

CHAPTER 4 PART A

DRAFTING OF FAMILY SETTLEMENT, RELINQUISHMENT DEED, HIRE PURCHASE DEED

FAMILY SETTLEMENT

<p><u>CONCEPT OF FAMILY SETTLEMENT</u></p>	<p><u>“A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour.”</u></p> <ul style="list-style-type: none"> • According to the 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.
<p><u>ESSENTIALS OF FAMILY SETTLEMENT DEED</u></p>	<p><u>IN KALE V. DY. DIRECTOR OF CONSOLIDATION, AIR 1976 SC 807</u> the Supreme Court has laid down the following propositions</p> <ol style="list-style-type: none"> (1) The family settlement must <u>be a bona fide one so as to resolve family disputes</u> and rival claims by a fair and equitable division or allotment of properties between the various members of the family. (2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence. (3) The family arrangement may be even oral in which case no registration is necessary. (4) It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing.. (5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest or even a possible claim in the property which is acknowledged by the parties to the settlement. (6) A fair and equitable, the family arrangement is final and binding on the parties to the settlement.
<p><u>FAMILY SETTLEMENT DEED REQUIRES TO BE DULY STAMPED</u></p>	
<p><u>FAMILY ARRANGEMENT WHEN ENFORCEABLE</u></p>	<ul style="list-style-type: none"> • No doubt, a family arrangement, which is for the benefit of the family generally, can be enforced in a court of law. But before the court would do so, it must be shown that there was an occasion for effecting a family arrangement and that it was acted upon. <u>[Lakshmi Perumallu v. Krishnavenarna, AIR 1965 SC 825 : 1965 (1) SCR 261.]</u>

SETTLEMENT OF FAMILY BUSINESS

THIS DEED OF FAMILY ARRANGEMENT is executed on this in the year 2018 between :

A B 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.
- (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.

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.
- It may be deed poll or as a deed to which both the releaser as well as the person in whose favour the release is made are made parties.
- 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 is drafted as a deed then all releasers and all persons having an interest in the claim or property should be made parties. If the release is of a claim under an instrument then it would require attestation, if

	the instrument required attestation. If the release is required to be registered it should be attested by at least two witnesses. In other cases it may be attested by one witness
<u>DIFFERENCE BETWEEN RELINQUISHMENT DEED AND RELEASE DEED</u>	<ul style="list-style-type: none"> • A release is sometimes called relinquishment. When considered from the point of view of the person in whose favour the transaction operates, it is “release” as it releases him or his property from an obligation or liability. • When considered from the point of view of the releaser, it may be said to be a “relinquishment” as the releaser relinquishes a certain right which he has, or may be entitled to enforce.

SPECIMEN 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 realising the debts and calling in the property and assetsof 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.

HIRE-PURCHASE DEED

<u>INTRODUCTION</u>	<ul style="list-style-type: none"> • A contract of hire is a contract of bailment and is governed by the provisions of Chapter IX of the Indian Contract Act, 1872. • The system of acquiring ownership through an agreement of hire purchase helps in promoting sales especially consumer durables. • It affords facilities to acquire an asset to an intending purchaser who is unable to pay the full price of the asset at one time in lumpsum. • After making the payment of an initial amount in the form of part payment of the cost of the article, the purchaser pays the balance consideration money in monthly/quarterly instalments as may be settled. • This initial payment generally covers 20 to 25 per cent of the value of the article
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	<p>being purchased on hire-purchase basis. On payment of all the instalments, the property in the article automatically passes on to the hirer. He has an option to return the article during the period of hire.</p>
<p><u>ESSENTIAL ELEMENTS OF HIRE PURCHASE</u></p>	<ul style="list-style-type: none"> • The essential terms of hire purchase agreement are • (1) a clause by which the owners agree to let and hirer agrees to hire the goods; and • (2) a clause giving to the hirer a right to determine the hiring or return the goods; and • (3) a clause giving the hirer a right or option to purchase the goods for a nominal sum at the end of the hiring
<p><u>DEEDS OF HIRE PURCHASE AGREEMENTS</u></p>	<ul style="list-style-type: none"> • The document for causing the transaction of hire is drafted in the form of an agreement. • The statutory rights and obligations provided in the Indian Contract Act, 1872 need not be provided in the agreement. All other conditions agreed upon between the seller and hirer should be mentioned in the agreement. In law the transaction of hire purchase is treated as an act of bailment and the provisions of the Contract Act are available to protect the rights and obligations of the hirer and the seller. But it should be drafted in conformity with the provisions of Indian Contract Act. • Two things that distinguish the hire-purchase agreement from an ordinary contract of sale are <ul style="list-style-type: none"> • (i) payment of instalments and • (ii) option to purchase the goods hired.
<p><u>MINIMUM PAYMENT CLAUSE</u></p>	<ul style="list-style-type: none"> • In order to provide for depreciation of the article taken under the hire purchase agreement, it is usual to insert a “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 per cent of the total price after deduction of the instalments already paid by the hirer.
<p><u>TYPES OF HIRE PURCHASE AGREEMENT</u></p>	<ul style="list-style-type: none"> • The Hire-purchase agreements, are of two forms.

	<ul style="list-style-type: none"> When the owner is unwilling to look to the purchaser of goods to recover the balance of the price, and the financier who pays the balance undertakes the recovery. In this form, goods are purchased by the financier the dealer, and the financier obtains a hire-purchase agreement from the customer under which the latter becomes the owner of the goods on payment of all the instalments of the stipulated hire and exercising his option to purchase the goods on payment of a nominal price 	<ul style="list-style-type: none"> In the other form of transactions, goods are purchased by the customer, who in consideration of executing a hire-purchase agreement and allied documents remains in possession of the goods, subject to liability to pay the amount paid by the financier on his behalf to the owner or dealer, and the financier obtains a hire-purchase agreement which gives him a license to seize the goods in the event of failure by the customer to abide by the conditions of the hire-purchase agreement
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	

1. Agreement for Hire Purchase

THIS AGREEMENT made this day of between (hereinafter called the owners which expression shall include the successors and assigns where the context so admits) of the one part AND (hereinafter called the hirer) of the other part.

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 2018 on the terms hereby agreed to between the owner and hirer as follows

1. *Hire*: 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. *Option to purchase*: 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 effected and the price fully paid the said goods shall remain the property of the owner.

3. *Hirer's covenants*: During the hiring tenure the hirer will:

- not sell, pledge, hypothecate, charge or in any manner encumber the goods or part with possession of the said goods or any of them;
- 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;
- 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 authorised agent or nominee at all reasonable times to inspect and examine the condition of the said goods;
- (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.
 - (i) Hirer agrees to make good to the owner all damages to the asset (fair wear and tear excepted) and pay the owner the full value of the asset in event of a total loss, whether the damage or loss be caused accidentally or otherwise and by any reason whatsoever and to keep the asset at the sole risk of the hirer, until the hirer purchases the asset or returns it to the owner.
 - (ii) Hirer agrees to pay expenses for repair deemed necessary by the owner, replace any damaged parts and not make any alteration or addition without previous written approval of the owner.
 - (iii) Hirer has examined or caused to be examined the asset and the receipt by him of the same shall be conclusive evidence that the asset has been accepted duly in perfect order and working condition, etc.)

4. *Change in address:* 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. *Default clause:* 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. *Owner to make possession:* On the determination of the hiring, the owner may without notice or demand retake possession of the said goods and for that purpose may by himself or by his agent or servants enter into or upon any premises occupied by the hirer and search the same if necessary for the hired goods.

7. *Option to terminate hiring:* The hirer may terminate this agreement at any time by returning the said goods at the owner's place of business.

8. *Rights of damages not affected:* If the hiring is terminated by the hirer under clause 8 such termination shall not prejudice the owner's right to recover the hire upon the date of such termination nor his right to recover damages for any prior breach of this agreement by the hirer, and the hirer shall not be allowed credit or set off for on account of any payments previously made by him.

9. *Compensation for depreciation:* 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.

10. 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 hereunto have set and subscribed their hands the day, month and year hereinbefore mentioned and bind themselves their heirs, successors and administrators and assigns.

Witness: 1.

Witness: 2.

Signature of Hirer

Signature of Owner

<p><u>WILL</u></p>	<p>[<u>SECTION 2(H) OF INDIAN SUCCESSION ACT, 1925</u>].</p> <ul style="list-style-type: none"> • <u>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</u> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p>A Will is, therefore, the legal declaration of a man’s intention which he wills to be performed after his death or an instrument by which a person makes a disposition of his property to take effect after his death</p> </div> <ul style="list-style-type: none"> • ‘Will’ as per General Clause Act, 1897 shall include a Codicil and every writing making a voluntary posthumous disposition of property – Section 3(64). • <u>‘Codicil’ means an instrument made in relation to Will and explaining, altering or adding to its dispositions and is deemed to form part of the Will – Section 2(d) of Indian Succession Act, 1925</u>
<p><u>ESSENTIAL CHARACTERISTICS OF WILL ARE:</u></p>	<ul style="list-style-type: none"> (a) The document must be in accordance with the requirements laid down under section 63 of Indian Succession Act, 1925; i.e., executed by a person competent to make Will and attested as required under the Act. (b) The declaration should relate to the properties of the testator, which he wishes to bequeath. (c) The declaration must be to the effect that it operates after the death of Testator. (d) It is revocable during the life time of the testator. As per section 62 of the Indian Succession Act, 1925 a Will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will. Any clause in a Will that the testator cannot revoke, it will render the Willvoid. (e) It is of an ambulatory nature which can be modified or altered at any time by the testator. (f) After the Indian Succession Act, 1925, Wills (except made by Mohammedans) should be made in writing
<p><u>WHO CAN MAKE A WILL</u></p>	<p>Section 59 of the Indian Succession Act, provides for the persons capable of making wills.</p> <ul style="list-style-type: none"> • every person of sound mind not being a minor may dispose of his property by will. • Even persons who are deaf or dumb or blind can make Will provided they are able to know what they do by it. • person who is ordinarily insane , any make his WILL during the period 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 • A married women(only of his own property.)

TYPES OF WILLS

<p><u>PRIVILEGED WILL</u></p> <ul style="list-style-type: none"> 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 a Will made in the manner provided in Section 66. Such Wills are called 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 sections 65 & 66 of the Indian Succession Act 	<p><u>UNPRIVILEGED WILL</u></p> <ul style="list-style-type: none"> Wills made by the persons other than stated above are 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 the Indian Succession Act.
<p><u>LANGUAGE, STAMP DUTY AND REGISTRATION.</u></p>	<ul style="list-style-type: none"> Wills made by the persons other than stated above are 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 the Indian Succession Act.
<p><u>A WILL DOES NOT REQUIRE STAMP DUTY</u></p>	<ul style="list-style-type: none"> Registration of Will is not mandatory. It is optional. (Section 18(c) Registration Act, 1908) However a registered Will has certain advantages. The Will must be attested by two or more witnesses
<p><u>CONSTRUCTION OF WILL</u></p>	
	<ul style="list-style-type: none"> <u>Cardinal maxim:</u> The cardinal maxim to be observed in construing a Will is to endeavour 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 without indulging in any conjecture or speculation as to what the testator would have done, if he had been better informed or better advised. [<u>Gnambal Ammal v. T. Raju Iyer,</u>]
	<ul style="list-style-type: none"> <u>RELEVANT CONSIDERATIONS:</u> 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, the position of the testator, his family relationship, the probability that he would use words in a particular sense and many other things which are often summed up in somewhat picturesque figure. The court is entitled to put itself into the testator's arm chair. [<u>Venkatanarasimha v. Parthasarthy, 41 IA 51, 70 (PC) ; Gnambal Ammal v. T. Raju Iyer, AIR 1951 SC 103,106.</u>]
	<ul style="list-style-type: none"> <u>AVOIDANCE OF INTESTACY:</u> 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. [<u>Kasturi v. Ponnammal, AIR 1961 SC 1302.</u>]
	<p>(i) <u>Effect should be given to every disposition:</u> It is one of the cardinal principles of construction of Will that to the extent that it is legally</p>

	<p>possible, effect should be given to every disposition contained in the Will unless the law prevents effect being given to it. The intention of the testator should be gathered by giving a harmonious interpretation to the various terms of the Will as a whole. <u>[Rampali v. Chando, AIR 1966 All 584,586].</u></p> <ul style="list-style-type: none"> •
<u>PROBATE</u>	<ul style="list-style-type: none"> • Probate is a certificate granted under the seal of Competent Court, certifying the Will (a copy whereof is annexure thereto) 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
<u>LETTER OF ADMINISTRATION</u>	<ul style="list-style-type: none"> • A letter of administration can be obtained from the Court of competent jurisdiction in cases where the testator has failed to appoint an executor under a will or where the executor appointed under a will refuses to act or where he has died before or after proving the Will but before administration of the estate. • Letters of Administration are not always necessary in cases of intestacy of Hindus, Mohammedans, Buddhists, Sikhs, Jains, Indian Christians or Parsis. Letter of Administration is always necessary where a person (governed by the Indian Succession Act) dies intestate
<u>BROAD OUTLINES TO DRAFT WILL</u>	<p>The following broad outlines should be followed while drafting a Will:</p> <ul style="list-style-type: none"> – Mention the name and address of the testator; – Mention of the fact that the testator is making the will voluntarily and in sound disposing state of mind; – The necessity or urgency, if any, for exclusion of the will; – Enumeration of testators relatives who would be entitled to his properties on intestacy and to whom the bequests are proposed to be made; – Details of procedure of making bequests; – Use of clear and unambiguous language; • Avoidance of conflict with the rule of law. For eg., rule against perpetuity (in this connection, the provisions of sections 112-118 of the Indian Succession Act must be borne in mind) <ul style="list-style-type: none"> – Appointment of executor – Schedule of properties bequeathed; – Attestation of will by atleast two witnesses; – Provisions relating to bequest and trusts created by the will should be complete • Interest conveyed by will should be clearly defined. A will or bequest not expressive of any definite intention is void for uncertainty.

Will by a Hindu in Favour 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.

SCHEDULE OF PROPERTY

1.....

2.....

3.....

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.....

Will in Favour Of Minor Son

I, AB, etc. execute this last Will of mine this day of in the city of voluntarily out of my own free will without any compulsion or pressure from any person and having a second disposing mind.

WHEREAS I had made a Will dated in favour of my wife CD bequeathing all my properties to her ;

AND WHEREAS the said wife died ON leaving EF, aged 12 years as our only son.

1. I hereby revoke the Will made in favour of my wife CD on
2. I hereby declare and bequeath all my properties, movable and immovable, belonging to me or which may belong to me and remain undisposed of during my life-time unto EF, my son aforesaid.
3. In case I should die before the said son EF attains majority, I appoint GH, etc.. as an executor under this Will, who shall realise all my to outstanding and administer the estate left by me for the benefit of EF, of the said legatee after defraying all expenses of such administration. The said executor shall be entitled during such administration to charge Rs..... per month as remuneration for his service till the aforesaid EF attains majority. When the said EF attains majority, the said GH shall handover all the estate then in existence unto the said EF. During the minority of the said EF, the executor shall act as guardian of the said EF and shall look after his education and training in a be fitting and useful manner so as to earn a decent living either as an engineer or as a member of some other noble profession. However, if the said EF attains majority during my life-time and survives me, this provision relating to appointment of the executor shall not be operative and the said EF shall be entitled to receive and appropriate as owner all and every part of the estate left by me.

IN WITNESS WHEREOF I have signed this Will in the presence of witnesses hereunder who have attested the same in my presence.

Testator

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.....I have examined the testator and found him in sound disposing mind and as having fully understood the contents of this Will.

(Sd.).....

PROMISSORY NOTE	<ul style="list-style-type: none">• Promissory note is one of the negotiable instruments recognized under the Negotiable Instruments Act, 1881. A “promissory note” is defined by Section 4 of the Negotiable Instruments Act, 1881 as “an instrument in writing (not
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	<p><u>being a bank note or a currency note) 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 the instrument”</u></p>
	<p>A signs instruments in the following terms:</p> <p>(a) “I promise to pay B or order Rs.500.”</p> <p>(b) I acknowledge myself to be indebted to B in Rs. 1,000 to be paid on demand for values received.”</p> <p>(c) “Mr. B, I.O.U. (I owe you) Rs. 500”</p> <p>(d) “I have taken from you Rs. 100, whenever you ask for it have to pay”.</p> <p>The instruments marked (a) and (b) are promissory notes. The instruments respectively marked (c) and (d) are not promissory notes</p>
<p><u>PARTIES TO A PROMISSORY NOTE</u></p>	<p>A promissory note has the following parties:</p> <p>(a) <i>The maker</i>: the person who makes or executes the note promising to pay the amount stated therein.</p> <p>(b) <i>The payee</i>: one to whom the note is payable.</p> <p>(c) <i>The holder</i>: is either the payee or some other person to whom he may have endorsed the note.</p> <p>(d) The endorser.</p> <p>(e) The endorsee.</p>
	<p>To be a promissory note, an instrument must possess the following essentials:</p> <p>(a) It must be in writing. An oral promise to pay will not do.</p> <p>(b) It must contain an express promise or clear undertaking to pay. A promise to pay cannot be inferred. A mere acknowledgement of debt is not sufficient. If A writes to B “I owe you (I.O.U.) Rs. 500”, there is no promise to pay and the instrument is not a promissory note.</p> <p>(c) The promise or undertaking to pay must be unconditional.</p> <p>(d) The maker must sign the promissory note in token of an undertaking to pay to the payee or his order.</p> <p>(e) The maker must be a certain person, i.e., the note must show clearly who is the person engaging himself to pay.</p> <p>(f) The payee must be certain. The promissory note must contain a promise to pay to some person or persons ascertained by name or designation or to their order.</p> <p>(g) The sum payable must be certain and the amount must not be capable of contingent additions or subtractions.</p> <p>(h) Payment must be in legal money of the country. Thus, a promise to pay Rs. 500 and deliver 10 quintals of rice is not a promissory note.</p>

	<p>(i) 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.</p> <p>(j) It must contain the name of place, number and the date on which it is made. However, their omission will not render the instrument invalid, e.g. if it is undated, it is deemed to be dated on the date of delivery.</p>

Specimen Forms

Promissory Note Payable on Demand

On Demand we, A.B., aged about years, son of Shri Resident of AND C.D., aged about Years, son of Shri Resident of jointly and severally promise to pay to E.F., aged about years, son of Shri resident of Or order the sum of Rupees (Rs.) only, with interest at the rate of% per annum until repayment for value received.

DATED AND DELIVERED at this theday of 2018.

SD AB

SD CD

DRAFTING OF POWER OF ATTORNEY

<p><u>POWER OF ATTORNEY</u></p>	<ul style="list-style-type: none"> • Power of attorney as “a writing given and made by one person authorising another, who, in such case, is called the attorney of the person (or donee of the power), appointing him to do any lawful act in stead of that person, as to receive rents, debts, to make appearance and application in court, before an officer of registration and the like. It may be either general or special, i.e., to do all acts or to do some particular act”
	<ul style="list-style-type: none"> • 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” • A power of attorney can be executed in favour of more than one person.
<p><u>WHO CAN EXECUTE POWER OF ATTORNEY</u></p>	<ul style="list-style-type: none"> • A power of attorney can be executed by any person, who can enter into a contract i.e. a person of sound mind who has attained majority. • A power of attorney can be executed only in favour of a major. While functioning as an attorney the donee is acting as an agent of the donor i.e. the executor of the power of attorney, who is the principal.
<p><u>FORMS OF POWER OF ATTORNEY</u></p>	<ul style="list-style-type: none"> • 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.”.
<p><u>ATTESTATION</u></p>	<ul style="list-style-type: none"> • A power of attorney need not be attested. However, it would be advisable to execute the power of attorney before and have it authenticated by a Notary Public or any Court Judge/Magistrate
<p><u>DURATION OF POWER OF ATTORNEY</u></p>	<ul style="list-style-type: none"> • 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 [<i>Fowler v. Broode P.N. Light & Co.</i>, (1893) 1 Ch. 724] • . A special power of attorney to do an act is determined when the act is done
<p><u>REVOCABLE AND IRREVOCABLE POWER OF ATTORNEY</u></p>	<ul style="list-style-type: none"> • A power of attorney executed in favour of a person can always, at the discretion of the donor thereof, be revoked. • 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).

	<ul style="list-style-type: none"> • 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
	<ul style="list-style-type: none"> • Power of attorney is liable to stamp duty under the provisions of the Indian Stamp Act, 1889. Duty varies from State to State. • The exact amount of the duty will depend upon the State in which the power of attorney is executed. • Further, if a power of attorney executed in one State has to be sent to another State where the stamp duty payable is higher, for use, then the power of attorney should be stamped with the difference in the duty before it is so used. Otherwise, the power of attorney could be impounded. • 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. •

<u>REGISTRATION OF POWER OF</u>	<ul style="list-style-type: none"> • 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. • In certain cases, registration of power of attorney may become compulsory under Section 17 of the Indian Registration Act, 1908.
<u>LETTER OF AUTHORITY</u>	<ul style="list-style-type: none"> • 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

(a) Power-of-Attorney to Sell a Particular Property

BY THIS POWER OF ATTORNEY I, AB, of etc., hereby appoint CD of, etc., my attorney, in my name and on my behalf to do *inter alia* the following acts, deeds and things, viz.:

1. To negotiate on terms for and to agree to and sell my house No..... (or, etc.) situate at, etc., fully mentioned and described in the *Schedule* hereto to any purchaser or purchasers at such price which my said attorney, in his absolute discretion, thinks proper, to agree upon and to enter into any agreement or agreements for such sale or sales and/or to cancel and/or repudiate the same.
2. To receive from the intending purchaser or purchasers any earnest money and/or advance or advances and also the balance of purchase money, and to give good, valid receipt and discharge for the same which will protect the purchaser or purchasers without seeing the application of the money.
3. Upon such receipt as aforesaid in my name and as my act and deed, to sign, execute and deliver any

conveyance or conveyances of the said property in favour of the said purchaser or his nominee or assignee.

- 4. To sign and execute all other deeds, instruments and assurances which he shall consider necessary and to enter into and/or agreement to such covenants and conditions as may be required for fully and effectually conveying the said property as I could do myself, if personally present.
- 5. To present any such conveyance or conveyances for registration, to admit execution and receipt of consideration before the Sub-Registrar or Registrar having authority for and to have the said conveyance registered and to do all acts, deeds and things which my said attorney shall consider necessary for conveying the said property to the said purchaser or purchasers as fully and effectually in all respects as I could do the same myself.

And I hereby agree to ratify and confirm all and whatever other act or acts my said attorney shall lawfully do, execute or perform or cause to be done, executed or performed in connection with the sale of the said property under and by virtue of this deed notwithstanding no express power in that behalf is hereunder provided.

IN WITNESS WHEREOF I, the said AB, have hereto signed (or, put my signature, or set hand and seal at..... this..... day of.....

Schedule of the property to be sold.

Signed, sealed and delivered

(a) General Power-of-Attorney

KNOW ALL MEN BY THIS POWER OF ATTORNEY:

WHEREAS..... a Company registered under the Companies Act, 1956, and having its registered office at..... (hereinafter called the 'Company') has from time to time to institute and defend civil, criminal and revenue suits, appeals, revisions and other legal proceedings in various courts, offices and before other authorities in India and outside;

AND WHEREAS the Company has to enter into various agreements and contracts and execute various sorts of documents, including leases, guarantees and counter guarantees, indemnity bonds etc.;

AND WHEREAS it is considered necessary and expedient to execute a General Power of Attorney in favour of..... and....., Managing Directors of the Company;

AND WHEREAS the Board of Directors of the Company, by resolution No..... passed in their meeting held on..... have resolved to execute and register a General Power of Attorney in terms of the draft placed before the Board in favour of Shri..... and Shri....., Managing Directors of the Company and have authorised Shri....., Director, to execute, sign, seal, register and deliver the said Power of Attorney:

NOW THIS POWER OF ATTORNEY WITNESSES AS FOLLOWS:

The Company hereby appoints Shri..... and Shri....., as its Attorneys (hereinafter collectively called "the Attorneys") so long as they or any of them are/is the Managing Director/..... of the Company to do severally, the following acts, deeds and things in the name and on behalf of the Company:

- 1. To take decision for instituting and defending legal proceedings and to institute and defend legal proceedings-civil, criminal or revenue, including Income-tax, Sales tax and Excise and confess judgement or withdraw, compromise, compound or refer any matter or dispute to arbitration, as they or either of them may think fit;

To sign, verify and file in all or any courts and offices in India and outside, in all or any cases, whether original or appellate revision or review, plaints, complaints, written statements, affidavits, applications, review or revision petitions, statutory returns and memoranda of appeals or cross objections;

2. To engage and appoint advocates, vakils, solicitors, pleaders and mukhtiar, as the case may be;
3. To appoint special agents or attorneys on such terms and conditions as they or either of them may deem fit;
4. To appear in all or any courts and offices to represent the Company in all proceedings and make statement on oath or otherwise for and on behalf of the Company;
5. To file in and receive back from any or all courts or offices documents of all kinds and to give receipts therefor;
6. To deposit or obtain refund of stamp duty or court fee or to repay the same;
7. To deposit in or withdraw from any or all courts or other offices moneys and give receipts therefor;
8. To apply for copies of documents or other records of courts or offices;
9. To apply for inspection of and to inspect records of which inspection is allowed;
10. To execute decrees, receive moneys and obtain possession of properties in execution of decrees, give receipts and discharges therefor and compromise or compound any such decrees;
11. To realise and collect all outstandings and claims of the Company and to give effectual receipts and discharges;
12. To execute, sign, seal and where necessary to register all documents including deeds, leases, agreements, contracts, letters of appointments, powers of attorneys;
13. To sign, seal and execute bonds, indemnity bonds, guarantees and counter-guarantees;
14. To execute, endorse and negotiate Bills of Exchange, Hundies, promissory notes and negotiate or otherwise deal with Government Promissory Notes or any securities of the Central or State Government or any local authority;
15. To acquire, buy, purchase within limits prescribed by the Bonds, or sell, transfer pledge or otherwise negotiate shares and/or debentures held by the Company in other joint stock companies or statutory corporation and for that purpose to sign and execute transfer deeds or other instruments, collect dividends and bonuses falling due thereon and otherwise deal in such shares/debentures;
16. To sign, discharge receipts, transfer forms and any other documents required by the Post Office in connection with the Post Office National Saving Certificates;
17. And generally to do all such acts, deeds or things as may be necessary or proper for the purposes mentioned above.

AND the Company hereby agrees that all acts, deeds or things lawfully done by the said Attorneys or either of them under the authority of this power shall be construed as acts, deeds and things done by the Company and the Company hereby undertakes to confirm and ratify all and whatsoever the said Attorneys or either of them shall lawfully do or cause to be done by virtue of the powers hereby given.

IN WITNESS WHEREOF this deed has been signed and sealed by Shri....., Director, authorised in this behalf vide Board's Resolution No..... dated..... on this..... day of..... 2018 in presence of:

WITNESSES:

Director
for (Name of the Company)

CHAPTER 5 PART A.**DRAFTING OF SALE, MORTGAGE & HYPOTHECATION**

<p><u>SALE OF IMMOVABLE PROPERTY</u></p>	<p><u>Section 54 of the said Act defines sale.</u></p> <ul style="list-style-type: none"> • “Sale” defined - “Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part- promised. • <i>Sale how made</i> - Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. • In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.
<p><u>ESSENTIAL ELEMENTS OF SALE ARE</u></p>	<ol style="list-style-type: none"> (1) Transfer of ownership in exchange of price paid or promised or part paid or part promised. (2) Parties to transaction of sale are known as seller and buyer. (3) Subject-matter of sale is immovable property which is sold by seller and purchased by buyer. (4) There must be conveyance of property (5) Sale of immovable property attracts stamp duty under the Indian Stamp Act.
	<p>In <i>Suraj Lamp & Industries Pvt Ltd. v. State of Haryana</i> the Supreme Court of India observed that it has become common practice to effect transfers of immovable property by way of either general power of attorney (GPA) sales or sale agreement, GPA or will transfers in order to evade, inter-alia, the payment of duties, taxes and other fees payable on transfer and registration (eg, stamp duty or registration fees)</p>
<p><u>DRAFTING OF SALE OF IMMOVABLE PROPERTY</u></p>	<ul style="list-style-type: none"> • Before drafting the conveyance or Sale Deed for the immovable property, it is necessary that the title of the property be investigated and it should be ensured that the <ul style="list-style-type: none"> ➤ title to the property is proved as good and marketable. ➤ Investigation of title should be done by an experienced person, solicitor or advocate or professional consultant who should certify having carried out searches in the concerned office that the ➤ property is free from any encumbrance i.e. charges, etc
<p><u>ACQUISITION OF IMMOVABLE</u></p>	<ul style="list-style-type: none"> ➤ A company can validly acquire or dispose of an immovable property if its Memorandum and Articles of Association so provide and its Board of

<p>PROPERTY BY</p>	<p>Directors pass the requisite resolution in conformity with the provisions of the Companies Act.</p> <p>➤ A company may acquire any immovable property by having it sold out by any other person in its favour under a document known as 'Sale Deed' executed by the vendor in its favour. A Sale Deed must be properly drafted adhering to all the principal conditions prescribed under the Transfer of Property Act to acquire a perfect title to the property being purchased by the company.</p>
<p>Some of the important conditions as contained in the said Act which a draftsman should bear in mind while drafting a Sale Deed are</p>	
	<div style="border: 1px solid black; padding: 10px; background-color: #d4edda;"> <p>(a) Lawful Consideration and Object</p> <p>(b) Competence of Person to Transfer</p> <p>(c) Transfer of All Interest - in the Property</p> <p>(d) Absolute Transfer</p> <p>(e) Absolute Interest in the Property</p> <p>(f) Justification for Transfer</p> <p>(g) Protection of Creditors' Interest</p> <p>(h) Enforcement of Rights Attached to Property on Valid Transfer</p> <p>(i) Property to be Free from Conditions</p> </div>

(1) An Agreement of Sale of Immovable Property

THIS AGREEMENT OF SALE executed on this the..... day of..... 20144 between S son of SF, resident of....., hereinafter called vendor of the ONE PART and P son of PF resident of..... hereinafter called the purchaser of the other part. (The expression "Vendor" and "Purchaser" wherever they occur in these presents, shall also mean and include their respective heirs, executors, administrator, legal representatives and assigns).

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 the sum of Rs..... (Rupees in words) free of all encumbrances.

NOW THIS AGREEMENT OF SALE WITNESSES AS FOLLOWS:

1. The price of the property more fully set out in the Schedule is fixed at Rs..... (Rupees.....) free of all encumbrances.
2. The purchaser has paid to the vendor this day the sum of Rs..... (Rupees.....) by way of earnest

money for the due performance of the agreement, the receipt of which the vendor doth hereby admit and acknowledge.

3. The time for performance of the agreement shall be..... months from this date, and it is agreed that time fixed herein for performance shall be the essence of this contract.
4. The purchaser shall pay to the vendor the balance sale price of Rs..... (Rupees.....) before registration of the sale deed.
5. The vendor agrees that he will deliver vacant possession of the property to the purchaser before registration of the sale deed.
6. The vendor shall hand over all the title deeds of the property to the purchaser or his advocate nominated by him within..... days from the date of this Agreement for scrutiny of title and the opinion of the vendor's Advocate regarding title of the property shall be final and conclusive. The purchaser shall duly intimate the vendor about the approval of the title within..... days after delivering the title deeds to him or his Advocate.
7. If the vendor's title to the property is not approved by the purchaser, the vendor shall refund to the purchaser the earnest money received by him under this Agreement and on failure of the vendor to refund the earnest money within..... days he shall be liable to repay the same with interest thereon at..... per cent per annum.
8. If the purchaser commits a breach of the Agreement, he shall forfeit the earnest amount of Rs..... (Rupees.....) paid by him to the vendor.
9. If the vendor commits a breach of the Agreement, the vendor shall not only refund to the purchaser the sum of Rs..... (Rupees.....) received by him as earnest money, but shall also pay to the purchaser an equal sum by way of liquidated damages.
10. Nothing contained in paras 9 and 10 supra shall prejudice the rights of the parties hereto, to specific performance of this Agreement of sale.

(Schedule of Property)

IN WITNESS WHEREOF the vendor and the purchaser have set their hands to the Agreement of sale the..... of..... 2018 in the presence of the witnesses:

Witness

VENDOR

Witness:

PURCHASER

<p><u>SALE OF BUSINESS AND ASSIGNMENT OF GOODWILL</u></p>	<ul style="list-style-type: none"> Supreme Court of India in <i>Khushall Khengar Shah v. Khorshedbanu, AIR 1970 SC 1147</i>, 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.
<p>ASPECIMEN OF DEED OF SALE OF A BUSINESS AND ASSIGNMENT OF GOODWILL</p>	

THIS INDENTURE made the..... day of..... 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 therefor 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 thereunder 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 in pursuance of the said agreement in this behalf and in consideration of the premises, the said CD do hereby agree with the said AB that he, the said CD, shall and will from time to time and at all times hereafter execute and perform all outstanding contracts and orders and engagements and/or otherwise save harmless, indemnify and keep indemnified the said AB and his estate and effects against all losses, claims, demands, costs, charges and expenses as against the several sums of money which by the said books appear to be due and owing from the said AB in respect or the said trade and business, and also from and against the contracts and engagements to which by the said books the said AB appears to be now liable and or performance or non-performance thereof.

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.

LAW RELATING TO MORTGAGE AND ITS TYPES

MORTGAGE

- Section 58 of the Transfer of Property Act, 1882 defines =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.**
- 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 MORTGAGE

SIMPLE MORTGAGE

- Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly that in the event of his failing to pay according to his contract,
- the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

MORTGAGE BY CONDITIONAL SALE

- Where, the mortgagor ostensibly sells the mortgaged property-
 - i. On condition that on default of payment of the mortgage-money on a

	<p>certain date the sale shall become absolute, or;</p> <p>ii. On condition that on such payment being made the sale shall become void, or ;</p> <p>iii. On condition that on such payment being made the buyer shall transfer the property to the seller,</p> <p>The transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale:</p> <p>PROVIDED that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document, which effects or purports to effect the sale</p>
<u>USUFRUCTUORY MORTGAGE</u>	<ul style="list-style-type: none"> • Where the mortgagor delivers possession, or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee and authorizes him to retain such possession until payment of the mortgage money • , and to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest or partly in payment of the mortgage money, partly in lieu of interest and partly in payment of the mortgage money, • the transaction is called a usufructuary mortgage and the mortgagee a usufructuary mortgagee.
<u>ENGLISH MORTGAGE</u>	<ul style="list-style-type: none"> • Where the mortgagor binds himself to repay the mortgage money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage money as agreed, the transaction is called an English mortgage.
<u>MORTGAGE BY DEPOSIT OF TITLE DEEDS</u>	<p>Mortgage by deposit of title deeds is called in English law as <i>equitable mortgage</i>. 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 <i>Memorandum of Mortgage</i> by deposit of title deeds is prepared by the mortgagee to secure the specific mortgage money. The main characteristics of this type of mortgage are as under:</p> <ol style="list-style-type: none"> 1. Debt even time barred, present and future advances are covered under the equitable mortgage. In other types of mortgage, future advances are not covered. 2. 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. <p>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.</p>

	<ol style="list-style-type: none"> 3. This deposit can be made by the company through its nominee or agent duly authorised. 4. Intent to create security by deposit of title deeds should be present at the time of such deposit in the mortgagor. 5. Neither ownership nor possession of the property passes to the mortgagee under the equitable mortgage. <p>Equitable mortgage is preferred by the lenders/banks/creditors as well as the commercial enterprises because of the inherent advantages viz. (a) to save time and avoid inconvenience of documentation, and registration; (b) to minimise cost of creating mortgage and cost of borrowed funds by saving stamp duty; (c) to maintain secrecy of the debt transaction; (d) section 180 of the Companies Act, 2018.</p>
<u>ANAMOLOUS MORTGAGE</u>	<ul style="list-style-type: none"> • A mortgage which is not a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, an English mortgage or a mortgage by deposit of title deeds within the meaning of section 58 is called an anomalous mortgage.
<u>WHO CAN BE MORTGAGOR</u>	<ul style="list-style-type: none"> • 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 authorised by 'Object Clause' of the Memorandum of Association and approved by a resolution of the Board of directors. Further, for creation of a mortgage, the Financial Institutions usually insist on a resolution of the shareholders under Section 180 of the Companies Act, 2018. • Any person capable of holding property may take a mortgage unless he is dis-qualified 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.
<ul style="list-style-type: none"> • <u>RIGHTS OF MORTGAGEE</u> 	
<u>RIGHT TO SELL</u>	<ul style="list-style-type: none"> • If borrower fails to return the loan in time then the mortgagee has the right to sell the property of the mortgagor, but the same can only be sold through auction subject to approval from the Court.
<u>RIGHT TO RECOVER SHORTFALL</u>	<ul style="list-style-type: none"> • In case the amount to be recovered falls short after selling the property, mortgagee shall have the right to recover the balance due. •
<u>REFUSAL OF DEBT</u>	<ul style="list-style-type: none"> • Mortgagee shall have the right to get a foreclosure decree from the court
<u>LIABILITIES OF MORTGAGEE</u>	
	<ul style="list-style-type: none"> • Property should be protected to the best possible extent.

	<ul style="list-style-type: none"> • No alteration to the property. • Proper Insurance Cover against the Property. <ul style="list-style-type: none"> • All taxes, revenues levied by government should be paid.
RIGHTS AND LIABILITIES OF MORTGAGOR	
	<ul style="list-style-type: none"> • Right to redeem the Property on payment of dues. • Right to Claim Damages in case the Property is damaged in the custody of Mortgagee. • Right to lease the property in case the property is in possession of Mortgagor. • Liability to pay taxes, revenues levied by government in case the property is in custody of Mortgagor.
DRAFTING OF DEEDS OF MORTGAGE	
<u>PARTIES</u>	<ul style="list-style-type: none"> • There should be two parties, the mortgagor and the mortgagee. The former is usually defined as the borrower. The Indian practice of having a deed of mortgage executed by the mortgagor only is unscientific, because the mortgage deed usually contains covenants by both the parties
<u>RECITAL</u>	<ul style="list-style-type: none"> • These are of two kinds. Firstly, recital as to the title of the mortgagor, such as “Whereas the borrower is the absolute owner of the property hereby mortgaged free from encumbrances”. The second form of recital is as to the agreement for loan, such as: “And Whereas the mortgagee has agreed with the borrower to lend him the sum of Rs..... upon having the re-payment thereof with interest hereinafter mentioned secured in manner hereinafter appearing”
<u>COVENANT FOR REPAYMENT</u>	<ul style="list-style-type: none"> • This clause usually recites that in pursuance of the said agreement and in consideration of the receipt of the mortgage money the mortgagor covenants to pay the mortgage money with interest at the stipulated rate in the manner agreed upon
<u>MORTGAGE CLAUSE</u>	<ul style="list-style-type: none"> • The mortgagor covenants to insure the mortgage property in the name of the mortgagee of an insurance office approved by the mortgagee. In default the mortgagee is entitled to insure and the costs incurred are to be charged to the mortgagor
<u>COVENANT TO PAY OUTGOINGS</u>	<ul style="list-style-type: none"> • The borrower undertakes to pay and discharge and indemnify the mortgagee against all rates, taxes, duties, charges, assessments, outgoings
<u>POWER OF SALE</u>	<ul style="list-style-type: none"> • Under this clause, the mortgagee is entitled to recover his dues by sale of the mortgaged property, and if the sale proceeds are insufficient, to recover the balance from the person and other property of the mortgagor
<u>POWER TO APPOINT RECEIVER</u>	<ul style="list-style-type: none"> • Under this clause, the mortgagee is given power to appoint a Receiver of the mortgaged property in case the payment of interest for two or more instalments is in arrear under Section 69A of Transfer of Property Act.
<u>POSSESSION</u>	<ul style="list-style-type: none"> • In English mortgage, the mortgagee has a right to take possession of the property. In usufructuary mortgage, the possession of the property is given to the mortgagee.

	•
<p>In Drafting of Memorandum of Mortgage by deposit of title deeds, the following information is invariably included:</p> <p><i>I. Preliminary information:</i></p> <ol style="list-style-type: none"> (1) Caption (2) Name and address of the borrower/mortgagor Company (3) Name and address of Mortgagee (4) Amount of loans made available/sanctioned (5) Date of creation of mortgage by deposit of title deeds. <p>II. Memorandum record note to contain brief information covering creation of deposit, date of deposit, name and authorisation of person who created deposit, name of the lender in whose favour deposit was made, description of title deeds is to be given in the Schedule to be appended thereto, and reference of property with situation and location briefly described thereto.</p> <p>III. Consideration for creation of equitable mortgage i.e. the description of the property offered with title deeds with full description in a different schedule, the amount of loans against and for which the security is created, this..... by coverage of other cash charges, expenses, interests, liquidated damages, etc.</p> <p>IV. Description of Board Resolution to create equitable mortgage by the person authorised therein.</p> <p>V. Declaration of clear and marketable title to the property.</p> <p>VI. Witnessing clause - Mention of the name of the person in whose presence the deposit of title was made.</p> <p>VII. (Schedule I - List of document of title and evidence) (Schedule II - Details of property).</p> <p>• Date and Signature.</p>	
<p><u>RELEASE AND RECONVEYANCE OF MORTGAGE DEED</u></p>	<ul style="list-style-type: none"> • Release of any of the mortgaged assets or reconveyance 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 reconveyance of mortgaged property covered under equitable mortgage is sought by the mortgagor, the same could be done by releasing the relevant title documents and repositing 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. •
<p><u>DEED OF SIMPLE MORTGAGE</u></p>	
<p>THIS DEED of Mortgage is made on the..... day of 2018, BETWEEN 'AB' of..... etc. (hereinafter called "the Mortgagor"), of the One Part and 'CD' of, etc. (hereinafter called the</p>	

“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 2018, 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..... 2018, without delay or default;

- AND THE INDENTURE FURTHER WITNESSETH and it is hereby agreed and declared by and between the 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..... 2018.

AND THIS INDENTURE FURTHER WITNESSETH that the Mortgagor do hereby covenant with the Mortgagee that notwithstanding any act, deed or thing herebefore 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.

The Schedule above referred to

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

Witnesses:

1.
MORTGAGOR

.....

- 2. MORTGAGEE

-

THIS DEED of Mortgage made the..... day of..... 2018, 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..... 2018, 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.
MORTGAGEE 'CD'

The Schedule above referred

-

Memorandum that this..... day of..... 2018, '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..... 2018.

The Schedule A above referred to

Description of the Title Deeds deposited.

The Schedule B above referred to

Description of the Property.

Signature of the Mortgagor.

CHARGE

ACCORDING TO COMPANIES ACT 2013

As per section 2(16) of the Companies Act, 2013 define charges as to **mean an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes as mortgage**

ACCORDING TO TRANSFER OF PROPERTY ACT

Where immovable property of one person **is by act of parties or operation of law** made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge.

REGISTRATION

As per [section 77](#) of the Companies Act, 2013, every company creation a charge shall register the particulars of charges signed by the company and its charge-holder together with the instruments creating.

Every charge created within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside, liable to register under section 77 of Companies Act, 2013

DIFFERENCE BETWEEN MORTGAGE AND CHARGE

BASIS	MORTGAGE	CHARGE
MEANING	A mortgage is transfer of an interest in the property made by the mortgagor as a security for	Charge is not the transfer of any interest in the property though it is security for the payment of

	the loan.	an amount.
SECTION	Section 58	Section 100
MODE OF CREATION	A mortgage can only be registered and attested by two witnesses.	While a charge need not be made in writing it need not be attested or registered.
ATTESTATION	A mortgage deed must be registered and attested by two witnesses.	While a charge need not be made in writing and if reduced to writing it need not be attested or registered.
RIGHT TO FORECLOSE	In certain types of mortgage the mortgagor can foreclose the mortgaged property.	In case of charge, the charge holder cannot foreclose, though he can get the property sold as in simple mortgage.
RIGHT IN REM	In charge, no right in rem is created. Rem means right against the whole world.	In mortgage, right in rem is created.

HYPOTHECATION

- Hypothecation means offering an asset as a collateral security to the lender whereby the ownership lies with a lender and the possession is enjoyed by the borrower.
- In a case of default by the borrower, the lender can exercise his ownership rights to seize the asset.
- [It is usually done in a case of movable assets, for creating the charge against collateral for the loan given.](#)
- [Under hypothecation, the possession of the security remains with the borrower itself. Hence, if the borrower defaults on payments, the lender would have to first take possession of the security \(asset under hypothecation\) and then sell the asset to recover dues.](#)
- 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 on them, but the possession does not pass.

EXAMPLE OF HYPOTHECATION

[In the case of vehicle loans, the vehicle remains with the borrower but the same is hypothecated to the bank/ financier. If there is any default by the borrower, the bank takes possession of the vehicle after giving notice and then sells the same. The loan account is credited with the sales proceeds of the asset to recover the dues towards the principal amount and interest amount. Any balance left thereafter shall be given back to the borrower. Apart from vehicles, hypothecation can be done for stocks and bills receivables](#)

HYPOTHECATION IS A FORM OF TRANSFER OF PROPERTY IN

	GOODS.
PLEDGE	<ul style="list-style-type: none"> • PLEDGE:- It is defined in the following words, "Bailment of goods as a security for the payment of a debt or performance of a promise is called pledge." • Bailor is called pledgor or "Pawnor" and Bailee is called "Pawnee" or pledgee. • Example :- Mr. Shukla borrows Rs. Ten thousands from Mr. Pritam and keeps his motor cycle as security for payment of the debt. The bailment of motor cycle is called pledge. • Note : In this example Mr. Shukla is a Pawnor and Mr. Pritam is a Pawnee
BASIC ESSENTIALS	<ul style="list-style-type: none"> • MoveableProperty :- The pledge is concerned with the moveable property. All types of goods and valuable documents are included in it • .OwnershipRight :- In case of pledge, the ownership of the goods remains with the pawnor. It is not transferred to pawnee. • Transfer of Possession • In case of pledge only possession of goods transferred by the pawnor to the pawnee. •

DIFFERENCE BETWEEN PLEDGE, MORTGAGE AND HYPOTHECATION

Sr. No.	PLEDGE	MORTGAGE	HYPOTHECATION
1.	Pledge is the bailment of the goods as security of debt. (Section 172 of Indian Contract Act, 1872)	It is the transfer of an interest in specific immovable property for the purpose of securing the payment of money. (Section 58 of Transfer of Property Act,	Hypothecation as such has not been referred either in the transfer of Property Act 1882 or in Indian Contract Act, 1872. It is however, a security of

		1882)	movable property.
2.	There must be delivery of goods.	Delivery of Property as such is always not the condition.	Possession of the goods remains with the hypothecator/borrower.
3.	Pledge is not possible where the goods are in the custody of a third party.	There can be mortgage even the property is in possession of a third party.	It is possible even in respect of movables which might be subsequently acquired.
4.	It relates to movable property.	It relates to immovable property.	It is basically related to movable property.

LAW RELATING TO LEASE AND LICENCE

<p><u>DEFINITION AND MEANING OF LEASE</u></p>	<ul style="list-style-type: none"> • 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. • Lease is a contract between lessor and lessee for the fixed term for the use on hire of a specific asset selected by lessee • Lessor retains ownership of the assets and lessee has possession and use of the asset on payment of specified rental over a period. • It is a sort of contractual arrangement between the two parties whereby one acquires the right to use the property called “lessee” and the other who allows the former the right to use his owned property, called the “lessor”. • Thus, lease is a contractual arrangement, it originates from a contract between the lessor and lessee and is regulated by the terms, conditions and covenants of such contract.
<p><u>ESSENTIALS POINTS REGARDING LEASE</u></p>	<ul style="list-style-type: none"> • (I) the parties i.e. lessor or lessee; • (ii) the subject matter of lease i.e. the property to be leased; • (iii) demise or partial transfer of such property; • (iv) the term and period of lease; and • (v) the consideration or rent.
	<ul style="list-style-type: none"> • Before taking up drafting of the lease documents both the leasing company and the lessee should have the information to have a birds-eye view of the existing charges, mortgages, encumbrances or lien on the property proposed to be leased by lessor or where the leased assets are proposed to be kept by the lessee.
<p><u>REGISTRATION OF LEASE</u></p>	<ul style="list-style-type: none"> • <u>Lease deed is required to be registered in the following cases.</u> <ul style="list-style-type: none"> ➤ <u>Lease on the year to year basis</u> ➤ <u>Lease for any term exceeding 1 year</u> ➤ <u>Lease which reserves a yearly rent</u>
<p><u>STAMP DUTY</u></p>	<ul style="list-style-type: none"> ➤ 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. Stamp duty shall be payable as per respective state stamp law and hence it will be payable and vary from state to state.
<p><u>SUB LEASE</u></p>	<ul style="list-style-type: none"> • A sub-lease is a demise by a lessee for lessor term than he himself has. • Every lessee, however short his term may be, make 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. •

	<u>Hunsrai v. Bejoylal Seal, (1930) 57 Cal 1176, that in India a sub-lease is not an absolute assignment and it was further held in Akshoy Kumar v. Akman Molla, (1915) 19 CWN 1197, that there is no privity of estate as between the lessor and the sub-lessee, who does not step into the shoes of the lessee. A sub-lease is not prejudiced by the surrender of the head lease (Section 115 of Transfer of Property Act) but the position is different in the case of forfeiture which annuls all sub-leases except in case of fraud as between the lessor and lessee. A sub-lessee is entitled to relief against forfeiture under Section 114 of the Transfer of Property Act, 1882, which is applicable only in the case of non-payment of rent. No relief is open to the sub-lease in case of transfer of breach of covenant in restraint of transfer</u>
<u>SURRENDER OF LEASE</u>	<ul style="list-style-type: none"> • 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 (1933) 60 Cal 379). • The person who surrenders is called the surrenderer and the person to whom surrender is made is called the surrenderee. • A 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 Durga Narain, AIR 1940 All. 317).
	<ul style="list-style-type: none"> • <u>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,</u>

DRAFTING OF A LEASE

	<u>LEASE transactions are very common in today's era of trade and commerce. While drafting lease following points must be kept in mind.</u>
	<ul style="list-style-type: none"> • <u>The parties to a lease referred as the "lessor" and the lessee and are governed under the Transfer of Property Act, 1882 . The lessor is also called the land lord and the lessee the tenant.</u> • <u>The subject matter of lease must be immovable property.</u>
	<ul style="list-style-type: none"> • <u>Recital are not generally necessary in drafting a lease deed and should not be inserted except when absolutely necessary in order to mention facts which cannot be conveniently mentioned in the operative part.</u>
	<ul style="list-style-type: none"> • <u>The consideration for lease is either rent or premium. The agreed rent, reserved rent including premium etc, should be mentioned in the beginning of the Testatum .</u>
	<ul style="list-style-type: none"> • <u>Operative part should show clearly the lessor divesting himself of possession and the lessee coming into possession</u>
	<ul style="list-style-type: none"> • <u>Habendum Part should specify the nature of the lease, commencement and duration of the lease in question.</u>
	<ul style="list-style-type: none"> • <u>Reddendum Part remains peculiar to a deed of lease. Here is mentioned the mode and time fixed for the payment of rent. It begins with the word rendering or paying with the reference to the rent. Rent is payable during the term of the lease . In the part , place is to be mentioned where rent is payable. If there is apportionment of rent, that is also to be specifically mentioned here in this part.</u>
	<ul style="list-style-type: none"> • <u>Covenants – Terms and conditions are mentioned in several paragraphs. The usual covenants are to be found in Section 108 of the Transfer of Property Act; other important covenants generally refer to payment of taxes, repairs, insurance, subletting purpose of the lease, e.g. residential purpose,</u>

renewal, forfeiture

LICENCE

<u>LICENCE</u>	<ul style="list-style-type: none">• Indian Easements Act, 1882. <p>License has been defined in Section 52 of the Indian Easements Act, 1882 as under:</p> <ul style="list-style-type: none">• “<i>License</i>” defined – 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 any one 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
<u>LICENCE WHEN TRANSFERABLE</u>	<ul style="list-style-type: none">• 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
<u>REVOCATION OF LICENCE</u>	<p style="text-align: center;"><u>REVOCATION MAY BE EXPRESSED AND IMPLIED</u></p> <div style="display: flex; justify-content: space-around;"><div data-bbox="456 1199 943 1829" style="border: 1px solid black; padding: 5px;"><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 two exceptions to this rule:</p><ul style="list-style-type: none">(a) a license which is coupled with a transfer of property and such transfer is in force, and(b) a license acting upon which the licensee has executed a work of permanent character and incurred expenses in the execution cannot be revoked.</div><div data-bbox="943 1199 1430 1829" style="border: 1px solid black; padding: 5px;"><p>Section 62 of the Act provides that a license is deemed to be revoked:</p><ul style="list-style-type: none">(a) when, for a cause proceeding the grant of it, the grantor ceases to have an interest in the property affected by the license;(b) the licensee releases it, expressly or impliedly, to the grantor or his representative;(c) 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</div></div>

		<p>expires, or the condition is fulfilled;</p> <p>(d) 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;</p> <p>(e) where the licensee becomes entitled to the absolute ownership of the property affected by the license;</p> <p>(f) where the license is granted for a specified purpose and the purpose is attained or abandoned, or becomes impracticable;</p>
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DIFFERENCE BETWEEN LEASE AND LICENCE

	LEASE	LICENCE
1.	A lease is a transfer of interest in land.	A licence is merely a personal right and does not amount to any interest in immovable property.
2.	Exclusive possession of the property in question is given to the transferee.	No such exclusive possession is given to the transferee.
3.	A lessee has to be served with notice to quit before eviction.	A licensee is not entitled to any such notice.
4.	A lease is generally not revocable.	It is always revocable at the will of the licensor.
5.	A lease is unaffected if the lessor transfers the property.	A licence is determined on account of the transfer of the property in question.
6.	A lease does not get terminated on account of the death of the lessor.	A licence gets terminated on account of the death of the grantor.
7.	There can be sub-lease after assigning the rights in favour of third party unless refrained in this regard.	There is no such eventuality.
8.	The document creating lease generally requires registration.	The document granting licence does not require any registration.

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SPECIMEN FORM OF LICENCE DEED

(1) Deed of License for use of wall of a Building for publicity and advertisement for goods, etc.

THIS DEED OF LICENSE is made on the..... day of2013 BETWEEN AB of, etc. (the Licensor) of the one part and CD of, etc. (the Licensee) of the other part.

WHEREAS the said CD has applied to AB for the use of the eastern outside wall of his building being premises No..... for the purposes of utilising the same for publicity and advertisement of his goods, a specimen copy whereof with type and design shall be delivered to the licensor, for a period of two years.

AND WHEREAS the said AB has agreed to grant the license on the following terms and conditions:

1. That the said CD shall be entitled to use the said outer wall of premises No..... for the purpose of advertisement of his goods by coloured signs, marks, letters or other representations for two years from the date, in dimensions measuring..... and not contrary to any regulations of the Municipality or other public body or authority.
2. That the said CD shall pay Rs..... as such advertisement charges per month in advance within the 5th day of every current month.
3. That in the event the said outer wall or the plaster thereof is damaged on account of any act, default or negligence or omission on the part of CD, he shall forthwith execute all the necessary repairs thereto or in the alternative pay adequate compensation to AB on that account.
4. That the said CD shall pay for all taxes and impositions on account of such advertisement.
5. That the said AB shall be entitled to revoke this license within the said period of two years only on failure to pay regularly the fees or taxes or impositions as aforesaid.
6. That the said CD shall not be entitled to affix on the said wall any representation of other goods nor have any interest in the said wall and further shall indemnify the said AB against any damage suffered in case such display or advertisement is found to be in breach of statutory rules or authoritative order.

IN WITNESS WHEREOF the parties have executed this Deed the day and year above written.

Witnesse

Signature

(2) Specimen Agreement of License for use of a House Property to a Company for Office Accommodation

AN AGREEMENT MADE this..... day of..... 2013 BETWEEN AB son of..... by faith..... by occupation..... herein after referred to as the "owner" of the ONE PART AND CD represented by its secretary being signatory to this agreement having its principal office at present at No..... hereinafter referred to as "occupiers" of the OTHER PART.

WHEREAS the occupiers approached the owner for permission for using a portion of his property, viz. premises No. fully mentioned and described in the Schedule hereto for a period not exceeding eleven months only from the date of signing of this agreement which the owner has agreed to grant reserving for himself the care, maintenance and services to property and on the basis of leave and license only (which will

stand *ipso facto* revoked on the expiry of the said term). Now, it is hereby expressly agreed and declared by and between the parties as follows:

1. This writing shall never be construed as any tenancy agreement or lease nor otherwise creating any other right or interest in the property in favour of the occupiers which is not at all the intention of the parties but on the contrary merely a temporary agreement or arrangement simply to allow the occupiers to use and occupy portion of the premises for their office accommodation under the control and supervision of the owner for which purpose the owner shall retain rooms, viz., one in the ground floor and another in the first floor. The owner shall have his own staff in the said rooms for the care and supervision and maintenance of and services to the property.
2. The occupiers shall, in consideration of such accommodation as hereunder provided, pay to the owner a fixed sum of Rs. as charges for such temporary occupation for the period of months which sum will be paid at the rate of per month on the of every current month without delay or default and a further sum of Rs. for service charges and also use of fittings and fixtures making thus a sum total of Rs..... per month. The two last mentioned amounts shall also be paid on the..... of every current month.
3. The occupiers shall also pay to the owner on account of Corporation of Calcutta all existing and future occupiers' share of rate and taxes of the property and also the enhancement in the owner's share, if any, during the period of their occupation and shall otherwise keep the owner and his estate indemnified as against any loss, if any, arising out of such non-payment or non-observance of any of the covenants herein contained.
4. The occupiers have as security deposit for such payments and observance of the covenants hereunder contained, kept with the owner a sum of Rs..... to be repaid without interest on revocation of license and surrender and deliver the possession of the said portion of the property subject to such deductions as the owner shall be entitled as against the occupiers. e.g., arrears of charges provided in Clause 2, unpaid taxes, electric bills, etc., as hereunder provided or otherwise permitted in law.
5. The occupiers shall on expiry of the period of..... and license hereunder granted or earlier revocation thereof, surrender the property and deliver the same to the owner when and in such an event he will be entitled to the refund of Rs..... subject to deductions provided in Clause 4 hereof.

Provided, however, and notwithstanding anything hereinbefore contained, it is hereby expressly agreed by and between the parties hereto that in default of any payment on the dates hereinbefore referred to above to the owner or the Corporation of Calcutta or other appropriate authorities the owner shall be entitled to and shall have always the power to revoke the license hereunder granted at his absolute discretion and reoccupy the said portion of the property without subjecting himself to any liability on that account and notwithstanding any intermediate negotiations or waiver of breach thereof when and in such an event the occupiers shall surrender the occupied portion of the property as hereunder contemplated.

6. The occupiers shall have no right to make any addition or alteration to the property except temporary removable walls by way of adjustments but shall be entitled to make interior decorations only by temporary wooden partitions which they shall remove at their own costs at the time of surrender of the said portion of the property on expiry of the term of the license hereby granted or earlier revocation thereof and repairs all the damages, if any caused to the property.

IN WITNESS WHEREOF the parties have executed this Agreement this..... day of 2013

Signed, sealed and delivered at Calcutta

In the presence of

SPECIMEN OF DEED OF LEASE

THE LEASE is made the..... day of..... 2018 BETWEEN AB of, etc.: (hereinafter called “the lessor”) of the one part and CD of, etc., (hereinafter called “the lessee”) of the other part, WITNESSES as follows:

1. In consideration of the rent hereinafter reserved and the covenants and conditions hereinafter contained to be observed and performed on the part of the lessee, the lessor does hereby grant, transfer, demise by way of lease to the lessee ALL THAT piece or parcel or parcels of land described in the schedule below TO HAVE AND TO HOLD the same unto and to the use of lessee for the term of..... years commencing from the..... day of..... 2013 at the annual rent of Rupees.....
2. The lessor hereby covenants with the lessee as follows:
 - (a) The lessor shall put the lessee in possession of the said land on the said..... day of 2013.
 - (b) Upon the lessee paying the rent hereby and hereunder reserved and observing and performing the covenants and conditions herein contained the lessee shall quietly and peacefully hold, possess and enjoy the said land during the said term without any claim, interruption or disturbance by the lessor or any person claiming under or in trust for him.
3. The lessor has good right, full power and absolute authority to grant a lease of the demised premises in the manner hereunder effected The lessee hereby covenants with the lessor as follows:
 - (a) The lessee shall pay the said rent without abatement or deductions on or before the..... day of..... every year and the first of such payments shall be made on the..... day of..... 2013.
 - (b) The lessee shall bear and pay all rents, taxes and other assessments and outgoings which are now or may hereafter be imposed or assessed on the said land except those which are payable in law by the lessor.
 - (c) The lessee shall not use and occupy the said land for any purpose other than private residence for himself and the member of his family by construction of temporary structures according to the plan approved by the Municipal Authority.
 - (d) The lessee shall not, except with the consent in writing of the lessor first had and obtained, assign, underlet or part with the possession of the said land or any portion thereof or of the structures to be constructed thereon or any portion thereof which consent the lessor may at his absolute discretion withhold.
 - (e) That if the lessee shall pay the rent punctually and regularly and duly observe and perform the conditions and covenants herein contained and apply in writing to the landlord not less than..... months prior to the expiration of the term herein reserved for renewal of the lease, the lessor shall then and in such an event grant to the lessee a new lease of the said land for a further period of..... years on the same terms and conditions as are herein contained except the covenant for renewal and subject to such variations as may be mutually agreed.
 - (f) On the determination of the lease, the lessee shall deliver peaceful vacant possession of the land hereby demised as also the structures to be erected by the lessee without claiming any compensation or value thereof.

IN WITNESS, etc

LAW RELATING TO LEASE AND LICENCE

<p><u>DEFINITION AND MEANING OF LEASE</u></p>	<ul style="list-style-type: none"> • 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. • Lease is a contract between lessor and lessee for the fixed term for the use on hire of a specific asset selected by lessee • Lessor retains ownership of the assets and lessee has possession and use of the asset on payment of specified rental over a period. • It is a sort of contractual arrangement between the two parties whereby one acquires the right to use the property called “lessee” and the other who allows the former the right to use his owned property, called the “lessor”. • Thus, lease is a contractual arrangement, it originates from a contract between the lessor and lessee and is regulated by the terms, conditions and covenants of such contract.
<p><u>ESSENTIALS POINTS REGARDING LEASE</u></p>	<ul style="list-style-type: none"> • (I) the parties i.e. lessor or lessee; • (ii) the subject matter of lease i.e. the property to be leased; • (iii) demise or partial transfer of such property; • (iv) the term and period of lease; and • (v) the consideration or rent.
	<ul style="list-style-type: none"> • Before taking up drafting of the lease documents both the leasing company and the lessee should have the information to have a birds-eye view of the existing charges, mortgages, encumbrances or lien on the property proposed to be leased by lessor or where the leased assets are proposed to be kept by the lessee.
<p><u>REGISTRATION OF LEASE</u></p>	<ul style="list-style-type: none"> • <u>Lease deed is required to be registered in the following cases.</u> <ul style="list-style-type: none"> ➤ <u>Lease on the year to year basis</u> ➤ <u>Lease for any term exceeding 1 year</u> ➤ <u>Lease which reserves a yearly rent</u>
<p><u>STAMP DUTY</u></p>	<ul style="list-style-type: none"> ➤ 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. Stamp duty shall be payable as per respective state stamp law and hence it will be payable and vary from state to state.
<p><u>SUB LEASE</u></p>	<ul style="list-style-type: none"> • A sub-lease is a demise by a lessee for lessor term than he himself has. • Every lessee, however short his term may be, make 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.
	<p><u>Hunsrai v. Bejoylal Seal, (1930) 57 Cal 1176, that in India a sub-lease is not an</u></p>

	<u>absolute assignment and it was further held in <i>Akshoy Kumar v. Akman Molla, (1915) 19 CWN 1197</i>, that there is no privity of estate as between the lessor and the sub-lessee, who does not step into the shoes of the lessee. A sub-lease is not prejudiced by the surrender of the head lease (Section 115 of Transfer of Property Act) but the position is different in the case of forfeiture which annuls all sub-leases except in case of fraud as between the lessor and lessee. A sub-lessee is entitled to relief against forfeiture under Section 114 of the Transfer of Property Act, 1882, which is applicable only in the case of non-payment of rent. No relief is open to the sub-lease in case of transfer of breach of covenant in restraint of transfer</u>
SURRENDER OF LEASE	<ul style="list-style-type: none"> • 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 (1933) 60 Cal 379). • The person who surrenders is called the surrenderer and the person to whom surrender is made is called the surrenderee. • A 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 (<i>Misri Lal Durga Narain, AIR 1940 All. 317</i>).
	<ul style="list-style-type: none"> • <u>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 (<i>Makhanlal v. Nagendranath,</i></u>
DRAFTING OF A LEASE	
	<u>LEASE transactions are very common in today's era of trade and commerce. While drafting lease following points must be kept in mind.</u>
	<ul style="list-style-type: none"> • <u>The parties to a lease referred as the "lessor" and the lessee and are governed under the Transfer of Property Act, 1882 . The lessor is also called the land lord and the lessee the tenant.</u> • <u>The subject matter of lease must be immovable property.</u>
	<ul style="list-style-type: none"> • <u>Recital are not generally necessary in drafting a lease deed and should not be inserted except when absolutely necessary in order to mention facts which cannot be conveniently mentioned in the operative part.</u>
	<ul style="list-style-type: none"> • <u>The consideration for lease is either rent or premium. The agreed rent, reserved rent including premium etc, should be mentioned in the beginning of the Testatum .</u>
	<ul style="list-style-type: none"> • <u>Operative part should show clearly the lessor divesting himself of possession and the lessee coming into possession</u>
	<ul style="list-style-type: none"> • <u>Habendum Part should specify the nature of the lease, commencement and duration of the lease in question.</u>
	<ul style="list-style-type: none"> • <u>Reddendum Part remains peculiar to a deed of lease. Here is mentioned the mode and time fixed for the payment of rent. It begins with the word rendering or paying with the reference to the rent. Rent is payable during the term of the lease . In the part , place is to be mentioned where rent is payable. If there is apportionment of rent, that is also to be specifically mentioned here in this part.</u>
	<ul style="list-style-type: none"> • <u>Covenants – Terms and conditions are mentioned in several paragraphs. The usual covenants are to be found in Section 108 of the Transfer of Property Act; other important covenants generally refer to payment of taxes, repairs, insurance, subletting purpose of the lease, e.g. residential purpose, renewal, forfeiture</u>

LICENCE

<u>LICENCE</u>	<ul style="list-style-type: none"> Indian Easements Act, 1882. <p>License has been defined in Section 52 of the Indian Easements Act, 1882 as under:</p> <ul style="list-style-type: none"> <i>“License” defined</i> – 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 any one in the circumstances and to the extend 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
<u>LICENCE WHEN TRANSFERABLE</u>	<ul style="list-style-type: none"> 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
<u>REVOCATION OF LICENCE</u>	<p style="text-align: center;"><u>REVOCATION MAY BE EXPRESSED AND IMPLIED</u></p> <div style="display: flex; justify-content: space-around; align-items: flex-start;"> <div style="border: 1px solid black; padding: 5px; width: 45%;"> <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 two exceptions to this rule:</p> <ul style="list-style-type: none"> (c) a license which is coupled with a transfer of property and such transfer is in force, and (d) a license acting upon which the licensee has executed a work of permanent character and incurred expenses in the execution cannot be revoked. </div> <div style="border: 1px solid black; padding: 5px; width: 45%;"> <p>Section 62 of the Act provides that a license is deemed to be revoked:</p> <ul style="list-style-type: none"> (g) when, for a cause proceeding the grant of it, the grantor ceases to have an interest in the property affected by the license; (h) the licensee releases it, expressly or impliedly, to the grantor or his representative; (i) 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 </div> </div>

		<p>fulfilled;</p> <p>(j) 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;</p> <p>(k) where the licensee becomes entitled to the absolute ownership of the property affected by the license;</p> <p>(l) where the license is granted for a specified purpose and the purpose is attained or abandoned, or becomes impracticable;</p>
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DIFFERENCE BETWEEN LEASE AND LICENCE

	LEASE	LICENCE
1.	A lease is a transfer of interest in land.	A licence is merely a personal right and does not amount to any interest in immovable property.
2.	Exclusive possession of the property in question is given to the transferee.	No such exclusive possession is given to the transferee.
3.	A lessee has to be served with notice to quit before eviction.	A licensee is not entitled to any such notice.
4.	A lease is generally not revocable.	It is always revocable at the will of the licensor.
5.	A lease is unaffected if the lessor transfers the property.	A licence is determined on account of the transfer of the property in question.
6.	A lease does not get terminated on account of the death of the lessor.	A licence gets terminated on account of the death of the grantor.
7.	There can be sub-lease after assigning the rights in favour of third party unless refrained in this regard.	There is no such eventuality.
8.	The document creating lease generally requires registration.	The document granting licence does not require any registration.

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SPECIMEN FORM OF LICENCE DEED**(3) Deed of License for use of wall of a Building for publicity and advertisement for goods, etc.**

THIS DEED OF LICENSE is made on the day of 2013 BETWEEN AB of, etc. (the Licensor) of the one part and CD of, etc. (the Licensee) of the other part.

WHEREAS the said CD has applied to AB for the use of the eastern outside wall of his building being premises No. for the purposes of utilising the same for publicity and advertisement of his goods, a specimen copy whereof with type and design shall be delivered to the licensor, for a period of two years.

AND WHEREAS the said AB has agreed to grant the license on the following terms and conditions:

1. That the said CD shall be entitled to use the said outer wall of premises No. for the purpose of advertisement of his goods by coloured signs, marks, letters or other representations for two years from the date, in dimensions measuring and not contrary to any regulations of the Municipality or other public body or authority.
2. That the said CD shall pay Rs. as such advertisement charges per month in advance within the 5th day of every current month.
3. That in the event the said outer wall or the plaster thereof is damaged on account of any act, default or negligence or omission on the part of CD, he shall forthwith execute all the necessary repairs thereto or in the alternative pay adequate compensation to AB on that account.
4. That the said CD shall pay for all taxes and impositions on account of such advertisement.
5. That the said AB shall be entitled to revoke this license within the said period of two years only on failure to pay regularly the fees or taxes or impositions as aforesaid.
6. That the said CD shall not be entitled to affix on the said wall any representation of other goods nor have any interest in the said wall and further shall indemnify the said AB against any damage suffered in case such display or advertisement is found to be in breach of statutory rules or authoritative order.

IN WITNESS WHEREOF the parties have executed this Deed the day and year above written.

Witnesse

Signature

(4) Specimen Agreement of License for use of a House Property to a Company for Office Accommodation

AN AGREEMENT MADE this day of 2013 BETWEEN AB son of by faith by occupation herein after referred to as the "owner" of the ONE PART AND CD represented by its secretary being signatory to this agreement having its principal office at present at No. hereinafter referred to as "occupiers" of the OTHER PART.

WHEREAS the occupiers approached the owner for permission for using a portion of his property, viz. premises No. fully mentioned and described in the Schedule hereto for a period not exceeding eleven months only from the date of signing of this agreement which the owner has agreed to grant reserving for himself the care, maintenance and services to property and on the basis of leave and license only (which will stand *ipso facto* revoked on the expiry of the said term). Now, it is hereby expressly agreed and declared by and

between the parties as follows:

1. This writing shall never be construed as any tenancy agreement or lease nor otherwise creating any other right or interest in the property in favour of the occupiers which is not at all the intention of the parties but on the contrary merely a temporary agreement or arrangement simply to allow the occupiers to use and occupy portion of the premises for their office accommodation under the control and supervision of the owner for which purpose the owner shall retain rooms, viz., one in the ground floor and another in the first floor. The owner shall have his own staff in the said rooms for the care and supervision and maintenance of and services to the property.
2. The occupiers shall, in consideration of such accommodation as hereunder provided, pay to the owner a fixed sum of Rs. as charges for such temporary occupation for the period of months which sum will be paid at the rate of per month on the of every current month without delay or default and a further sum of Rs. for service charges and also use of fittings and fixtures making thus a sum total of Rs..... per month. The two last mentioned amounts shall also be paid on the..... of every current month.
3. The occupiers shall also pay to the owner on account of Corporation of Calcutta all existing and future occupiers' share of rate and taxes of the property and also the enhancement in the owner's share, if any, during the period of their occupation and shall otherwise keep the owner and his estate indemnified as against any loss, if any, arising out of such non-payment or non-observance of any of the covenants herein contained.
4. The occupiers have as security deposit for such payments and observance of the covenants hereunder contained, kept with the owner a sum of Rs..... to be repaid without interest on revocation of license and surrender and deliver the possession of the said portion of the property subject to such deductions as the owner shall be entitled as against the occupiers. e.g., arrears of charges provided in Clause 2, unpaid taxes, electric bills, etc., as hereunder provided or otherwise permitted in law.
5. The occupiers shall on expiry of the period of..... and license hereunder granted or earlier revocation thereof, surrender the property and deliver the same to the owner when and in such an event he will be entitled to the refund of Rs..... subject to deductions provided in Clause 4 hereof.

Provided, however, and notwithstanding anything hereinbefore contained, it is hereby expressly agreed by and between the parties hereto that in default of any payment on the dates hereinbefore referred to above to the owner or the Corporation of Calcutta or other appropriate authorities the owner shall be entitled to and shall have always the power to revoke the license hereunder granted at his absolute discretion and reoccupy the said portion of the property without subjecting himself to any liability on that account and notwithstanding any intermediate negotiations or waiver of breach thereof when and in such an event the occupiers shall surrender the occupied portion of the property as hereunder contemplated.

6. The occupiers shall have no right to make any addition or alteration to the property except temporary removable walls by way of adjustments but shall be entitled to make interior decorations only by temporary wooden partitions which they shall remove at their own costs at the time of surrender of the said portion of the property on expiry of the term of the license hereby granted or earlier revocation thereof and repairs all the damages, if any caused to the property.

IN WITNESS WHEREOF the parties have executed this Agreement this..... day of 2013

Signed, sealed and delivered at Calcutta

In the presence of

SPECIMEN OF DEED OF LEASE

THE LEASE is made the..... day of..... 2018 BETWEEN AB of, etc.: (hereinafter called “the lessor”) of the one part and CD of, etc., (hereinafter called “the lessee”) of the other part, WITNESSES as follows:

4. In consideration of the rent hereinafter reserved and the covenants and conditions hereinafter contained to be observed and performed on the part of the lessee, the lessor does hereby grant, transfer, demise by way of lease to the lessee ALL THAT piece or parcel or parcels of land described in the schedule below TO HAVE AND TO HOLD the same unto and to the use of lessee for the term of..... years commencing from the..... day of..... 2013 at the annual rent of Rupees.....
5. The lessor hereby covenants with the lessee as follows:
 - (a) The lessor shall put the lessee in possession of the said land on the said..... day of 2013.
 - (b) Upon the lessee paying the rent hereby and hereunder reserved and observing and performing the covenants and conditions herein contained the lessee shall quietly and peacefully hold, possess and enjoy the said land during the said term without any claim, interruption or disturbance by the lessor or any person claiming under or in trust for him.
6. The lessor has good right, full power and absolute authority to grant a lease of the demised premises in the manner hereunder effected The lessee hereby covenants with the lessor as follows:
 - (a) The lessee shall pay the said rent without abatement or deductions on or before the..... day of..... every year and the first of such payments shall be made on the..... day of..... 2013.
 - (b) The lessee shall bear and pay all rents, taxes and other assessments and outgoings which are now or may hereafter be imposed or assessed on the said land except those which are payable in law by the lessor.
 - (c) The lessee shall not use and occupy the said land for any purpose other than private residence for himself and the member of his family by construction of temporary structures according to the plan approved by the Municipal Authority.
 - (d) The lessee shall not, except with the consent in writing of the lessor first had and obtained, assign, underlet or part with the possession of the said land or any portion thereof or of the structures to be constructed thereon or any portion thereof which consent the lessor may at his absolute discretion withhold.
 - (e) That if the lessee shall pay the rent punctually and regularly and duly observe and perform the conditions and covenants herein contained and apply in writing to the landlord not less than..... months prior to the expiration of the term herein reserved for renewal of the lease, the lessor shall then and in such an event grant to the lessee a new lease of the said land for a further period of..... years on the same terms and conditions as are herein contained except the covenant for renewal and subject to such variations as may be mutually agreed.
 - (f) On the determination of the lease, the lessee shall deliver peaceful vacant possession of the land hereby demised as also the structures to be erected by the lessee without claiming any compensation or value thereof.

IN WITNESS, etc

<u>DEEDS OF ASSIGNMENT</u>	<ul style="list-style-type: none"> • 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. • An assignment is thus a term which encompasses the transfer of rights held by one party i.e the assignor to another party i.e assignee.
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ASSIGNMENT COULD BE DONE IN THE FOLLOWING WAYS				
1.ACTIONABLE CLAIMS	2.INSURANCE POLICIES	3.SHARES	4.PATENTS	5.TRADE MARKS
6.COPYRIGHT			7. BUSINESS GOODWILL.	

<u>ASSIGNMENT OF ACTIONABLE CLAIM</u>	<p>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:</p> <ul style="list-style-type: none"> • “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 recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.”
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A Specimen of Deed of Assignment of Business Debts

THIS DEED OF ASSIGNMENT made this..... day of..... between..... son of..... resident of..... (hereinafter called “the Assignor”) of the one part, and....., son of....., resident of....., (hereinafter called “the Assignee”) of the other part.

WHEREAS the assignor has, for some time been carrying on the business of....., in the course whereof the several persons whose names, addresses and occupations are mentioned in the Schedule appended hereto, have become lawfully debtors to him and so for the several sums of

money set opposite to 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.....).

NOW THIS DEED W ITNESSES that in consideration of the sum of Rs..... (Rupees.....) now paid to the assignor by the assignee (the receipt whereof the assignor hereby acknowledges), the said assignor, as beneficial owner, does hereby transfer, sell and assign unto and to the use of the said assignee, all the several said debts, and sums of money specified in the said Schedule which are now due and owing to the assignor to have and to receive them for his absolute use and benefit with absolute power, authority and liberty to enforce payment thereof by suit or otherwise and that 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, and further that he has not entered into any arrangement with any of them and that the assignor shall at all times hereafter do, execute and perform all such and other acts, deeds, things, or writings as may be reasonably required for realization of the said debts, and further and better and more effectively transferring and/or assuring them or any of them in favour of the assignee.

Schedule above referred to

IN WITNESS WHEREOF the assignor and the assignee do hereto affix their signatures on the day, month and the year above mentioned at..... (place).

Witness:

Witness:

ASSIGNMENT OF SHARES IN ACOMPANY

- **Section 44 of the Companies Act, 2013 defines the nature of property in the shares of a company. It lays down: "The shares or debentures or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company."**
- **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.
- As between buyer (transferee) and seller (transferor) of shares, the buyer is entitled to all dividends declared after the contract of sale, unless otherwise agreed. Whatever may be the agreement, a transfer of shares after declaration of dividend, does not, as against the company, carry the dividend, even though the transfer may be cum-dividend

A Specimen of Deed of Assignment of Shares in a Company

THIS ASSIGNMENT is made this day of between AB, son of resident of (hereinafter called "the Assignor") of the one part, and CD, son of resident of (hereinafter called "the Assignee") of the other part.

THE DEED WITNESSES:

That in consideration of the sum of Rs..... (Rupees.....) paid by the assignee to the assignor, the receipt whereof the assignor hereby acknowledges, the said AB hereby assigns, sells and transfers to the said CD..... Equity Shares of Rs..... each, fully paid up, bearing consecutive Nos..... to..... (inclusive), which stand in the name of the assignor in the Register of Members of..... Co. Ltd. TO HOLD the same to the assignee absolutely, subject nevertheless to the conditions on which the assignor held the same up to date.

AND the assignee hereby agrees to take the said Equity Shares subject to such conditions.

IN WITNESS WHEREOF the assignor and the assignee do hereto affix their respective signatures on the day, month and the year stated above.

Witness:

Witness:

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.
In this a sum of money is secured to be paid on the death of the person whose life is insured.	In this there is a contract whereby an insurer undertakes to indemnify the assured, his nominees, assigns, heirs and legal representatives against the loss of and/or damage to goods

- Insurable interest in the subject-matter insured is a pre-requisite of a contract of insurance and for the success of an insurance claim the assured or the claimant, as the case may be, must be interested in the subject-matter insured at the time of the loss.
- 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 a life insurance policy and it may be assigned either before or after loss in the case of a marine or good policy.
- The assignee can sue on the policy of insurance in his own name and can defend an action on any ground available to the assignor.
- The policy may be assigned by endorsement thereon or in other customary manner.

- An assured who has no insurable interest in the subject-matter insured cannot assign.
- Where an assured who has lost interest in the subject matter by transfer and has not, before or at the time of transferring the subject matter, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative.

A Specimen of Deed of Assignment of Policy of Life Assurance

THIS ASSIGNMENT made this..... day of..... 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.

W HEREAS 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 thereunder.

IN WITNESS WHEREOF the assignor and the assignee do hereto affix their respective signatures on the day, month and the year stated above.

Witness:

As

signor

Witness: Assignee

ASSIGNMENT OF PATENTS

- **Patent is a right, granted by the Government under the Patents Act, 1970 to the grantee, of 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.**
- Section 68 of the Act makes provision with regard to the assignment of patents. The Section lays down:

	<ul style="list-style-type: none"> • “An assignment of a patent or of a share in a patent, shall not be valid unless the same were in writing and the agreement between the parties concerned is reduced to the form of a document embodying all the terms and conditions governing their rights and obligations. • The application for registration of such document is filed in the prescribed manner with the Controller within six months from the execution of the document or within such further period not exceeding six months in the aggregate as the Controller on application made in the prescribed manner allows: Provided the document shall, when registered, have effect from the date of its execution.” • Section 69 of the Act lays down that “Where any person becomes entitled by assignment, transmission or operation of law to a patent or to a share in a patent or becomes entitled as a mortgagee, licensee or otherwise to any other interest in a patent, he shall apply in writing in the prescribed manner to the Controller for the registration of his title. • Section 70 of the Act empowers the person or persons registered as grantee or proprietor of a patent to assign, grant licences under, or otherwise deal with, the patent and to give effectual receipts for any consideration for any such assignment, licence or dealing.
TRADEMARK	<ul style="list-style-type: none"> • A trademark is a recognizable sign, design, or expression which identifies products or services of a particular source from those of others, although trademarks used to identify services are usually called service marks.^{[4][5]} The trademark owner can be an individual, business organization, or any legal entity. A trademark may be located on a package, a label, avoucher, or on the product itself. For the sake of corporate identity, trademarks are often displayed on company buildings
EXAMPLE	<ul style="list-style-type: none"> • COKE, APPLE
OBJECT	<ul style="list-style-type: none"> • The object of trade mark law is to deal with the precise nature of the right which a person can acquire in respect of trade marks; the mode of acquisition of such rights, the method of transfer of those rights to others, the precise nature of infringement of such rights, and the remedies available in respect thereof. This branch of commercial law has undergone changes from time to time, with the changing pattern of business methods and practices. Even the very concept of a trade mark and its functions have changed. One can, therefore, expect more changes to take place in course of time.
	<p>trademark may be designated by the following symbols:</p> <ul style="list-style-type: none"> • TM (the "trademark symbol", which is the letters "TM" in superscript, for an unregistered trademark, a mark used to promote or brand goods) • SM (which is the letters "SM" in superscript, for an unregistered service mark, a mark used to promote or brand services)

	<ul style="list-style-type: none"> • ® (the letter "R" surrounded by a circle, for a registered trademark)
<u>ASSIGNMENT OF TRADE MARK.</u>	<ul style="list-style-type: none"> • 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.
	<ul style="list-style-type: none"> • Section 38 of the Act further lays down: <p>“Notwithstanding anything in any other law to the contrary, a registered trade mark shall, subject to the provisions of this Chapter, be assignable and transmissible, whether with or without the goodwill of the business concerned and in respect either of all the goods or services in respect of which the trade mark is registered or of some only of those goods or services.”</p> • Section 39 An unregistered trade mark, according to Section 39 of the Act, shall not be assignable or transmissible except along with the goodwill of the business concerned.

A Specimen of Deed of Assignment of a Registered Trade Mark

THIS DEED OF ASSIGNMENT made between AB, son of....., resident of..... (hereinafter called the “assignor”) of the one part and CD, son of..... resident of..... (hereinafter called the “assignee”) of the other part.

WHEREAS the said AB 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 said AB has made actual and *bona fide* use of the said Trade Mark in India in relation to the toiletry goods manufactured by him at his factory in.....

NOW THIS DEED OF ASSIGNMENT WITNESSES that in pursuance of the said agreement and in consideration of the said sum of Rs..... (Rupees.....) paid by the said CD to AB, the receipt whereof the said AB hereby admits/acknowledges and confirms, he the assignor AB do hereby grant, transfer and assign upon the terms hereinafter mentioned, the exclusive use and all benefits of the aforesaid Trade Mark in relation to the goods of toiletry manufactured by him at his factory at.....

AND the said assignor hereby covenants with the assignee that he will not infringe nor use a mark identical with the Trade Mark hereby assigned nor use another Trade Mark nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to the goods in respect of which it is registered and in a manner as to render the use of this Trade Mark likely to be taken either as being a use of the said Trade Mark or to import a reference to the assignor.

AND the assignor further covenants that he, the assignor shall, at the cost of CD or any person claiming through him, do or cause to be done any other act, deed or thing as may be required for more perfectly assuring the aforesaid assignment.

IN WITNESS WHEREOF the parties aforesaid have set their respective hands in the presence of the witnesses hereunder.

<u>ASSIGNMENT OF COPYRIGHTS</u>	<p>Copyright is a right given by the law to creators of</p> <ul style="list-style-type: none"> • Literary • Dramatic • Musical • Artistic
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	<ul style="list-style-type: none"> • Producers of cinematographic films and • Sounds recording. <p>Copyrights includes right of reproduction, communication, to the public, adaption and translation of the work.</p>
	<p>Section 18 of the Act deals with the assignment of copyrights. The Section lays down:</p> <p>“(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;</p> <p>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.</p> <p>(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.</p> <p>(3)</p> <p>With regard to the mode of assignment, Sub-section (1) of Section 19 of the Act prescribes: “No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by his duly authorised agent.”</p>

ASSIGNMENT OF BUSINESS AND GOODWILL AND OTHER RIGHTS AND IN INTEREST

	<ul style="list-style-type: none"> • 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. <p>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.”</p> <p>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:</p> <p>(a) by personal reputation of the owners;</p> <p>(b) by reputation of the goods dealt in;</p>
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	<ul style="list-style-type: none">(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
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<p><u>INTRODUCTION</u></p>	<ul style="list-style-type: none"> Partnership is 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. Partnership is defined in Section 4 of the Partnership Act, 1932 as a relation between persons who have agreed to share profits of business carried on by all or any one of them acting for all. Partnership requires three elements – <table border="1" data-bbox="529 464 1385 655"> <tr> <td>• an agreement entered into by all persons concerned;</td> </tr> <tr> <td>• distribution of the profits of business; and</td> </tr> <tr> <td>• management of the business by all or any one or more of them acting for all, i.e., mutual agency.</td> </tr> </table> A partnership is distinguishable from associations e.g., clubs, societies, co-operative bodies and incorporated companies. The real intention and conduct of the parties appearing from the (a) written agreement, or (b) verbal agreement together with surrounding circumstances are the tests of partnership [Cox v. Hickman (1860) 8 HLC 268]. Persons who have entered into partnership with one another are called individually partners and collectively a firm, and the name under which their business is carried on is called the firm name (Section 4 of the Indian Partnership Act, 1932). 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” 	• an agreement entered into by all persons concerned;	• distribution of the profits of business; and	• management of the business by all or any one or more of them acting for all, i.e., mutual agency.	
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<u>REGISTRATION OF PARTNERSHIP.</u>	<ul style="list-style-type: none"> • Registration of partnership firm has been made optional under the provisions of Section 58 of the Indian Partnership Act, 1932 • . Consequences of non-registration of a partnership firm are set out in Section 69 of the Partnership Act. • An unregistered firm cannot enforce a right or claim arising out of a contract against any third party 				
<u>CLASSIFICATION OF PARTNERSHIP</u>	<table border="1"> <thead> <tr> <th data-bbox="435 426 906 464"><u>PARTICULAR PARTNERSHIP</u></th> <th data-bbox="911 426 1382 464"><u>PARTNERSHIP AT WILL</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="435 470 906 667"><u>When two or more persons agree to do business in a particular adventure or undertaking such a partnership is called “ particular partnership”</u></td> <td data-bbox="911 470 1382 667"><u>A partnership is deemed to be a “partnership at Will” when no provisions is made by contract between the partners for the duration of their partnership or for the determination of partnership.</u></td> </tr> </tbody> </table>	<u>PARTICULAR PARTNERSHIP</u>	<u>PARTNERSHIP AT WILL</u>	<u>When two or more persons agree to do business in a particular adventure or undertaking such a partnership is called “ particular partnership”</u>	<u>A partnership is deemed to be a “partnership at Will” when no provisions is made by contract between the partners for the duration of their partnership or for the determination of partnership.</u>
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<u>IMPORTANT PROVISIONS REGARDING PARTNERSHIP.</u>					
	<ul style="list-style-type: none"> • The partnership is based on contract. This contract may be made either orally or in writing or even may be inferred from the course of dealing between the partners. • In order to avoid all disputes relating to terms of partnership, it is suggested that a written document containing terms and conditions of partnership be executed between the partners. • The deed is executed by all the partners and is drafted as an agreement to carry on certain business in partnership on certain terms and conditions. 				
	<p>As a draftsman of the partnership deed one should be extra careful to understand and properly incorporate in partnership deed the terms relating to the following:</p> <ol style="list-style-type: none"> (1) Name and place of business. (2) Duration of the partnership. (3) Shares of each partnership in the profits and losses of the business. (4) The management of the business. (5) Nature of principal work agreed to be carried on in partnership. (6) Number of partners and initial capital employed by each one of them. (7) Provision and the manner for raising future capital, if required. (8) Work distribution, if any, of each of the partners. (9) Obligation of partners who are members of a partnership firm. (10) Operation of Bank Accounts. (11) Withdrawal by partners. 				

	<p>(12) Accounting system of the business.</p> <p>(13) Whether place of business belongs to partnership or any individual partner.</p> <p>(14) Division/Devolution of goodwill of the business in case of dissolution of partnership.</p> <p>(15) Distribution of assets and liabilities amongst partners at the time of dissolution</p> <p>(16) Provisions for bringing in or admitting new partners.</p> <p>(17) The effect of the death of a partner, whether his heirs will take his place, or the partnership will be continued by the remaining partners or it will stand dissolved.</p>
<p><u>INTRODUCTION OF A NEW PARTNER</u></p>	<ul style="list-style-type: none"> • Introduction of a new partner is a matter of agreement between the partners (vide Section 31 of the Partnership Act, 1932. Also see Section 42 of the said Act). • 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 done before he became a partner.
<p><u>DISSOLUTION OF PARTNERSHIP</u></p>	<p>When jural relation between all the partners <i>inter se</i> is snapped, this constitutes dissolution of the firm. Dissolution of a firm may take place:</p> <p>(1) Without the intervention of the Court.</p> <p>(2) With the intervention of the Court.</p> <p>Dissolution without the intervention of the Court may take place:</p> <p>(a) by agreement between the parties,</p> <p>(b) by the adjudication as insolvent of all the partners or of all the partners but one.</p> <p>(c) by the business of the firm becoming unlawful,</p> <p>(d) subject to agreement between the partners:</p> <p style="padding-left: 40px;">(i) by the expiry of the term fixed,</p> <p style="padding-left: 40px;">(ii) by the death of a partner,</p> <p style="padding-left: 40px;">(iii) by the insolvency of a partner,</p> <p>(e) by notice in writing in case of partnership at will.</p> <p>Dissolution with the intervention of the Court may be made on any of the grounds contained in Section 44 of the Partnership Act.</p>

	The mere incoming or outgoing of partners does not dissolve the firm.
	<ul style="list-style-type: none"> • A deed of partnership, or of dissolution of partnership, must be executed and attested as a bond on a non-judicial stamp paper of proper value, and its registration is not compulsory; but where a deed of dissolution of a firm involves transfer of immovable property worth Rs. 100 or upwards, the deed is compulsorily registrable. • No law requires that a deed of partnership should be attested, but it is desirable that it should be attested by at least two partners. Stamp duty on an instrument of partnership and on a deed of dissolution is payable under Article 46. Schedule I to the Indian Stamp Act, 1899.
<u>ATTESTATION AND REGISTRATION</u>	
<p>THIS INDENTURE OF PARTNERSHIP IS MADE ON the..... day of..... 2018 Between S/o..... R/o..... aged..... (hereinafter called the 'First Party') AND C.D..... aged..... years, son of..... resident of..... (hereinafter called the 'Second Party').</p> <p>WHEREAS the parties hereto have agreed to commence business in partnership and it is expedient to have a written instrument of partnership.</p> <p>WHEREAS the parties hereto have mutually agreed to carry on the business of..... (here describe the business) at..... (here specify the place or the principal place of business) and to share the profits and losses of the said business in partnership between themselves and they have with that object constituted themselves into a firm of partners under the name and style of M/s..... (here give the name of the firm).</p> <p>The terms and conditions agreed to by and between the parties hereto witnesses:</p> <ol style="list-style-type: none"> 1. The duration of the firm shall be, to begin with, a period of..... years or such further or lesser period as the parties may choose to mutually agree. 2. The capital of the firm for the time being is fixed at Rs..... (Rupees.....) only which has been contributed by the partners as follows namely: First Party..... Second Party..... (In case minor is admitted to the benefits of the partnership the capital contributed by him, if any) Provided that the partners may by mutual agreement increase or decrease the capital and their respective contributions thereto. The partners by mutual consent may raise capital by way of loans if considered expedient. 3. The partners shall distribute the net profits and bear the losses in the following ratios: First Party..... 	

Second Party.....

4. The partner, shall be entitled to withdraw out of the profits, money not exceeding Rs..... in each month adjustable against the account of the respective partners at the time of annual accounting.

5. The First party shall make available to the firm the shop premises in which the business of the firm shall be carried on, situated at..... and which shop or premises is in his occupation as a tenant from month to month paying a monthly rent of Rs..... to Shri..... and shall hereafter hold the said shop or premises in trust for the partnership for which rent shall be paid out of the partnership from the date mentioned in para 1 above.

6. The said rent, and all taxes, duties, repairs and outgoings in respect of the said shops or premises or other place or places of business of the partnership shall be paid out of the partnership.

IN WITNESS WHEREOF the said A.B. and C.D. have hereto at..... signed the day and the year first above mentiond.

LAW RELATING TO TRUST

<u>INTRODUCTION</u>	<ul style="list-style-type: none">• <u>A trust is defined in the Indian Trusts Act, 1882</u> as 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
<u>AUTHOR OF THE TRUST</u>	The person who reposes or declares the confidence is called the 'author of the trust'
<u>BENEFICIARY</u>	The person who accepts the confidence is called the 'beneficiary'.
<u>TRUST PROPERTY</u>	The subject matter of the trust is called the 'trust property' or the 'trust money'.
<u>TRUSTEE</u>	The person or persons who manages/manage the trust property or trust money is/are called the 'trustee/trustees' of the trust.
<u>INSTRUMENT OF THE TRUST</u>	the instrument by which the trust is declared is called the 'instrument of trust'
<u>THE BREACH OF THE TRUST</u>	The breach of any duties imposed on the trustee by any law for the time being in force is called 'breach of trust'
<u>OBJECT OF THE TRUST</u>	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

	<p>(v) the Court regards it as immoral or opposed to public policy.</p> <p>Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.</p> <p>Any property which is transferable can be a subject of a trust whether it be immovable or movable. But more</p>								
<p><u>DISTINCTION BETWEEN</u></p>	<table border="1"> <thead> <tr> <th data-bbox="456 464 922 520"><u>SIMPLE TRUST</u></th> <th data-bbox="922 464 1380 520"><u>SPECIAL TRUST</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="456 520 922 680">Where a trustee is merely to hold the estate without having any activity duties to perform is called a simple trusts.</td> <td data-bbox="922 520 1380 680">Where, however, the trust has been created for a particular object or purpose there is specific trust.</td> </tr> <tr> <td data-bbox="456 680 922 798">The trustee merely to hold the property for the benefits of the beneficiary</td> <td data-bbox="922 680 1380 798">The trustee has duties to perform.</td> </tr> </tbody> </table>	<u>SIMPLE TRUST</u>	<u>SPECIAL TRUST</u>	Where a trustee is merely to hold the estate without having any activity duties to perform is called a simple trusts.	Where, however, the trust has been created for a particular object or purpose there is specific trust.	The trustee merely to hold the property for the benefits of the beneficiary	The trustee has duties to perform.		
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	<table border="1"> <thead> <tr> <th data-bbox="456 1253 922 1310"><u>PUBLIC TRUST</u></th> <th data-bbox="922 1253 1380 1310"><u>PRIVATE TRUST</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="456 1310 922 1436">In a public trust the beneficiary is the general public or a specified section of it.</td> <td data-bbox="922 1310 1380 1436">In a private trust the beneficiaries are defined and ascertained individuals.</td> </tr> <tr> <td data-bbox="456 1436 922 1717">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.</td> <td data-bbox="922 1436 1380 1717">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.</td> </tr> <tr> <td data-bbox="456 1717 922 1831">Every charitable trust is only a public trust as benefit to the community at large or to a section</td> <td data-bbox="922 1717 1380 1831"></td> </tr> </tbody> </table>	<u>PUBLIC TRUST</u>	<u>PRIVATE TRUST</u>	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	
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	of the community is of the essence of a valid charitable trust.	
	<ul style="list-style-type: none"> 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. 	
<u>CREATION OF TRUST</u>	<p>The deed creating a trust should contain in reasonable certainty, among others, the following:</p> <ul style="list-style-type: none"> (a) an intention to create a trust; (b) the purpose of the trust; (c) the beneficiaries; (d) names of the trustee/s; (e) trust property; (f) unless the author is himself a trustee transfer of the legal ownership of the property to the trustee; and (g) duties, rights and liability of the settler, trustee and the beneficiary 	
<u>EXTINCTION AND REVOCATION OF TRUST</u>	<p>SECTION 77 if Indian trust Act, 1882 provides that trust is extinguished in</p> <ul style="list-style-type: none"> its purposes is completely fulfilled its ourposes becomes unlawful. The fulfillment of its purposes becomes impossible by destructionof the trust property or otherwise. The trust being revocable is expressly revoked. 	
	<p>Debenture Trust Deeds</p> <p>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.</p> <p>In addition, the usual important conditions of debenture trust deeds may be stated as follows:</p> <ol style="list-style-type: none"> 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 	

	<p>behalf of the debenture holders.</p> <ol style="list-style-type: none"> 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. <p>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.</p>
<p><u>HOWTO DRAFT TRUST DEED</u></p>	<p>An instrument of trust is drafted either as a deed poll or as a regular deed between the author of trust and the trustee</p> <p>Where trustees are strangers and a transfer of property is involved, it is better to draft the deed as a deed between the author of trust and the trustees.</p> <p>Where the author is to be the trustee himself and the deed requires a mere declaration of trust, it is drafted as a deed poll.</p> <p>No specific words are necessary, but, whatever the words used, the deed should contain with reasonable certainty the matters mentioned under the heading 'Creation of Trust'</p> <p>If the author is himself the trustee, he declares in the operative part that he "dedicates" or "sets apart" the property in trust for such and such purpose and constitutes himself as the trustee.</p> <p>The intention is expressed clearly in the recitals of the deed and in the operative part also. If the trustee is a stranger the property is transferable to him "upon trust".</p>

A Specimen Deed of Revocation of a Trust

THIS DEED is made on the..... day of..... by 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.....

LAW RELATING TO GIFTS

- Section 122 states that 'Gift' is 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 life time of the donor and while he is still capable of giving. If the donee dies before acceptance, this gift is void.
- For the purpose of making gift of immovable property, the transfer must be affected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses.

GIFT IS THE TRANSFER OF CERTAIN

Existing moveable property

OR

Existing immovable property

MADE VOLUNTARILY AND WITHOUT
CONSIDERATION BY ONE PERSON CALLED
THE DONOR

TO ANOTHER PERSON CALLED THE DONEE

AND ACCEPTED BY OR ON BEHALF OF THE DONEE. SUCH ACCEPTANCE MUST MADE DURING THE LIFE TIME OF THE DONOR AND WHILE HE IS STILL CAPABLE OF GIVING. IF THE DONEE DIES BEFORE ACCEPTANCE,, THE GIFT IS VOID.

SOME IMPORTANT POINTS REGARDING GIFT.

**1 ESENTIAL
ELEMENTS**

1. There must be a transfer of ownership.
2. The subject matter of gift must be certain existing movable or immovable property.

	<p>3. The transfer must be made voluntarily.</p> <p>4. It must be done without consideration</p>
	<ul style="list-style-type: none"> • Gift should be made only for the existing property as gift of future property is void under section 124 of the Transfer of Property Act, 1882. • Because gift of future property is mere promise and cannot be enforced.
	<ul style="list-style-type: none"> • Section 125 provides that the gift of a thing to two or more donees of whom one does not accept it, is void as to the interest which he would have taken had he accepted. • The intention conveyed under this Section is that a gift is personal to the donee and therefore if a gift made to two persons jointly and one of them does not accept it, the other cannot accept the whole.
<u>Revocation of gift</u>	<ul style="list-style-type: none"> • Section 126 of T.P. Act, 1882 prescribes the circumstances when a gift may be suspended or revoked. • As per Section 126, 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, but a gift which the parties agree shall be revocable wholly or in part at the mere will of the donor is void, wholly or in part as the case may be. • A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract it might be rescinded. • Save as aforesaid a gift cannot be revoked. Gift in India are regulated by personal law, usages and customs. • <u>Under Hindu Law a gift once completed is binding upon the donor and it cannot be revoked by him unless it was obtained by fraud or undue influence [Ganga Baksh v. Jagat Bahadure (1896) 23 Cal - 15]. But the rules of Muslim Law are different. Section 126 of T.P. Act, 1882 for revocation of gift cannot be applied to Muslims.</u>
	<p>A Muslim can revoke a gift even after delivery of possession except in following cases</p> <p>(1) when the gift is made by a husband to his wife or by a wife to her husband;</p> <p>(2) when the donee is related to the donor within the prohibited degrees</p> <p>(3) when the gift is <i>Sadaka</i> (made to a charity or for a religious cause)</p> <p>(4) when the donee is dead;</p> <p>(5) when the thing given has passed out of the donees' possession by sale, gift</p>

	<p>or otherwise;</p> <p>(6) when the thing given is lost or destroyed;</p> <p>(7) when the thing given has increased in value;</p> <p>when the thing given is so changed that it cannot be identified;</p> <p>(9) when the donor has received some thing in exchange for the gift.</p>
<u>ONEROUS</u>	<ul style="list-style-type: none"> • Section 127 states that where a gift is in the form of a single transfer to the same person of several things of which one is and the others are not, burdened by an obligation, • the donee can take nothing by the gift unless he accepts it fully. • Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one.
<u>STAMP DUTY AND REGISTRATION</u>	<ul style="list-style-type: none"> • The value of the property gifted must be set forth in the deed of gift. Stamp Duty is payable on gift deed as on the conveyance as per amount of value of the property as mentioned in the deed or as per market value of such property whichever is greater as per Article 23 of the Indian Stamp Act, 1899. • If the value of the property is intentionally omitted or undervalued with a view to defraud the revenue, prosecution may be invited under Section 64 of Indian Stamp Act (<i>Muhamad Muzaffar Ali</i> ILR 44 Allahabad 339 FB). Further, penalty provisions under Gift-tax Act may also be attracted. • Gift deed of immovable property is compulsorily registrable as per Section 123 of the Transfer of Property Act and Section 17(i)(a) of the Registration Act, 1908, whatever may be the values.
<u>HOW THE DEEDS OF GIFT ARE MADE</u>	<ul style="list-style-type: none"> • 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” is generally expressed in all cases of gift to relations, and “consideration of esteem and regard” is expressed when the gift is in favour of same person for whom the donor has regard e.g. when the donee is his religious preceptor. • But for a Company these intra-personal characteristic may be necessary. A Company may make gift to honour a person for his outstanding achievements in social life if so authorised under its memorandum and articles

(1) Deed of Gift for Love and Affection

THIS GIFT is made on the..... day of..... BETWEEN AB, etc. (caled “the donor”) AND CD, etc. (called “the donee”)

SECTION B

DRAFTING OF SUITS APPEALS AND APPLICATIONS



<u>WRITS</u>	<ul style="list-style-type: none"> • Writs are extra ordinary remedies in cases where there is either no remedy available under the ordinary law or the remedy available is inadequate. • Articles 32 and 226 of our Constitution empower anyone, whose rights are violated, to seek writs, Under Article 32; the Supreme Court can be moved for enforcement of fundamental right only. • However, under Article 226. High Court can be moved for enforcement of any right including fundamental right.
<u>HABEAS CORPUS</u>	<ul style="list-style-type: none"> • The words ‘habeas corpus’ literally means ‘to have body. It is a remedy available to a person who is confined without legal justification. • Through this writ, the court let it know the reasons for detention of the person and if there is no justification, order the authority concerned to se the person free. • The writ of habeas corpus, thus, entails the authority to produce the person before the court. • The applicant of this writ may be the prisoner or any person on his behalf to safeguard his liberty. It seeks immediate relief from unlawful detention whether in prison or private custody
<u>MANDAMUS</u>	<ul style="list-style-type: none"> • Mandamus literally means a command. This writ of command is issued by the Supreme Court of High court when any government, court, corporation or any public authority has to do a public duty but fail to do so. • To invoke the performance of such duty this writ of mandamus is issued, It should be noted that it should not be discretionary duty of the authority which is challenged. • It should be a compulsory one; the applicant too should have a legal right to enforce such performance. • It may further be noted that this writ can not be issued against President or the Governor
<u>PROHIBITION</u>	<ul style="list-style-type: none"> • Writ of Prohibition is issued by a superior court to subordinate court preventing latter from usurping the jurisdiction which is legally not vested in it. • The writ lies in both for access of jurisdiction or absence of jurisdiction. • It is generally issued before the trial of the case or during the pendency of the proceeding but before the order is made. • It may be noted that this writ is available against judicial and quasi-judicial body.
<u>CERTIORARI</u>	<ul style="list-style-type: none"> • If any lower court or a tribunal gives its decision but based on wrong jurisdiction, the effected party can move this writ for a direction against such lower court or tribunal to ignore such decisions based on wrong jurisdiction. The writ of certiorari issued to subordinate judicial or quasi- judicial body when they act: <ul style="list-style-type: none"> • Without or in excess of jurisdiction;

	<ul style="list-style-type: none"> • In violation of the prescribed procedure; • In contravention of principles of natural justice; <ul style="list-style-type: none"> □ Resulting in an error of law apparent on the face of record. <p>The writs of prohibition and certiorari are of the same nature, the only difference being that the writ of prohibition is issued at an earlier stage, before the order is made and the writ of certiorari is available on a later stage i.e. after the order has been passed</p>
<u>WRIT OF QUO WARRANTO</u>	<ul style="list-style-type: none"> ➤ The term ‘Quo Warranto’ means “What is your authority”. Whenever any public office is held by any one not qualified to hold it, it can be challenged by this writ by any person. ➤ An order issued by the court to such an authority to explain under what valid grounds he is holding such a post. ➤ It is found on investigation that he is not entitled to be office; the court may restrain him from acting in the office and declare the office to be Vacant. The writ of quo-warranto to issue when: <ul style="list-style-type: none"> • The office is public and of substantive nature; • The office is created by the State or by the Constitution itself; and • The respondent must have asserted his claim to the office
<p>AN APPEAL MAY BE DIVIDED INTO THREE PARTS: (1) FORMAL PART, KNOWN AS THE MEMORANDUM OF APPEAL, (2) MATERIAL PART, GROUNDS OF APPEAL, AND (3) RELIEF SOUGHT FOR.</p> <p>The important rules must be carefully remembered and observed while drafting grounds of appeal.</p>	

In the High Court of..... at.....
Civil Original (Extra-ordinary) Jurisdiction
Civil Writ Petition No..... of 2018

In the matter of:

JKL S/o..... R/o..... former employee (Inspector Grade-I) in the Respondent-Company.

...*Petitioner*

versus

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..... 2018 and he continued to work, earning one promotion also.

4. That on..... 2018 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 S

7.1 That the petitioner being a permanent employee of the respondent-company, his services could not be derminating 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

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.

PETITIONER

DATED

PLACE

...

The Writ petition must be supported by an affidavit of the petitioner

<p><u>SPECIAL LEAVE PETITIONS</u></p>	<ul style="list-style-type: none">➤ Article 134A of the Constitution of India lays down that every High Court, passing or making a judgement, decree, final order, or sentence, referred to in➤ Clause (1) of Article 132 or Clause (1) of Article 133 or Clause (1) of Article 134,<ul style="list-style-type: none">(a) may, if it deems fit so to do, on its own motion; and(b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgement, decree, final order or sentence, determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in Clause (1) of Article 132, or Clause (1) of Article 133 or, as the case may
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	<p>be, sub-clause (c) of clause (1) of Article 134, may be given in respect of that case.</p> <ul style="list-style-type: none"> ➤ Where a 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, the aggrieved party may petition to the Supreme 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. The Article lays down: <ul style="list-style-type: none"> “(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India. (2) Nothing in clause (1) shall apply to any judgement, determination, sentence or order passed or made by any Court or tribunal constituted by or under any law relating to the Armed Forces”. ➤ Section 112 of the Code of Civil Procedure, 1908 keeps the powers of the Supreme Court under Article 136 of the Constitution to grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India, beyond the scope of the provisions of the Code. ➤ Section 112 lays down: <ul style="list-style-type: none"> (1) “Nothing contained in this Code shall be deemed: <ul style="list-style-type: none"> (a) to affect the powers of the Supreme Court under Articles 136 or any other provision of the Constitution; or (b) to interfere with any rule, made by the Supreme Court, and for the time being in force, for the presentation of appeals to that Court, or their conduct before that Court;
<p><u>SPECIAL PETITION IN COURT</u></p>	<ul style="list-style-type: none"> ➤ 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.
<p>IN THE MATTER OF:</p> <p>AND</p>	<p>CIVIL APPELLATE JURISDICTION</p> <p>Special Leave Petition under Article 136 of the Constitution of India</p>

IN THE MATTER OF:

ABC Company Ltd., a company registered under the Companies Act, 1956 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, 1956.

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 on 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 judgement/order of the High Court are assailed on the following, amongst, other.

GROUND:

5.1 That.....

5.2 That.....

5.3 That.....

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 judgement/order passed by the High Court and dismiss the petition filed by the respondent (No.) in the High Court.

PETITIONER

AFFIDAVIT

IN THE HON'BLE SUPREME COURT OF INDIA

IN THE MATTER OF:

<p>.....</p> <p>1.</p> <p>2.</p> <p>3.</p>	<p>...Petitioner</p>
<i>Versus</i>	
<p>...Respondent</p>	
AFFIDAVIT	
<p>I,company through the petitioner in the Special Leave Petition titled as above do hereby solemnly affirm and state as under:</p> <p>1. That I am the Chairman/Managing Director etc. of the petitioner-company and am fully aware of and conversant with the relevants facts concerning the matter in issue in this petition.</p> <p>2. That the contents of the accompanying Special Leave Petition are true and correct to the best of my knowledge and belief.</p> <p>3. That no relevant fact has been concealed or kept back in the S.L.P.</p> <p>I, further solemnly affirm at..... (place) this the..... day of..... that the above averments are true and correct. Nothing has been kept back or concealed.</p>	
DEPONENT	

DRAFTING OF LEGAL OPINION

<u>INTRODUCTION</u>	<p>➤ 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</p>
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**WHY LEGAL
OPINION IS
NEEDED**

- 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

- Drafting a legal opinion can and should always be split into three processes: The mental attitude, the thinking process and the writing process.

**THE MENTAL
ATTITUDE**

**THE THINKING
PROCESS**

**THE WRITING
PROCESS**

**THE MENTAL
ATTITUDE**

- The mental attitude required to write a good opinion, or give good advice, is that of a practitioner as opposed to an academic.
- The approach required is a practical approach not an academic approach. The practical approach is something to be developed and acquired, and defining it does not necessarily help. But, the four fundamental principles to remember to develop the right mental attitude at all times are:-
 - (a) You are dealing with a real situation.
 - (b) The facts are more fundamental than the law.
 - (c) The law is a means to an end.

	(d) Answer the question.
<p><u>THE THINKING PROCESS</u></p>	<p>The next stage in writing an opinion is the thinking process. It involves the following stages:-</p> <p>(a) Read and digest your Instructions:- Find out exactly what your instructions are, what is required of you, what the case is about, what are the basic facts and what your client actually wants to know.</p> <p>(e) Answer the primary question:- have a clear idea of what your client wants to know if you are to address your mind the right issues and give proper advice. Your objective is after all, to tell your client what he or she wants to know.</p> <p>(f) Digest & organise the facts:- The first thing to do is to digest and organise the facts. There will be facts in any case which are relevant and pertinent to the case and facts which are not..</p> <p>(g) Construct a legal framework:- Once the facts are at your finger tips, a legal framework needs to be constructed into which these facts can be logically slotted..</p> <p>(h) Look at the case as a whole:- What should also be borne in mind throughout the planning stage is the opponent's case. A legal opinion will be useless if it considers the client's case in isolation. Evidential issues must also be considered..</p> <p>(i) Consider your advice:- What your client needs is good practical advice, so you should also consider the practical steps that you advise your client to take.</p> <p>BEFORE YOU BEGIN WRITING A LEGAL OPINION, YOU WILL KNOW EXACTLY WHAT ADVICE YOU ARE GOING TO GIVE, WHY YOU ARE GIVING IT AND HOW YOU ARE GOING TO PRESENT</p>
<p><u>THE WRITING PROCESS</u></p>	<ul style="list-style-type: none"> ➤ Simply knowing your opinion, knowing the answer, does not mean the writing process is a mere formality. ➤ The legal opinion should be written following a structure. It should be entitled OPINION or ADVICE and contain the title of the case in the heading. ➤ At this point, many legal opinions will set out the main conclusions and advice and the overall opinion. This is good practice as it will encourage focus throughout the legal opinion and the reader will be able to read the following paragraphs knowing where they are leading. A percentage chance of success can be included in this section if appropriate. ➤ The subsequent paragraphs should set out your reasons for reaching the legal opinion which you do in the opening paragraphs. This is where the legal structure will come in. Each issue should be taken in

	<p>its logical order. Each section should include your opinion on that issue and the reasons for it.</p> <ul style="list-style-type: none">➤ There are certain rules of structure which ought to be followed for the sake of consistency in legal opinions. One example of these is that liability should be dealt with before quantum in civil claims. If there are two or more defendants take each of the defendant's liability in turn before turning to quantum. <p>The concluding paragraph of a legal opinion ought to be a 'Next Step' paragraph advising what needs to be done to strengthen the client's case</p>
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LAW RELATING TO APPEALS & PLAINTS

<p>INTRODUCTION</p>	<p>CIVIL PROCEDURE CODE AND CRIMINAL PROCEDURE CODE The Codes consists of two divisions.</p> <div style="display: flex; justify-content: space-around;"> <div style="border: 1px solid black; padding: 5px; width: 45%;"> <p>SUBSTANTIVE LAW</p> <p>i.e., the law which determines the rights and obligation of the parties to a dispute.</p> <p>substantive law, can be amended only be the Parliament</p> </div> <div style="border: 1px solid black; padding: 5px; width: 45%;"> <p>PROCEDURAL LAW</p> <p>the law which prescribes the procedure for the enforcement of rights and obligation of the parties to the disputes.</p> <p>second division, containing procedural law, can be amended only by the High Courts</p> </div> </div>
<p><u>CONCEPT OF DECREE</u></p>	<ul style="list-style-type: none"> • The term 'decree' has been defined u/s 2(2) of Civil Procedure Code, 1908. It means the formal expression of an adjudication which conclusively determines the rights of the parties with regard to all or any of the matter in controversy in the suit. • A decree may be either preliminary or final. A decree is preliminary when a further procedure has to be taken before the suit can be completely disposed off. • It is final when such adjudication completely disposes of the suit. • It may be noted that the term 'decree' doesn't include the following: <ul style="list-style-type: none"> ✓ Any adjudication from which an appeal lies as an appeal from an order. ✓ Any order or decision of the dismissal of the suit for default.
<p><u>CONCEPT OF ORDER</u></p>	<ul style="list-style-type: none"> • The term 'Order' has been defined u/s 2 (14) of the Civil Procedure Code. It means the formal expression of any decision of the Civil Court which is not a decree.
<p><u>CONCEPT OF JUDGEMENT</u></p>	<ul style="list-style-type: none"> • The term judgment has been defined u/s 2 (9) of the Civil Procedure Code. It means the statement given by the Judge on the grounds of a Decree or Order. Thus a judgment sets out the ground and the reason for the Judge to have arrived at the decision.
<p><u>OFFENCE</u></p>	<ul style="list-style-type: none"> • Offences mean any act or omission made punishable by any law for

	<p>the time being in force.</p> <ul style="list-style-type: none"> In simple terms, an offence is a wrong committed by any individual in a society. Following are the four elements which constitute the offence: <p>A human being;</p> <ul style="list-style-type: none"> Mens Rea (guilty mind or intention); Illegal act i.e.; Actus Reas; and Injury to another person
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<p><u>COGNIZABLE OFFENCE</u></p> <ul style="list-style-type: none"> Cognizable offence means an offence in which a person can be arrested by a police officer without warrant. Cognizable offences are generally more serious in nature and heavily punishable. In such cases, the police have hardly any time to obtain a warrant of arrest from a court, as the offender may escape by the time of warrant is obtained or he may tamper with the material evidence. Examples of cognizable offences are Murder, Dacoity, etc 	<p><u>NON COGNIZABLE OFFENCE</u></p> <ul style="list-style-type: none"> Non-Cognizable offence means an offence in which the police can't arrest a person without warrant. Non-Cognizable offences are less serious in nature as compared to cognizable offence. In case of these offences injury cause to the society is comparatively small. Examples of non-cognizable offences are simple hurt, undue influence at an election, etc.
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<p><u>BAILABLE OFFENCE</u></p> <ul style="list-style-type: none"> Bailable offence means an offence which is shown as bailable in the first schedule of the Criminal Procedure Code or which is bailable by any other law for the time being in force. Bailable offences are less serious than non-bailable offences. A Bail, in the case of bailable offence, is a matter of right. 	<p><u>NON BAILABLE OFFENCE</u></p> <ul style="list-style-type: none"> Non-bailable offence means any other offence. Non-bailable offences are more serious. Bail, in case of non-bailable offence, depends upon the discretion of the court
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• **Bail means the release of an accused from the custody of the officer of law and entrusting him to the private custody of person who become bound as surety to produce the accused to answer the charge at the stipulated time and date.**

<p><u>ANTICIPATORY BAIL</u></p>	<p>✓ Anticipatory bail is a bail which is granted to a person who apprehends arrest but has not yet been arrested. Where any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence he may apply to the High Court or the Court of Sessions for a direction u/s 438. On such application, the Court may, if it thinks fit, direct that in the event of such arrest, he shall be released</p>
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- on bail.
- ✓ An opportunity of hearing must be given to the opposite party before granting anticipatory bail (*State of Assam v. R.K. Krishna Kumar* AIR 1998 SC 144).

The Court grants the anticipatory bail subject to the following conditions:

- That the accused shall make himself available for interrogation by a police officer as and when required;
- He shall not threaten the witness so as to make them hostile; and
- He shall not leave India without the prior permission of court

Specimen Bail Application before a Magistrate during Police Enquiry under s. 437, Cr.PC 1973

In the Court of..... Magistrate

The State

Versus

Accused AB son of TZ, Village:

Thana:

In the matter of petition for bail of
accused AB, during police enquiry

The humble petition of
AB the accused above-named

Most respectfully sheweth:

1. That your petitioner was arrested by the police on 5th March 2013 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 your petitioner was not identified by any inmate of the house of CM where the burglary is alleged to have taken place, nor any incriminating article was found in his house.
3. That your petitioner has reason to believe that one GS 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

Verification

I, AB, son of TZ, 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 The statements in paragraphs 1 to 5 of the

foregoing petition are true and correct to my knowledge and belief.

2. I sign this verification on the 6th day of May 2018.

Solemnly affirmed by the
said AB on 6th May 2018 at
the Court
House at.....

Before me

Notary/Magistrate.

COMPLAINT

Complaint means any allegation made orally or in writing to a Magistrate with the view to his taking action under Criminal Procedure Code, that some person, whether known or unknown, has committed an offence.

It may be noted that the term complaint doesn't include a police report.

Police report means a report forwarded by a police officer to a Magistrate.

A complaint in a criminal case is what a plaint is in a civil case. The requisites of a complaint are:

- (i) an oral or a written allegation;
- (ii) some person known or unknown has committed an offence;
- (iii) it must be made to a magistrate; and
- (iv) it must be made with the object that he should take action.

- There is no particular format of a complaint.
- 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. (*Mohd. Yousuf v. Afaq Jahan*, AIR 2006 SC 705). Complaint need not be presented in person. A letter to a magistrate stating facts constituting an offence and requesting to take action is a complaint.

For one, words 'plaints' and 'complaints' are nearly synonymous. In both, the expression of grievance is predominant. Verily, when a suitor files a statement of grievance he is the plaintiff and he files a 'complaint' containing allegations and claims remedy. As days passed, we have taken up the word 'Plaint' for the Civil Court and the word 'Complaint' for the Criminal Court.

INVESTIGATION INQUIRY AND TRIAL

Investigation [Sec. 2 (h)] : As per Criminal Procedure Code, investigation is to be conducted always by a police officer or by any other

Inquiry [Sec. 2(g)] : According to Criminal Procedure Code, inquiry is always conducted by the Magistrate or by the court.

Trial: The word 'trial' has not been defined under Criminal Procedure Code. It means the judicial process in accordance with law,

<p>authorized person. Investigation process consists of the following steps:</p> <ul style="list-style-type: none"> • Proceeding to the spot; • Ascertainment of facts and circumstances; • Discovery and arrest of the suspected person; and • Collection evidence. 	<p>An inquiry before trial to ascertain whether any offence has been committed and whether he should be put upon the trial.</p>	<p>whereby the question of guilt or innocence of the person accused of an offence is determined. Thus a trial ends either in conviction or acquittal.</p>
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<p><u>WARRANT AND SUMMON CASES</u></p>	<ul style="list-style-type: none"> • Warrant case means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding 2 years. • Summons case means a case relating to an offence and not being a warrant case. • Thus, it can be seen that the distinction between two terms is based on the quantum of the Punishment that can be awarded. • In other words, cases which are punishable with imprisonment up to 2 years are summons cases and the rest are all warrant cases. • Further in a summons case, the court order is directly issued to a person to produce himself before the court, whereas in a warrant case, the court order is issued to the police to produce the person concerned before the court.
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<p><u>FIRST INFORMATION REPORT</u></p>	<p>Section 154 Cr.PC 1973 deals with information in cognizable cases. Section 154 reads:</p> <ol style="list-style-type: none"> (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
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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.

- ✓ In *Lallan Chaudhary and Ors. v. State of Bihar, AIR 2006 SC 3376*, the Supreme
- ✓ Court held that section 154 of the Code thus casts a statutory duty upon police officer to register the case, as disclosed in the complaint, and then to proceed with the investigation.
- ✓ The mandate of Section 154 is manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station, such police officer has no other option except to register the case on the basis of such information.
- ✓ The provision of Section 154 is 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. [*Ramesh Kumari v. State (NCT of Delhi) and Ors., 2006 Cri.LJ 1622*].

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)

<u>REFERENCE</u>	<ul style="list-style-type: none"> • A reference can be made by a lower court to the higher court where the question of law is involved in the suit and the lower court has a reasonable doubt about such question of law. • The application for reference can be made by any of the parties to the suit. Further the lower court may also, on its own, refer the matter to the higher court. • The purpose of Sec. 113 is to enable the sub-ordinate courts to obtain, in non-appealable cases, the opinion of High Court on questions of law for doing justice to the parties.
<u>REVIEW</u>	<ul style="list-style-type: none"> • Section 114 of the Civil Procedure Code provides for the review of the case i.e., the reconsideration of the decision given by a court. • The application for review can be filed where no appeal could be preferred against the order of the court and also in those cases where the person concerned doesn't want to prefer such an appeal, though such an appeal is maintainable. • It may be noted that application to review has to be filled before the same court which has given the decision. It may further be noted that a court can exercise the power of review only if it is specifically authorized to exercise such power under some law.
<u>REVISION</u>	<p>A petition of revision can be made before the High Court when the subordinate Court:</p> <ul style="list-style-type: none"> • Exercises a jurisdiction not vested in it by law; • Fails to exercise jurisdiction vested in it by law or • Acted in the exercise of jurisdiction with material irregularity

DISTINGUISH BETWEEN SET OFF AND COUNTER CLAIM

Set off is for an ascertained sum or arises out of the same transactions as the plaintiff's claim.	A counter claim may not arise out of the same transaction.
Set off is a defence and as such has to be pleaded in the written statement.	Counter claim on the other hand is a weapon of offence enabling a defendant to enforce his claim against the plaintiff as effectively as in an independent action. It is a sort of cross action.
In case of set off the plaintiff in order to establish his plea of limitation has to prove that set off was barred when the plaintiff commenced his action.	In a counter claim the plaintiff has to prove that it has to prove that it was barred when it was pleaded.
Set off is a claim by the defendant in defence which exceeds the plaintiff's claim.	A counter claim by the defendant may, however, exceed the plaintiff's claim being in the nature of cross action.

<p><u>PLEADINGS – MEANING</u></p>	<ul style="list-style-type: none"> • The present day system of pleadings 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 Courts of the States. • Order 6, R. 1 of Civil Procedure Code (C.P.C.) defines ‘pleading’. It means either a plaint or a written statement.’ • Pleading are statement of facts in written drawn up and filed in acourt by each of the party to the case • The main objectives of pleadings is to find out and narrow down the controversy between the parties.
<p><u>FUNDAMETALS OF PLEADINGS</u></p>	<p>The fundamental rule of pleadings is contained in provisions of O. 6, R. 2 of C.P.C. which enjoins :</p> <div style="background-color: #c8e6c9; padding: 10px; border: 1px solid #ccc;"> <p>(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.</p> <p>(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is conveniently, contained in a separate paragraph.</p> <p>(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.”</p> </div> <div style="background-color: #d32f2f; color: white; border-radius: 50%; padding: 20px; text-align: center; margin-top: 10px;"> <p>“The pleadings are not to be considered as constituting a game of skill between the advocates. The) ought to be so framed as not only to assist the party in the statement of his case but the court in its investigation of the truth between the litigants”</p> </div>
<p><u>INGREDIENTS OF PLEADINGS</u></p>	<p>The pleading shall contain</p> <ul style="list-style-type: none"> (i) facts only, then again, material facts; (ii) not law; (iii) not evidence; and (iv) immaterial facts to be discarded. (v) deficiency in pleading.

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<u>PLAINT STRUCTURE</u>	<p>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.</p> <p>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:</p> <ol style="list-style-type: none"> (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 (i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits. 										

DRAFTING OF PLAINT / APPLICATIONS /PETITIONS

- EVERY APPLICATION SHOULD CONTAIN
 - ✓ NAME OF THE COURT
 - ✓ NUMBER OF THE SUIT
 - ✓ NAME OF THE APPLICANT AND THE OPPOSITE PARTY
 - ✓ PROVISIONS OF THE LAW UNDER WHATS ITS MODE.
 - ✓ AFFIDAVIT

These may be classified into

APPLICATIONS UNDER CPC

PETITIONS UNDER THE OTHER STATUES

WRITTEN STATEMENT(MEANING)

- **written statement** means a pleading for defence. However, the expression '**written statement**' has not been defined in the code and it is a term of specific connotation ordinarily signifying a reply to the plaint which is filed by the plaintiff.
- **Then in answer** to the defendant's pleas in defence, a subsequent pleading is filed by the plaintiff, either in reply to the defendant's claim of set off , or with leave of court called as replication or rejoinder.
- **Before drafting a written statement , the defendant should examine the plaint very carefully and make sure whether the whole information required for drawing up the defence is available. If not then he may apply for discovery of documents.**
- It is incumbent on the defen-dant to file his defence in writing.
- If the defendant fails to file written statement, the court may pronounce judgment against him or may under O. 8, R. 10, make such order in relation to the suit as it deems fit
- . If the defendant has omitted to avail of his right to file a written statement at or before the first hearing, the court can extend the time for filing it, in exercise of its discretion, if the circumstances so warrant.
- If there are several defendants, then may file a joint defence, if they may have the same defence to the claim.

DRAFTING OF WRITTEN STATEMENT

<u>DENY THE AVERMENT OF THE PLAINT/PETITION</u>	<ul style="list-style-type: none"> ✓ One has to deny the averment of the plaint/petition which are incorrect, perverse or false. ✓ averment contained in any para of the plaint are not denied specifically it is presumed to have been admitted by the other party by virtue of the provisions ✓ It must be borne in mind that the denial has to be specific and not evasive (Order 8, Rule 3 & 4 CPC) [1986 Rajdhani Law Reporter 213; AIR 1964 Patna 348 (DB), AIR 1962 MP 348 (DB); <i>Dalvir Singh Dhillowal v. Kanwaljit Singh</i> 2002
<u>POINTS RAISED</u>	<ul style="list-style-type: none"> ✓ 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.
<u>ATTACHMENT</u>	<ul style="list-style-type: none"> ✓ Attach relevant correspondence, invoice, challan, documents, extracts of books of accounts or relevant papers as annexures while reply is drafted to a particular para of the plaint;
<u>PROPER REPLY</u>	<ul style="list-style-type: none"> ✓ The reply to each of the paras 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. [<i>Vinod Kumar v. Surjit Kumar</i>,
<u>SIGNATURES</u>	<ul style="list-style-type: none"> ✓ After reply, the same is to be signed by the constituted attorney of the opposite party. ✓ If the opposite party is an individual, it could be signed by him or his constituted attorney or if the opposite party is a partnership firm, the same should be signed by a partner who is duly authorised under the Partnership Deed, because no partner has an implied authority to sign pleadings on behalf of the partnership firm by virtue of Section 22 of the Indian Partnership Act, 1932. ✓ In case of a body corporate, the same could be signed by any Director, Company Secretary, Vice-President, General Manger or Manager who is duly authorised by the Board of Directors of the company because any of the aforesaid persons per se are not entitled to sign pleadings on behalf of the body corporate
<u>AFFIDAVIT</u>	<ul style="list-style-type: none"> ✓ The reply/written statement is to be supported by an Affidavit of the opposite party. Likewise, the Affidavit will be sworn by any of the persons aforesaid and duly notorised by an Oath Commissioner. The Affidavit has to be properly drawn and if the affidavit is not properly drawn or attested, the same cannot be read and the petition could be dismissed summarily.
<u>REPLY TO ANNEXURES</u>	<ul style="list-style-type: none"> ✓ The reply alongwith all annexures should be duly page numbered and be filed alongwith authority letter if not previously filed.

<u>SUPPORTING DOCUMENTS</u>	<ul style="list-style-type: none"> ✓ At the time of filing of reply, attach all the supporting papers, documents, documentary evidence, copies of annual accounts or its relevant extracts, invoices, extracts of registers, documents and other relevant papers. 										
<u>NOPOINTS SHOULD BE OMITTED</u>	<ul style="list-style-type: none"> ✓ 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 as provided in Order 6, Rule 17 CPC, and also the same cannot be raised in the Affidavit-in-Evidence at the time of leading of evidence 										
<u>PLEADINGS</u>	<ul style="list-style-type: none"> ✓ If a party is alleging fraud, undue influence or mis-representation, general allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice, however, strong the language in which they are couched may be, and the same applies to undue influence or coercion. [<i>Afsar Shaikh v. Soleman Bibi</i>, AIR 1976, SC 163; 1976 (2) SCC 142]. ✓ While pleading against fraud or mis-representation, party must state the requisite particulars in the pleadings. [<i>K Kanakarathnam v. P Perumal</i>, AIR 1994 Madras 247.] 										
<u>RELIEF</u>	<ul style="list-style-type: none"> ✓ 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 [Order 7, Rule 7 CPC]. The general principle is that the relief if not prayed for, will not be allowed. [<i>R Tiwary v. B Prasad</i>, AIR 2002 SC 136.] 										
<u>FORMS OF DEFENCE</u>	<p>When it is intended to take several defences in the same written statement, the different kinds of defences should be separately written.</p> <table border="1"> <tr> <td><u>DENIALS OR TRAVERSE</u></td> <td>Where the defendant totally and categorically denies the allegations of the plaintiff.</td> </tr> <tr> <td><u>DILATORY PLEAS</u></td> <td>Where the defendant pleads go the root of the case.</td> </tr> <tr> <td><u>OBJECTION IN THE POINT OF LAW OR DEMURRER</u></td> <td>Where the defendant pleads that the plaint allegations do not disclose a cause of action or that the special damages claimed are too remote.</td> </tr> <tr> <td><u>SPECIAL DEFENCE</u></td> <td>Where the defendant admits the allegations but seeks to destroy their effect by alleging affirmatively certain facts of his own.</td> </tr> <tr> <td><u>SET OFF</u></td> <td>It has the effect of extinguishing the plaintiff's claim to the extent of the amount claimed by the defendant.</td> </tr> </table>	<u>DENIALS OR TRAVERSE</u>	Where the defendant totally and categorically denies the allegations of the plaintiff.	<u>DILATORY PLEAS</u>	Where the defendant pleads go the root of the case.	<u>OBJECTION IN THE POINT OF LAW OR DEMURRER</u>	Where the defendant pleads that the plaint allegations do not disclose a cause of action or that the special damages claimed are too remote.	<u>SPECIAL DEFENCE</u>	Where the defendant admits the allegations but seeks to destroy their effect by alleging affirmatively certain facts of his own.	<u>SET OFF</u>	It has the effect of extinguishing the plaintiff's claim to the extent of the amount claimed by the defendant.
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<u>SET OFF</u>	It has the effect of extinguishing the plaintiff's claim to the extent of the amount claimed by the defendant.										

<p><u>REJOINDER/ REPLICATION</u></p>	<ul style="list-style-type: none"> ✓ Rejoinder is a quick reply that is often sharp or witty, or is a legal term referring to a defendant's answer to a plaintiff's legal action. ✓ 'Replication' and 'rejoinder' have well defined meanings. Replication is a pleading by plaintiff in answer to defendant's plea. ✓ 'Rejoinder' is a second pleading by defendant in answer to plaintiff's reply i.e. replication ✓ To reach the avowed goal of expeditious disposal, all interlocutory applications are supposed to be disposed of soon on their filing. A delivery of copy or the I.A. to the counsel for opposite party is a notice of application ✓ . Reply, if any, may be filed in between, if the time gap was reasonable enough enabling reply being filed
<p><u>INTERLOCUTORY APPLICATIONS</u></p>	<ul style="list-style-type: none"> ✓ "Interlocutory" means not that decides the cause but which only settles some intervening matter relating to the cause ✓ . After the suit is instituted by the plaintiff and before it is finally disposed off, the court may make interlocutory orders as may appear to the court to be just and convenient. ✓ The power to grant Interlocutory orders can be traced to Section 94 of C.P.C. Section 94 summarises general powers of a civil court in regard to different types of Interlocutory orders. The detailed procedure has been set out in the Schedule I of the C.P.C which deals with Orders and Rules. ✓ Interlocutory orders may take various shapes depending upon the requirement of the respective parties during the pendency of the suit. Applications for appointment of Commissioner, Temporary Injunctions, Receivers, payment into court, security for cause etc.
<p><u>ORIGINAL PETITION</u></p>	<ul style="list-style-type: none"> ✓ Suits are filed to lodge money claims in civil courts working under District Courts while petitions are filed in High Courts which are above District Courts seeking some directions against the opposite party; mostly the Government. ✓ There is no legal term like original suit or original petition. The suit which is initially filed in the first court for the first time is referred as original suit. ✓ Petitions are Writ Petitions, Arbitration Petitions, Miscellaneous Petitions etc. & not the original petition. After judgement in suit or petition, if any aggrieved party challenges it then it is by filing appeal in the higher court which is ordinarily called as Appeal but often in some

	<p>court it is termed as Letters Patent Appeal (LPA) & as Special Leave Petition (SLP) in Supreme Court</p>
<p><u>AFFIDAVIT</u></p>	<ul style="list-style-type: none"> • An affidavit is a written <u>sworn statement of fact</u> voluntarily made by an <i>affiant</i> or <i>deponent</i> under an oath or affirmation administered by a person authorized to do so by law. • Such statement is witnessed as to the authenticity of the affiant's <u>signature</u> by a taker of oaths, such as a <u>notary public</u> or commissioner of oaths. • . An affidavit is a type of verified statement or showing, or in other words, it contains a verification, on the basis of the personal knowledge and which on the basis of information received and believed to be true. • Affidavits may be written in the first or third person, depending on who drafted the document. • If an affidavit is notarized or authenticated, it will also include a caption with a venue and title in reference to judicial proceedings.
<p>The following rules should be remembered when drawing up an affidavit:</p> <ol style="list-style-type: none"> (1) Not a single allegation more than is absolutely necessary should be inserted; (2) The person making the affidavit should be fully described in the affidavit; (3) An affidavit should be drawn up in the first person; (4) 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; (5) Every person or place referred to in the affidavit should be correctly and fully described, so that he or it can be easily identified; (6) 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”; (7) 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”. (8) 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; (9) The affidavit should have the following oath or affirmation written out at the end: <p style="text-align: center;">“I swear that this my declaration is true, that it conceals nothing, and that no part of it is false”. or</p> 	

“I solemnly affirm that this my declaration is true, that it conceals nothing and that no part of it is false”. Any alterations in the affidavit must be authenticated by the officer before whom it is sworn.

An affidavit has to be drawn on a non-judicial Stamp Paper as applicable in the State where it is drawn and sworn.

An affidavit shall be authenticated by the deponent in the presence of an Oath Commissioner, Notary Public, Magistrate or any other authority appointed by the Government for the purpose.

(10) 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.

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 abovenamed 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.

Dated.....

Deponent

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)

EXECUTION OF PETITION

APPLICATION FOR EXECUTION

Execution of decree

- Application for execution of a decree shall be made by a holder of a decree who desires to execute it to the appropriate court which passed it or to the officer appointed in this behalf.
- In case the decree has been sent to another court than the application shall be made to such court or the proper officer thereof. Application for execution of a decree may be either (1) Oral; or (2) written

(A) Oral Application: Where a decree is for payment of money the court may on the oral application of the decreeholder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgement debtor, prior to the preparation of a warrant if he is within precincts of the court.

(b) Written Application: Every application for the execution of a decree shall be in writing save as otherwise provided sub-rule (1) (above) signed and verified by the applicant or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely :

- the No. of the suit the name of the parties;
- the date of the decree;
- whether any appeal has been preferred from the decree;
- whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;
- whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;
- the amount with interest (if any) due upon the decree,



		<p>(g) the amount of costs (if any) awarded;</p> <p>(h) the name of the person against whom execution of the decree sought; and</p>	
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LAW RELATING TO APPEALS AND APPEARANCES

<p><u>APPEALS</u></p>	<ul style="list-style-type: none"> • An Appeal is <ul style="list-style-type: none"> ✓ An application by a party. ✓ To an appealable Court. ✓ Asking it to set aside or revise a decision. ✓ Of a subordinate Court • A right to appeal is not a natural or inherent right but is a creature of a statute . • It is for the appellant to show that the statute gives a right to appeal to him. • The appellant judgement must include the following <ul style="list-style-type: none"> ✓ The points of determination. ✓ The decision thereon ✓ The reasons for the decision and: ✓ Relief to which the appellant is entitled to.
<p><u>MEMORANDUM OF APPEAL</u></p>	<p>This part should contain the following details.</p> <ul style="list-style-type: none"> • Name of the court to which appeal is filed. • Number of the appeal(as per the number is noted by the officials of the court.) • Year in which the appeal is filed • Name and the address of the appellant. • An introductory statement giving the particulars of the decree or Order appealed from.
<p><u>GROUND OF THE APPEAL</u></p>	<p>The grounds of the appeal are the grounds on which the decree or the order appealed from is objected to.</p> <p>The following points may be raised in the grounds of appeal.</p> <ul style="list-style-type: none"> • Any mistake committed by lower court in weighing the evidence. • Any mistake in view of law entertained by the lower court. • Any material irregularity committed in the trial of case. • Any substantial error or defect.

LAWS WHICH DEAL WITH APPEAL

<p>The Code of Civil Procedure, 1908 provides for four kinds of appeals:</p> <ol style="list-style-type: none"> (1) Appeals from original decrees (Sections 96 to 99 and Order XLI); (2) Second Appeals (Sections 100 to 103); (3) Appeals from Orders (Sections 104 to 106, Order XLIII, Rules 1 and 2); and (4) Appeals to the Supreme Court. 	<p><i>Appeals in Constitutional cases:</i></p> <ul style="list-style-type: none"> • Clause (1) of the Article 132 of the Constitution provides that an appeal shall lie to the Supreme Court from any judgement, 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.
<p>(1) Appeals from original decrees (Sections 96 to 99 and Order XLI);</p>	<p><i>(i) Appeals in civil cases:</i> Article 133 deals with</p>

<p>Appeals from original decrees may be preferred from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court on points of law as well as on facts</p>	<p>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.</p> <p>These conditions are:</p> <ol style="list-style-type: none"> (a) the decision appealed against must be a “judgement, decree or final order” of a High Court in the territory of India, (b) such judgement, decree or final order should be given in a civil proceeding, (c) and 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
<p><u>Second Appeals (Sections 100 to 103);</u></p> <ul style="list-style-type: none"> • 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 • Under Section 100 to the Code, an appeal may lie from an appellate decree passed <i>ex parte</i>. 	<p><i>(ii) Appeals in criminal cases:</i> 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.</p> <p>There are two modes by which a criminal appeal from any “judgement, final order or sentence” in a criminal proceeding of a High Court can be brought before the Supreme Court:</p> <ol style="list-style-type: none"> (1) Without a certificate of the High Court. (2) With a certificate of the High Court. (3) Appeal by Special Leave.
<p><u>Appeals from Orders (Sections 104 to 106, Order XLIII, Rules 1 and 2); and</u></p> <p>Appeals from, Orders under Sections 104 to 106 would lie only from the following Orders on grounds of defect or irregularity of law:</p> <ol style="list-style-type: none"> (a) An Order under Section 35A of the Code allowing special costs; (b) An Order under Section 91 or Section 92 refusing leave to institute a suit; (c) An Order under Section 95 for 	

<p>compensation for obtaining arrest, attachment or injunction on insufficient ground;</p> <p>(d) An Order under the Code imposing a fine or directing the detention or arrest of any person except in execution of a decree; and</p> <p>(e) Appealable Orders as set out under Order XLIII, Rule 1.</p>	
<p><u>Appeals to the Supreme Court</u></p> <p>Appeals to the Supreme Court, the highest Court of Appeal, lie in the following cases:</p> <p>(1) Section 109 of the Code of Civil Procedure, 1908 provides:</p> <p>“Subject to the Constitution and such rules as may, from time to time, be made by the Supreme Court regarding appeals from the Courts of India, and to the provisions hereinafter contained, an appeal shall lie to the Supreme Court from any judgement, decree or final order in a civil proceeding of a High Court, if the High Court certifies:</p> <p>(i) that the case involves a substantial question of law of general importance; and</p> <p>(ii) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.” Order 45 of the Code of Civil Procedure, 1908 provides rules of procedure in appeals to the Supreme Court.</p> <p>(2) Articles 132 to 135 of the Constitution deal with ordinary appeals to the Supreme Court:</p>	
<p><u>DRAFTING OF APPEAL</u></p>	
<p>An appeal may be divided into three parts: (1) formal part, known as the memorandum of appeal, (2) material part, grounds of appeal, and (3) relief sought for</p>	

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:

Company Ltd. a company incorporated under the provisions of the Companies Act and having its registered office.....

Versus

(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 parties which was reducing into writing. 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. 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*.
4. 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
5. 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.
6. 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)
7. That the parties led evidence. After hearing the counsel for the parties the learned District Judge has by 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 below are annexed hereto and are marked as *ANNEXURE A-3 AND A-4*, respectively.

Aggrieved by the aforesaid judgement and decree of the court below dismissing the suit of the plaintiff

this appeal is hereby filed on the following, amongst other,

GROUNDS

- A. That the judgement and decree under appeal are 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 favour 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.
 - D.
 - E.
 - F.
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 judgement and decree under appeal having been passed on.....

In the above facts and circumstances the appellant prays that this appeal be allowed, the judgement 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....., 2018 that the contents of the above appeal are correct to the best of my knowledge and belief.....

CHAPTER 8 PART A**LAW RELATING TO APPEARANCES AND PLEADINGS**

INTRODUCTION	<ul style="list-style-type: none"> • With the growth of the Corporate Sector, the role of CS has increased • The corporate sector has recognized the role of the Company Secretaries as a compliance officer and as a nodal point of contact between the company and its shareholders, debenture holders, depositors, financial institutions and the Government. • The Company Secretaries in practice are rendering value added services to corporate sector as independent professionals • . That apart, a Company Secretary can appear as an authorized representative before 				
	<table border="1" style="width: 100%; background-color: yellow;"> <tr> <td style="width: 25%;">NCLT</td> <td style="width: 25%;">CCI</td> <td style="width: 25%;">SAT</td> <td style="width: 25%;">TRAI</td> </tr> </table>	NCLT	CCI	SAT	TRAI
NCLT	CCI	SAT	TRAI		

	<u>NAME OF THE ACT</u>	<u>APPELLATE AUTHORITY</u>	<u>TYPE OF APPEAL OR WHO CAN APPEAL</u>	<u>TIME LIMIT WITHIN WHICH THE APPEAL IS TO BE FILED.</u>
1	COMPANIES ACT	NCLT	<ul style="list-style-type: none"> • REFUSAL BY THE PUBLIC COMPANY TO REGISTER THE TRANSFER OR TRANSMISSION OF ITS SHARE OR DEBENTURE WITHIN A PERIOD OF 30 DAYS. 	<ul style="list-style-type: none"> • WITHIN 60 DAYS OF THE RECEIPT OF NOTICE OF SUCH REFUSAL. • WHERE NO NOTICE HAS SENT BY THE COMPANY WITHIN 90 FROM THE DATE ON WHICH THE INSTRUMENT OF TRANSFER WAS DELIVERED TO THE COMPANY.
2	TRAI	SUPREME COURT	ANY PERSON AGGRIEVED BY ANY ORDER OF THE APPELLATE TRIBUNAL MAY APPEAL TO SUPREME COURT	WITHIN 90 DAYS FROM THE DATE OF THE ORDER APPEALED AGAINST. THE SUPREME COURT MAY CONDONE THE DELAY IN APPEAL.
3	SEBI ACT 1992	SAT	ANY PERSON AGGRIEVED BY AN ORDER OF THE SEBI OR ADJUDICATING AUTHORITY.	Within 45 DAYS OF THE RECEIPT OF THE COPY OF THE SAID ORDER.
		SUPREME COURT	ANY PERSON AGGRIEVED BY ANY ORDER OF SAT.	WITHIN 60 DAYS FROM THE DATE OF THE COMMUNICATION OF THE SAID ORDER. THE SUPREME COURT MAY CONDONE THE DELAY IN FILING APPEALS
4	COMPETITION ACT 2002	APPELLATE TRIBUNAL	ANY PERSON AGGRIEVED BY THE ORDER OF THE CCI.	WITHIN 60 DAYS OF THE RECEIPT OF THE COPY OF THE SAID ORDER . THE TRIBUNAL MAY CONDONE THE DELAY IN FILING APPEAL.
		SUPREME COURT	ANY PERSON OF THE CCI AGGRIEVED BY THE ORDER OF THE APPELLATE TRIBUNAL.	WITH IN 60 DAYS OF THE RECEIPT OF THE COPY OF THE SAID ORDER . THE SUPREME COURT MAY

				CONDONE THE DELAY IN FILING APPEALS
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<u>RIGHT TO LEGAL REPRESENTATION</u>	
<u>UNDER THE COMPANIES ACT.</u>	<ul style="list-style-type: none"> • 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. • 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><u>APPEAL AGAINST REFUSAL TO REGISTER TRANSFER OF SHARES</u></p> <ul style="list-style-type: none"> • 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 two 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.
	<p><u>APPEAL TO SUPREME COURT</u></p> <p>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 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 sixty days [Section 423]</p>
<u>UNDER TRAI ACT</u>	<p><u>APPEAL TO SUPREME COURT</u></p> <p>Section 18 of the TRAI Act (as amended in 2000) provides that notwithstanding anything contained in the Code of Civil Procedure, 1908 or in any other law, an</p>

	<p>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</p>
	<p>SECTION 100 OF THAT CODE</p> <ul style="list-style-type: none"> • 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. • The proviso appended to the Section 18 says that 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.
<p><u>APPEAL TO THE SECURITIES APPELLATE TRIBUNAL</u></p>	<p>Section 15T of the SEBI Act lays down that any person aggrieved:</p> <ol style="list-style-type: none"> (1) (a) by an order of SEBI made, under this Act, or the rules or regulations made thereunder; 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. (2) No appeal shall lie to the Securities Appellate Tribunals from an order made (a) by SEBI; (b) by an adjudicating officer. (3) Every appeal under sub-section (1) 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, is received by him and it shall be in such form and be accompanied by such fee as may be prescribed. This details have been prescribed in the Rules. Provided that the 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. (4) 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. (5) The Securities Appellate Tribunal shall send a copy of every order made by it to SEBI and the parties to (6) the appeal and to the concerned Adjudicating Officer. (7) The appeal filed before the Securities Appellate Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal
	<p><u>APPEAL TO THE SUPREME COURT</u></p> <ul style="list-style-type: none"> • 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

	<p>days from the date of communication of the decision or order of the Appellate Tribunal to them:</p> <ul style="list-style-type: none"> • 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 <u>said period of sixty days.</u>
<u>DRAFTING OF AFFIDAVIT IN EVIDENCE</u>	<p>The following must be kept in mind while preparing the affidavit-in-evidence by the parties –</p> <ol style="list-style-type: none"> 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. <p>It may be noted that in the affidavit in evidence, the position of law or legal provisions or principle of law are not reproduced because the position of law or settled principles of law are not required to be proved by any party and they are deemed to exist and any party can argue and take help of those settled position of law while arguing their case before the Court or Tribunal or Forum and need to be proved by filing an evidence. [Section 5, Indian Evidence Act.]</p> <ol style="list-style-type: none"> 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, hand-writing 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 alongwith it either the original of papers, documents, books, registers relied upon by it or bring with it the carbon copy of the same. <p>It may be noted that only photocopy of any paper or document (in the absence of its reply, original or carbon copy) can not be relied upon and tendered as an evidence.</p>
<u>RULE OF ADVERSE</u>	<ul style="list-style-type: none"> • 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,

<p><u>INFERENCE</u></p>	<p>an adverse inference is liable to be drawn against such party.</p> <ul style="list-style-type: none"> • The Court will be justified in drawing an adverse inference against that party. [<i>Ms. Shefali Bhargava v. Indraprastha Appollo Hospital & Anr.</i>, 2003 NCJ 787 (NC)]. • It is equally incumbent upon a party to produce evidence of some expert where the issue involved is a complex or difficult one as for instance, issues pertaining to engineering, medical, technology or science etc. • Since the court cannot constitute itself into an expert body and contradict the claim/proposition on record unless there is something contrary on the record by way of expert opinion or there is any significantly acclaimed publication or treatise on which reliance could be based. • [<i>Dr. Harkanwaljit Singh Saini v. Gurbax Singh & Anr.</i>, 2003 NCJ 800 (NC)].
<p><u>ARGUMENTS ON PRELIMINARY SUBMISSIONS</u></p>	<ul style="list-style-type: none"> • Preliminary submissions 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. • Before incorporating such facts and/or provisions of law in the write-up, a lawyer/ authorized representative should be thorough with the provisions of law and interpretation, thereof, based upon relevant judgments so as to ensure that the submissions being made on behalf of the client are accepted and upheld by the Presiding Officer/Court/Tribunal as the case may be. • Thus, for eg., if a claim being opposed by a lawyer/authorized representative is evidently barred by limitation, such an objection should be taken in the preliminary submissions/objections. Such type of submissions/objections should be duly supported by law on the point or by relevant case law/judgments
<p><u>ARGUMENTS ON MERIT</u></p>	<ul style="list-style-type: none"> • Such arguments as relate to the facts pleaded by the parties are termed as arguments on merits. While addressing arguments on merits, a lawyer/authorized representative should carefully point out the pleadings of the parties and the relevant evidence in support thereof, lead by the parties, both oral as well as documentary. • INSTANCES • Thus, where an agreement/contract of service is pleaded and there is no evidence either oral or documentary on record in support of such an agreement/contract, it should be specifically pointed out that the opponent has failed to prove/establish that such an agreement/contract actually exists.
	<ul style="list-style-type: none"> • While taking such plea one should ensure that the legal provisions and/or interpretation, thereof, is very clear and directly applicable to the issues involved in the matter. <p>Some illustrations are as under:</p> <ol style="list-style-type: none"> (i) Suit is not maintainable for want of statutory notice etc. (ii) Complaint does not disclose cause of action (iii) Plaintiff has no right to sue. (iv) Suit barred by principles of res-judicata. (v) Suit barred by principles of waiver, estoppel, acquiescence.

	<p>(vi) Suit is barred by special enactment.</p> <p>(vii) Court has no jurisdiction.</p> <p>(viii) Suit is barred by limitation.</p> <p>(ix) Suit is premature, and so on</p> <ul style="list-style-type: none">• Some of these are known technically as 'special defences'. In a suit based on contract, defendant may admit that he made the contract, but may avoid the effect of admission by pleading performance, fraud, release, limitation etc
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CHAPTER 8 PART B**COURT CRAFT AND ART OF ADVOCACY**

<u>INTRODUCTION</u>	<ul style="list-style-type: none"> • 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 practising 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
<u>PREPARATORY POINTS</u>	<p>There are certain basic preparatory points which a Company Secretary should bear in mind when contacted by a client.</p> <ul style="list-style-type: none"> – 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.
<u>DRAFTING OF PLEADINGS</u>	<p>Pleadings could be both written and oral. Mastering both the kinds of pleadings is must for effective delivery of results to the clients.</p>

	<p>Some of the important factors which may be borne in mind while making written pleadings are as under:</p> <ul style="list-style-type: none"> – 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/judgements. <p>If you are opponent</p> <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 law point and judgements; – Submit your reply to each paragraph of the petition. <p>If you are for the petitioner</p> <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
<p><u>ORAL PLEADINGS</u></p>	<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 a case before CLB/NCLT or other tribunals. 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 judgements to be relied ready for the Court and for your opponent(s).
<p><u>WHILE PRESENTING YOUR CASE</u></p>	<p>Submit a list of citations to the Court Master before opening of case; Start your address with humble note;</p> <ul style="list-style-type: none"> – Refer to the order sought to be challenged or reliefs sought to be

	<p>prayed;</p> <ul style="list-style-type: none"> – State brief facts; – Formulate issues/points, categorise 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 judgements; – 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.
<p><u>IMPORTANT PRINCIPLES OF ADVOCACY</u></p>	<p>Some of the important principles of advocacy a Company Secretary should observe include:</p> <ol style="list-style-type: none"> 1. Act in the best interest of the client; 2. Act in accordance with the client’s wishes and instructions; 3. Keep the client properly informed; 4. Carry out instructions with diligence and competence; 5. Act impartially and offer frank, independent advice; 6. Maintain client confidentiality.
<p><u>ADVOCACY TIPS</u></p>	<p>(i) <u>Clarity: The judge’s time is limited, so make the most of it.</u></p> <p>(ii) <u>Credibility: The judge needs to believe that what you are saying is true and that you are on the right side.</u></p> <p>(iii) <u>Demeanour: We don’t have a phrase “hearing is believing”. The human animal which includes the human judge, is far more video</u></p>

	<p><u>than audio. The way we collect most of our information is through our eyesight.</u></p> <p>(iv) <u>Eye contact: While pleading, maintain eye contact with your judge.</u></p> <p>(v) <u>Voice modulation: Voice modulation is equally important. Modulating your voice allows you to emphasize the points you want to emphasize. Be very careful about raising your voice. Use your anger strategically. But use is rarely. Always be in control of it.</u></p> <p>(vi) <u>Psychology: Understand judge’s psychology as your job is to make the judge prefer your version of the truth.</u></p> <p>(vii) <u>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.</u></p> <p>(viii) <u>Learn to listen.</u></p> <p>(ix) <u>Entertain your judge. Humour will often bail you out of a tough spot</u></p>
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DUTY OF COMPANY SECRETARY

<u>DUTY TOWARDS THE COURT</u>	<u>DUTY TOWARDS THE CLIENT</u>
<ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • 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
<ul style="list-style-type: none"> • A Company Secretary shall maintain towards the Courts a respectful attitude, bearing in mind that the dignity of the judicial office is essential for the survival of a free community. 	<ul style="list-style-type: none"> • 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.
<ul style="list-style-type: none"> • A Company Secretary shall not influence the decision of a Court by any illegal or improper means. 	<ul style="list-style-type: none"> • 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

<p>Private communications with the judge relating to a pending case are forbidden.</p>	<p>person other than his client or his authorized agent.</p>
<ul style="list-style-type: none"> • 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. 	<p>A Company Secretary shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client</p>
<ul style="list-style-type: none"> • 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. 	
<ul style="list-style-type: none"> • A Company Secretary should not act or plead in any matter in which he is himself pecuniarily interested 	
<p><u>PROFESSIONAL ETIQUETTES</u></p>	<ul style="list-style-type: none"> • 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. • Being corporate professionals, you must practice some basic etiquette tips that would help you to go up the ladder of success in the workplace. <u>These include Dressing Etiquette; Introduction and Greeting Etiquettes; Conversation Etiquette; Communication Etiquettes; Invitation Etiquette and Dining Etiquettes etc.</u>
<p><u>DRESSING ETIQUETTE</u></p>	
<p> </p>	

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.
- 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.

ICSI GUIDELINES
FOR
PROFESSIONAL
DRESS OF
COMPANY
SECRETARY

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:

- (a) 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.
- (b) The professional dress for female members will be saree or any other dress of a sober colour with a navy blue jacket.

	<p>(c) Members in employment may wear the dress/uniform as specified by the employer for all employees or if allowed the aforesaid professional dress.</p> <p>(d) 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.</p> <p>It may be pointed out that any person whether a lawyer, pleader or authorized representative representing a litigant before any Court of law or a Tribunal or any other authority discharging the functions of a Court/a quasi judicial authority, should comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community and a gentleman</p>
<p><u>HANDSHAKE ETIQUETTES</u></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 a 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><u>COMMUNICATION ETIQUETTES</u></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.

	<ul style="list-style-type: none"> – 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><u>INVITATION ETIQUETTE</u></p>	<div style="border: 1px solid #ccc; background-color: #f9cb9c; padding: 10px;"> <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. </div>
<p><u>DINNING ETIQUETTES</u></p>	<ul style="list-style-type: none"> – 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.

	<ul style="list-style-type: none">– 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
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CHAPTER 10

COMPOUNDING OF OFFENCES

<u>INTRODUCTION</u>	<ul style="list-style-type: none"> • 'Compounding' means that the accused and the complainant have come to terms and the dispute between the parties has been settled amicably or adjusted by agreement • The complainant agrees not to prosecute the accused • . The accused and the complainant then make a joint application to the court that the parties have come to terms and the case may not be proceeded with. • Thus, in compounding, there is a compromise or agreement, while in case of imposition of fine under the provisions of an Act, • Generally, offences which are of a private nature and relatively not serious are made compoundable. 		
<u>ADVANTAGES OF COMPOUNDING.</u>	<ul style="list-style-type: none"> • Under any legislation, if it is done before the trial by the court, wherein either of the parties to the dispute which is at fault willingly agrees to its fault and a compromise is done between both the parties without the matter being adjudicated by the court. • Compounding saves the parties from the hassle of spending a lot of money, time and energy in lengthy legal proceedings. • In a country like India where there are thousands of cases pending in the courts, 'compounding' is a good way of settling disputes or matters 		
COMPOUNDING UNDER COMPANIES ACT, 2013	COMPOUNDING UNDER FEMA	COMPOUNDING UNDER SEBI	CONSENT ORDER
COMPOUNDING UNDER COMPANIES ACT	<p>Compounding of offences is yet regularized by Section 621A of Companies Act, 1956 as new section 441 under Companies Act, 2013 is not yet notified</p> <p>Section 441 has provisions relating to compounding of offences.</p> <p>Applicability: As per provision of Section 441 (1) of the Act, 2013- Any offence punishable under this Act, whether committed by a company or any officer thereof, with fine only, may, either before or after the institution of any prosecution, be compounded. Further, as per provision of section 441(6) of the Act, 2013- any offence which is punishable under this act with imprisonment or</p>		

fine, or offence punishable with imprisonment or fine or with both, shall be compoundable with the permission of the Special Court(Provision of Section 435 of the Act, 2013 lay down the law of establishing the special courts by the central government for speedy trial of offences which are punishable under this Act with imprisonment for 2 years or more) in accordance with the procedure laid down in the Act for compounding of offences.

Jurisdiction: Power of Compounding of offence is with NCLT/ Regional Director/ Person authorized by Central Government. Amounts exceeding Rs 5,00,000 will be adjudicated upon by the NCLT and the amounts lesser than Rs 5,00,000 by the RD or the Central Government authorized person.

Penalty:Penalty imposed by the RD or the NCLT may not exceed the maximum amount of the fine which may be imposed for the offence so compounded.

Effects:

- **Once the offence is compounded, no further prosecution shall be initiated either by registrar or shareholder or any other person in respect of that offence.**
- **If the offence is committed for non filing of any return or document with registrar, then that return or documents needs to be filed with the registrar along with fees and additional fees as may be imposed under the order and within such time frame as may be stipulated under the order.**
- **If any prosecution is going in any court in respect of the offence, then on successful compounding of the same, the person against whom the prosecution is going on shall be discharged.**
- **Failure of compliance with the order of Compounding is an offence punishable with imprisonment of six months or fine not exceeding ` 100,000/- or with both.**
- **Once the offence is compounded, the intimation of compounding needs to be given to the Registrar within the period as mentioned in**

the order of compounding

- **Compoundable offences:**

Offences punishable with fine;	Offence punishable with fine or imprisonment (with the permission of Special Court)	Offences punishable with fine or Imprisonment or both (with the permission of Special Court)
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- **OFFENCES NOT COMPOUNDABLE:**

- Offences punishable with imprisonment
- Offences punishable with imprisonment and fine.
- As per proviso of the Section 441(1) of the Act, 2013, any offence covered under this sub-section by any or its officer shall not be compounded if the investigation against such company has been initiated or is pending under this Act.

	<p><i>Procedure of compounding of offence:</i></p> <ul style="list-style-type: none"> • An application for compounding of offence has to be made before the office of the Registrar of Companies where the registered office of the company is situated. A Form GNL-1 has to be filed with ROC along with the following attachments: <ul style="list-style-type: none"> o Board resolution passed for making an application. o Detailed application giving the general profile and history of the company, facts of the case like nature of offence and period of default, details about making the default good, prayer for compounding etc. o Copy of notice received from ROC. (Not applicable in case compounding application is made suo moto. o The office of the Registrar of Companies shall, after going through the contents of the application shall calculate the maximum amount of penalty that can be imposed for violation of provision of the Act, forward the application to office of RD or CLB/Tribunal, as the case may. o Office of RD/ CLB/Tribunal shall fix the date and time of personal hearing for the company or officer of the company who is seeking compounding of offence. o After hearing the matter, RD/CLB/Tribunal shall pass an order compounding the offence 				
<p>COMPOUNDING OF OFFENCES UNDER SEBI ACT, 1992</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2" style="text-align: center; padding: 5px;">COMPOUNDING OF OFFENCES UNDER SEBI ACT, 1992</td> </tr> <tr> <td style="width: 50%; padding: 5px;">CONSENT ORDER</td> <td style="width: 50%; padding: 5px;">COMPOUNDING OF OFFENCES</td> </tr> </table>	COMPOUNDING OF OFFENCES UNDER SEBI ACT, 1992		CONSENT ORDER	COMPOUNDING OF OFFENCES
COMPOUNDING OF OFFENCES UNDER SEBI ACT, 1992					
CONSENT ORDER	COMPOUNDING OF OFFENCES				

	<p>THIS IS USED WHERE COMPOUNDING IS TO BE DONE FOR THOSE OFFENCES PUNISHABLE WITH FINE ONLY.</p>	<p>THIS IS USED WHERE COMPOUNDING IS DONE WHERE OFFENCES PUNISHABLE WITH</p> <p>.1) IMPRISONMENT ONLY</p> <p>2) IMPRISONMENT OR FINE</p> <p>.3) IMPRISONMENT AND FINE.</p>
<p><u>PROCESS OF COMPOUNDING OF OFFENCES</u></p>	<ul style="list-style-type: none"> Section 24A of SEBI Act, 1992 permits compounding of offences by the court where prosecution proceedings are pending. Section 24A of SEBI Act reads as under: <p><u>“Notwithstanding anything contained in the Code of Criminal Procedure, 1973 any offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.”</u></p> Compounding of offence can cover appropriate prosecution cases filed by SEBI before the criminal courts Compounding of offence can take place at any stage after filing criminal complaint by SEBI. Where a criminal complaint has not yet been filed but is envisaged, the process for consent orders will be followed rather than the one for compounding. Where compounding is proposed by a party, such application may be made to the court and a copy can be addressed to the <u>“Division of Prosecution, Enforcement Department” at SEBI’s Mumbai address.</u> So far as process of compounding of offences is concerned, any party who wishes to compound an offence shall file an appropriate application before the court where complaint is pending with a copy addressed to the Prosecution Division, Enforcement Department of SEBI’s Mumbai office which will forward the application/ request to be placed before the high powered Committee. The terms of compounding as recommended by the Committee and approved by the Competent Authority would be placed before the court 	

	<p>by the Prosecution Division by way of written submissions or application, as appropriate, for passing orders as the court deems fit.</p> <ul style="list-style-type: none"> The final acceptance of any offer of compounding will come in to effect only upon the court passing the compounding order
<p><u>FACTORS TO BE TAKEN INTO CONSIDERATION WHILE COMPOUNDING OF OFFENCES UNDER VARIOUS LAWS</u></p>	
	<ul style="list-style-type: none"> Whether violation is intentional. Party's conduct in the investigation and disclosure of full facts. Gravity of charge i.e. charge like fraud, market manipulation or insider trading History of non-compliance. Good track record of the violator i.e. it had not been found guilty of similar or serious violations in the past. Whether there were circumstances beyond the control of the party Violation is technical and/or minor in nature and whether violation warrants penalty. Consideration of the amount of investors' harm or party's gain. Processes which have been introduced since the violation to minimize future violations/lapses. Compliance schedule proposed by the party Economic benefits accruing to a party from delayed or avoided compliance. Conditions where necessary to deter future non-compliance by the same or another party. Satisfaction of claim of investors regarding payment of money due to them or delivery of securities to them. Compliance of the civil enforcement action by the accused. Party has undergone any other regulatory enforcement action for the same violation. Any other factors necessary in the facts and circumstances of the case.
<p><u>CONSENT ORDERS OF SEBI</u></p>	<ul style="list-style-type: none"> SEBI has brought the concept of Consent Order into force for resolving the disputes in more smooth manner through negotiations and discussions instead of lengthy litigation. Consent Order means "an order settling administrative or civil proceedings between the regulator and a person (Party) who may prima facie be found to have violated securities laws." A Consent Order may or may not include a determination that a violation has occurred.

	<ul style="list-style-type: none"> • Consent Order provides flexibility of wider array of enforcement and remedial actions which will achieve the twin goals of an appropriate sanction, remedy and deterrence without resorting to litigation, lengthy proceedings and consequent delays. • Consent Orders can be passed in respect of all types of enforcement or remedial actions including administrative. • Violation of Consent Order by a Party (i.e. failure to obey) would invite appropriate action, including for violating SEBI orders, besides revival of the pending action. • If SEBI rejects the offer of settlement, the person making the offer shall be notified of the same and the offer of settlement shall be deemed to be withdrawn.
<p><u>COMPOUNDING OF OFFENCES UNDER FEMA</u></p>	<ul style="list-style-type: none"> • Section 15 of the FEMA Act dealing with power to compound contravention stipulates that <ol style="list-style-type: none"> (1) Any contravention under Section 13 may, on an application made by the person committing such contravention, be compounded <u>within one hundred and eighty days from the date of receipt of application by the Director of Enforcement or such other officers of the Directorate of Enforcement and Officers of the Reserve Bank as may be authorised in this behalf by the Central Government in such manner as may be prescribed.</u> (2) Where a contravention has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be initiated or continued, as the case may be, against the person committing such contravention under that section, in respect of the contravention so compounded. • The Government has, in consultation with the Reserve Bank of India, reviewed the procedures for compounding of contravention under FEMA. • The procedures have been reviewed to provide comfort to the citizens and corporate community by minimising transaction costs, while taking severe view of wilful, malafide and fraudulent transactions. • Accordingly, the responsibility of administering compounding of contravention cases under FEMA has been vested with the Reserve Bank with exception of hawala transactions. • The Directorate of Enforcement would continue to deal with these cases. <p>As per the new norms announced on 1st February 2005, the RBI will be required to conclude case proceedings within 180 days from the receipt of application for compounding, and the sum worked out after compounding has to be paid within 15 days from the order of compounding.</p>

	(1) The order passed by RBI will be applicable for a period of three years. If a second offence is committed after the expiry of three years, it will be deemed as a fresh contravention and not a repetition of the earlier one	
<u>COMPOUNDING OF OFFENCES UNDER CRPC.</u>	<p>Section 320 of Cr.P.C.</p> <p>Section 320 of Cr.P.C. provides for a list of offences that can be compounded. However such offences have been classified into ones which can be compounded:-</p> <p>a) With the permission of court</p> <p>b) Without the permission of the court</p> <ul style="list-style-type: none"> Where the offences are essentially of a private nature are relatively not quite serious, the CrPC considers it expedient to recognize some of the compoundable offences and some others as compoundable only with the permission of the court. <p>Compounding with the permission of the Court:</p>	
Offence	Section of the I.P.C. applicable	Person by whom offence may be compounded
1. Uttering words, etc. with deliberate intent to wound the religious feelings of person	298	The person whose religious feelings are intended to be wounded
2. Causing hurt	323, 334	The person to whom the hurt is caused
3. Wrongfully restraining confining any person	341, 342	The person restrained or confined
4. Assault or use of criminal force	352, 355, 358	The person assaulted or to whom criminal force is used

5. Mischief, when the only loss or damage caused is loss or damage to a private person	426, 427	The person to whom the loss or damage is caused
6. Criminal trespass	447	The person in possession of the property trespassed upon
7. House-trespass	448	The person in possession of the property trespassed upon
8. Criminal breach of contract of service	491	The person with whom the offender has contracted
9. Adultery	497	The husband of the woman
10. Enticing or taking away or detaining with criminal intent of a married woman	498	The husband of the woman
11. Defamation, except such cases as are specified against Section 500 of the I.P.C., 1860 in column 1 of the Table under sub-section (2)	500	The person defamed
12. Printing or engraving matter, knowing it to be defamatory	501	The person defamed
13. Sale of printed or engraved substance	502	The person defamed

containing defamatory matter, knowing it to contain such matter		
14. Insult intended to provoke a breach of the peace	504	The person insulted
15. Criminal intimidation except when the offence is punishable with imprisonment for seven years	506	The person intimidated
16. Act caused by making a person believe that he will be an object of divine displeasure	508	The person against whom the offence was committed

CHAPTER 10 PART A

DRAFTING UNDER COMPANIES ACT**PROMOTER**

- As per Section 2(69) of the Companies Act, 2013, Promoter" means a person

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

Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

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;

<p>PROMOTER'S CONTRACT PRE INCORPORATION CONTRACTS</p>	<ul style="list-style-type: none"> • 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 <i>preliminary or pre-incorporation contracts</i> • . The promoters .generally enter into such contracts as agents for the company about to be formed. • As the company is non-existent before incorporation it cannot be bound, by any purported ratification • Person who acts for the intended company remains personally liable to the vendor even if the company purports to ratify the agreement, unless the agreement provides that: <ul style="list-style-type: none"> (i) his liability shall cease if the company adopts the agreement; and (ii) either party may rescind the agreement, if the company does not adopt it within a specified time; <p>After incorporation, the company may adopt the preliminary agreement. But this must be by novation which may be implied from the circumstances. But in some cases, the memorandum directs the directors to execute such contracts.</p> <p>A pre-incorporation contract can be enforced against the company if it is warranted by the terms of incorporation and it is adopted by the company and communicated in acceptance. [Sections 15 and 19 of the Specific Relief Act, 1963].</p> <ul style="list-style-type: none"> •
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A Specimen of Promoters' Contract for the Purchase of an Industrial Plot for setting up Industrial Unit of the Proposed Company ABC Ltd.

THE AGREEMENT made on..... day of..... between Mr. A, son of Mr..... resident of....., Mr. B, son of Mr..... resident of..... and Mr. C, son of Mr....., resident of.....' (hereinafter referred to as "promoters") of the one part which expression shall, unless repugnant to the context include their heirs, legal representatives and assigns and Mr. "V" son of Mr..... resident..... (hereinafter referred as "Vendor") of the other part, which expression shall, unless repugnant to the context, include his heirs, legal representatives and assigns.

WHEREAS the promoters have been engaged for quite sometime in the past in promoting and forming a company to be known as ABC Ltd., which name has been made available to the promoters by the Registrar of Companies....., consequent upon which they have filed with the Registrar memorandum of association and articles of association for registration of the company;

AND WHEREAS the memorandum and articles of association of the proposed ABC Ltd., empower the company and its directors to enter into agreements on its incorporation on the lines of the agreement entered into by the promoters for the purchase of land, plant, machinery, equipment and for hiring the services of persons required for and in connection with the formation and incorporation of the company;

AND WHEREAS the Vendor is the absolute owner of industrial plot of land measuring..... and situated at..... and is desirous of selling the same;

AND WHEREAS the promoters are desirous to buy the said plot of land for the proposed company ABC Ltd. to set up an industrial unit on its incorporation.

NOW IT IS AGREED AND DECLARED BETWEEN AND BY THE PARTIES AS FOLLOWS:

That the said vendor shall sell and the promoters shall purchase the industrial Plot No..... situated in the..... Industrial Area, bounded on North by....., on South by....., on East by....., and on West by..... 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 appearance of the vendor and the promoters before the Sub-Registrar..... at the time of registration of the deed of sale to this agreement.

The vendor shall satisfy the promoters or ABC Ltd., if incorporated by then, about the title of the vendor to the aforesaid piece of land within one month of the execution of this agreement and the promoters or their attorney shall be entitled to ask for such information as may be necessary to ascertain the title of the vendor and the vendor shall be bound to allow inspection of the title deeds relating to the plot of land at his place within two months of the date of this agreement. On the satisfaction of the promoters as to the title of the vendor in respect of the said plot of land, the parties shall complete the transaction of the sale within six months of the date of this agreement.

2. The parties shall bear the expenses of sale equally. The purchaser shall pay to the vendor the expenses for purchase of stamp, a fortnight before the expiry of the period fixed for this agreement for completion of the sale and the promoters shall also at the same time deliver to the vendor a draft of the deed of sale which the vendor shall, if in proper form, execute at his expense in favour of the purchasers and present the same for registration on or before the date fixed for the completion of the sale transaction.

3. 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 of the price aforementioned and shall do all other acts that may be necessary or requisite to effectually put the promoters or ABC Ltd., as the case may be, in such possession.

4. In case there found to be any error or misdescription in area or the boundaries or the other specifications of the plot of land agreed to be conveyed to the promoters of ABC Ltd. or ABC Ltd., as the case may be, corresponding decrease or increase in price relating to the area and rectification of misdescription of the specification relating to boundaries etc. shall be permissible, and shall not form any ground for avoiding this agreement for sale of the plot of land.

IN WITNESS WHEREOF the parties aforementioned have signed this deed of acceptance of the terms thereof.

1. Witness	Vendor
2. Witness	Purchasers/Promoters of the Company ABC Limited, under incorporation.
3. Witness	A
4. Witness	B
	C

AGREEMENT BY COMPANY ADOPTING CONTRACT MADE ON ITS BEHALF BEFORE ITS IN CORPORATION.

This Agreement made at New Delhi on this..... day of..... 2018 between Shri A of the 1st part, Shri B of the Second part and AB & Co. Ltd. (hereinafter referred to as 'the company') of the third part.

Whereas after the execution of the contract on 10th July, 2018 (hereinafter referred to as "the said contract") between Shri A, the vendor, and Shri B, on behalf of the company, the said company AB & Co. Ltd. has been incorporated under the Companies Act, 2013.

Now it is hereby agreed by and between the parties hereto as under:

1. The said contract dated 10th July, 2014 is hereby adopted by the company and shall be binding on the said Shri A and on the company in the same manner and shall take effect in all respects as if the company had been in existence at the date of the agreement.

2. Shri B who actually signed on behalf of the proposed company shall be discharged from all liability under the said contract as the company had adopted and ratified the said contracts.

In witness whereof the parties hereunto have put their hands and signatures and the company has caused its common seal affixed in the presence of Shri..... and Shri..... two directors who have set their respective hands and signatures the day and year first herein above written in terms of the Resolution passed in its Board of Directors in their meeting held on.....

Common
Seal