are removed.
- ❖ The plea which go to the root of the cause are known as pre –emptory pleas or pleas in bar, whereas the pleas that do not talk about the root of the cause but are intended to delay the proceedings are known as dilatory pleas.
- ❖ **Set-off:** it has the effect of extinguishment the plaintiff's claims to the extent of the amount claimed by the defendants.

When it is intended to take several defenses in the same written statement, it is convenient to adopt the following order for the several pleas:

- ❖ Denials
- ❖ Dilatory Pleas
- ❖ Objections in point of law
- ❖ Special Defense
- ❖ Set off

REPLY

This nomenclature is used for pleadings filed by a party (plaintiff/petitioner as well as defendant/respondent) in answer to the claims raised by a party and generally confined to miscellaneous or interim applications. However, certain Tribunals/ Commissions/Forums use such nomenclature to devote pleadings filed by a party in answer to the claims set out in the main petitions as well, for ego in the case of proceedings before consumer forums. Pleadings filed by a respondent in answer to the claims set out in the complaint, are generally referred to as reply. Again, the rules of pleadings as apply to a written statement should be kept in mind while drafting reply in opposition to the claims set out in the petition.

REJOINDER

A written statement/reply of the plaintiff/petitioner by way of defense to pleas' raised in the counter affidavit/written statement from the defendant/respondent, is termed as a rejoinder or replication.

Pleadings

Such statements are subsequent pleadings as contemplated in Order of Rule 9 of the Civil Procedure Code. Under Rule 9, leave of the court is essential before any party can present a further pleading after the written statement has been filed. The only subsequent pleading that may be filed without the leave of the court is the written statement filed by way of defense to a set-off or a counter-claim.

It should be borne in mind that while filing a rejoinder/replication, a party couldn't be allowed to fill up gaps or lacuna in his pleadings. Nor again can a party introduce new material facts or different cause of action except in a case where subsequent to filing of the petition/suit, the petitioner/plaintiff discovers new matters and accordingly seeks leave of the Court to submit such further particulars in his pleadings

Drafting of Reply/Written Statement - Important Considerations

At the time of drafting the reply or written statement, one has to keep the following points in mind:-

- ❖ It must be noted that denial has to be **specific and not evasive**. However, general allegation in the plaint cannot be said to be admitted because of general denial in written statement.
(Union V. A. Pandurang)
- ❖ If the plaint has raised a point/issue which is otherwise not admitted by the opposite party in the correspondence exchanged, it is generally advisable to deny such point/issue and let the onus to prove that point be upon the complainant. In reply, one has to submit the facts, which are in the nature of defense, and to be presented in a concise manner.
(Syed Dastagir V. T.R. Gopalkrishnan Setty)
- ❖ Attach relevant correspondence, invoice, challan, documents, and extracts of books of accounts or relevant papers as annexures while reply is drafted to a particular Para of the plaint.
- ❖ The reply to each of the Para of the plaint be drafted and given in such a manner that no Para of the plaint is left unattended. The pleadings are foundations of a case.
- ❖ After reply, the same is to be signed by the constituted attorney of the opposite party.
- ❖ Please note that if a duly authorized person does not file the plaint or reply, the petition would be liable to be dismissed
(Nibro Limited V. National Insurance Company Limited.)
- ❖ The reply/written statement is to be supported by an Affidavit of the opposite party.
- ❖ The reply along with all annexures should be duly paged numbered and be filed along with authority letter if not previously filed.
- ❖ It may be noted that if any of the important points is omitted from being given in the reply, it would be suicidal as there is a limited provision for amendment of pleadings and also the same cannot be raised in the Affidavit-in-Evidence at the time of leading of evidence. General rule is that no pleadings, no evidence.
- ❖ In every pleading, one must state specifically the relief, which the party is claiming from the court or tribunal or forum. While framing the prayer clause, one should claim all possible relief as would be permissible under the pleadings and the law.

AFFIDAVIT (ORDER 19, CPC 1908)

An affidavit being a statement or declaration on oath by the deponent is an important document and the consequences of a false affidavit are serious. Thus, it must contain correct and accurate particulars. The person executing is called deponent.



Every affidavit must clearly and separately indicate the statements



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which are true to the:

- ❖ Knowledge of the deponent;
- ❖ Information received by the deponent;
- ❖ Belief of the deponent; and
- ❖ Information based on legal advice.

Affidavit must be specified and verified, the contents true on the basis of personal knowledge & believed to be true on the basis of information received by any deponent.

The following rules should be remembered when drawing up an affidavit:

- The person making the affidavit should be fully described in the affidavit;
- An affidavit should be drawn up in the first person;
- An affidavit should be divided into paragraphs, numbered consecutively, and as far as possible, each paragraph should be confined to a distinct portion of the subject;
- Every person or place referred to in the affidavit should be correctly and fully described, so that he or it can be easily identified;
- When the declarant speaks of any fact within his knowledge he must do so directly and positively using the words "I affirm" or "I make oath and say";
- Affidavit should generally be confined to matters within the personal knowledge of the declarant, and if any fact is within the personal knowledge any other person and the petitioner can secure his affidavit about it, he should have it filed. But in interlocutory proceedings, he is also permitted to verify facts on information received, using the words "I am informed by so and so" before every allegation, which is so verified. If the declarant believes the information to be true, he must add "and I believe it to be true".
- When the application or opposition thereto rests on facts disclosed in documents or copies, the declarant should state what is the source from which they were produced, and his information and belief as to the truth of facts disclosed in such documents;
- The affidavit should have the following oath or affirmation written out at the end:

"I swear that this declaration is true, that it conceals nothing, and that no part of it is false".
- The officer before whom it is sworn must authenticate any alterations in the affidavit.
- An affidavit has to be drawn on a non-judicial Stamp Paper as applicable in the State where it is drawn and sworn.
- The deponent in the presence of an Oath Commissioner, Notary Public, Magistrate or any other authority appointed by the Government for the purpose, shall authenticate an affidavit.

Stamp duty

Affidavits are chargeable with stamp duty under Article 4, Schedule I, Stamp Act, 1899. But no stamp duty is charged on affidavits filed or used in Courts. Such affidavits are liable to payment of Court fee prescribed for the various Courts.

COUNTER AFFIDAVIT



Pleadings filed by a defendant/respondent in answer to the claims set out by the plaintiff/petitioner, in the form of an affidavit and/or supported by an affidavit are referred to as a counter affidavit.

This nomenclature is generally used while filing pleadings on behalf of a defendant/respondent before the High Court / certain other Tribunals and Commissions etc. The rules of pleadings as are applicable to a written statement, apply to a counter affidavit as well. Filing of a counter affidavit is obligatory when the defendant/respondent is so required by the Court. Failure of the defendant/respondent to file a counter affidavit on the day fixed by the Court, will not entitle him, as of right, thereafter to file it. It does not mean that the defendant/ respondent will be shut out once for all. He may be permitted by the Court to file it on a later date on sufficient grounds shown for not filing the same in time.

- ❖ The fundamental rule applicable would be same as written statement.
- ❖ Filing counter affidavit is obligatory if so required by the court.
- ❖ However, it may be permitted by the court to file it later on sufficient ground shown.

AFFIDAVIT IN EVIDENCE

Indian evidence act, 1872 contains the general rules of evidence, which are applicable both in civil as well as in criminal matters.

Section 3 of Indian stamp act recognizes the two categories of evidence i.e. oral evidence or documentary evidence.



Oral evidence	Oral evidence means and includes all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under enquiry.
Documentary evidence:	Documentary evidence means and includes all documents produced for the inspection of the court.

For the purpose of evidence, facts are divided into the following two categories:

Facts in issue	The facts which are constituent of a litigated right, liability or disability are called facts in issue.
Relevant facts	In order to prove the existence or non-existence of facts in issue, certain other inter-connected facts may be given in existence. They are called relevant facts.

DRAFTING OF AFFIDAVIT IN EVIDENCE IMPORTANT CONSIDERATIONS

The following must be kept in mind while preparing the affidavit-in-evidence by the parties -

- ❖ The best evidence is that of a person who was personally involved in the whole transaction. In case, that person is not available for any reason, then any other person who has joined in his place to make deposition by way of his affidavit.
- ❖ In case, the petitioner himself was involved in the execution of a contract, he should file affidavit-in-evidence.
- ❖ The allegations or charges or grounds relating to facts should be re-produced duly supported by



documentary evidence.

- ❖ In case, the point or issue pertains to engineering, medical, technology, science or other complex or difficult issues, then the evidence of expert is to be filed in the form of his Affidavit. If necessary, the said witness has to appear before the Forum for the purpose of cross-examination by the counsel for the other party. For example, handwriting or finger print experts etc.
- ❖ Besides the leading evidence on the points raised by the petitioner or by the opposite party in his written statement/reply, if possible, the party who is filing the affidavit-in-evidence should also file documents, papers or books or registers to demolish the defence or case set up by the opposite party.
- ❖ It is also permissible for any party to bring any outside witness (other than the expert witness) in support of his case if the facts and circumstances of the case so warrant and permitted by the Court/Tribunal.
- ❖ At the time of tendering affidavit-in-evidence, the party must bring along with it either the original of papers, documents, books, registers relied upon by it or bring with it the carbon copy of the same.

It may be noted that only photocopy of any paper or document cannot be relied upon and tendered as an evidence. Evidence, as defined in Section 3 of the Evidence Act, 1872 means and includes-

- ✓ All statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry; such statements are called oral evidence;
- ✓ All documents including electronic records produced for the inspection of the Court; such documents are called documentary evidence.

No evidence is required of matters which are, either formally admitted for the purposes of the trial, in civil cases, by the pleadings, by answer to interrogatories, by agreement or otherwise and in criminal cases, as regards proof of those documents admitted under Section 294, Code of Criminal Procedure, 1972.

RULE OF ADVERSE INFERENCE

It is incumbent upon a party in possession of best evidence on the issue involved, to produce such evidence and if such party fails to produce the same, an adverse inference is liable to be drawn against such party. The Court will be justified in drawing an adverse inference against that party.

[Ms. Shefali Bhargava v. Indraprastha Appollo Hospital]

Additional points:

- ❖ Deponent must be described in all particulars.
- ❖ Affidavit must contain oath or affirmation (I hereby solemnly affirm and declare as under)
- ❖ It should always be drawn in first person.
- ❖ Allegation should not be vague. Must be clear and specific.
- ❖ Execution must be on non-judicial paper.
- ❖ Stamp duty will be charged. Except to be filed in the courts, as they are liable to prescribed court fees.

- ❖ It must be sworn before oath commissioner or notary public or magistrate or such other authority appointed by government.

ARGUMENTS ON PRELIMINARY SUBMISSIONS

The following points may be noted in this regard:

Preliminary submission should primarily confine to the true and correct facts regarding the issue involved and which have been suppressed or not disclosed by the other side in the pleadings.

Additionally, the provisions of law or legal objections relevant and applicable to the issues involved in the matter should be mentioned.

Before incorporating any facts or provisions of law in the write up, a lawyer/authorized representative should be thorough with the provisions of law and interpretation based on the relevant judgments so as to strengthen his case.

Arguments on merits

Arguments relating to facts pleaded by the parties are termed as arguments on merits.

The following important points are mentioned in these regards:

The lawyer should carefully point out the pleading of the parties and the relevant evidence in support thereof, both oral as well as documentary.

While arguing on merits, the lawyer should ensure that all the contradictions in the pleadings of the opponent are duly pointed out.

In case if the notice is alleged to have been served but there is no documentary evidence placed on record by the opponent, then in such a case, it should be pointed out that the opponent has failed to establish that the notice has been served.

Relevant facts extraction from opponent or their witnesses during the course of cross examination and relating to the factual issue involved in the matter should also be highlighted.

Legal pleadings/ submissions: the following points are important in connection the legal pleadings/ submissions:

While making legal pleadings/ submissions, it should be ensured that the legal provisions/ interpretations are very clear and directly applicable to the issues involved in the matter.

All the legal submission which go to the root of the controversy and which are sufficient as well as material for adjudication of the issue involved should be taken in opposition to the claims of the opponents.

Some of the reasons, which are generally used in legal pleadings/ submissions, are as follows:

- ❖ Suit is not maintainable for want of statutory notice etc.
- ❖ Complaint does not disclose cause of action
- ❖ Plaintiff has no right to sue
- ❖ Suit is barred by principles of Res – judicata
- ❖ Suit is barred by principles of estoppels
- ❖ Suit is barred by special enactment
- ❖ Court has no jurisdiction
- ❖ Suit is barred by limitation



- ❖ Suit is premature and so on.

Out of above some are technically known as 'special defense'. In a suit based on contract, the defendant may admit that he made the contract, but may avoid the effect of admission by pleading performance, fraud, release, limitation etc.

Interlocutory application: 'interlocutory' means not that decides the cause but which only settle some intervening matter relating to the cause. After the plaintiff institutes the suit and before it is finally disposed off, the court may make interlocutory orders as may appear to the court to be just and convenient.

Interlocutory orders may take various shapes depending on the requirement of the respective parties during the pendency of the suit. For Eg., Application for appointment of receivers, temporary injunctions etc.

Execution Petition: Also known as Execution of Decree. A holder of a decree shall make application for execution of a decree who desires to execute it to appropriate court, which passed it, or to the officer appointed in this behalf. Application for execution of a decree may be either oral or written.

The court to which an application is made may require the application to produce a certified copy of the decree. Some high court in different states has framed additional rules in this regard.

REPRESENTATIVE SUIT

Representative suit are in exception to the general principle that all persons interested in a suit shall be parties thereto. Representative suit are the suits in which parties represent –

- Others; or
- Themselves and also other suits by executors, trustees etc.

The following essential conditions must be fulfilled in a Representative suit:

- ❖ The parties must be numerous.
- ❖ The parties mostly have same interest in the suit.
- ❖ The suit must be brought or prosecuted with the permission or under the direction of the court.
- ❖ Notice must be given to the parties to be represented in the suit.



SPECIMEN AFFIDAVIT OF CREDITOR IN PROOF OF HIS DEBT IN PROCEEDING FOR THE LIQUIDATION OF A COMPANY

IN THE (HIGH) COURT OF.....

The matter of the Indian Companies Act, 2013.

And

The matter of the liquidation of..... Company Limited.

I, A.B., aged..... years, son of Shri..... resident of....., do hereby on oath (or on solemn affirmation) state as follows:

1. That the above named company was on the..... day of....., 2018, the date of the order for winding up the same, and still is justly and truly indebted to me in the sum of Rupees..... (Rs.....) only in account of (describe briefly the nature of the debt).
2. That in proof of the aforesaid debt I attach hereto the documents marked A, B and C.
3. That I have not, nor have any person or persons by my order or to my knowledge or belief for my use, received the aforesaid sum of Rupees..... or any part thereof, or any security or satisfaction for the same or any part thereof except the sum or security (state the exact amount of security).
4. That this my affidavit is true, that it conceals nothing and no part of it is false.

Sd/-

A.B.

Deponent

Dated.....

Verification

I, the abovenamed deponent, verify that the contents of paragraphs 1 to 4 of this affidavit are true to my personal knowledge.

Sd/-

A.B.

Dated.....

I, S/o..... R/o..... declare, from a perusal of the papers produced by the deponent before me that I am satisfied that he is Shri A.B.

Sd/-

.....

Solemnly affirmed before me on this..... day of..... 2018 of..... (time) by the deponent.

Sd/-

.....

(Oath

Commissioner)



REVIEW (Sec 114 & order 47, Rule 1 of CPC)

Any person considering himself aggrieved by a decree or order, may apply for a review of judgment, to the Court which passed the decree or made the order,

on any of the following grounds:

- ❖ Discovery by the applicant of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made; or
 - ❖ On account of some mistake or error apparent on the face of the record; or
 - ❖ For any other sufficient reason;
- AND
- The Court may make such order thereon as it thinks fit.
 - The reasons for the decision; and
 - Where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

REVISION (Sec 115 of CPC)

In a case where an appeal does not lie against a final order the aggrieved party can file a revision before the High Court (and no other court). There are certain orders passed by the Civil Courts subordinate to the High Court against which the remedy of appeal is not available, even though such orders finally decide an important question involved in the suit or substantially affect the right or interest of a party to the suit. In such cases the High Court can entertain a revision and quash or modify the order of the court below.

As per Sec 115

1. The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such sub-ordinate Court appears:
 - a) To have exercised a jurisdiction not vested in it by law; or
 - b) To have failed to exercise a jurisdiction so vested; or
 - c) To have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:

Provided that the High Court shall not, under the Section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, **except where:**

- a) The order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding; or
 - b) The order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.
2. The High Court shall not, under this Section vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto."

SPECIMEN FORM OF REVISION
In the High Court of _____
Civil Appellate Jurisdiction
Civil Revision No _____ of 2018

IN THE MATTER OF:

ABC S/o _____ R/o _____

...Petitioner

Versus

XYZ S/o _____ R/o _____

...Respondent

AND

IN THE MATTER OF:

Civil Revision Against The Order Dated _____ Passed By The Learned Sub-Judge, Ist Class _____ In The Suit Entitled Abc -Vs.- Xyz (Civil Suit No. _____ Of 2018)

May it please the Hon'ble Chief Justice, High Court of _____ and his companion Justices

THE PETITIONER

MOST RESPECTFULLY SHOWETH:

1. That the petitioner named above has filed a suit against the respondents for the recovery of possession of a house situated in....., fully described in the plaint. The suit is pending in the court of Sub-Judge 1st Class..... and the next date of hearing is.....
2. That on being summoned the respondent appeared before the court below and filed his written statement wherein he denied the petitioner's title set up in the suit property.
3. That the trial court framed issues on..... and directed the petitioner (plaintiff) to produce evidence, upon which the petitioner promptly furnished to the court below a list of witnesses and also deposited their diet expenses etc., making a request that the witness be summoned by that Court.
4. That on a previous date of hearing that is....., 2017, two witness of the petitioner had appeared and their statements were recorded. However, the learned Presiding Officer of the court below passed an order that the petitioner-plaintiff on his own produce the remaining witnesses without seeking the assistance of the court. This order was passed despite a request by the petitioner that at least those witness named in the list who are State employees should be summoned by the court, as they are required to produce and prove some official records.
5. That on the next date of hearing the learned trial court by the order impugned in this revision closed the evidence of the petitioner-plaintiff on the ground that he did not produce the remaining witnesses.

GROUND

Pleadings

1. That the impugned order has caused great prejudice to the petitioner and if the same is allowed to stand the petitioner's suit is bound to fail.
2. That the trial court has unjustifiably denied assistance of the court to the petitioner-plaintiff to secure the attendance of his witnesses. The interests of justice demand that he is provided with all legal assistance in this regard.

In the facts and circumstances discussed above the petitioner prays that this Hon'ble Court be pleased to quash and set aside the order under revision and direct the court below to provide assistance of the court for summoning the plaintiff-witnesses.

Date: _____

Place: _____

(Affidavit shall be attached to the Revision)

sd/-

PETITIONER

SUIT FOR PERMANENT INJUNCTION

An injunction is a specific order of the Court forbidding the commission of a wrong threatened or the continuance of a wrongful course of action already begun, or in some cases (when it is called a 'mandatory injunction') commanding active restitution of the former state of things.

Injunctions are two types-

- (i) Temporary and
- (ii) Permanent".

Permanent injunction restrains a party for ever from doing the specified act and the same can be granted only on merits at the conclusion of the trial after hearing both the parties to the suit. It is governed by Sections 38 to 42 of the Specific Relief Act, 1963.

A temporary or interim injunction on the other hand restrains a party temporarily from doing the specified act and can be granted until the disposal of suit. It is regulated by the provisions of Order 39 of the Code of Civil Procedure and it may be granted at any stage of the suit. Injunctions are preventive, prohibitive or restrictive i.e. when they prevent, prohibit or restraint some one from doing some thing or mandatory, i.e. when they compel, command or order some persons to do some thing.

It is not the plaintiff alone who can apply for interim injunction. A defendant can also make an application for grant of an injunction against the plaintiff. Injunction may be issued only against a party and not against a stranger or third party. The various circumstances under which the temporary injunction can be granted has been provided for under Order 39 Rule 1 C.P.C.

The power to grant temporary injunction is at the discretion of the court. The discretion however should be exercised reasonably, judiciously and on sound legal principles.



Specimen Suit for Temporary Injunction Restraining Waste

In the Court of the Civil Judge at

Original Suit No. of

AB, s/o aged r/o

Plaintiff

versus

CD, s/o aged r/o

Defendant

The above-named plaintiff states as follows:

1. The plaintiff is the absolute owner of (describe the property).
2. The defendant is in possession of the same under a lease from the plaintiff.
3. The defendant has cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale, without the consent of plaintiff.
4. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

Date: _____

sd/-

Place: _____

PETITIONER

Specimen Suit for Permanent Injunction Restraining Breach of Contract

In the Court of the Civil Judge at

Original Suit No. of

AB, s/o aged r/o Plaintiff

versus

CD, s/o aged r/o Defendant

The above-named plaintiff states as follows:

1. The plaintiff let plots Nos. 142 and 678 in village__ to the defendant, by a deed of lease, dated July 6, 2010, for purposes of a nursery for 7 years, and the defendant agreed by the said deed of lease not to use the land for any other purpose.
2. The defendant has, since July 1, 2013 commenced to dig earth from the said plots for the purposes of his adjoining brick-kiln.
3. The removal of earth from the land would make it unfit for cultivation for several years and would even otherwise reduce its quality and value and compensation in money would not afford adequate relief to the plaintiff.
4. The defendant threatens and intends, unless restrained from so doing, to continue to dig earth from the said plots.

The plaintiff claims a perpetual injunction restraining the defendant, his servants, or agents, from digging earth from any portion of the said plots Nos. 142 and 678.

Date: _____

sd/-

Place: _____

PETITIONER



SUIT FOR SPECIFIC PERFORMANCE

Specific performance is an order of a court which requires a party to perform a specific act, usually what is stated in a contract. It is an alternative to awarding damages, and is classed as an equitable remedy commonly used in the form of injunctive relief concerning confidential information or real property. While specific performance can be in the form of any type of forced action, it is usually used to complete a previously established transaction, thus being the most effective remedy in protecting the expectation interest of the innocent party to a contract.

Orders of specific performance are granted when damages are not an adequate remedy, and in some specific cases such as sale of land. Such orders are discretionary, as with all equitable remedies, so the availability of this remedy will depend on whether it is appropriate in the circumstances of the case.

The Supreme Court in *Babulal v. Hazari Lal Kishori Lal & others*, has held that no special form of decree in a suit for specific performance is supplied by the Civil Procedure Code. Chapter 11 of the Specific Relief Act, 1963 deals with the various circumstances under which a contract may be enforced specifically and where it cannot be allowed. When a contract is to be specifically enforced, it means simply this that when the parties do not agree to perform the contract mutually, the intervention of the Court is required and the Court will do all such things as the parties would have been bound to do had this been done without the intervention of the Court.

By the decree for specific performance, the court sets out what it finds to be the real contract between the parties and declares that such a contract exists and it is for the executing court to do the rest. It may be noticed further that a decree in a suit for specific performance has been considered to be somewhat in the nature of preliminary decree which cannot set out in the fullest detail the different steps which are required to be taken to implement the main portion of the order directing specific performance of the contract. The executing court is in such a case vested with authority to issue necessary directions.

Specimen Suit by a Vendee for Specific Performance of Contract for Sale of Land

In the Court of the Subordinate Judge at
Other Class Suit No. of 2018

A.B.

Son of late

By case Hindu, by occupation – agriculturist

Residing at

District

..... Plaintiff

C.D.

Son of

By case Hindu, by occupation – agriculturist

of Village

District

..... Defendant

Suit for specific performance of contract

Valued at Rs. 8,500

The above-named plaintiff states as follows:

1. That the defendant while owning and occupying the property, described in the Schedule below, had entered into a contract in writing on agreeing therein to sell to the plaintiff the land, described



in the Schedule below, at a consideration of Rs. 8,500 and received from the plaintiff a sum of Rs. as earnest money.

2. That it was agreed therein that the defendant would sell the said property to the plaintiff by executing a proper sale deed and register the same on receipt of the balance sum of Rs. within six months from the date of the 'Bainanama' referred to above.

3. That the plaintiff has been always willing to pay to the defendant the balance of consideration money and as a matter of fact, the plaintiff offered to the defendant the said balance of consideration by a notice dated.....served by the plaintiff on the defendant by registered post with A/D through his lawyer Shri..... (Advocate).

4. That in the said notice the defendant was requested for compliance with the terms in the notice within 15 days from the date of receipt of the plaintiff's notice. The defendant received the notice on..... but did not comply with the request made therein.

5. That the plaintiff is entitled to specific performance of the said contract dated.....

6. That the cause of action for this suit arose first on..... (the date fixed for performance of the contract) and thereafter on after expiry of 15 days' period after receipt of notice by the defendant at Mouja.....P.S..... within the jurisdiction of this court.

7. That for the purpose of jurisdiction and court-fees, the suit is valued at Rs. 8,500 and ad valorem court fees of Rs. 660 are paid.

The plaintiff, therefore, prays:

(1) that the suit be decreed directing the defendant to execute and register the sale deed in question in favour of the plaintiff in respect of the property in the Schedule below, on accepting the contracted purchase money less the amount already paid as an earnest money;

(2) that the defendant be directed to execute and register the sale deed within a time specified by the court, failing which the said deed be executed and registered according to the provisions of O. 21, R. 34 (5) and 6(a) of C.P.C.;

(3) all costs of suit.

Date: _____

Place: _____

sd/-

PETITIONER

Schedule

Verification

APPEALS

Although "Appeal" has not been defined in the Code of Civil Procedure, 1908 yet any application by a party to an appellate Court, asking it to set aside or revise a decision of a subordinate Court is an "appeal".

A right of appeal is not a natural or inherent right but is a creature of a statute. It is the statute alone to which the Court must look to determine whether a right of appeal exists in a particular instance or not. Parties cannot create a right of appeal by agreement or mutual consent. The right of appeal is not a matter of procedure, but is a substantive right and can be taken away only by a subsequent enactment, if it says so expressly or by necessary intendment and not otherwise. It is for the appellant to show that the statute gives a right of appeal to him.

The Code of Civil Procedure, 1908 provides for four kinds of appeals:

- ❖ Appeals from original decrees (Sections 96 to 99 and Order XLI);
- ❖ Second Appeals (Sections 100 to 103);
- ❖ Appeals from Orders (Sections 104 to 106, Order XLIII, Rules 1 and 2); and
- ❖ Appeals to the Supreme Court.

Appeals from original decrees:	May be preferred from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court on points of law as well as on facts.
Second Appeals:	lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.
Appeals from Orders:	under Sections 104 to 106 would lie only from the certain orders on grounds of defect or irregularity of law:
Appeals to the Supreme Court:	An appeal can be filed before the Supreme Court in respect of those decrees which have been passed by the high court's in their original jurisdiction.

Constitution of India provides for following appeals to the Supreme Court

Appeals in Constitutional cases:	Clause (1) of the Article 132 of the Constitution provides that an appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceedings, if the High Court certifies under Article 134A that the case involves a substantial question of law as to interpretation of the Constitution.
Appeals in civil cases:	Article 133 deals with appeals to the Supreme Court from decisions of High Court in civil proceedings. For an appeal to the Supreme Court the conditions laid down in this article must be fulfilled. These conditions are: (a) The decision appealed against must be a "judgment, decree or final order" of a High Court in the territory of India, (b) Such judgment, decree or final order should be given in a civil proceeding, and



	(c) A certificate of the High Court to the effect that: (i) The case involves a substantial question of law, and (ii) In the opinion of the High Court the said question needs to be decided by the Supreme Court.
Appeals in criminal cases:	A limited criminal appellate jurisdiction is conferred upon the Supreme Court by Article 134. It is limited in the sense that the Supreme Court has been constituted a Court of criminal appeal in exceptional cases where the demand of justice requires interference by the highest Court of the land.

There are 3 modes by which a criminal appeal from any "judgment, final order or sentence" in a criminal proceeding of a High Court can be brought before the Supreme Court:

- ❖ Without a certificate of the High Court.
- ❖ With a certificate of the High Court.
- ❖ Appeal by Special Leave.

Drafting of Appeals	<p>An appeal may be divided into three parts:</p> <ol style="list-style-type: none"> (1) Formal part, known as the memorandum of appeal, (2) Material part, grounds of appeal, and (3) Relief sought for. <p>The memorandum of appeal should begin with the name of the Court in which it is filed. After the name of the Court, number of the appeal and the year in which it is filed are given. As the number is noted by the officials of the Court, a blank space is left for it. Then follow the names and addresses of the parties to the appeal. The name of the appellant is given first and then that of the respondent. It should be indicated against the names of the parties as to what character each party had in the lower Court, i.e. whether he was a plaintiff or a defendant, or an applicant or an opposite party.</p>
Drafting Grounds of Appeals	<ul style="list-style-type: none"> ❖ Grounds of objection should be written distinctly and specifically; ❖ They should be written concisely; ❖ They must not be framed in a narrative or argumentative form; and ❖ Each distinct objection should be stated in a separate ground and the grounds should be numbered consecutively. <p>General Grounds of Appeal</p> <ul style="list-style-type: none"> ❖ Any mistake committed by the lower court in weighing the evidence ❖ Any mistake in the view of law entertained by the lower court ❖ Any misapplication of law to the facts of the case ❖ Any material irregularity committed in the trial of the case ❖ Any substantial error or defect or procedure ❖ Any defect, error or irregularity of any interlocutory order passed in the case. <p>However it may be noted that the above grounds will be allowed subject to the following conditions</p> <ul style="list-style-type: none"> ❖ That the mistake of the lower court should be material i.e. it should be such as affects the decision and ❖ That the objection taken must be such as arises from the pleadings and evidence in the

lower court.	
Relief Sought in Appeal	It is nowhere expressly provided in the Code that the relief sought in appeal should be stated in the memorandum of appeal. The absence of prayer for relief in appeal does not appear to be fatal and the Court is bound to exercise its powers under Section 107 of the Code and to give to the appellant such relief as it thinks proper. However, it is an established practice to mention in the memorandum of appeal, the relief sought by the appellant.
Signature	A memorandum of appeal need not be signed by the appellant himself. It may be signed by him or by his counsel but if there are several appellants and they have no counsel, it must be signed by an "of them. It is not required to be verified.

**Specimen of Appeal to District court
In the Court of District Judge, Indore**

Civil Appeal No. _____/ 2009
Under **Section 96 of CPC, 1908.**

IN THE MATTER OF:

A. B. s/o B. C.

123, A B Road, Indore, MP

_____Plaintiff/**Appellant**

Vs.

M. N. s/o O. P.

456, A B Road, Indore, MP

_____Defendant/**Respondent**

May it please the hon'ble chief Justice of District court of _____ and his lordship companion justice,

THE APPELLANT COMPANY

MOST RESPECTFULLY SHOWETH:

That the company herein is a company duly registered under the provisions of the companies act 2013 having its registered office at _____ - and engaged in the business of Manufacturing Product X.

That the respondent are doing the business of selling goods manufactured by the appellants and approached the appellant for purchasing the aforesaid manufactured goods. An agreement was reached between the parties and was reduced into writing.

That the appellant supplied goods worth Rs. 15,00,000 (Rupees Fifteen Lakhs) over a period of 8 months to the respondent. A statement of accounts regarding the goods so supplies is annexed hereto and marked as "A-1"

That the after paying total amount of Rs. 6,00,000, remaining amout has not been paid by the respondendt despite repeated demands and issuance of a legal notice by the appellant through advocate.



Pleadings

That on being summoned by respective court, the respondent appeared through counsel and filed their written statement to which appellant plaintiff also filed replication.

That after hearing the counsel for the parties, the learned district judge has by his his judgement and decree passed on _____ dismissed the appellant's suit on the ground that the evidence led by the parties does not establish the claim of the appellant plaintiff. Copies of the judgement and decree of the court are annexed hereto and marked as A-3 and A-4 respectively.

The aforesaid judgement and decree of the court is assailed on the following grounds amongst the others.

GROUND

- (1) That the orders passed by the Learned Lower Court are contrary to the provisions of law and the principles of natural justice.
- (2) That the findings arrived by the Learned Lower Court are not supported by the evidence on record.
- (3) That the Learned Lower Court committed an error in holding that the house premises are not required by the plaintiff/appellant for his personal bonafide occupation.
- (4) That the copy of the Judgment and the Decree against which this appeal has been preferred is attached alongwith.
- (5) That the Learned Lower Court has having answered the first issue in the negative decided the rest of the issues against the appellant, which itself is improper and illegal.
- (6) That the necessary court fee is paid herewith.

PRAYER

(7) That the appellant, therefore, prays that for the reasons stated above and as may be argued at the time of hearing, the record and proceedings be called for, this appeal be allowed, the orders under appeal be set aside and quashed, and orders deemed just and proper be kindly passed. Further that the cost of this petition be awarded in favor of plaintiff-appellant.

Place: _____

(Signature of the Plaintiff-Appellant)

Date: _____

Advocate
for Plaintiff-Appellant

VERIFICATION

I, _____, do hereby verify that the contents from paras 1 to 5 are correct and true to the best of my knowledge and personal belief and no part of it is false and nothing material has been concealed therein. Affirmed at Indore this 4th Day of September 2009.

(Signature)
Plaintiff-Appellant

Specimen Form of Appeal to the High Court

IN THE HIGH COURT OF AT

CIVIL APPELLATE JURISDICTION REGULAR CIVIL APPEAL NO. OF



IN THE MATTER OF:

A.B.C. Company Ltd. a company incorporated under the provisions of the Companies Act and having its registered office.....

...Appellant

Versus

M/s..... a partnership concern

(or XYZ company Ltd., a company incorporated under the Companies Act and having its registered office at.....)

...Respondents

May it please the Hon'ble Chief Justice of the High Court of..... and his Lordship's companion Justices,

THE APPELLANT-COMPANY

MOST RESPECTFULLY SHOWETH:

1. That the appellant herein is a company duly registered under the provisions of the Companies Act and the registered office of the appellant is at..... and the company is engaged in the business of manufacturing.....
2. That the respondents who are also doing business of selling goods manufactured by the appellants and other manufacturers approached the appellant for purchasing from the appellant company the aforesaid manufactured goods. An agreement was reached between the party which was reducing into writing.
3. The appellant supplied goods worth Rs. 15 lacs over a period of..... months to the respondents. A statement of account regarding the goods so supplied is annexed hereto and marked as ANNEXURE A-1. 3.
4. That the respondents have made a total payment of Rs. 6 lacs on different dates. The statement of the said payments made by the respondents is appended and is marked as ANNEXURE A-2.
5. That the remaining amount has not been paid by the respondent despite repeated demands and issuance of a legal notice by the appellant through advocate.
6. That the appellant filed a suit for recovery of the aforesaid balance amount of Rs. 9 lacs together with interest at the rate of 12% per annum and the cost of the suit. The suit was filed on..... in the court of the learned District Judge.
7. That upon being summoned by the said court the respondents appeared through counsel and filed their written statement to which appellant-plaintiff also filed replication (rejoinder).
8. That the parties led evidence.
9. That after hearing the counsel for the parties the learned District Judge has by his judgment and decree passed on..... dismissed the appellant's suit on the ground that the evidence led by the parties does not establish the claim of the appellant/plaintiff. Copies of the judgment and decree of the court below are annexed hereto and are marked as ANNEXURE A-3 AND A-4, respectively.

The aforesaid judgment and decree of the court is assailed (criticized) on the following grounds amongst others.

GROUND

- A. That the judgment and decree under appeal is erroneous both on facts as well as law.
B. That the learned trial court has failed to properly appreciate the evidence, and has fallen into error in not finding that the preponderance of probability was in favor of the plaintiff appellant.
C. That there was sufficient evidence led by the plaintiff to prove the issues raised in the suit and the defendant-respondent has failed to effectively rebut the plaintiff's evidence, more particularly the documentary evidence.

8. That the valuation of this appeal for the purposes of payment of court-fee is fixed at Rs..... and the requisite court fee in the form of stamps is appended to this memorandum of appeal.

9. That this appeal is being filed within the prescribed period of limitation, the judgment and decree under appeal having been passed on.....

PRAYER

In the above facts and circumstances the appellant prays that this appeal be allowed, the judgment and decree under appeal be set aside and the decree prayed for by the appellant in his suit before the court below be passed together with up-to-date interest and costs of both courts.

APPELLANT

VERIFICATION

Verified at..... on this, the..... day of....., 20.... That the contents of the above appeal are correct to the best of my knowledge and belief.....

APPELLANT

THROUGH

COUNSEL

Dated:

(.....)

Complaint Sec 2(d) of Cr. PC

Any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code that some person, whether known or unknown, has committed an offence, but it does not include a police report.

However, a report made by the police officer in a case which discloses after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint, and the police officer making the report as a complainant. A complaint in a criminal case is what a plaint is in a civil case.

The requisites of a complaint are:

- an oral or a written allegation;
- some person known or unknown has committed an offence;



- c. it must be made to a magistrate; and
- d. it must be made with the object that he should take action.

There is no particular format of a complaint and need not be presented in person. A petition addressed to the Magistrate containing an allegation that an offence has been committed, and ending with a prayer that the culprit be suitably dealt with is a complaint.

BAIL

Bail means the release of the accused from the custody of the officers of law and entrusting him to the private custody of persons who are sureties to produce the accused to answer the charge at the stipulated time or date.

An "*anticipatory bail*" is granted by the High Court or a Court of Session, to a person who apprehends arrest for having committed a non-bailable offence, but has not yet been arrested (Section 438). An opportunity of hearing must be given to the opposite party before granting anticipatory bail.



Specimen Bail Application before a Magistrate during Police Enquiry under s. 437, Cr. PC 1973

In the Court of _____ Magistrate _____

The State _____

Versus

Accused Mr. A son of Mr. B, Village: _____

In the matter of petition for bail of accused

Mr. A, during police enquiry
The humble petition of Mr. A
The accused above-named

MOST RESPECTFULLY SHOWETH:

1. That the police arrested your petitioner on 5th March 2015 on mere suspicion. That nearly a month has passed after the arrest but still the Investigating Police Officer has not submitted a charge sheet.
2. That any inmate of the house of Mr. Arvind where the burglary is alleged to have taken place did not identify your petitioner, nor was any incriminating article found in his house.



Pleadings

3. That your petitioner has reason to believe that one Mr. Gopal with whom your petitioner is on bad terms and who is looking after the case for complainant has falsely implicated your petitioner in the case out of grudge.
4. That your petitioner shall fully co-operate with the police.
5. That your petitioner is not likely to abscond or leave the country.

Your petitioner prays that your Honour may be pleased to call for police papers and after perusing the same be pleased to direct the release of your petitioner on bail.
And your petitioner, as in duty bound, shall ever pray.

Advocate

Mr. A

VERIFICATION

I, Mr. A, son of Mr. B, residing at..... by occupation business, do hereby solemnly affirm and say as follows:

1. I am the petitioner above-named. I know and I have made myself acquainted with the facts and circumstances of the case and I am able to depose thereto.
2. The statements in paragraphs 1 to 5 of the foregoing petition are true and correct to my knowledge and belief.
3. I sign this verification on the 6th day of May 2018.

Solemnly affirmed by the said Mr. A

on 6th May 2018 at the Court
House at..... Mr. A

Before me
Notary/Magistrate

FIRST INFORMATION REPORT (FIR)

Section 154 Cr.P.C 1973 deals with information in cognizable cases. Section 154 reads:

1. Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.
2. A copy of the information as recorded under Sub-section (1) shall be given forthwith, free of cost, to the informant.
3. Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in Sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case

himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

The above provisions are mandatory. Hence the police officer concerned is duty bound to register the case on receiving information disclosing cognizable offence. Genuineness or credibility of the information is not a condition precedent for registration of a case. That can only be considered after registration of the case.

Specimen Form of First Information Report

To

The Officer-in-Charge

———— (Name of the Police Station)

Sir

This is to inform you that my cycle has been stolen from the cycle stand in the daily market last evening. Last evening, before I went to the market, I placed my green model Hero Cycle in the cycle stand No. 1 as usual.

I had locked the cycle. The cycle bears the No. ____ I had bought it only a month ago and it was almost new. The cycle had a full gear case, a carrier and a side basket. When such mishap occurred I was buying vegetables in the market. I asked everybody who were present there about the cycle. It was all in vain.

I request you to kindly register a case of theft and initiate the necessary investigation to recover the stolen cycle.

Yours faithfully,

———— (Your Name)

Past Exam Questions

Q1. Short notes on:

- Revision (June 2008)
- Art of pleading (June'11)
- Affidavits (Dec'12)
- Written statement (June 2013)
- Objects of pleadings (June 2013)
- Interlocutory application (June 2014)

Q2. Factors/considerations that a judge looks for in the pleadings of parties in the cause (Dec'14)

Q3. Wordings in the order of permanent injunction & wordings in the order of temporary injunction (June'14)

Q4. In a pleading, there is no scope for law & evidence as per order 6 of the code of civil procedure, 1908, yet in practice both are pleaded in higher courts, like high courts & tribunals.

(June 2015)

Q5. Several types of appeal have been provided in the ordinary civil law as well as constitutional framework. Elucidate in respect of civil jurisdiction only. (Dec'14)

Q6. In the light of judicial pronouncements, discuss the following:

- It is well settled that evidence should be tailored strictly according to pleadings. (Dec'14)
- Pleading is just a written complaint for preventing deviations from the course which litigation must take as held in Ganesh Trading vs. Motiram AIR 1970 SC 480.
- A complaint in a criminal case is what a plaint is in a civil case, whether the complaint is made to police or to a court. (June'14)
- Material facts *vis-a-vis* immaterial facts while drafting a plaint. (June'14)





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Art of Writing Opinion

WRITS

For enforcement of Fundamental Rights as conferred on the citizens of India and others under the Constitution of India, Article 32 of the Constitution confers on the Supreme Court of India power to issue directions or orders or writs including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the said rights.



The Constitution also confers power on the High Courts to issue certain writs.

Types of Writs

As mentioned in Articles 32 and 226 of the Constitution, writs are in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*. A brief discussion of each is as follows:

Habeas Corpus	<p>The writ of habeas corpus is a remedy available to a person who is confined without legal justification. The words "Habeas Corpus" literally mean "to have a body". This is an order to let the Court know on what ground he has been confined and to set him free if there is no legal justification for his detention. This writ has to be obeyed by the detaining authority by production of the person before the Court. Under Articles 32 and 226 of the Constitution, any person may move the Supreme Court and the High Court of competent jurisdiction respectively, for the issue of this writ.</p> <p>The applicant may be the prisoner himself moving the Court or any other person may move the Court on his behalf to secure his liberty praying for the issue of the writ of habeas corpus. No person can be punished or deprived of his personal liberty except for violation of any law and in accordance with the due process of law. Dis-obedience to the writ of habeas corpus attracts punishment for contempt of Court under the Contempt of Courts Act, 1971.</p>
Mandamus	<p>The expression "mandamus" means a command. The writ of mandamus is, thus, a command issued to direct any person, corporation, inferior Court or Government authority requiring him to do a particular thing therein specified which pertains to his or their office and is further in the nature of a public duty. This writ is used when the inferior tribunal has declined to exercise jurisdiction. Mandamus can be issued against any public authority. The applicant must have a legal right to the performance of a legal duty by the person against whom the writ is prayed. Mandamus is not issued if the public authority has discretion.</p> <p>Mandamus can be issued by the Supreme Court and all the High Courts to all authorities. However, it does not lie against the President of India or the Governor of a State for the exercise of their duties and powers (Article 360). It also does not lie against a private individual or body except where the State is in collusion with such private party in the matter of contravention of any provision of the Constitution or of a Statute. It is a discretionary remedy and the Court may refuse if alternative remedy exists except in case of infringement of Fundamental Rights.</p>



Prohibitions	<p>The writ of prohibition is issued by the Supreme Court or any High Court to an inferior Court preventing the latter from usurping jurisdiction which is not legally vested in it. It compels courts to act within their jurisdiction when a tribunal acts without or in excess of Jurisdiction or in violation of rules or law.</p> <p>The writ of prohibition is available only against judicial or quasi-judicial authorities and is not available against a public officer who is not vested with judicial functions. If abuse of power is apparent this writ may be prayed for as a matter of right and not a matter of discretion. The Supreme Court may issue this writ only in case of Fundamental Rights being affected by reason of the jurisdictional defect in the proceedings. This writ is available during the pendency of the proceedings and before the order is made.</p>
Certiorari	<p>CERTIORARI means to be more fully informed. Here the appellate court ask inferior court to give or deliver it records in a case.</p> <p>The writ of certiorari is available to any person whenever any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, acts in excess of its legal authority. The writ removes the proceedings from such body to the High Court in order to quash a decision that goes beyond the jurisdiction of the deciding authority.</p>
Quo warrant	<p>The writ of quo warrant is prayed for, for an inquiry into the legality of the claim which a person asserts to an office or franchise and to oust him from such position if he is an usurper. The holder of the office has to show to the Court under what authority he holds the office. This writ is issued when:</p> <ul style="list-style-type: none"> ❖ The office is of a public and of a substantive nature; ❖ The office is created by a Statute or by the Constitution itself; and ❖ The respondent must have asserted his claim to the office. It can issue even though he has not assumed charge of the office.

SPECIMEN FORM OF A WRIT PETITION

In the High Court of..... at.....

Civil Original (Extra-ordinary) Jurisdiction

Civil Writ Petition No..... of 2016

IN THE MATTER OF:

JKL S/o..... R/o..... former employee (Inspector Grade-I) in the Respondent Company.

...Petitioner

1. XYZ Company Ltd., a company wholly owned by the Govt. of India and having its registered office at..... through its Chairman.

2. Managing Director of the above Company

...Respondent

Civil Writ Petition against the order dated..... passed by the Managing Director, respondent No. 2 herein, by which the services of the petitioner as an employee of the respondent-company have been terminated.



May it please the Hon'ble Chief Justice of the High Court of and His Lordship's companion Judges.

THE PETITIONER

MOST RESPECTFULLY SHOWETH:

1. That the petitioner is a citizen of India and is therefore entitled to enjoy all the rights guaranteed by the Constitution of India.

2. That respondent No. 1 is a company registered under the Companies Act, 1956 having its registered office at.....

The respondent-company is wholly owned by the Government of India and is, thus, an instrumentality of State is given in Annexure 12 of the Constitution.

3. That the petitioner was an employee of the respondent-company, having been appointed as a Sub-Inspector Grade-I on..... 2013 and he continued to work, earning one promotion also.

4. That on..... 2013 respondent No. 2 herein abruptly issued the impugned order dated..... terminating the services of the petitioner and the petitioner came to be relieved of his duties the same day. A copy of the impugned order is annexed hereto and marked as *ANNEXURE-1*.

5. That on a bare reading of the impugned order it becomes clear that the order has been issued on the basis of some alleged misconduct on the part of petitioner, but no inquiry under the relevant rules has been held before the passing of the order.

6. That the petitioner has not committed any act that could be termed to be an act constituting misconduct.

7. The impugned order is being assailed on the following, amongst other,

GROUND

7.1 That the petitioner being a permanent employee of the respondent-company, his services could not be terminating without holding an enquiry under the rules applicable to the employees of the company.

7.2 That the principles of natural justice have been contravened by the respondents in not giving to the petitioner any opportunity of being heard.

7.3 That the impugned order is otherwise also erroneous and unsustainable, as it does not contain any reason and is a non-speaking order.

7.4 That the impugned order is arbitrary and contravenes Article 14 of the Constitution.

7.5

7.6

8. That the petitioner has not filed any petition other proceedings relating to the matter at this petition in any other court.

PRAYER



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Art of writing opinion

In the facts and circumstances stated above the petitioner prays that a direction in the form of a writ of *quo warranto* and *mandamus* or any other appropriate writ be issued quashing the impugned order and reinstating the petitioner in service with all consequential benefits including back wages.

It is further prayed that the respondent be burdened with costs.

DATED.....

THROUGH

Sd/
PETITIONER

Sd/
COUNSEL

MR.....

Note:- The Writ petition must be supported by an affidavit of the petitioner.

SPECIAL LEAVE PETITIONS

Article 134A of the Constitution of India lays down that every High Court, passing or making a judgment, decree, final order, or sentence, referred to in Article 132 or Article 133 or Article 134.

Article 132 of the Constitution of India provides that an appeal shall lie to the supreme court from any judgment, decree, final order of a high court in the territory of India, whether in a civil, criminal or other proceedings, if the high court certifies under article 134 A that the case involves substantial question of law as to interpretation of the constitution. Here, the petition of to obtain the special leave is required to be made to the high court, for making the aforesaid appeal to the supreme court.

Where the high court refused to issue the required certificate to enable an aggrieved party to appeal to the Supreme Court against the judgment, order or sentence awarded by the high court for grant of special leave to appeal under Article 136 of the Constitution.

Article 136 of the Constitution confers upon the Supreme Court power to grant special leave to appeal.

Special Leave Petition (SLP) to the Supreme Court under Article 136

In suitable cases, where some arguable questions, mostly on legal points, are involved the Constitution confers under Article 136 wide discretionary powers on the Supreme Court to entertain appeals even in cases where an appeal is not otherwise provided for. But so far as questions of fact, as distinct from questions of law, is concerned, it is only in rare or exceptional cases that the Supreme Court interferes and that too when finding of the High Court or the lower Court is such that it shocks the conscience of the court.



SPECIMEN FORM OF A PETITION FOR SPECIAL LEAVE IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

IN THE MATTER OF:



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Special Leave Petition under Article 136 of the Constitution of India
AND

IN THE MATTER OF:

ABC Company Ltd., a company registered under the Companies Act through..... Chairman/Managing Director, the company having its registered office at.....

...Petitioner

Versus

1. S/o..... R/o.....
2. Union of India through the Secretary, Ministry of Corporate Affairs, New Delhi.
3. The Registrar of Companies.....

...Respondents

May it please the Hon'ble Chief Justice of India and His Lordship's Companion Judges of the Supreme Court.

THE PETITIONER-APPELLANT-(COMPANY)

MOST RESPECTFULLY SHOWETH:

1. That the petitioner is a company duly incorporated under the provisions of the Companies Act, having its registered office at..... and is challenging by way of this Special Leave petition the judgment and order of the High Court of..... dated in proceeding under Section..... of the Companies Act.
2. That the questions of law involved in this matter are as follows:
 - a) Whether the High Court has fallen into error in taking the view that.....?
 - b) Whether it would be a good ground for winding up of the petitioner-company that two of its directors are not an speaking terms and there is, thus, a deadlock in the administration of the affairs of the company. or [Here state any other ground that has been taken by the respondents or any of the respondents seeking the relief of winding up of the company from the High Court or any other relief.....].
 - c) Whether.....
3. That respondent No. 1 herein had filed a petition before the Hon'ble High Court of..... seeking the relief..... which petition was contested by the petitioner-company inter alia on the grounds that.....
4. That the High Court after hearing the parties through their respective counsel allowed the said petition, holding that sufficient grounds had been made out for winding up of the petitioner company (or any other relief claimed in the petition before the High Court).
5. That the aforesaid findings and the final judgment/order of the High Court are assailed on the following, amongst, other.

GROUND

- 5.1 That.....
- 5.2 That.....
- 5.3 That.....

6. That the petitioner has not filed any appeal or other proceeding relating to this matter in this Hon'ble Court or any other Court.

RELIEF

The petitioner-company accordingly prays that this Hon'ble Court be pleased to grant Special Leave to Appeal in the matter and to allow the appeal, set aside the impugned judgment/order passed by the High Court and dismiss the petition filed by the respondent (No. _____) in the High Court.

Sd/

DATED.....

THROUGH

Sd/
COUNSEL

MR.....

PETITIONER

OPINION WRITING

Introduction

- ❖ An opinion is a professional's written response to client's instructions to advise in writing. It follows that it must contain advice.
- ❖ Professionals do not advise someone simply by telling them what to do, but supplement it with the basic reasoning behind it.
- ❖ Advising is inextricably bound up with and is part of the mental attitude with which professionals approach opinion writing, with the thinking process that precedes the actual writing of the opinion, and with the writing process itself.



Need for a Legal Opinion

- ☞ Interpretation of statutes or documents
- ☞ Advise a transaction structure
- ☞ Opinion for guidance of decision makers in commerce, industry or government
- ☞ Opinion to Lenders on enforceability of Finance Documents
- ☞ Opinion for Investors for compliance by Target Companies
- ☞ Opinion on Foreign Direct Investment
- ☞ Determining provision for contingent liabilities or determination of contingent assets
- ☞ Merits or demerits of legal proceedings
- ☞ Provision for contingent liabilities or Identification of contingent assets
- ☞ Initiating civil or criminal proceedings
- ☞ Drafting a pleading
- ☞ Preparation for trial of arbitral or legal proceeding
- ☞ Ascertain compliance level for issue of securities and identification of risk factors for investors
- ☞ Valuation of business

Formulation of a Legal Opinion

- A request for a legal opinion will usually come in written form. Such a request will usually include any document/ documents in the case.
- The request for a legal opinion will include at least one and usually a number of questions which the legal advisor is being asked to address.
- A legal opinion will often have the over arching question – does the client have a good and viable case. This is clearly the most important question to any client and must be approached with honesty and directness.
- If the client's case is not viable they must be advised about this during the course of legal opinion.
- If there is something that can be done to improve the client's prospects of success, a good legal opinion will spell out this very precisely.
- Numbered action points are one way of achieving clarity in this regard.



Art of writing opinion

Above all, it is vital to remember that in being asked to draft a legal opinion, you are being asked to advice. Sitting on the fence is not an option. Lay out the pros and cons of a particular course of action, but always come down on one side or the other. Giving a percentage chance of success at the beginning of a legal opinion is one way of being clear about what you think the client's prospects are.

Drafting a legal opinion can and should always be split into three processes:

- + The mental attitude
- + The thinking process
- + The writing process.

PAST EXAM QUESTION

Q1 Desire Ltd. proposed to increase its share capital. A notice calling for general meeting for considering and approving increase in share capital was issued to the shareholders. Questioning the validity of the notice, a shareholder objected that the amount of proposed increase was not specified in the notice. Is this objection legally valid? Justify your answer. (5 marks)

Q2 Distinguish between:

- Writ of prohibition & writ of certiorari
- Writ of mandamus & writ of certiorari

(Dec'13, Dec'06)
(June'15)

Q3 Explain:

- Habeas corpus
- Mandamus

(June'10)





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APPEARANCES & ART OF ADVOCACY

RIGHT TO LEGAL REPRESENTATION:

An advocate can represent a person before a court. However, as far as before the quasi-judicial bodies are concerned, an advocate can represent a person as well as by a practicing company secretary/chartered accountant/cost accountant.

Thus, practicing company secretary can appear as an authorized representative before CLB/NCLT/CCI/SAT/TRAI and various other tribunals.



Under the Companies Act	<p>Section 432 of the Companies Act, 2013 dealing with right to legal representation envisages that the applicant or the appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any officer to present his or its case before the Tribunal or the Appellate Tribunal, as the case may be.</p> <p>The expression 'authorised representative' has been defined under Regulation 2(d) as a person authorized in writing by a party under Regulation 19(2) to function before a Bench as the representative of such party.</p> <p>Therefore, a person to be authorized must be one of the persons specified in Regulation 19(2) viz. Advocate or Secretary in whole-time practice or a Practising Chartered Accountant, or Practising Cost and Works Accountant. However, a company may also appoint and authorize its Director or Company Secretary to appear in its behalf, in any proceeding before the Bench. The Central Government, the Regional Director or the Registrar may authorize an officer to appear on its behalf (Regulation 19).</p> <p>Company Secretaries who are in job can appear for and on behalf of Employer Company, by virtue of powers given under a power of attorney while appearing before CLB/NCLT or Authority Letter but preferably Power of Attorney.</p>
Under the TRAI Act	Section 17 of the Telecom Regulatory Authority of India (TRAI) Act, 1997 authorizes Company Secretaries to present his or its case before the Appellate Tribunal.
Under the SEBI Act	Securities and Exchange Board of India (SEBI) Act, 1992 under Section 15V permits the appellant either to appear in person or authorize one or more of practicing Company Secretaries, Chartered Accountants, Cost Accountants or Legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.
Under the Competition Act	Sections 35 and 53S of the Competition Act, 2002 authorizes Company Secretaries in practice to appear before Competition Commission of India and Competition Appellate Tribunal.



Besides, there are a number of concepts and terms such as value of assets, turnover, determination of market, relevant market, geographic market which require active professional involvement and advice. Further, Competition Act, 2002 provides a number of factors to be considered by the Competition Commission of India in determining appreciable adverse effect on competition.
--

APPELLATE AUTHORITIES

❖ UNDER THE COMPANIES ACT, 2013

Appeal against Refusal to Register Transfer of shares:

Section 58 of the Companies Act, 2013 lays down that if a company refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any shares or interest of a member in, or debentures of, the company, it shall, within 2 months from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferee and the transferor or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.



Section 58 further lays down that the transferor or transferee, or the person who gave intimation of the transmission by operation of law, as the case may be, may appeal to the Board/Tribunal against any refusal of the company to register the transfer or transmission, or against any failure on its part within the period referred to in the preceding paragraph, either to register the transfer or transmission or to send notice of its refusal to register the same.

The appeal under above paragraph shall be made within two months of the receipt of the notice of such refusal or, where no notice has been sent by the company, within four months from the date on which the instrument of transfer, or the intimation of transmission, as the case may be, was delivered to the company.

Appeal to Supreme Court

Any person aggrieved by any decision or order of the NCLAT may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order of the NCLAT to him on any question of law arising out of such decision or order. However, the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days [Section 423]

❖ APPELLATE AUTHORITIES UNDER TRAI ACT

Appeal to the Supreme Court

Section 18 of the TRAI Act provides that notwithstanding anything contained in the Code of Civil Procedure, 1908 or in any other law, an appeal shall lie against any order, not being an interlocutory order, of the Appellate Tribunal to the Supreme Court on one or more of the grounds specified in **Section 100** of that Code



It further says that no appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

Every appeal under this section shall be preferred within a period of ninety days from the date of the decision or order appealed against.

However, the Supreme Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

❖ APPELLATE AUTHORITIES UNDER SEBI ACT

Appeal to the Securities Appellate Tribunal	Section 15T of the SEBI Act lays down that any person aggrieved: (a) By an order of SEBI made, under this Act, or the rules or regulations made there under; or (b) By an order made by an adjudicating officer under this Act; may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.
--	--

However, no appeal shall lie to the Securities Appellate Tribunals from an order made by SEBI; by an Adjudicating Officer, with the consent of the parties.

Every appeal shall be filed within a period of 45 days from the date on which a copy of the order made by SEBI or the Adjudicating Officer. However, Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of 45 days if it is satisfied that there was sufficient cause for not filing it within that period.

On receipt of an appeal, the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

Appeal to Supreme Court	Section 15Z lays down that any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of fact or law arising out of such order. It has been provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.
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❖ APPELLATE AUTHORITIES UNDER THE COMPETITION ACT

Appeal to Appellate Tribunal:	As per Section 53B of the Act - any direction, decision or order may prefer an appeal to the Appellate Tribunal. Every appeal shall be filed within a period of sixty days from the date on which a copy of the direction or decision or order made by the Commission is received. Appellate Tribunal may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that there was sufficient cause for not filing it within that period. On receipt of an appeal Appellate Tribunal may, after giving the parties to the appeal, an
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	opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the direction, decision or order appealed against. The Appellate Tribunal shall send a copy of every order made by it to the Commission and the parties to the appeal.
Appeal to Supreme Court	<p>Section 53T of the Act provides that the Central Government or any State Government or the Commission or any statutory authority or any local authority or any enterprise or any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal.</p> <p>Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed after the expiry of the said period of sixty days.</p>

APPELLATE AUTHORITIES UNDER THE INCOME-TAX ACT, 1961

Appeal against the order of the Income-tax Officer lies with the Appellate Assistant Commissioner or the Commissioner (Appeals) or Commissioner of Income-tax. Appeal against the order of the Appellate Assistant Commissioner or the Commissioner (Appeals) can be preferred by the assessee or the income-tax department and such appeal lies with the Appellate Tribunal. Appeal against the order of the Appellate Tribunal by way of reference by the Tribunal can also be preferred by the assessee or the income-tax department and such appeal lies to the High Court. The Order of the High Court on the reference can be challenged either by the assessee or by the income-tax department by preferring an appeal to the Supreme Court which is the final appellate authority.

ETIQUETTE & COURT CRAT (ART OF ADVOCACY)

INTRODUCTION

Company Secretaries are knowledge professional with compliance bent of mind and analytical approach. They are not only conversant with the technicalities and provisions of the corporate legal areas but are highly specialized professionals in the matters of procedural and practical aspects involved in the compliances enjoined under various statutes and the rules, regulations, bye-laws and guidelines made there under.



However, In changing scenario, it is equally important that they must possess manners, a professional look and demeanor to project a professional and competent image in the corporate world as well as while appearing before the tribunal and quasi judicial bodies.

For a CS it is very important to be familiar with dress code norms, court craft and professional etiquettes having value for their career, value for their company, value for them as an individual to achieve success in the professional career.

DRESS CODE



In professional life it is important to look presentable because personal appearance counts. How you look can be a major factor in how you are perceived by others. How you look, talk, act and work determine whether you are a professional or an amateur. The way you dress, speaks volumes about who you are as a person and as a professional. Whenever you enter a room for the first time, it takes only a few seconds for people you have never met to form perceptions about you and your abilities. Your clothes and body language always speak first. So it is important that your image gives people the right impression.

Guidelines for Professional Dress of Company Secretaries

To enhance the visibility and brand building of the profession and ensuring uniformity, the Council of the Institute of Company Secretaries of India has prescribed the following guidelines for professional dress for members while appearing before / judicial/quasi-judicial bodies and tribunals:

- The professional dress for male members will be Navy Blue suit and white shirt with a tie (preferably of the ICSI) or navy blue buttoned-up coat over a pant or a navy blue safari suit.
- The professional dress for female members will be saree or any other dress of a sober colour with a Navy Blue jacket.
- Members in employment may wear the dress/uniform as specified by the employer for all employees or if allowed the aforesaid professional dress.
- Practising Company Secretaries appearing before any tribunal or quasi- judicial body should adhere to dress code if any prescribed for appearing before such tribunal or quasi-judicial body or if allowed the aforesaid professional dress.

Professional etiquettes



Etiquette is the fine art of behaving in front of others. It is a set of practices and forms which are followed in a wide variety of situations. Many people consider it to be a branch of decorum, or general social behavior. Each society has its own distinct etiquette, and various cultures within a society also have their own rules and social norms.

Practicing good professional etiquette is necessary for professional success in the emerging business scenario which is constantly changing thus making the market place more competitive. Every corporate professional must practice some basic etiquette tips to go up the ladder of success in the workplace.

Even if the academic knowledge and skills are spectacular, not knowing proper etiquette required to be successful in the professional career could be road block preventing you to achieve success in the professional life and business relationship.

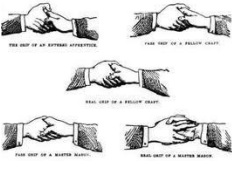


Dressing etiquette



With every organization program comes the inevitable question: What do I wear? Knowing what to wear, or how to wear something, is key to looking great in any event.

- ❖ Always wear neat and nicely pressed formal clothes. Choose corporate shades while you are picking up clothes for your office wear.
- ❖ Ties for men should compliment.
- ❖ Women should avoid wearing exposing dresses and opt for little but natural make-ups.
- ❖ Heels should be of appropriate or modest height.



	<ul style="list-style-type: none"> ❖ Men need to keep their hair (including facial hair) neatly trimmed and set. ❖ Always polish your shoes. ❖ Keep your nails clean. ❖ Wear clothes which you are comfortable in and can carry well. This is very important while you are in a business meeting or client presentation.
<p>Handshake etiquette</p> 	<p>Etiquette begins with meeting and greeting. A handshake is a big part of making a positive first impression. A firm shake is an indication of being confident and assertive. The following basic rules will help you get ahead in the workplace:</p> <ul style="list-style-type: none"> ❖ Always rise when introducing or being introduced to someone. ❖ Shake hands with your right hand. ❖ Shake hands firmly (but not with bone crushing or fish-limp grip), and with only one squeeze. ❖ Hold it for a few seconds (only as long as it takes to greet the person), and pump up and down only once or twice. ❖ Make eye contact while shaking hands.
<p>Communication etiquettes</p> 	<ul style="list-style-type: none"> ❖ Always speak politely. Listen to others attentively. A good listener is always dear to every client. ❖ While speaking over telephones, always greet the other person while starting and ending the call. ❖ Speak only when the other person has finished talking instead of interrupting in between. ❖ Show interest in what other people are doing and make others feel good. Stand about an arm's length away while talking to others. ❖ Question another person in a friendly, not prying, manner. ❖ Make eye contact when talking to others. ❖ Be polite. Avoid foul language, unkind statements, and gossip. ❖ Keep your conversations short and to the point. ❖ Maintain your sobriety and politeness even if the client speaks something offensive or rude and avoid replying back in harsh tone/words.
<p>Invitation Etiquette</p> 	<p>How you respond to an invitation says volumes about your social skills. It reflects negatively on your manners if your response (or lack of response) to an invitation costs time or money for your host.</p> <ul style="list-style-type: none"> ❖ Reply by the date given in the invitation, so that the host or hostess knows what kind of arrangements to make for the event, food is not wasted, and unnecessary expense is eliminated. ❖ If an RSVP card is not included, respond by calling or sending a brief note. ❖ If you cancel after initially accepting an invitation, phone your regrets as soon as possible. Send a note of regret following the phone conversation. ❖ Don't ask for permission to bring a guest unless the invitation states. ❖ Arrive at the event promptly, but not too early. ❖ Mingle and converse with the other guests. ❖ Don't overstay your welcome. ❖ Extend your thanks as you leave.



Dining Etiquettes



- ❖ Always be courteous while official dinners. Offer the seat to your guest first. If you are the guest, be punctual and thank the host for the dinner.
- ❖ Wait until you receive your host's signal.
- ❖ Initiate conversations while waiting for the food.
- ❖ Never begin eating any course until everyone has been served or the host/hostess has encouraged you to do so.
- ❖ Chew quietly; don't speak with your mouth full.
- ❖ Avoid pointing the knife or fork towards the other person while eating and speaking.
- ❖ Allow your guest to select the menu and wine.
- ❖ If something unwanted has gone to your mouth, place the napkin in front of your mouth tactfully and bring it out instead of putting your hand inside the mouth to get rid of it.
- ❖ Learn the basic table manners before you go out to dine with a potential client or an important business meet.

COURT CRAFT

Company Secretaries act as an authorized representative before various Tribunals/quasi judicial bodies. It is necessary for them to learn art of advocacy or court craft for effective delivery of results to their clients when they act as an authorized representative before any tribunal or quasi judicial body.

For winning a case, art of advocacy is important which in essence means to convince the judge and others that my position in the case is the proper interpretation. Advocacy/court craft is learned when we enter the practicing side of the profession. The aim of advocacy is to make judge prefer your version of the truth.

Apart from the legal side of the profession, advocacy is often useful and sometimes vital, in client interviewing, in negotiation and in meetings, client seminars and public lectures. It is a valuable and lifelong skill worth mastering.

Technical and legal knowledge about the area in which Company Secretaries are acting is essential. Better their knowledge, the better their advocacy skills and the greater their impact. Good advocacy or negotiating skills will not compensate for lack of appropriate knowledge.

PREPARATORY POINTS

There are certain basic preparatory points, which a Company Secretary should bear in mind when contacted by a client.

- ❖ Take minute facts from the client;
- ❖ Lend your complete ears to all that client has to say;
- ❖ Put questions to the client while taking facts so that correct/relevant facts can be known;
- ❖ Convey to the client about exact legal position in context of 'relief sought by the client';
- ❖ Give correct picture of judicial view to the problem posed by the client.

Basic skills as regards Advocacy: CS should be able to formulate and present a coherent submission



based upon facts, general principles and legal authority in a structured and persuasive manner.

Following are the basic skills A CS should carry during advocacy before tribunals/ quasi-judicial authority:

- ❖ Identify the client's goals
- ❖ Identify and analyze factual material
- ❖ Identify the legal context in which factual issue to each other
- ❖ State in summary form the strength and weaknesses of the case from each party's perspective
- ❖ Develop a presentation strategy
- ❖ Outline the facts in simple narrative forms
- ❖ Structure and present in simple forms the legal framework of the case
- ❖ Structure the submission as a series of propositions based on the evidence
- ❖ Identify, analyze and assess the specific communication skills and techniques and tactics of examination, cross examination and re-examination
- ❖ Demonstrate an understanding of ethics, etiquettes and conventions of advocacy.

DRAFTING OF PLEADINGS

Pleadings could be both written and oral. Mastering both the kinds of pleadings is must for effective delivery of results to the clients. Some of the important factors, which may be borne in mind while making written pleadings, are as under:

- ❖ Quote relevant provisions in the petition and excerpts of observations made by the Courts relevant to the point;
- ❖ Draft prayers for interim relief in such a manner which though appears to be innocuous but satisfy your requirements;
- ❖ Do not suppress facts;
- ❖ Highlight material facts, legal provisions and Court decisions, if any;
- ❖ State important points at the outset together with reference to relevant provisions /judgments.

If you are opponent:	<ul style="list-style-type: none">❖ File your reply to the petition at the earliest opportunity;❖ Take all possible preliminary contentions together with reference to relevant legal point and judgments;❖ Submit your reply to each paragraph of the petition.
If you are for the petitioner:	<ul style="list-style-type: none">❖ File your rejoinder upon receiving the reply at the earliest opportunity;❖ Meet clearly with the specific points raised by the opponent in the reply affidavit.
Oral Pleadings:	<p>Effective oral pleadings are relevant both at the stage of preparation of the case before actual presentation and also at the stage of actual presenting of the case before the tribunals and other quasi judicial bodies. Following aspects could be relevant at both these stages:</p> <ul style="list-style-type: none">❖ Preparation before presentation of the case;❖ Carefully read your petition, provisions of law and judgements;❖ Jot down relevant points on a separate sheet of paper together with relevant pages of the compilation;❖ Keep copies of judgments to be relied ready for the Court and for your opponent(s).

WHILE PRESENTING YOUR CASE



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- ❖ Submit a list of citations to the Court Master before opening of case; Start your address with humble note;
- ❖ Refer to the order sought to be challenged or reliefs sought to be prayed;
- ❖ State brief facts;
- ❖ Formulate issues/points, categories them and address them one by one;
- ❖ Take each point, state relevant facts, provisions of law and relevant binding decisions;
- ❖ Hand over Xerox copies of binding decisions to the Court Master while placing reliance;
- ❖ Refer to relevant pages of the compilation, provisions of law and judgments;
- ❖ Complete all points slowly but firmly;
- ❖ Conclude your arguments by reiterating your points in brief;
- ❖ Permit the opponent counsel uninterruptedly. However, if facts are being completely twisted, interrupt depending upon the relevant circumstances;
- ❖ Take instructions from client in advance with respect to alternative reliefs.

AS REGARDS ADVOCACY

Company Secretaries should be able to formulate and present a coherent submission based upon facts, general principles and legal authority in a structured, concise and persuasive manner. They should understand the crucial importance of preparation and the best way to undertake it, and be able to demonstrate an understanding of the basic skills in the presentation of cases before the tribunals.

They should be able to:

- ❖ Identify the client's goals;
- ❖ Identify and analyze factual material;
- ❖ Identify the legal context in which the factual issue arises;
- ❖ Relate the central legal and factual issues to each other;
- ❖ State in summary from the strengths and weaknesses of the case from each party's perspective;
- ❖ Develop a presentation strategy;
- ❖ Outline the facts in simple narrative form;
- ❖ Structure and present in simple form the legal framework of the case;
- ❖ Structure the submission as a series of propositions based on the evidence;
- ❖ Identify, analyze and assess the specific communication skills and techniques;
- ❖ Demonstrate an understanding of the purpose, techniques and tactics of examination, cross-examination and re-examination to adduce, rebut and clarify evidence;
- ❖ Demonstrate an understanding of the ethics, etiquette and conventions of advocacy.

CONDUCT

Duty to the Court:

- ❖ A Company Secretary shall, during the presentation of his case and while otherwise acting before a Court/Tribunal, conduct himself with dignity and self-respect. He shall not be servile and whenever there is proper ground for serious complaint against a judicial officer, it shall be his right and duty to submit his grievance to proper authorities.
- ❖ A Company Secretary shall maintain towards the Court a respectful attitude, bearing in mind that the dignity of the judicial office is essential for the survival of a free community.
- ❖ A Company Secretary shall not influence the decision of a Court by any illegal or improper means. Private communication with the judge relating to a pending case is forbidden.



- ❖ A Company Secretary shall use his best efforts to restrain and prevent his client from resorting to sharp and unfair practices or from doing anything in relation to the Court, opposing counselor parties, which the Company Secretary himself ought not to do. A Company Secretary shall refuse to represent the client who persists in such improper conduct. He shall not consider himself a mere mouthpiece of the client, but shall exercise his own judgment in the use of restrained language in correspondence, avoiding scurrilous attacks in pleadings, and using intemperate language during arguments in Court.
- ❖ A Company Secretary shall not enter appearance, act, plead or practice in any way before a Court/Tribunal or any other Authority, if the sole or any member thereof is related to the Company Secretary.
- ❖ A Company Secretary shall not appear in or before any Court or Tribunal or any other Authority for or against an organization or an institution, Society or corporation, if he is a member of the Executive Committee of such organization or institution or society or corporation.
- ❖ A Company Secretary should not act or plead in any matter in which he is himself pecuniary interested.

Duty to Client:

- ❖ A Company Secretary shall not ordinarily withdraw from engagements once accepted, without sufficient cause and unless reasonable and sufficient notice is given to the client.
- ❖ A Company Secretary shall not accept a brief or appear in a case in which he has reason to believe that he will be a witness and if being engaged in a case, it becomes apparent that he is a witness on a material question of fact, he should not continue to appear if he can retire without jeopardizing his client's interest.
- ❖ A Company Secretary shall at the commencement of his engagement and during the continuance thereof, make all such full and frank disclosures to his client relating to his connection with the parties and any interest in or about the controversy as are likely to affect his client's judgment in either him or continuing the engagement.
- ❖ It shall be the duty of a Company Secretary to fearlessly uphold the interest of his client by all fair and honorable means without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence.
- ❖ A Company Secretary shall not at any time, be a party to fomenting of litigation. A Company Secretary shall not act on the instructions of any person other than his client or his authorized agent.
- ❖ A Company Secretary shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client.

Duty to Opponent:

- ❖ A Company Secretary shall not in any way communicate or negotiate upon the subject-matter of controversy with any party represented by an Advocate except through that Advocate.
- ❖ A Company Secretary shall do his best to carry out the legitimate promise/promises, made to the opposite-party.



IMPORTANT PRINCIPLES

Some of the important principles of advocacy a Company Secretary should observe include:

- ❖ Act in the best interest of the client;
- ❖ Act in accordance with the client's wishes and instructions;
- ❖ Keep the client properly informed;
- ❖ Carry out instructions with diligence and competence;
- ❖ Act impartially and offer frank, independent advice;
- ❖ Maintain client confidentiality.

ADVOCACY TIPS

Some of the tips given by legal experts which professionals like Company Secretaries should bear in mind while appearing before Tribunals or other quasi-judicial bodies are given herein below. They say while pleading, a judge in your pleadings looks for:

Clarity:	The judge's time is limited, so make the most of it.
Credibility:	The judge needs to believe that what you are saying is true and that you are on the right side.
Demeanour:	We don't have a phrase "hearing is believing". The human animal which includes the human judge, is far more video than audio. The way we collect most of our information is through our eyesight.
Eye contact:	While pleading, maintain eye contact with your judge.
Voice modulation:	Voice modulation is equally important. Modulating your voice allows you to emphasize the points you want to plead. Be very careful about raising your voice. Use your anger strategically, but use it rarely.
Always be in control of it.	
Psychology:	Understand judge's psychology as your job is to make the judge prefer your version of the truth.
Be likeable:	At least be more likeable than your opponent. If you can convert an unfamiliar Bench into a group of people who are sympathetic to you personally, you perform a wonderful service to your client.
Learn to listen.	
Entertain your judge. Humour will often bail you out of a tough spot.	



PAST EXAM QUESTIONS

- Q1. Yuvi Ltd., in a litigation, was levied a penalty by the Company Law Board on 1st February, 2009. It submitted an appeal to the High Court impugning the penalty order but after the stipulated period. Can the High Court condone the delay and allow the appeal? Cite case law, if any. (6 marks)
- Q2. "Practising of good professional etiquettes is necessary for professional success in the emerging business scenario." Discuss. (6 marks)
- Q3. *Short notes:*
- Rule of adverse inference (June 2010, June '11, June 13)
 - Representative suit (June 2010)
 - Dress code (Dec 2011)
 - Arguments on merit (Dec 2013)
 - Right to legal representation under companies act 1956 read with the companies act 2013 (Dec 2014)
 - Court craft (Dec 2012)
- Q4. Amendment of the pleadings to the general rule no pleading no evidence
- Q5. In what respect, if any, pleadings in the memorandum of appeals under sections 96 to 99, Order XLI, sections 100 to 103, 104 to 106, Order XLIII, Rules 1 and 2 and Appeals to Supreme Court under the Code of Civil Procedure, 1908, differ from the pleadings in appeals under Articles 132(1), 133 and 134 of the Constitution of India. (June 2011, June '15)
- Q6. Highlight important professional etiquettes necessary for success in career. (Dec 2014)
- Q7. State the arguments on preliminary submissions.
- Q8. Process of appeal to Securities Appellate Tribunal (SAT) under the SEBI Act, 1992. (Dec '14)
- Q9. Etiquettes is the art of behaving in front of others. (Dec 2013)
- Q10. Enumerate the appellate authorities under telecom regulatory authority of India Act 1997 & SEBI 1992 (June '14)





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