

Chp ② General Principles of Drafting.

classmate

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* Importance of Drafting →

helps in legal consultation

helps in documentation departmentally

helps in interpretation of documents.

* Drafting → Art of preparing legal documents like agreement, contract deed etc.

- Drafting is imp. for preparation of ^{document} instrument deed.

- Drafting is the synthesis of law & facts in language form.

- It operates in 2 phases → conceptual → verbal.

- Drafting is 1st thinking, then composing!

* Conveyancing →

It means transferring of property whether movable or immovable from one person to another.

in practical life, word "document" is used instead of → drafting → conveyancing.

Sec 2(10) of Indian Stamp Act, 1899 : conveyancing includes:

- (a) a conveyance by way of sale (+)
(b) Every instrument by which transfer of prop. takes place
- } from 1 person to another, inter vivos.

*** Drafting**

- ① It is an art of preparing legal docs.
- ② governed by several Acts
- ③ wide scope
- ④ Service agreement
Arbitration agreement
etc.

Conveyancing

- ① preparation of docs pertaining to transfer of property.
- ② Governed by TOPA, 1882
- ③ Narrow scope.
- ④ Sale deed
mortgage deed etc.

*** Contract**

- ① governed by ICA, 1872
- ② contract = agreement enforceable by law.
- ③ New rights / liab. are imposed on contracting parties
- ④ can be oral / written

Conveyancing

- ① governed by TOPA, 1882
- ② Relates to preparation of docs pertaining to transfer of property.
- ③ Mere transfer of rights / liab from transferor to transferee.
- ④ Must be written.

*** General principles of Drafting →**

Drafting of legal document is a skilled job.

- Draftsman must ascertain the following at 1st instance :

→ Title of Deed

→ Names, & description of parties

→ obtain necessary facts required for forming part of document.

→ clear idea on intention of parties.

- After ascertaining these factors, draftsman shall reduce it to writing within the ambit of law.

* Rules to be followed while drafting of docs →

① fowler's 5 Rules of Drafting : (FCS 3)

- prefer familiar words to far fetched words

- prefer concrete words to abstract

- prefer single words to circumlocution

- prefer short words to long

- prefer saxon words to Roman.

② Sketch / scheme of Draft document : outline the points & imp. matters to be drafted.

③ Skeleton Draft & self appraisal :

steps in drafting $\left\{ \begin{array}{l} 1^{st} \text{ thinking} \\ 2^{nd} \text{ composing} \\ 3^{rd} \text{ appraisal (self check)} \end{array} \right.$

use simple language

avoid repetition

available facts

Adhere to fowler's Rules of drafting

Elimination of ambiguity

applicable laws.

④ special attention must be given to certain docs - to ensure that nothing contrary to law has been mentioned.

⑤ Expert's opinion : must be taken whenever required.

* Draftsman should keep the following points in mind while drafting legal docs →

- ① self explanatory
- ② clearly understandable to a knowledgeable person
- ③ easily understandable by layman.
- ④ Title of drafting should be clear.
- ⑤ use of judicial language
- ⑥ Too much / too little / ambiguous ≠ perfect
- ⑦ Active voice, not passive voice
- ⑧ positive language even for -ve phrases
- ⑨ divide the text into paragraphs & number it consecutively!
- ⑩ single words instead of group of words
- ⑪ Nothing is to be omitted / admitted randomly.

* Some Do's →

- (a) avoid round about construction.
- (b) Reduce group of words to single word.
- (c) Express ideas in single words.
- (d) use simple verb for group of words.
- (e) write shorter sentences.

- (f) Avoid unnecessary repetitions
- (g) choose right words
- (h) know the exact meaning of words / phrases used
- (i) put yourself in shoes of reader & try to understand the intention behind execution of instrument.
- (j) Capitalise to highlight essentials of Document.
- (k) Use of days instead of quarterly / monthly etc.

* Some Don'ts →

- (1) Avoid using words having same sound — ER — EE
- (2) Negatives (exceptions) if any, should be carefully designed.
- (3) Avoid using words like less than / more than & use words like not exceeding / not below.
- (4) Do not use open words, instead use concrete words.
- (5) Avoid typographical error.

* Guidelines for using particular words / phrases :

- for general words — refer ordinary dictionary
- for legal words — refer legal dictionary.
- current meaning of words should be used.
- In case of technical words : their full meaning shall be ascertained.
- It should convey the intention of executor.
- Draftsman should use recognised work of eminent legal expert.

* **Document** : Sec 3(18) of GCA, 1897 : any matter expressed / described on any substance by way of letters, figures, marks or more than one means, intended to be used for purpose of recording the matter.

* **Deed** →

It is writing on	paper	} sealed, signed, delivered	} to transfer Rights, interest, property or create obligation on other party.
	vallum		
	parchment		

- All deeds are instrument BUT
All instrument ≠ deed.

- All deeds are documents.

* **various kinds of Deeds** →

① **Good deed** : one which conveys a good title & not merely good in form.

② **Good & sufficient Deed** : one which conveys a proper title & suffig sufficiently describes Rights & obligations of parties.

③ **Inclusive Deed** : one which contains boundaries of land whose Rights are getting transferred.

④ **Voluntary Deed** : one which is made without valuable consideration. Eg- Gift Deed.

- (5) **Pretended Deed** : Deed which is apparently / prima facie valid.
- (6) **Latent Deed** : one which is in a man's strong box for 20 yrs or more.
- (7) **Warranty Deed** : one which contains covenants (T & C) of warranty.
- (8) **Special warranty deed** : one which contains conditional warranty!

* Other forms of Deed →

- (a) **Deed pool** → means an agreement that no. of copies of deed should be equal to no. of parties so that each party receives one copy of deed.
- (b) **Deed poll** → means a deed made & executed by one person only. Eg - power of attorney!
- (c) **Indenture** → In olden times, to prevent fraudulent substitution of deed, deed was cut into 2 pieces with varying edges called as indenture deed.
- (d) **Cyrogaphum** → To create addⁿ safety the word cyrogaphum was written in deed & cut b/w the word. This was known as cyrogaphum.

② Deed Gravo → Deed that will become operative & effective only on happening of an event.

* Components of a Deed →

① Title of Deed → any deed starts with title of deed like SALE DEED / THIS DEED OF SALE. Title should be in capital letters to attract the attention of the reader.

② Place & Date → Mention the place i.e. city's place where deed is executed along with date of execution. Date (words and figures) BOTH.

③ Description of parties → Parties involved in deed should be promptly described, mentioning their name, son of —, age of —, r/o —.

④ Recitals → may be of 2 types :

↓
Narrative (past)

contains brief description of history of property i.e. how property was acquired by transferor. It helps to establish the ownership claim of transferor.

↓
Introductory

comes after Narrative recital and contains the intention of parties making the deed.

⑤ Testatum → NOW THIS DEED WITNESSES AS FOLLOWS →

- ⑥ Consideration → Total consideration for transferring the interest in property must be mentioned.
- ⑦ Receipt → Transferor must acknowledge the receipt of amt. paid by transferee.
- ⑧ operative clause → contains further T & C.
- ⑨ Description of property.
- ⑩ Exception & Reservation clause → It mentions those rights that transferor shall enjoy even after transfer of property!
- ⑪ Habendum clause → purpose for which transferee may hold the property.
- ⑫ Reddendum clause → Mode, Time for payment of rent (MTR)
- ⑬ Covenants (T & C) → T & C for deed.
- ⑭ Testimonium → Signifies that the parties have signed the deed.
↓
IN WITNESS WHEREOF BOTH PARTIES AS MENTIONED ABOVE HAVE AGREED TO JOIN THEIR RESPECTIVE HANDS TO GIVE EFFECT TO THE SAID CONTRACT.
- ⑮ Signature & Attestation → of atleast 2 witnesses.
- ⑯ Endorsements, supplements, schedule, annexures → contain addn info. Eg - map of property. etc.

* Imp. T & C in Agreement →

- ① Description of parties to contract
- ② Legal nature of contract - sale / purchase / lease contract etc.
- ③ Licenses & permits.
- ④ Responsibility for payment of Taxes, duties & charges.
- ⑤ Quality, ~~weight~~ quantity, Inspection of goods.
- ⑥ Packing
- ⑦ Shipment
- ⑧ Guarantee
- ⑨ Passing of property / Risks.
- ⑩ Amount / mode of payment
- ⑪ Force majeure
- ⑫ Settlement of disputes through Arbitration / ADR.

* Following matters must be given special attention for agreement of Sale / Purchase →

- ① Contracting parties
- ② Consideration.
- ③ Subject matter
- ④ Time of performance.

* CRUX *

→ Non operative

- Title
- Date & place
- Desc. of parties
- Recitals

→ operative

- Testatum / witnessing clause
- Hab. / redd. / excep.
- Covenants.

→ Formal

- Schedule
- Testimonium
- Sign. & attestation.

* **Instrument** → Every doc. by which Rights / Liab. are created, transferred, limited, extinguished.

- Term "document" is wider than "instrument"

* **AT, NEAR, ON** →

↓
signifies
a place

used for describing
the location of
Real estate

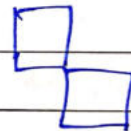
used to describe
the location of
land.

* **Adjoining, Adjacent, Contiguous** →

↓
near something,
close to some-
thing having a
common line/
point.

↓
next
to
some-thing
else.

↓
common point
of 2 lands.



* **Interpretation of Documents / Deeds** →

① **Informal Agreements** → These are interpreted as per the expectations that one party had from another when making such agreements.

- It is very difficult to interpret informal agreements.

- Rule of Reasonable expectation has to be applied here.

② ~~Formal~~ Formal Agreements →

- A deed comprises of primary evidence of terms of a contract. The law forbids any addition, subtraction, variation in terms of contract.
- Doc should contain all T & C & all material facts
- clear & unambiguous words prevail over hypothetical words. But if words are not clear: intention will have to be ascertained.
- Courts must interpret the words in their popular, natural and ordinary sense.
- If in a deed, an earlier clause is followed by a later clause which destroys the obligation created by earlier clause
 - later clause: reject
 - earlier clause: prevail.
- All merchantile docs should have liberal construction
- literal / grammatical meaning can be departed from only when repugnancy (inconsistency) was there.

* **Legal implications & Requirements** → If drafting principles are not properly followed, then it can lead to following implications →

↓	↓	↓
Double / doubtful meaning of words	increased ambiguity	increased litigations

misrepresentation of facts & wrong judgements.

↓
causing harm to innocent persons

↓
Difficulty in achieving the objective desired in the document.

* Endorsement ≠ Supplement Deed →

↓
to write on back of document wherein it is necessary in relation to contents of document.

↓
document which is entered into b/w parties on same subject matter on which ^{there was a} prior document - existing & operative, for adding new facts to the document.

↓
Endorsement helps in putting new facts on such document with a view to :

↓ (a)
inscribe a title/memorandum

↓ (b)
make offer to another by inscribing his name

↓ (c)
to acknowledge receipt of any sum.

* Stamping of Deeds →

↓
E-stamping is a computer based appⁿ & a secured electronic way of stamping documents.

↓
prevailing system of physical stamps is replaced by E-stamping.

↓
Stock Holding Corp. of India Ltd is a central Record keeping agency!

(Benefit)

- less time consuming
- easily accessible
- saves cost
- tamper proof
- Secure

→ user friendly.

* SALE DEED *

THIS DEED OF SALE executed on 1st of April of 2024
 XXX at Mumbai.
 no space

BY AND BETWEEN.

no space. { Mr Jainam age of _____ son of _____ resident
 of _____ (Hereinafter referred to as
 "Seller" or "Party of 1st part" and shall
 include legal heirs, administrator, represen-
 tatives and successor). LARS

AND

Ms. Siddhi age of _____ daughter of _____ resident
 of _____ (Hereinafter referred to as
 "Buyer" or "Party of 2nd part" and shall
 include legal heirs, administrator, represen-
 tatives and successor.)

no space { WHEREAS Jainam is the owner of the property
 mentioned in the schedule and is desirous
 of selling the same

AND WHEREAS Jainam had advertised for the
 property and Siddhi was keen to purchase
 and so approached Jainam.

AND WHEREAS Jainam consented to sell the
 property on the following terms & conditions
 mentioned below.

NOW THIS DEED OF SALE WITNESSES AS UNDER →

1. Description of property
That the property mentioned in the schedule by seller to buyer
2. Consideration
That an amount of 5 crore (five crores) shall ~~no space~~ be paid within 10 days of execution of the contract.
3. Mode of payment
That the consideration shall be paid by cheque.
4. Stamp duty
That the buyer shall pay the stamp duty.
5. Registration
That the buyer shall bear the registration charges.
6. Taxes
That the taxes will be paid by the buyer.
7. Default
That in case of default, either of the parties shall be liable to pay a compensation of ₹ 50 Lakhs (fifty lakhs)
8. Indemnity
That before possession seller will indemnify the buyer for any loss.
9. Dispute
That in case of dispute between the parties matter shall be referred to Arbitrator as under A & C Act, 1996.

10. Title of property / No encumbrance
That a valid title shall be transferred to the buyer.

11. Possession of property
That on making the final payment, property shall pass onto the buyer.

Schedule of property →

The property is situated at Ganjawala lane,
Borivali (W), Mumbai

Towards N - Ganjawala petrol pump

S - pathology lab

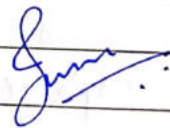
E - Skechers showroom

W - Milton mall

IN WITNESS WHEREOF BOTH THE PARTIES AS
MENTIONED ABOVE HAVE AGREED TO JOIN
THEIR RESPECTIVE HANDS TO GIVE EFFECT TO THE
SAID CONTRACT.

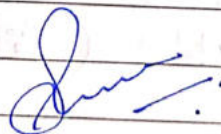
Jainam

Party of 1st part



Siddhi

Party of 2nd part



WITNESS

1. Name, Address, signature
2. Name, Address, signature.