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GROUP-1

DRAFTING, PLEADINGS AND  
APPEARANCES

A SUMMARY BOOK

DRAFTING-DYNAMITE

BY CS ANOOP JAIN

THE CORPORATE LAW WIZARD

**NOTE: THIS IS A SUMMARY BOOK FOR REVISION OF CORPORATE RESTRUCTURING AND  
INSOLVENCY PAPER CONTAINING ALL CHART ANALYSIS, DETAILED BOOK ON CORPORATE  
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- He is also owner of website ([csanoopjain.in](http://csanoopjain.in) a website only for cs students) from where students can get all corporate laws updates, [academy99.in](http://academy99.in) (a online book store) And [ajpublication.in](http://ajpublication.in)
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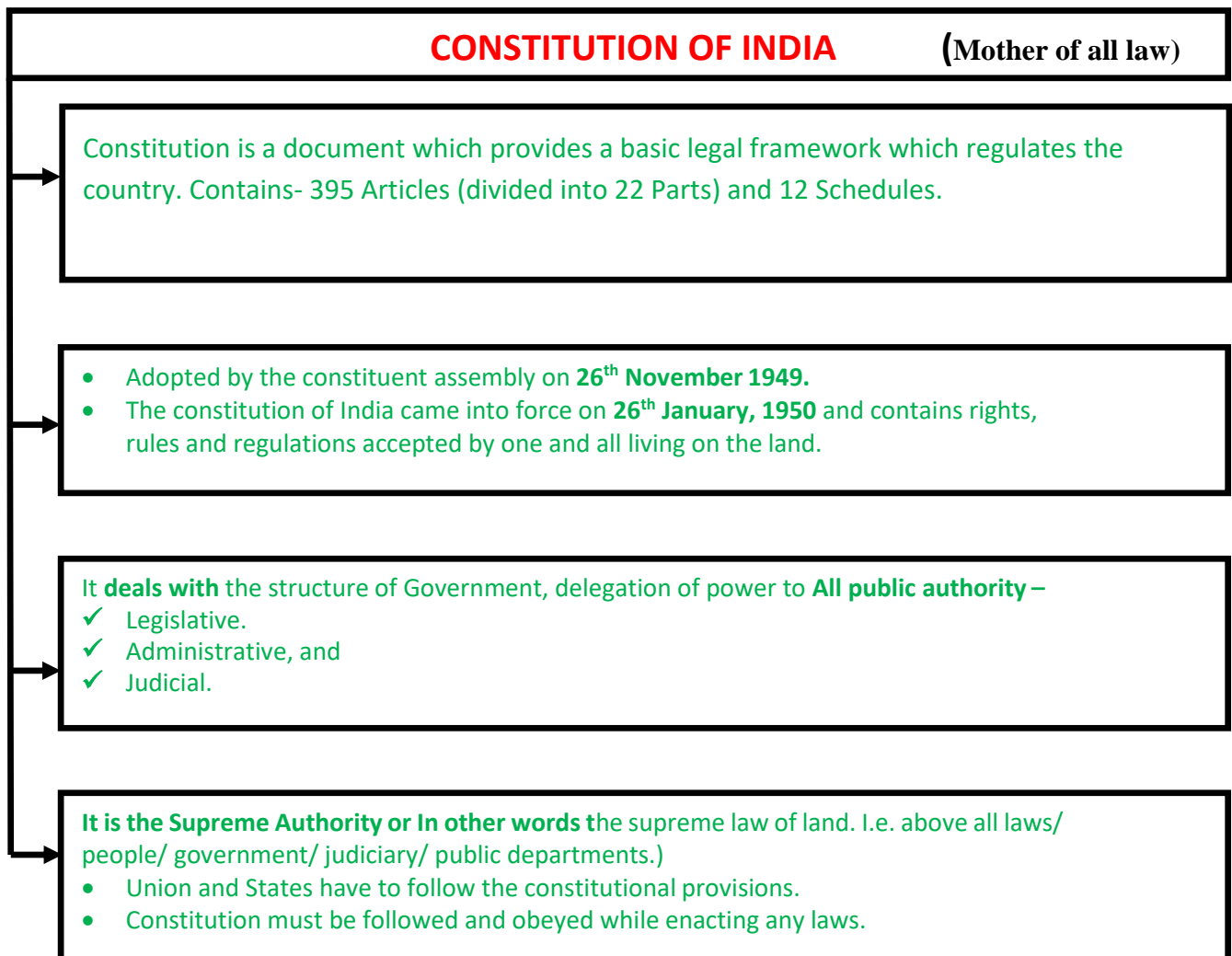
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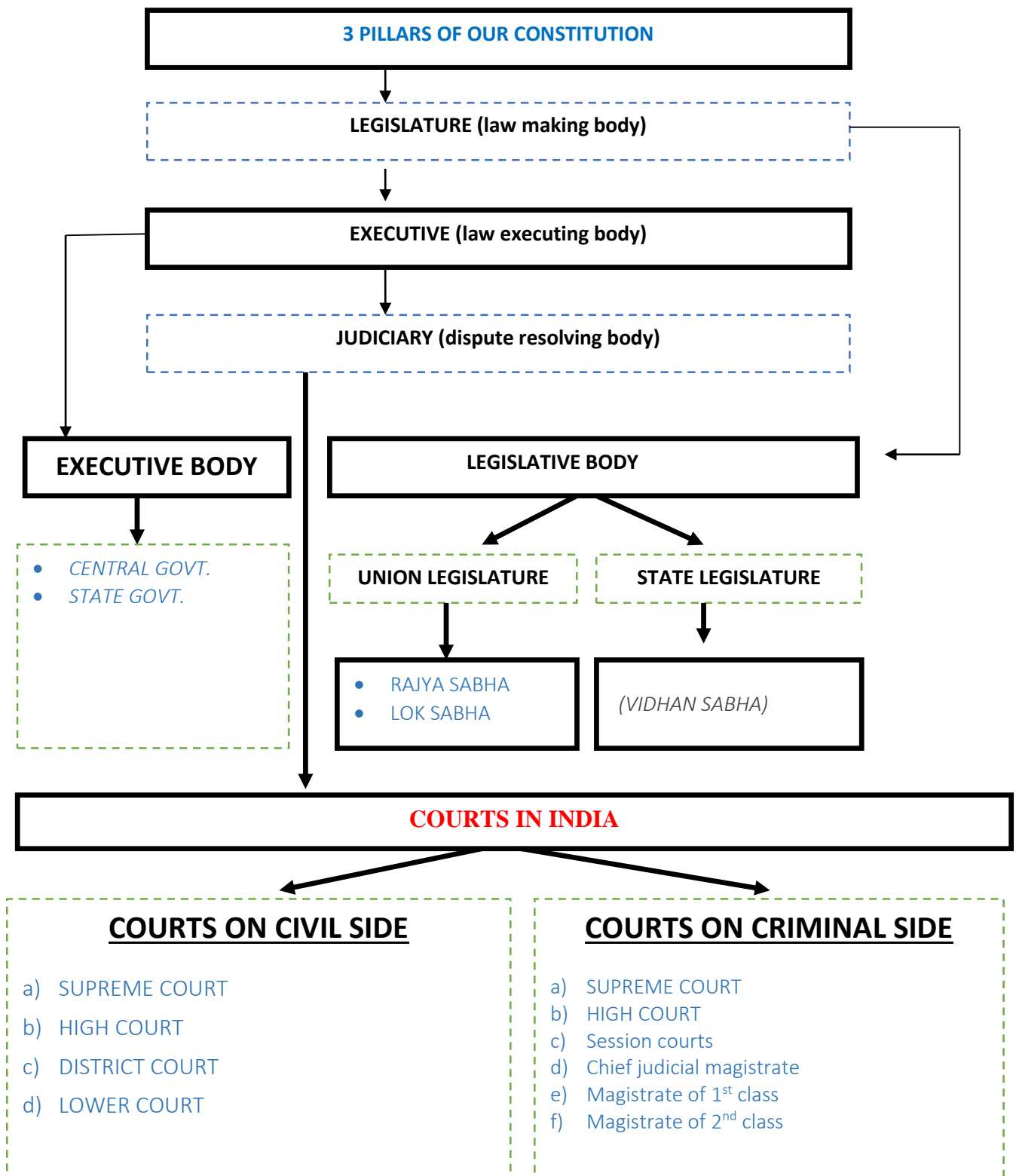
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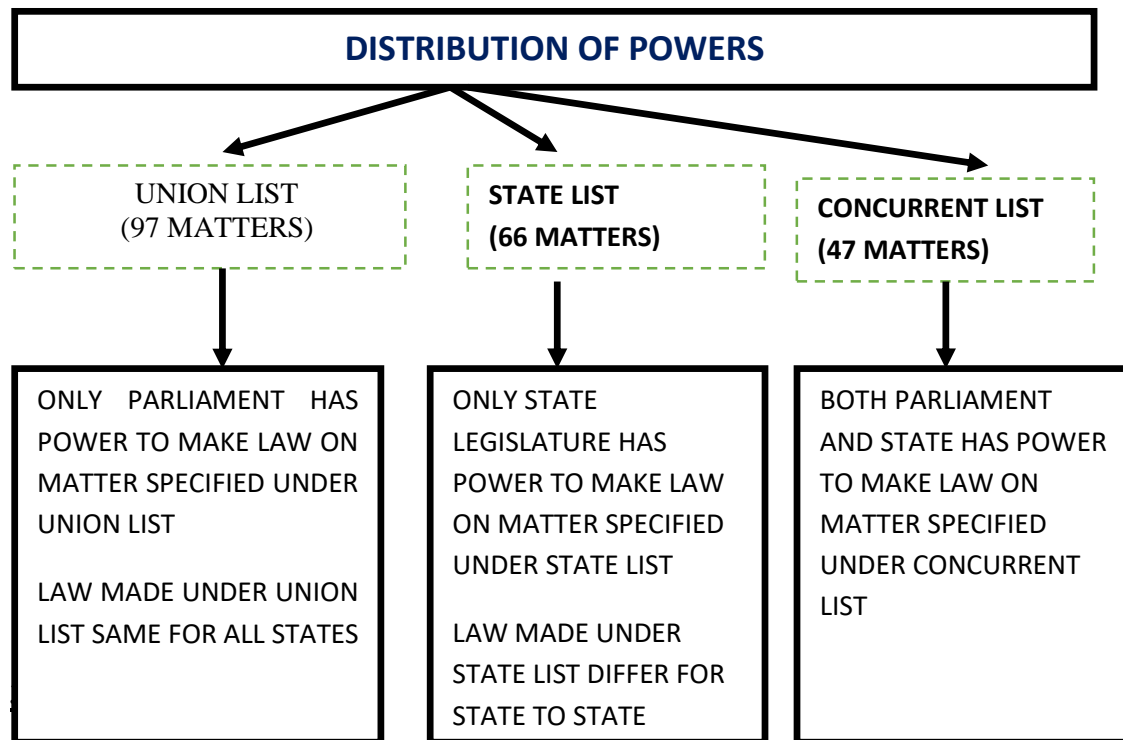
## CHAPTER-1 JUDICIAL AND ADMINISTRATIVE FRAMEWORK



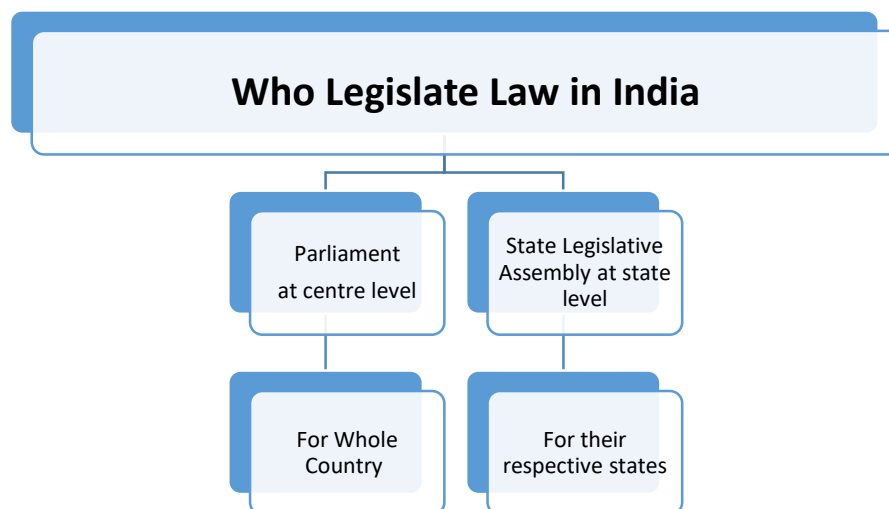
**3 PILLARS OF OUR CONSTITUTION**



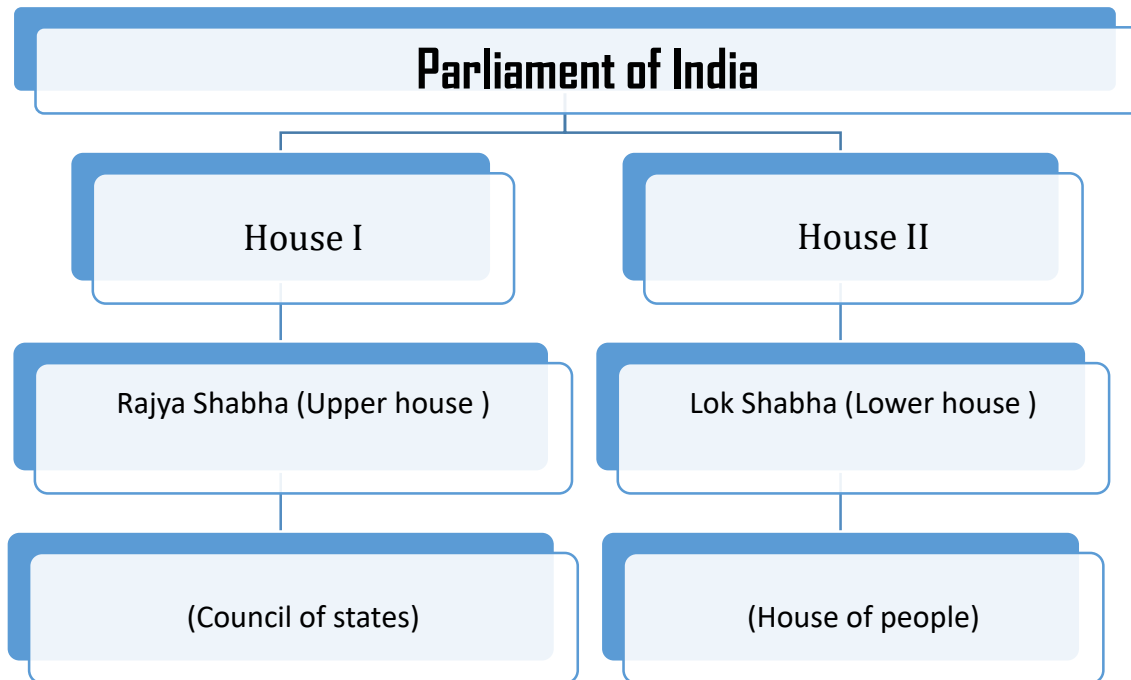
## DISTRIBUTION OF POWERS



## WHO LEGISLATE LAW IN INDIA

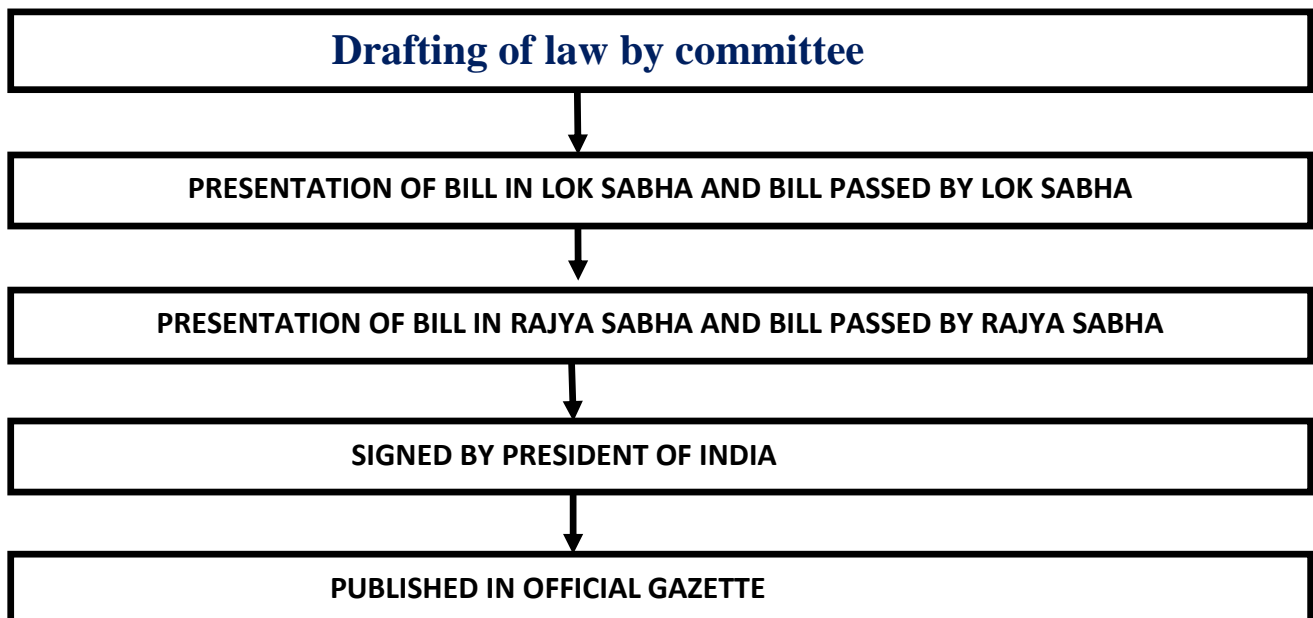


**PARLIAMENT OF INDIA**



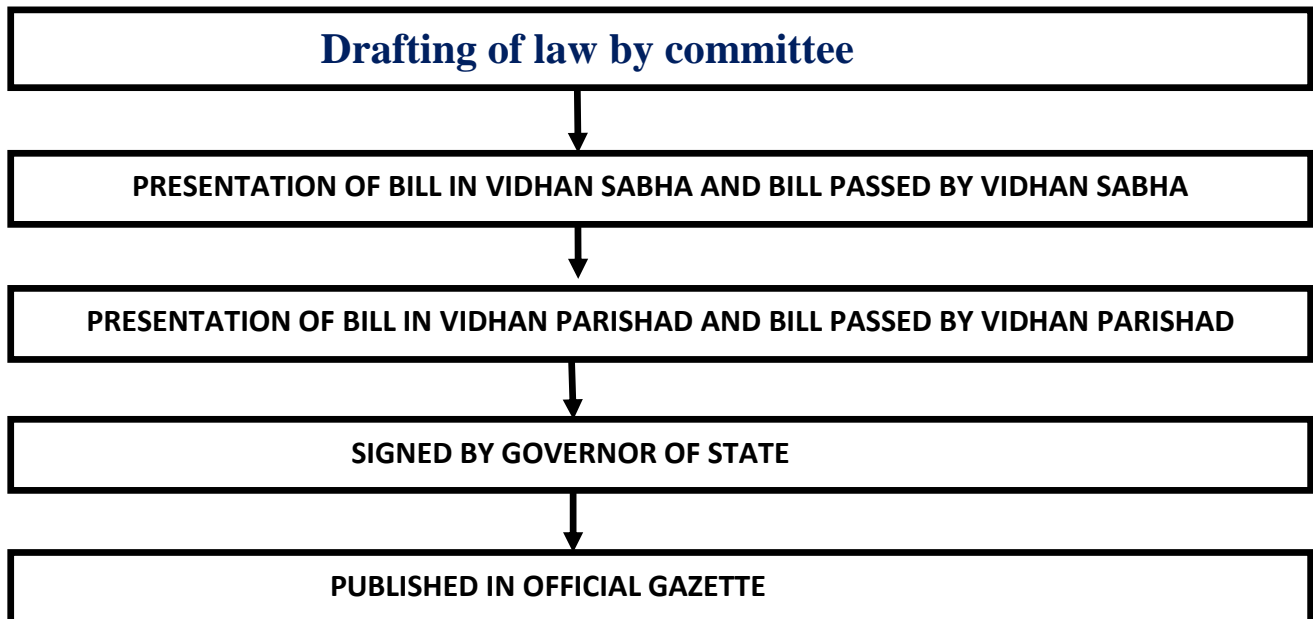
**LAW MAKING PROCESS IN INDIA AT**

**CENTRE LEVEL**



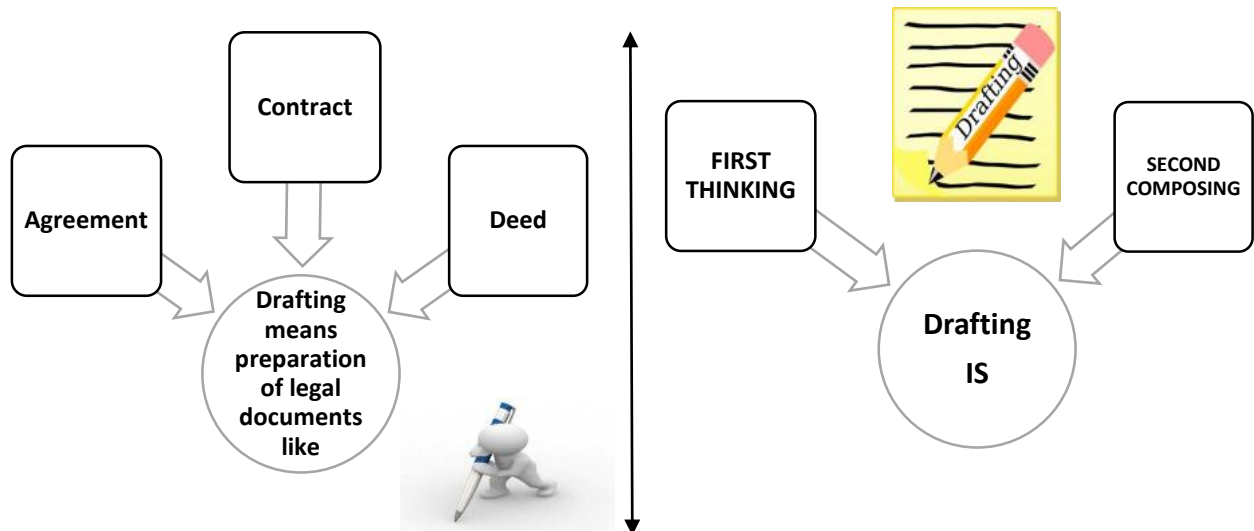
**LAW MAKING PROCESS IN INDIA AT**

**STATE LEVEL**

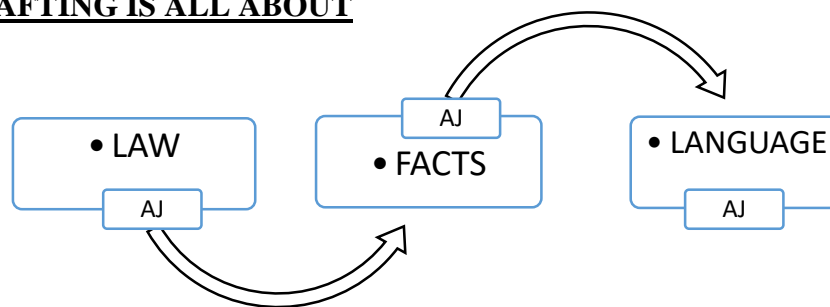


## CHAPTER-2 BASICS OF DRAFTING AND CONVEYANCING

### MEANING OF DRAFTING



### IN SHORT DRAFTING IS ALL ABOUT



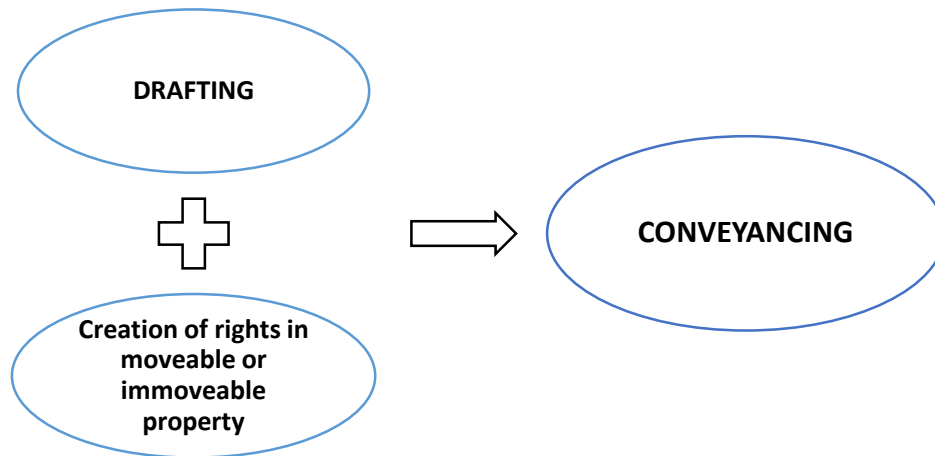
### KINDS OF DRAFTING

**STATUTORY DRAFTING:** Statutory Drafting Means drafting of Acts, Rules and Regulations etc. framed by parliament, state legislature and ministries.

**COMMERCIAL DRAFTING:** Commercial Drafting is the art of drafting of deeds and documents whereby any movable or immovable property or any interest is transferred from one person to another person.

**JUDICIAL DRAFTING:** Normally it includes filing of suit, appeal and application in various courts. (Pleadings)

**Meaning of conveyancing**



**DIFFERENCE BETWEEN DRAFTING AND CONVEYANCING**

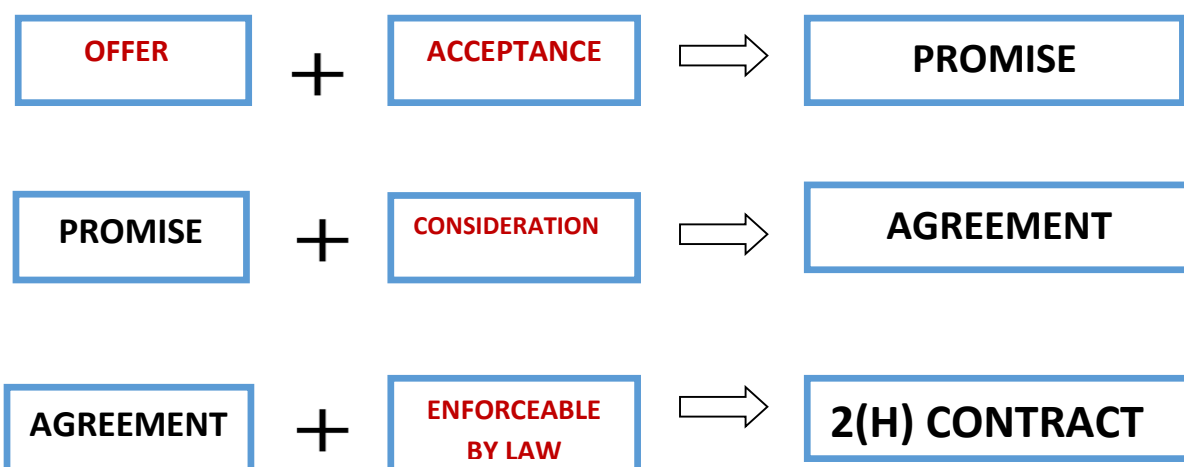
S.N O	DRAFTING	CONVEYANCING
1	Drafting is the way and the manner of preparation of any document.	Conveyancing is the way and the manner of preparation of only those documents which are pertaining to the transfer of property. Thus, Conveyancing gives more stress on documentation much concerned with the transfer of property from one person to another.
2	The concept of drafting is wider than the concept of Conveyancing.	The concept of Conveyancing is narrower than the concept of drafting.
3	Drafting relates to every document as defined in different context such as General Clauses Act, 1897, Sale of Good Act, 1930, Companies Act, 2013	Conveyancing relates to the term conveyance as defined in the Indian stamp act, 1899.
4	E.g. Arbitration Agreement, Service Agreement, Receipt, etc.	E.g. Sale Deed, Mortgage Deed, etc.

**DIFFERENCE BETWEEN CONTRACT AND CONVEYANCING**

S.NO.	CONTRACT	CONVEYANCING
1	Contract is an agreement which is enforceable by law.	Conveyancing is the art of drafting of any documents by which of any documents by which transfer of property takes place.
2	Contract consists of reciprocal promises and each party to the contract is bound to perform the promise.	There is no such promise and title in respect of the property in question already passes in favour of the vendee.

3	Contract creates a right of action in favor of the parties. Thus, in case of breach of contract, the aggrieved party may claim number of remedies such as compensation, specific performance act. Against the defaulting party.	It does not create any right of action but at the same time, it alters but at the time , it alters the existing rights
4	Contract is governed by the provisions of Indian Contract Act, 1872.	It is governed by the provisions of Transfer of property Act, 1882.

**CONCEPT OF AGREEMENT AND CONTRACT ACCORDING TO INDIAN CONTRACT ACT 1872**



**DO'S AND DON'TS WHILE DRAFTING OR CONVEYANCING A DOCUMENT**



**SOME DO'S**

1. Reduce the group of words to single word
2. Avoid- Round about construction
3. Avoid unnecessary repetition
4. Write shorter sentences
5. Express the ideas in fewer words
6. Prefer the active to the passive voice sentences
7. Choose the right word.
8. Know exactly the meaning of the words and sentences you are writing
9. Put yourself in the place of reader, read the documents and satisfy yourself about the content, interpretation and the sense it carries.

**SOME DONT'S**

The following things should be avoided while drafting the documents.

1. Avoid the use of words of same sound. For example, the words “employer” and “Employee”.
2. Negative in successive would be very carefully employed.
3. Draftsman should avoid the use of words less than or more than
4. If the draftsman want to authorise two person regarding some work he should clear the position between the two.

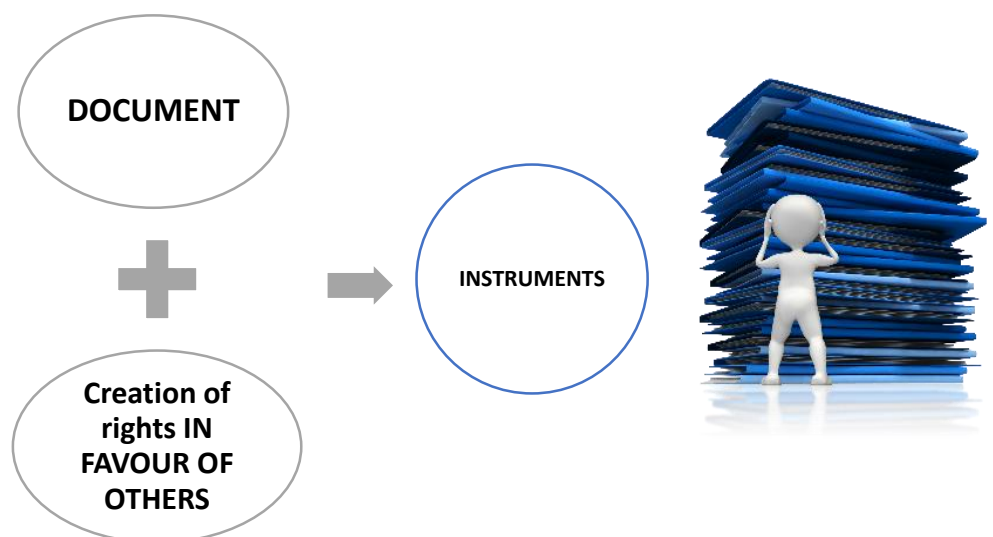
## CHAPTER -3 DOCUMENT, INSTRUMENT AND DEED

### MEANING OF DOCUMENT

Section 3 of the Indian Evidence Act, 1872 states that a "Document" means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used or which may be used, for the purpose of recording that matter.

Section 3 (18) of the General Clauses Act, 1897 states that a "Document" shall include any matter written, expressed or described upon any substance by means of letters, figures, or marks or by more than one of those means, which is intended to be used or which may be used for the purpose of recording that matter. E. g. minutes of a meeting.

### INSTRUMENT



### 2 METHODS OF CREATING DEED

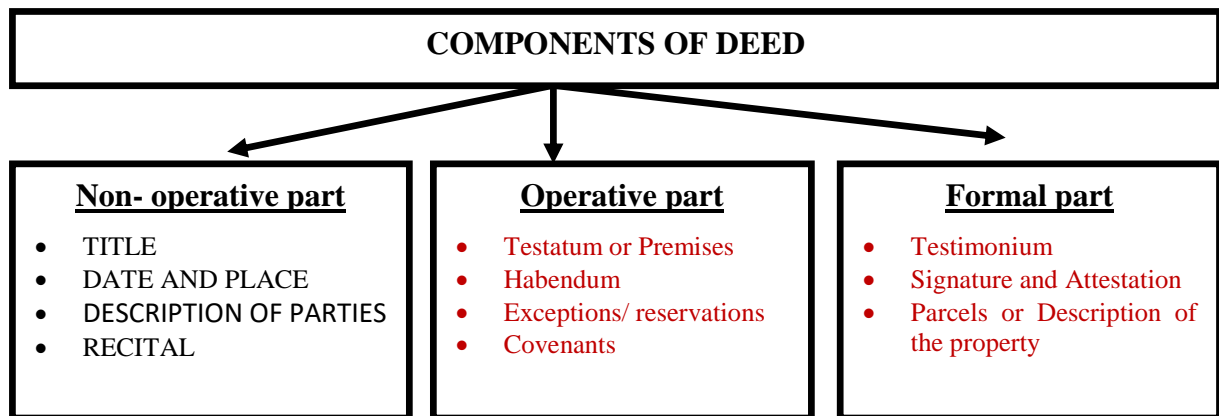
#### UNILATERAL

Deed Poll- It is a deed in which there is a single party.

#### BIILATERAL/ MULTIILATERAL

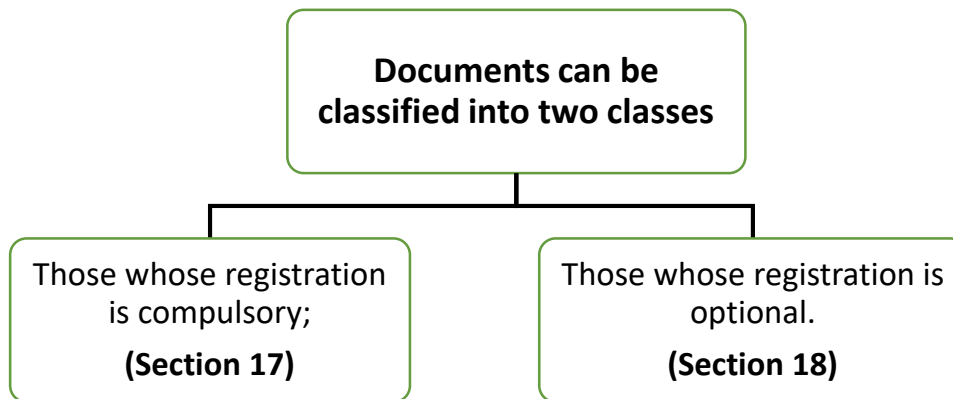
Indenture- It is a deed in which there are two or more parties.

**COMPONENTS OF DEED**

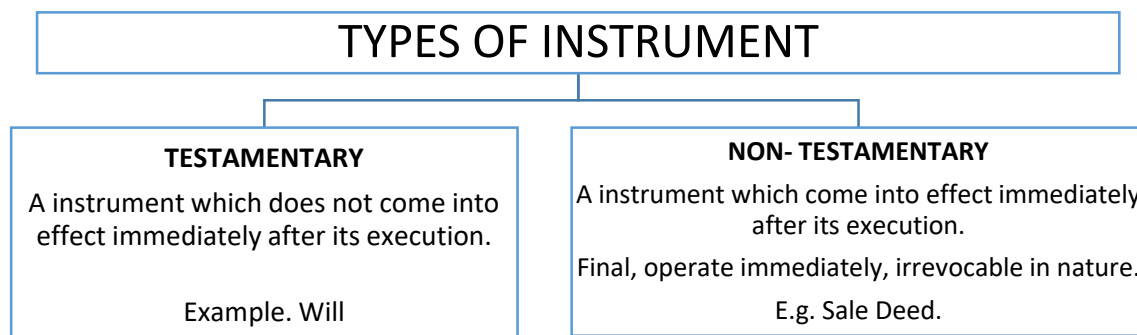


## CHAPTER -4                      IMPORTANT PROVISIONS OF REGISTRATION

THE REGISTRATION ACT, 1908 CAME IN TO FORCE ON 1<sup>ST</sup> DAY OF JANUARY, 1908




**INSTRUMENT** as per section 2(14) of Indian stamp Act, 1899 define instrument as including every document by which any right or liability is or purported to be created, transferred, limited, extinguished or recorded. E.g. Promissory Note.



**DOCUMENTS WHOSE REGISTRATION IS COMPULSORY (SECTION 17)**

According to **Section 17** of the Registration Act, 1908, documents whose registration is compulsory are the following:-

<p><b>Gift</b></p> 	<p>Instruments of gift of immovable property. <b>Section 17(1)(a)</b> In a case where the donor dies before registration, the document may be presented for registration after his death and if registered it will have the same effect as registration in his life time. On registration the deed of gift operates as from the date of execution.</p> <p>It was held in <b><u>Kalyana Sundram v. Karuppa</u></b>, that while registration is a necessary solemnity for the enforcement of a gift of immovable property, it does not suspend the gift until registration actually takes place, when the instrument of gift has been handed over by the donor to the donee and accepted by him, <i>the former has done everything in his power to complete the donation and to make it effective</i>. And if it is presented by a person having necessary interest within the prescribed period the Registrar must register it. <i>Neither death nor the express revocation by the donor, is a ground for refusing registration</i>, provided other conditions are complied with.</p>
<p><b>Non-Testamentary Instruments</b></p>	<p>which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title of interest, of the value of <b>one hundred rupees and upwards</b>, in <b>immovable property</b>. <b>Section 17(1)(b)</b></p>
<p><b>Acknowledge Receipt or payment</b></p>	<p>Non-testamentary instruments which acknowledge the <b>receipt</b> or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of an interest of the value of <b>Rs. 100 or upwards</b> in <b>immovable property</b>. <b>Section 17(1)(c)</b></p>
<p><b>lease of immovable property</b></p>	<p>A lease of immovable property is compulsory registrable:</p> <ul style="list-style-type: none"> <li>• If it is from year to year; or</li> <li>• If it is for a term exceeding one year; or</li> <li>• If it reserves a yearly rent.<b>Section 17(1)(d)</b></li> </ul>
<p><b>Decree of court or award of arbitrator</b></p>	<p>Non testamentary instruments transferring or assigning any decree or order of a court or any award, when such decree, order or award purports to create, declare, assign, limit or extinguish; whether in present or in future, any right, title or interest, whether vested or contingent of value of one hundred and upwards in immovable property, <b>Section 17(1)(e)</b></p>
<p><b>Authority to Adopt</b></p>	<p>an <b>Authority to Adopt</b> son which is not conferred by will.<b>17(3)</b></p>

## WHO CAN PRESENT THE DOCUMENTS FOR REGISTRATION

- Some Person Executing or Claiming Under the Document.
- The agent of such person.
- The representative or assign of such person.

### **TIME LIMIT FOR PRESENTATION**

#### DOCUMENTS EXECUTED IN INDIA

Section 23 provides that a document other than a will must be presented within **four months** of its execution.

In cases of **urgent necessity** or an unavoidable accident etc. the registrar may **extend** the period by maximum **4 months**, on payment of higher fees.

#### DOCUMENTS EXECUTED OUT OF INDIA

As per Section 26 Where the registering officer is satisfied that the document was executed outside India and it has been presented for registration within **four months** after its arrival in India, he may accept such document for registration on payment of proper registration fee.

A document executed outside India is not valid unless it is registered in India.

### **PLACE OF REGISTRATION**

#### Documents Affecting Immovable Property

Section 28 provides that documents affecting **immovable property** shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the relevant **property is situated**.

#### ANY OTHER DOCUMENT

Any **Other Document** may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was **executed or** in the office of any other Sub-Registrar under the **State Government** at which all the persons executing desire the document to be registered.

## CHAPTER -5 IMPORTANT PROVISIONS OF STAMPING

### INSTRUMENTS CHARGEABLE WITH THE STAMP DUTY

**Following instruments shall be chargeable with the amount of duty integrated in the schedule.**

- Instruments mentioned in schedule 1 which not having been previously executed in India.
- Instruments executed out of India are chargeable to duty if they relate to some property situated in India or some matter or thing done or to be done in India.
- Bills of Exchange and promissory notes

Exception: - Bills exchange payable on demand is not chargeable to stamp duty.

**Instruments Exempted from Duty**

- Instruments in favour of government these include instruments executed by or on behalf of or in favour of government.
- Bills of exchange and promissory notes executed outside India and acted upon outside India.
- Instruments for the sale transfer or other disposition of any ship.

<b><u>(Sec. 4)</u></b>	<b><u>Sec.5</u></b>	<b><u>Sec.6</u></b>
<b><u>Single Transaction effected by several Instruments</u></b>	<b><u>Multifarious Instruments</u></b>	<b><u>multidescription Instruments</u></b>
1 =Transaction 2=Instruments  DUTY ONLY ON PRINCIPAL INSTRUMENT	1 = Instruments 2= Transaction  DUTY ON BOTH TRANSACTIONS	1 = Instruments  FALLS UNDER THE 2 HEADS  HIGHEST OF DUTY PAID

## METHODS OF STAMPING

There are two types of stamping, namely

**ADHESIVE STAMPING,**  
Example: Revenue Stamp, Postal Stamp



**IMPRESSED STAMPING.**  
Example: Stamp Papers



## **TIME OF STAMPING OF INSTRUMENTS**

### **Sec.17 Instruments executed in India**

Stamped before or at the time of Execution

### **Sec.18 Executed out of India**

Within 3 months of its receipt in India


### **Sec.19 Bills of exchange and promissory notes drawn out of India**

By first holder in India before presentation for acceptance or payment or endorsement in India

## **CHAPTER -6 DRAFTING OF AGREEMENT AND CONTRACT**

<b>IMPORTANT POINTS TO BE KEPT IN MIND WHILE DRAFTING AN AGREEMENT</b>
1. The intention of the parties should be clear.
2. The agreement must be legal and enforceable.
3. Any agreement contravening the India Contract Act, 1872 will be void.
4. Agreement should be execute in duplicate so that each party should have a copy of the agreement.
5. The opening words of an agreement should be “An Agreement” or “This Agreement.

### **GUIDELINES FOR ENTERING INTO FOREIGN COLLABORATION AGREEMENTS**

<b>S.NO.</b>	<b>PARTICULARS</b>	<b>PROVISIONS</b>
1	<b>Investment</b>	Where in a foreign collaboration agreement, equity participation is involved the value of the shares to be acquired about be brought in cash.
2	<b>Lump sum payment</b> 	The amount agreed to be paid by an Indian party to a foreign collaborator for technology transfer should be paid in three installments as follows: <ul style="list-style-type: none"> <li>• One –third to be paid after the agreement has been approved by the Central Government;</li> <li>• One –third on transfer of the technical documents; and</li> <li>• One – third on the commencement of commercial production.</li> </ul>
3	<b>Duration of agreement</b>	Normal period of a foreign collaboration agreement is 8 year subject to maximum of 10 years. The period is approved by the Government usually for 5 year from the date of the agreement in the first instanced or 5 years from the date of commencement of commercial production
4	<b>Renewal or extension of agreement</b>	The Central Government may consider an application for renewal of a foreign collaboration agreement or for extension of its period on merit.
5	<b>Remittances:</b>	Remittances to foreign collaborations are allowed only on basis of prevailing exchange rates.
6	<b>Sub-licensing</b>	An agreement shall not normally impose any restriction on the sub-licensing of the technical know- how to other India parties. The terms of such-licensing will be as mutually agreed to between all the concerned parties including the foreign collaborator. Sub-licensing is, however subject to the Central Government’s approval.

7	<b>Brand Name</b>	There should be no insistence on the use of foreign brand names on products for sale in India.
8	<b>Applicable Law</b>	It should always be provided that which law will be applicable for resolving the disputes, which may arise.
9	<b>Approval of Central Government:</b>	Every foreign collaboration agreement shall be approved by the Central Government.

### **MEANING OF JOINT VENTURE**

1. Joint venture is a venture in which an enterprise is formed with participation in the ownership, control and management of minimum of two parties.
2. In joint venture, a business enterprise is formed for profit in which parties of joint venture share responsibilities in an agreed manner, by providing risk capital, technology, trade mark & access to market, etc.
3. **EXAMPLE** UNITECH and TELNOR by joint venture make a new company called UNINOR.



### **MEANING OF COMMERCIAL CONTRACT**

A commercial contract refers to a legally binding agreement between parties in which they are obligated to do or refrain from doing particular things.

Commercial contract can include all aspects of a business, such as hiring, wages, leases, loans etc. A breach of commercial contract takes place when a contracting party fails to live up to the agreements.



### **BUILDING CONTRACTS**

Building contracts, being legal documents, have to be drawn in accordance with the provisions of the Indian Contract Act. Such an agreement or contract must be drawn in accordance with the provisions of the **Indian Contract Act, 1872**.

All the essential ingredients of a contract, such as, a proposal, its acceptance, its due communication to the proposer, lawful consideration, lawful purpose and competence of parties to the contract etc. must be duly satisfied and ensured while drafting such contracts.



## HIRE-PURCHASE DEEDS

### TYPES OF HIRE-PURCHASE AGREEMENTS

- The financier obtains a hire-purchase agreement from the customer,
- Under which the customer becomes the owner of the goods
- On payment of all the installments of the stipulated hire and exercising his option to purchase the goods on payment of a nominal price.
- THE owner gets his money from the financier, who recovers the cost from the customer.

- The customer purchases the goods and he executes a hire-purchase agreement with a financier.
- Under which he remains in possession of goods, subject to payment of amount paid by the financier on his behalf to the owner.
- The financier gets a right to seize the goods in the event of non-fulfillment of conditions of hire-purchase agreement by the customer.

## ELECTRONIC CONTRACTS (E-CONTRACTS)

### TYPES OF E-CONTRACTS

#### TYPES OF E-CONTRACTS

##### Click-wrap or Web-wrap Agreements

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

##### The Shrink-wrap Agreements

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

##### Electronic Data Interchange or (EDI)

These contracts used in trade transactions which enables the transfer of data from one computer to another in such a way that each transaction in the trading cycle (for example, commencing from the receipt of an order from an overseas buyer, through the preparation and lodgement of export and other official documents, leading eventually to the shipment of the goods) can be processed with virtually no paperwork. Here unlike the other two there is exchange of information and completion of contracts between two computers and not an individual and a computer.

**SPECIMEN JOINT VENTURE AGREEMENT (JOINT VENTURE WITH FOREIGN COMPANY)**

**THIS AGREEMENT IS MADE** on this .....day of 2013 BETWEEN **AMCO INC.** Incorporated under the appropriate laws of the United States of America having its office at 5 Seventh Street, New York of the ONE PART and **INCO LTD.** a Company registered under the Companies Act, 2013 having its office at 99 Chowring Road Calcutta 700071 of the OTHER PART.

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

**WHEREAS INCO LTD.** (hereinafter referred to as **INCO**) carries on business as manufacturer of, dealer in and exporter of Computer Softwares and intends to expand its business in India and abroad. Whereas **AMCO** and **INCO** intend to co-operate in manufacturing/dealing in and exporting Computers, Hardware's and Softwares in India and abroad for mutual benefit by setting up a new company.

**NOW THIS AGREEMENT IS WITNESSED AS FOLLOWS**

1. A Joint-stock company would be formed under the name and style of Indo-American Company Pvt. Ltd. under the Companies Act 2013 having its Registered Office at 99 Chowringhee Road, Calcutta 700 071.
2. AMCO and three of its nominees and INCO and three of its nominees would be the subscribers to the Memorandum and Articles of Association of the said company to be incorporated.
3. The shareholding in the Share Capital of the said company to be incorporated would be in equal proportions between AMCO and INCO.
4. AMCO will be allotted shares in the said new company partly in cash and partly towards the cost of plant, machinery and equipment to be supplied by AMCO to the new company and in consideration for assignments by AMCO of its Patent Rights, Trade Marks, Trade Names and Licences in favour of the new company to be incorporated.
5. The shares that would be allotted by the new company should not be transferred by either AMCO or INCO within a period of five years from the date of allotment and thereafter if any of the parties intends to transfer any share then the same shall be offered first to the other party at a price to be determined by a Valuer to be appointed by mutual agreement and in absence by application to the Indian Chamber of Commerce.
6. The new company will manufacture Computers, Hardwares and Softwares and allied accessories and products and the same would be marketed in India and exported to other countries under the Trade name or Brand name made available by AMCO and by any other name and shall obtain new Trade Mark and obtain Patents for further and better manufacturing, selling and exporting the new company's products.
7. Neither party shall carry on their own business in a manner which will directly adversely affect the business and profitability of the new company.

8. The expenses for the setting up and promotion of the new company would be shared equally by AMCO and INCO.
9. Any disputes or differences arising in relation to this agreement, its construction, validity, performance, breach or any other question shall be referred to the Indian Chamber of Commerce for settlement by Arbitration or Conciliation in Calcutta and the decision of the said Arbitrator shall be final and binding on both the parties.
10. This agreement is made subject to obtaining approvals of the Indian Government and other concerned authorities.

**IN WITNESS WHERE OF the parties hereto have signed, this agreement on the----- day, ----- month and -----year first above-written.**

Witness

For and on behalf of AMCO Inc.  
Mr. A director of company

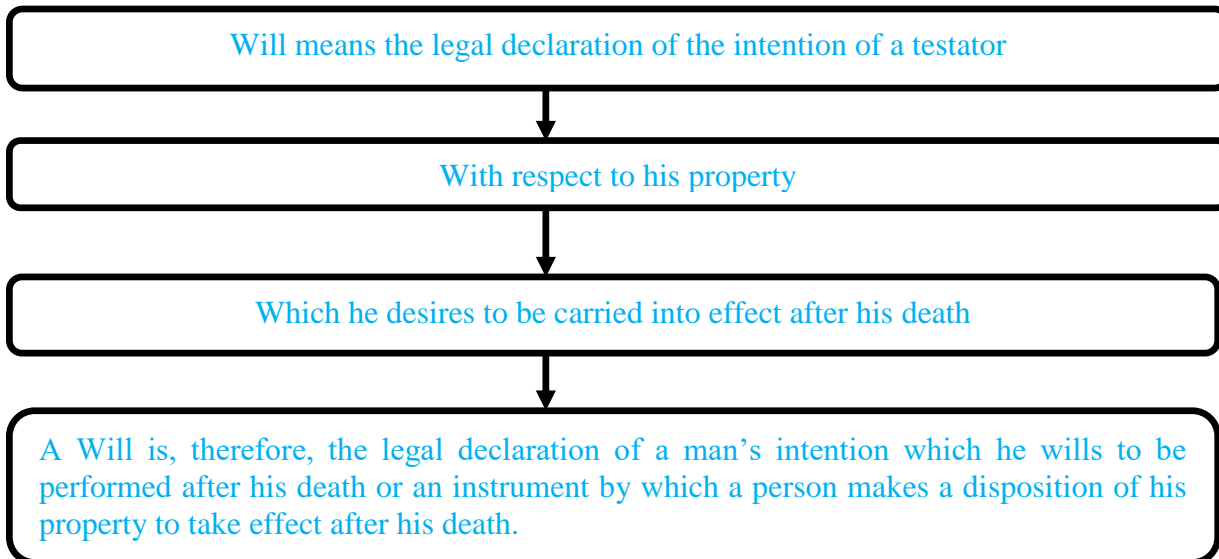
Witness

For and on behalf of AMCO Inc.  
Mr. b director of company

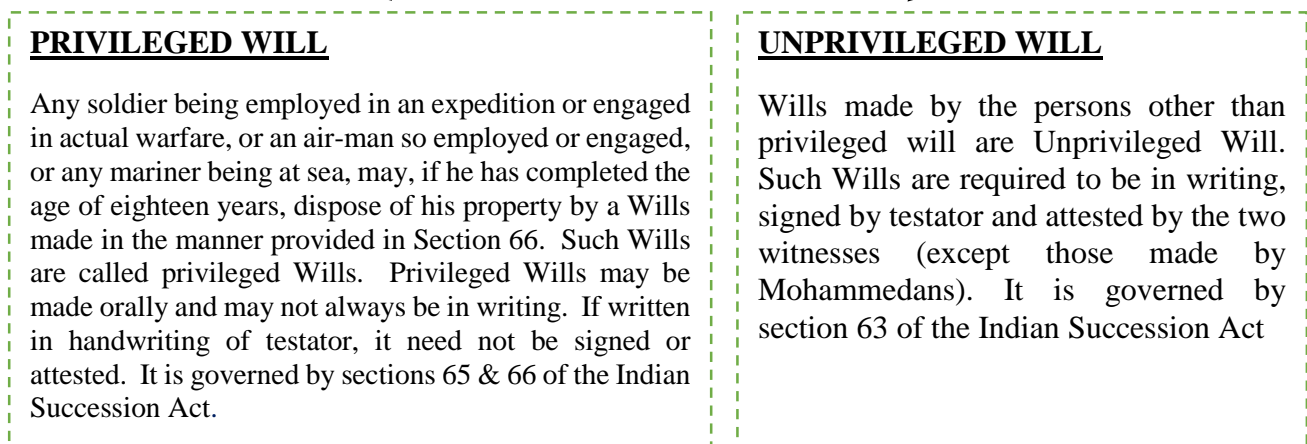
## **CHAPTER -7**                      **Family Settlement Deed, Relinquishment Deed and Will**

### **MEANING OF Will**

#### **SECTION 2 (h) OF INDIAN SUCCESSION ACT, 1925**



### **TYPES OF WILLS**



**SHORT FORM OF A WILL**

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

WHEREAS I had made a Will on.....bequeathing all my property in favour of ..... , my ..... (State relationship).

WHEREAS the said..... died on ..... leaving behind.....

**NOW I DECLARE THAT**

1. I hereby revoke my former Will dated, ..... in favour of ..... aforesaid.
2. I bequeath all my properties to ..... my..... (State relationship) absolutely.
3. I bequeath the following annuities to commence from the date of my death and to be paid in monthly installments:
  - i. To my daughter CD, etc., an annuity of Rs..... to be paid during her life;
  - ii. To my nephew EF, etc., an annuity of Rs..... for his life.
  - iii. To my old servant GH, etc., an annuity of Rs..... during his life.


**IN WITNESS WHEREOF** I the said AB have signed this Will here under the day and year first written above.

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

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.....

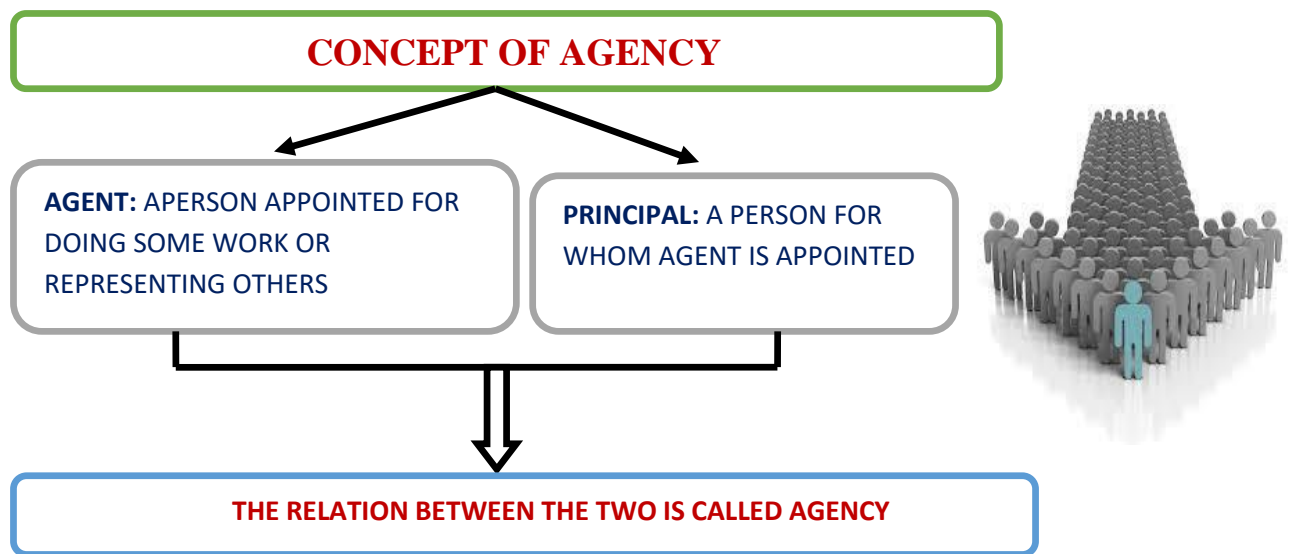
**FAMILY SETTLEMENT DEEDS**

S.NO.	PARTICULARS	PROVISIONS
1	<p><b>Concept of Family Arrangement</b></p> 	<p>A family arrangement is an agreement between members of the same 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.</p> <p><b><u>According to the Supreme Court</u></b>, 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>

2	<p><b>ESSENTIALS OF FAMILY SETTLEMENT</b></p> <p><b><u>CASE LAW</u></b></p> <p>KALE V. DY. DIRECTOR OF CONSOLIDATION</p>	<p>The Supreme Court has laid down the following essentials of a family settlement.</p> <ol style="list-style-type: none"><li>1. The family settlement must be a <i>bona fide</i> one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family.</li><li>2. The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence.</li><li>3. The family arrangement may be even oral in which case no registration is necessary.</li><li>4. It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing.</li></ol>
3	<p><b>Family Arrangement When Enforceable?</b></p> <p><b><u>CASE LAW:</u></b></p> <p><i>Lakshmi Perumallu v. Krishnavenamma</i></p>	<p>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</p>

## CHAPTER -8

## CONTRACT OF AGENCY



### DEL CREDERE AGENCY

1. There is a special type of agency, which combines agency with guarantee. This is known as **Del credere agency**.
2. A **Del credere agent** is one who, for an extra remuneration undertakes the liability to guarantee the due performance of the contract by the buyer.
3. By reason of his charging a **Del credere commission** he assumes responsibility for the solvency and performance of the contract by the vendee and thus indemnifies his principal against loss.
4. He, therefore, gives an additional security to the seller, but he does not shift the responsibility of payment from the buyer to the seller. A commission Del credere is the premium or price given by the principal to the agent for guarantee, which presupposes a guarantee.
5. A del credere agent like any other agent is to sell according to the instructions of his principal, to make such contracts as he is authorized to make for his principal and be bound, as soon as he receives the money, to hand it over to the principal .
6. He is distinguished from other agents simply in this sense that he guarantees that those persons to whom he sells perform the contracts which he makes with them.



**SPECIMEN OF AN AGENCY CONTRACT**

**AGENCY CONTRACT**

An agreement made at.....this.....day of .....between..... (Principal) hereinafter called “the principal“ of the one part and..... (Agent) (Hereinafter called “the agent”) of the other part.

**WHEREAS** for the purpose of making sales of the principal’s goods principal approach the agent for agency contract and agent accept the same.

**NOW THIS CONTRACT IS WITNESSED AS FOLLOWS**

1. The duration of agency contract shall be 3 years.
2. That the agent shall not, while selling the principal’s goods make any representation in the trade or give any warranty other than those contained in the principal’s price list.
3. That the agent shall be allowed to deduct and retain as his agency commission with himself.....per cent of the list price of all good on behalf of the principal.
4. That the agent shall, in all his commercial dealings and on documents and on the name-plate or latter-head indicating his place of business, describe himself as selling agent for the principal.
5. That the agent shall not sell the goods of the principal to any purchaser expect at current price list of the principal conveyed by him from time. The agent may, however allow a discount or rebate of ..... Per cent.
6. That either party may terminate this agreement at his option at any time after the expiration of .....years by giving the other month’s notice in writing.
7. That in the event of any dispute arising out of or in relation to or touching upon the agreement, the same shall be decided by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996.
8. That on the termination of this agreement for whatever reason the agent shall forthwith deliver to principal all the unsold stock of goods and shall pay to the principal for the shortages of deficiency of stock at list price less commission and rebate allowable to the agent.

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

Principal

Witness:

Agent

Witness:

**DEALERSHIP CONTRACT**

This Agreement is made at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, between a company incorporated under the Companies Act, 2013 and having its Registered Office at \_\_\_\_\_ through its Company Secretary, (hereinafter called “the Company) AND M/s \_\_\_\_\_, a partnership firm comprising Mr. \_\_\_\_\_ and Mr. \_\_\_\_\_, having its main business place at \_\_\_\_\_ (hereinafter called “the Firm).

**WHEREAS** the company, after having considered the proposal of the firm, has agreed to appoint the firm as its dealer on the terms and conditions as contained in this agreement.

**NOW THIS AGREEMENT WITNESSETH AS UNDER:**

1. That the company hereby appoints the Firm as its dealer to sell its products, more specifically defined in the Schedule to this agreement, in the areas also clearly defined in the said Schedule.
2. The agreement shall remain in force for one year commencing from \_\_\_\_\_ and shall be renewable for similar periods on the mutually agreed terms and conditions.
3. The Firm shall keep a minimum stock of \_\_\_\_ pieces of each of the company's products to meet the demand of the ultimate users/consumers, which quantity shall be reviewed every quarter in the light of the sales during the previous quarter and the market trends.
4. The company shall supply to the firm its firm its products on 15 days credit from the date of the invoice and if payments are not made within the credit period, the principal amount shall be charged interest at the rate of \_\_\_\_\_percent per annum from the sixteenth day of the invoice sate till payment.
5. The company shall supply to firm sufficient quantities of publicity and advertisement material for display at the firm's sales outlets and for distribution in its area of operation.
6. The company shall bear 50% of the cost of maintaining the sales outlet of the firm including rent thereof
7. The company and the firm shall settle their accounts every 6 months and the balance credit/debit shall be squared by making payment by the party owing to the other.
8. The firm shall not sell any product of the company at a price higher than the one indicated by the company from time to time.

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

*Witnesses:*

for and on behalf of company

(.....)

1  
2

Company Secretary

Mr. \_\_\_\_\_

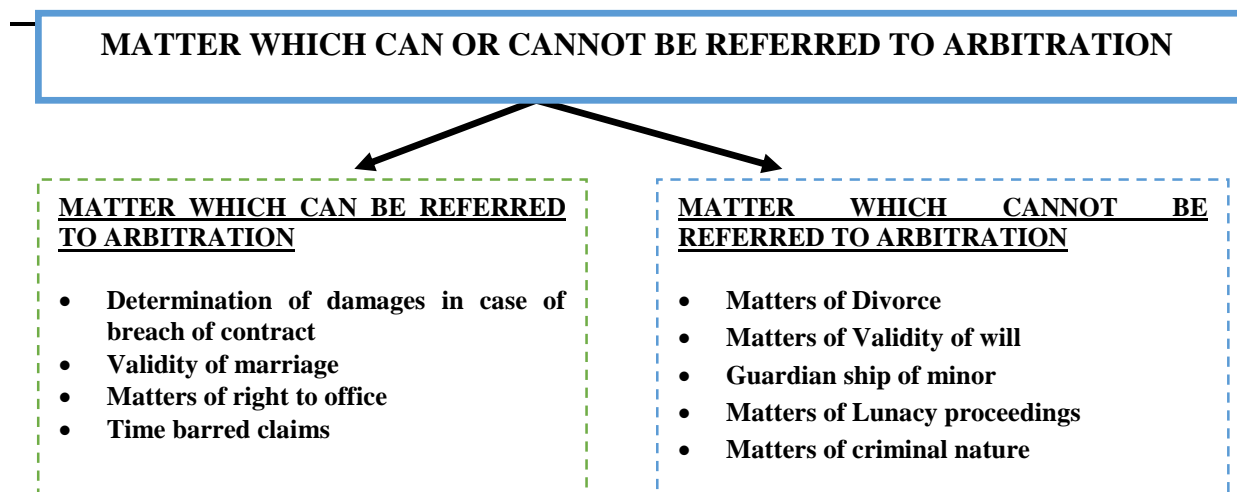
Mr. \_\_\_\_\_

Partners, M/s A & B ASSOCIATES

## CHAPTER -9 ARBITRATION AGREEMENT

### ESSENTIALS/FEATURES OF ARBITRATION AGREEMENT

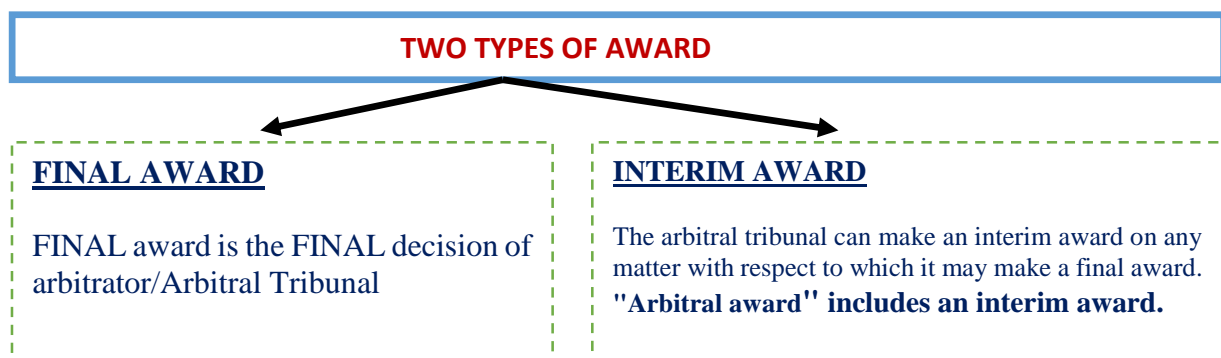
(a) It must be in writing.
(b) It must be signed by the parties to the agreement.
(c) There must be an intention of the parties to submit any probable dispute to arbitration.
(d) Being an agreement it must satisfy requirements of Indian Contract Act.
(e) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.



### ARBITRAL AWARD

As per Section 2(1)(c), "arbitral award" includes an interim award. The definition does not give much detail of the ingredients of an arbitral award. However, taking into account other provisions of the Act, the following features are noticed:

DECISION OF ARBITRATOR IS CALLED AWARD



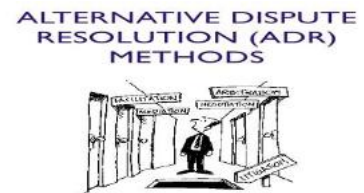
**INTERNATIONAL COMMERCIAL ARBITRATION**

“International commercial arbitration” means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under law in force in India and where at least one of the parties is

- |   |
|---|
| (a) An <b>individual</b> who is a resident in, any country other than India; or       |
| (b) A <b>body corporate</b> which is incorporated in any country other than India; or |
| (c) The <b>Government</b> of a foreign country.                                       |

**ALTERNATIVE DISPUTE RESOLUTION SYSTEM (ADRS)**

1. Alternate dispute resolution would include within it any method of dispute resolution other than court litigation. It would include arbitration, mediation and conciliation in main.
2. There is a growing awareness that courts will not be in a position to bear the entire burden of justice system.
3. A very large number of disputes lend themselves to resolution by alternative modes such as arbitration, mediation, conciliation, negotiation, etc.
4. The ADR processes provide procedural flexibility save valuable time and money and avoid the stress of a conventional trial.



**SPECIMEN ARBITRATION AGREEMENT**

**ARBITRATION AGREEMENT**

**THIS AGREEMENT** is made at..... this..... Day of..... Between Mr. x..... of ..... residing at ..... Hereinafter referred to as the party of the First Part and Mr. Y ..... of ..... residing at..... Hereinafter referred to as the party of the second part.

**WHEREAS** by an agreement (building contract) dated .....2015 entered into between the parties hereto, the party of the first part entrusted the work of constructing a building on his plot of land situated at ..... to the party of the second part on the terms and conditions therein mentioned.

**WHEREAS** the second party has commenced the construction of the building according to the plans sanctioned by the .....municipal corporation and has completed the construction to the extent of the 1st floor level.

**WHEREAS** the party of first part has made certain payments to the party of the second part on account but the party of the second part is pressing for more payments which according to the party of the first part he is not bound to pay and, therefore the work has come to a construction and delay in the work.

**WHEREAS** the said Agreement provides that in the event of any dispute or difference arising between the parties the same shall be referred to arbitration of a common arbitrator if agreed upon and the arbitration shall be governed by the provisions of the arbitration and conciliation act, 1996.

**NOW THIS AGREEMENT IS WITNESS AS FOLLOWS**

1. That the following points of dispute arising out of the said agreement dated... are hereby referred to the sole arbitration of the said Mr..... for his decision and award.
2. **The points of dispute are**
  - Whether the party of the second part has carried out the work according to the sanctioned plans and specifications.
  - Whether the party of the second part has delayed the construction.
  - Whether the party of the second part is overpaid for the work done up to now.
  - Whether party of the first part is bound to make any further payment over and above the payments made up to now for the work actually done.
3. The said arbitrator shall allow the parties to file their respective claims and contentions and to file documents relied upon by them within such reasonable time as the arbitrator may direct.
4. The said arbitrator shall give hearing to the parties either personally or through their respective advocates but the arbitrator will not be bound to take any oral evidence including cross examination of any party or person.
5. The said arbitrator shall make his award within a period of four months from the date of service of a copy of this agreement on him by any of the parties hereto provided that, the arbitrator will have to power to extend the said period from time to time with the consent of both the parties.
6. The arbitrator will not make any interim award.
7. The award given by the arbitrator will be binding on the parties hereto.
8. The arbitration shall be governed by the provisions of the arbitration and conciliation act, 1996.

**IN WITNESS WHEREOF** the parties aforementioned have signed this agreement on the date month and the year aforementioned.

Witness

First party

Witness

Second party

## CHAPTER -10 GUARANTEE, LOAN AND OUTSOURCING

### CONTRACT OF GUARANTEE

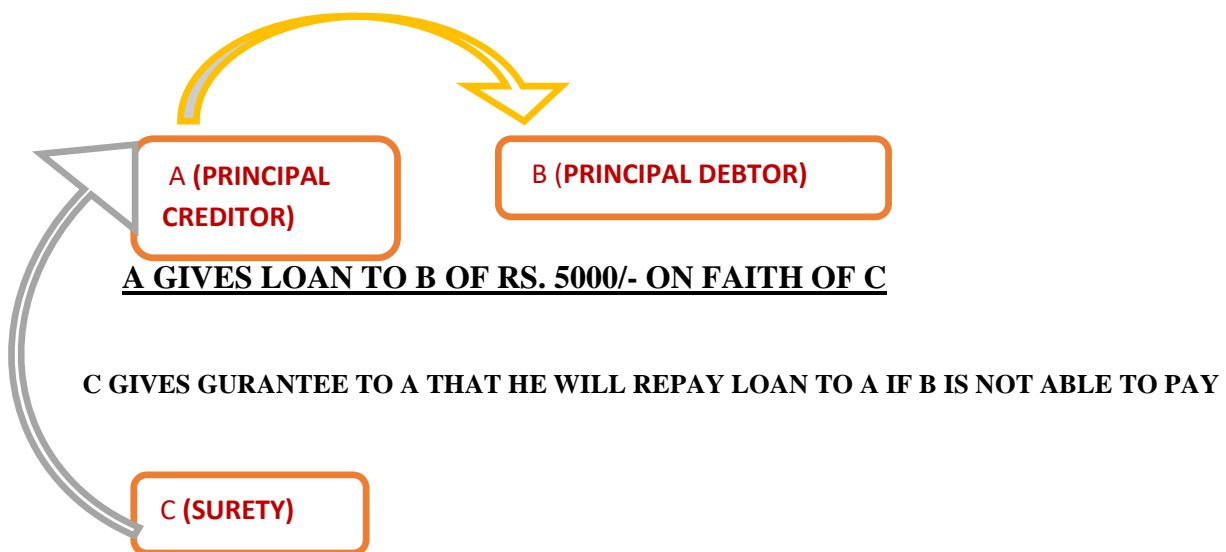
A 'contract of guarantee' is a contract to perform the promise, or discharge the liability, of a third person in case of his default. A guarantee may be either oral or written [**section 126 of the Indian contract act, 1872**]



### PARTIES INVOLVED IN GURANTEE

SURETY	PRINCIPAL DEBTOR'	CREDITOR
1. The person who gives the guarantee is called the Surety.	2. The person in respect of whose default the guarantee is given is called the "Principal debtor"	3. The person to whom the guarantee is given is called the "Creditor"

### CONTRACT OF GUARANTEE



### TYPES OF GUARANTEE

S.NO.	PARTICULARS	PROVISIONS
1	<b>FIDELITY GUARANTEE</b>	A guarantee guaranteeing an employer against misconduct of an employee or to answer for the debt or default of another is called a fidelity guarantee".  If the employer of a servant whose fidelity has been guaranteed continues to employ him even after a proved act of dishonesty without notice to the

		guarantor, the surety is discharged. That is a basic principle implicit in the very nature of a fidelity guarantee.
2	<b>CONTINUING GUARANTEE</b>	Section 129 of the Indian Contract Act, 1872 lays down that a guarantee which extends to a series of transactions is called a “continuing guarantee” and according to section 130, a continuing guarantee may be revoked by the surety at any time as to future transactions, by notice to the creditor.
3	<b>COUNTER GUARANTEE</b>	A guarantee given by the principal debtor to the surety providing him continuing indemnity against any loss or damage that the surety may suffer on account of default on the part of the principal debtor is called “counter- guarantee”.
4	<b>PERFORMANCE GUARANTEE</b>	A guarantee which ensures the contracted performance of another person and under which the surety undertakes to compensate the person in whose favour the guarantee is given, in the event of failure on the part of the person on whose behalf the guarantee is given, is known as “performance guarantee”.
5	<b>BANK GUARANTEE</b>	A “bank guarantee” is a guarantee given by a bank on behalf of its client or account-holder to another person with whom the client has entered into a contract to perform some job or to do and call upon the bank to pay the guaranteed amount in the event of the contingency, mentioned in the guarantee, happening or not happening, as the case may be.



### MEANING OF LOAN AGREEMENT

A **loan agreement** is a contract between a borrower and a lender which regulates the mutual promises made by each party.

Prior to entering into a loan agreement, the "borrower" first makes representations about his affairs surrounding his character, creditworthiness, cash flow, and any collateral that he may have available to pledge as security for a loan. These representations are taken into consideration and the lender then determines under what conditions (terms), if any, they are prepared to advance money.



### OUTSOURCING AGREEMENTS

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



2. Two common types of outsourcing are information technology (it) outsourcing and business process outsourcing (BPO). BPO includes outsourcing related to accounting, human resources,

benefits, payroll and finance functions and activities knowledge process outsourcing (KPO) includes outsourcing related to legal, paralegal and other highly skilled activities.

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

**SPECIMEN OF OUTSOURCING AGREEMENT FOR CONVERTING HARD COPIES OF A BOOK IN A COMPACT DISC (CD)**

**OUTSOURCING AGREEMENT**

This agreement for the conversion of the book titled intellectual property protection in India is executed in..... on ..... 2015 by and between

The golden law publishing Co. Pvt. Ltd. having their office at ..... represented by Mr..... Manager, Golden Law Publishing Co. Pvt. Ltd. (hereinafter referred to as 'the GLP Pvt. Ltd.)

**AND**

M/s Bluetec web services Pvt. Ltd a company registered under the companies act having their office at ..... and represented by Mr ..... Director M/s Bluetec Web Services Pvt. Ltd. (hereinafter referred to as the M/s Bluetec Pvt. Ltd.)

**WHEREAS** the GLP Pvt. Ltd has published the book intellectual property Protection in India it has decided to convert the hard copies of above mentioned book into a soft copy version by getting the book digitized and thereafter put the contents of the book in a CD (compact disc) along with a search engine. The GLP Pvt. Ltd. floated a tender for this book vide tender document with closing date ..... 2015 and after evaluating the bids of various parties the GLP Pvt. Ltd. has decided to award the project to M/s Bluetec Pvt. Ltd. on the following terms and conditions

**NOW THIS AGREEMENT WITNESS AS FOLLOWS:**

1. M/s Bluetec Pvt. Ltd would perform the job of digitization of the book including Data Punching / Scanning, Proof – reading (at an accuracy level of 99. 9%).
2. M/s Bluetec Pvt. Ltd. would be developing a search engine as per the GLP's requirement. The search engine would be licensed to the search engine for any purpose and would not be liable to pay to m/s Bluetec Pvt. Ltd .any additional amount for such usage.
3. The copyright of the contents of the CD. Marketing rights and all other rights pertaining to the said CD would solely vest with the GLP Pvt. Ltd.
4. M/s Bluetec Pvt. Ltd. undertakes to complete the assignment within a period of 50 days from the date of execution of this agreement.
5. M/s Bluetec Pvt. Ltd. would hand over the digitized contents of the aforesaid book to the GLP Pvt. Ltd. after the completion of the job and the total project cost to be paid to M/s Bluetec Pvt. Ltd. would be as follows:

- **Cost of developing the search engine- Rs. 50,000/- (rupees fifty thousand only)**

- **Digitization cost for each page (in hard copy ) – Rs. 12/- per page**
  - **Conversion cost for each page (in hard copy ) – Rs. 10/- per page**
  - **Total cost of each CD including the manual jewel case packing printing and security features – Rs. 85/ - per CD**
6. M/s Bluetec Pvt. Ltd. agrees to keep the hard copies of the book given for digitization in good shape.
7. All disputes claims and demands arising under or pursuant to or concerning this contract shall be subject to arbitration under the provisions of the arbitration and conciliation act, 1996.

**IN WITNESS WHEREOF** the parties hereto have set their respective hands to the agreement on the day, month and the year mentioned herein above.

**WITNESS 1**

**On behalf of M/s Bluetec Web Services Pvt. Ltd**

**WITNESS 2**

**On behalf of GLP Pvt. Ltd.**

## CHAPTER -11

## SERVICE AGREEMENT

### MEANING OF A SERVICE CONTRACT

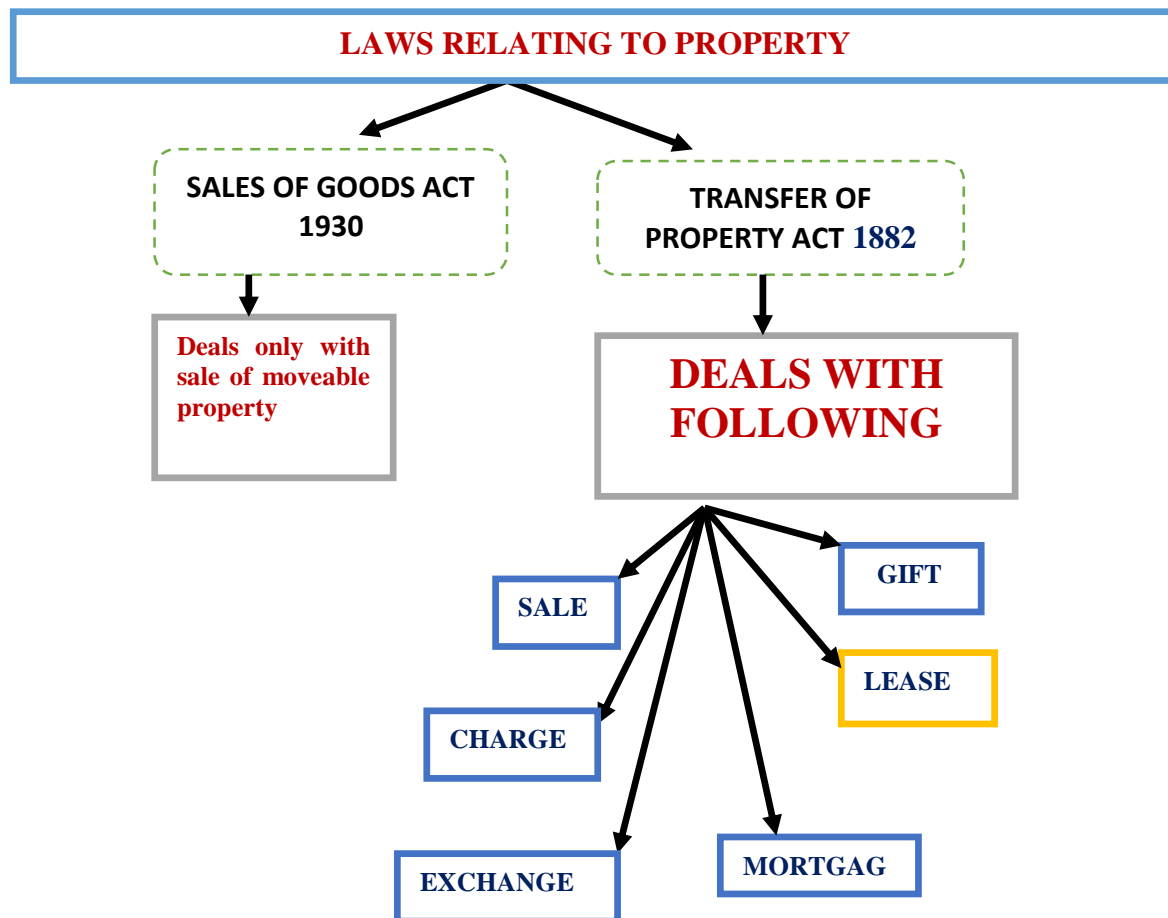
An agreement with specific terms between two persons in which there is a promise to do something in return for a valuable benefit known as consideration. Service contracts are drafted in the same way as other agreements. The terms of employment should be definitely fixed and clearly expressed and nothing should be left to presumptions



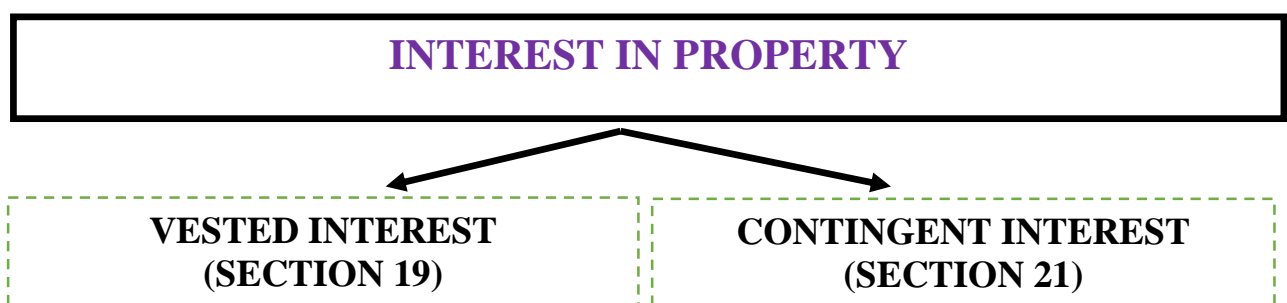
### Important points regarding service contract

S.NO.	PARTICULARS	PROVISIONS
1	<b>Content of a service contract</b>	<ol style="list-style-type: none"> <li>1. The time or period of employment</li> <li>2. The remuneration and other perquisites</li> <li>3. Duties of employment</li> <li>4. Powers of the employee</li> <li>5. Leave and the terms on which it will be granted</li> </ol>
2	<b>Determination of employment</b>	<p>The grounds for determination of employment should be clearly expressed in the agreement. The grounds on which the employment may be determined during the term are generally misconduct, negligence, or want of medical fitness. Subject to what has been stated earlier it may also be determined at pleasure by notice without giving any ground.</p> <p>In the case of misconduct or neglect no notice is required, but provision may be made for framing charges and taking defense as in the case of government servants since as employee is entitled to damages for wrongful dismissal if the termination of the service is not properly made provision in this respect should be carefully worded.</p>
3	<b>Restrictive covenants</b>	<p>It is usual to include restrictive covenants in the agreement such as that the employer will not undertake any other or service or that he will not divulge the employer's secrets or make improper use of his trade secrets or information about the employer's affairs.</p>
4	<b>Effect of labor laws</b>	<p>Many acts have been passed by the central or state legislatures relating to the conditions of employment of teachers and other employees of aided schools and colleges and of universities and of workers in factories and commercial establishments for e. g the factories act that industrial employment (standing orders) act the payment of wages act the workmen's compensation act etc. in drawing up a service contract for such an employee the provisions of the relevant acts must be kept in view. Any term of contract contrary to the statutory provisions will be null and void as it is not open to an employee to contract out of the safeguards provided by the legislature for his protection.</p>

## CHAPTER-12 DRAFTING OF SALE OF IMMOVABLE PROPERTY



### INTEREST IN PROPERTY



### DISTINCTION BETWEEN A VESTED AND A CONTINGENT INTEREST

BASIS	VESTED INTEREST	CONTINGENT INTEREST
<b>Fulfillment of Condition</b>	Vested interest doesn't depend upon the fulfillment of any condition	Contingent interest depends upon the fulfillment of some condition

<b>Right of Enjoyment</b>	In vested interest, there is a person immediate right though its enjoyment may be postponed to some future date.	In a contingent interest, a right of enjoyment is to accrue on the happening of an event which is uncertain.
<b>Effect of Transferee's Death</b>	Vested interest is not defeated by the death of the transferee before he obtains possession	Contingent interest does not take effect in the event of the transferee's death before the fulfillment of the condition
<b>Transferability and Heritability</b>	Vested interest is both transferable as well as heritable.	Contingent interest is not transferable if the transferee of a vested interest dies; the interest passes on to his heirs. If the transferee of the contingent interest dies before obtaining possession, the int. fails and doesn't pass on to his heirs.

## IMPORTANT DOCTRINES

### DOCTRINE OF ELECTION

**(SECTION 35)**

**Section 35** of the Transfer of Property Act deals with what is called doctrine of election.

**Election** may be defined as *“the choosing between two rights where there is a clear intention that both were not intended to be enjoyed”*.

The foundation of doctrine of election is that a **person taking the benefit of an instrument must also bear the burden**, and he must not take under and against the same instrument. It is, a general rule that ***no one may approbate (Accept) and reprobate (Reject)***.

### DOCTRINE OF FEEDING THE GRANT BY ESTOPPEL

**(SECTION 43)**

As per **Section 43** of Transfer of Property Act Where, a person fraudulently or erroneously represents that he is authorised to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this Section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

### DOCTRINE OF FRAUDULENT TRANSFER

**(SECTION 53)**

**Section 53 of Transfer of Property Act** Where a person transfers his property so that his creditors shall not have anything out of the property, the transfer is called a fraudulent transfer.

Every transfer of immoveable property made with intent to defeat or delay the creditors of the transferor **shall be voidable** at the option of any creditor so defeated or delayed.”

Section 53(2) provides that the rights of a transferee in good faith and consideration are protected

**DOCTRINE OF PART-PERFORMANCE** **(SECTION 53A)**

**Section 53A** of Transfer of Property Act. A contract for the sale of land has been entered into between A and B. The transferee has paid the price entering into possession and is willing to carry out his contractual obligations. As registration has not been effected A, the transferor, seeks to evict B from the land. B will not be allowed to suffer simply because the formality of registration has not been through. The legislature grants some relief to such a transferee under Section 53A, which embodies the doctrine of part-performance.

**DOCTRINE OF LIS PENDENS** **(SECTION 52)**

Lis means dispute, Lis Pendens means a pending suit, action, petition or the like.

Doctrine of Lis Pendens states that during the pendency of a suit in a Court of Law, property which is subject to litigation cannot be transferred and if transferred, the transferee will be bound by the result of the suit/proceedings.

**AGREEMENT TO SELL**

**THIS AGREEMENT OF SELL** executed at on \_\_\_\_ the \_\_\_\_ Day of \_\_\_\_, \_\_\_\_ (.....), 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.

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

**WHEREAS** it is agreed that the vendor shall sell and the purchase the said property for the sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) free of all encumbrances.

**NOW THIS AGREEMENT OF SALE WITNESSES AS FOLLOWS**

1. The price of property more fully set out in the Schedule is fixed at Rs. \_\_\_\_\_ 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 hereby admit and acknowledge.
3. The time of performance of the agreement shall be \_\_\_\_\_, months from the, and it is agreed that time fixed herein for the 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 execute the sale deed in favor of the purchaser or his nominee as purchaser may require.
7. If the vendor's title to the property is not approved by the purchaser, the vendor shall refund 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 \_\_\_\_\_ Percent per annum.

**IN WITNESS WHEREOF** the parties aforementioned have signed this agreement on the date month and the year aforementioned.

**WITNESS  
WITNESS**

**VENDOR  
PURCHASER**

## **CHAPTER -13**

## **LEASE AND LICENSE DEED**

### **IMPORTANT PROVISIONS REGARDING LEASE**

S.NO.	PARTICULARS	PROVISIONS
1	<b>Essentials elements of a lease transaction:</b>	<ol style="list-style-type: none"> <li>1. There must be transferor (lessor) and a transferee (lessee), both of whom have agreed for the construction.</li> <li>2. There must be for a certain time or in perpetuity.</li> <li>3. The transaction must be in consideration of a price paid or promised (known as premium pagdi, salami or Nazarene)</li> <li>4. The transaction must be in consideration of money to be paid periodically or on specified occasions to the transferor by the transferee called rent).</li> </ol>
2	<b>Difference between lease and agreement to grant a lease</b>	An instrument is usually construed as a lease if it contains words of immediate demise .An instrument is construed as an agreement to grant a lease if certain things have to be done by the lessor before the lease is granted such as the completion on repair or improvement of the premises, or by the lessee such as the obtaining of sureties.
3	<b>Kinds of lease and notice to quit</b>	<p>Unless the contract otherwise provides, lease for agricultural and manufacturing purposes shall be demand to be on year basis and all other leases shall be deemed to be on month to month basis</p> <p>A lease from year to year can be terminated either by the lessor or the lessee by giving to the other 6 months notice expiring with the end of the year of the tenancy.</p>
4	<b>Registration of lease deed</b>	<p>Lease Deed is required to be registered in the following cases</p> <ul style="list-style-type: none"> <li>➤ <b>Lease on year to year basis</b></li> <li>➤ <b>Lease for any term exceeding 1 year.</b></li> <li>➤ <b>Lease which reserves a yearly rent</b></li> </ul>
5	<b>Stamp duty on lease deed</b>	Stamp duty on a lease deed is chargeable as per Article 35 Schedule 35, Schedule I of the Indian stamp Act 1899. Stamp duty shall be payable as per respective state stamp law and hence it will vary from state to state.

### **SUB LEASE & ASSIGNMENT**

<b>SUB LEASE</b>	<b>ASSIGNMENT</b>
A sub-lease is demise by a lessee for lessor term than he himself has	If the demise is for the whole term or for a period beyond the term, it amounts to assignment

It is always allowed unless prohibited	It is always prohibited unless allowed
--	--

### **SURRENDER OF LEASES**

1. 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.
2. The person who surrenders is called the surrenderer and the person to whom surrender is made is called the surrenderee.
3. It may be expressed or implied. Except in a case of some special kinds of lease as required by special Act, no writing or registration is necessary. A surrender may be oral, if accompanied by delivery of possession.

### **DEED OF LEASE**

**THIS DEED OF LEASE** made at \_\_\_\_\_ on \_\_\_\_\_ day of \_\_\_\_\_, between AB \_\_\_\_\_ (Hereinafter called "the lessor") of the one part and CD \_\_\_\_\_ (hereinafter called "the Lessee") of the other part.

**WHEREAS** AB is desirous of letting his immovable property situated at \_\_\_\_\_ to CD for residential purpose on the below mentioned terms and conditions and CD is desirous of taking the aforesaid property on rent.

### **NOW THIS DEED IS WITNESS AS FOLLOWS**

1. The lessor hereby demises to the lessee all that dwelling house with the land fully described in schedule hereto together with all out houses, wells, motor garage, kitchen, pathways, passage, garden and other appurtenances thereof situate at \_\_\_\_\_ to hold the same to the lessee from the \_\_\_\_\_ day of \_\_\_\_\_ for the term of \_\_\_\_\_ years (or year to year) paying therefore during the said term the monthly rent of Rs. \_\_\_\_\_ payable on the first day of the month succeeding that for which for rent is due.

### **2. LESSEE'S OBLIGATION**

- the lessee hereby agrees that he will, during the said term (tenancy), pay all rents, taxes and other charges excluding the house tax which now are or may hereafter become payable in respect of the demised property;
- Pay Municipal charges including water bills and electric bills etc.
- That he will not without the previous consent in writing of the lessor transfer on sublet or otherwise part with the possession of the demised premises.
- That he will, without the consent in writing of the lessor, use the demised premises for residential purposes and for no other purpose.

### **3. LESSOR'S OBLIGATIONS**

- That he will during the said term (tenancy), maintain the demised premises in good and habitable condition.

- That he will during the said term (tenancy), maintain the electronic installation in the said premises and supply at his own expense such electric fans as may be required by the lessee.
- That he will carry out all immediate necessary repairs to the said premises to the entire satisfaction of the lessee.

**IN WITNESS WHEREOF** the parties aforementioned have signed this Deed on the date month and the year aforementioned.

Witness: lessor

Witness: lessee

**IMPORTANT PROVISIONS REGARDING LICENSE**

S.NO.	PARTICULARS	PROVISIONS
1	<b>Transferability of license</b>	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. This 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.
2	<b>Leave and license agreements</b>	<ol style="list-style-type: none"> <li>1. Leave and License Agreements are preferred by the parties to get out of the rigorous of landlord tenant relationship. Many types of agreements are made for the occupation of property like lease deeds, lease or tenancy agreements, rental agreements etc.</li> <li>2. Despite these agreements, most owners prefer to give their premises. Generally it is being witnessed that a person having a vacant apartment will never rent in out fearing what if the tenant decides not a vacate and makes the apartment his own. That is why tenancy has been put on the backburner and Leave and Licensees now the most popular option.</li> <li>3. In a Leave and License Agreement, the juridical possession of the premises is deemed to remain with the licensor and the licensee is said to be in constructive possession of the said premises. Thus, a leave and License does not create any interest in the premises in favour of the licensee but gives the licensee the mere right to use and occupy the premises for a temporary period.</li> </ol>
3	<b>Factors to be considered while</b>	

	<b>giving out premises on leave &amp; license basis</b>	<ol style="list-style-type: none"> <li>1. <b>Possession:</b> In a leave and license agreement, the owner is deemed to be in legal or judicial possession of the premises and the licensee is in constructive possession of the premises.</li> <li>2. <b>Income Tax:</b> In a leave and license agreement the owner has to pay the applicable rate of tax.</li> <li>3. <b>Municipal Tax:</b> In a leave and license agreement the Municipal Authorities may charge taxes as applicable in the area and if there is a security deposit amount sometimes the Municipal Authorities may calculate a notional interest on the securities deposit amount and charge tax thereon.</li> </ol>
4	<b>Registration of licence deed</b>	A mere deed of license need not be registered unless any right, title or interest in immovable property of the value of Rs. 100 or more is created or assigned.
5	<b>Stamp duty on licence deed</b>	A license which is contained in a deed such as a sale deed or a mortgage deed needs no separate stamp duty, however, if a separate deed of licensees executed, stamp duty will be chargeable as per Article 5 schedule I of the Indian Stamp Act, 1899.

**DIFFERENCE BETWEEN LEASE AND LICENSE**

<b>BASIS</b>	<b>LEASE</b>	<b>LICENCE</b>
<b>Interest in Property</b>	In case of Lease transfer of a right to enjoy immoveable property	In case of licence does not transfer any interest in the property.
<b>Possession</b>	Possession is always given to the transferee	licensee has no right to possession
<b>Revocation</b>	A lease cannot be revoked any time at the will of lessor	It can be revoked by the grantor at any time
<b>Transfer</b>	In case of lease death is not affected by the right of lessor.	In case of death of licensor, licence terminates.
<b>Transferee obligation</b>	The transferee of the lessor is bound by the lease.	The transferee of the licence is not bound by the licence.

**DEED OF LICENCE**

**THE DEED** of license made at .....on day of .....between AB son of .....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 registered office at present at .....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 situate at ..... fully mentioned and described in the Schedule hereto for a period not exceeding .....months only from the date of signing of this agreement which the owner has

agreed to grant reserving for himself the care, maintenance and service to property and on the basis of leave and license only.

**NOW THIS DEED IS WITNESSED 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., ..... in the ground floor and ..... in the first floor. The owner shall have his own staff on 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.
3. 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.
4. 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 decoration only by temporary wooden partitions.

**IN WITNESS WHEREOF** the parties aforementioned have signed this Deed on the date month and the year aforementioned.

Witness: Owner

Witness: Occupier

**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.

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

**NOW THIS DEED IS WITNESS AS FOLLOWS**

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.

**IN WITNESS WHEREOF** the parties aforementioned have signed this Deed on the date month and the year aforementioned.

Witness:

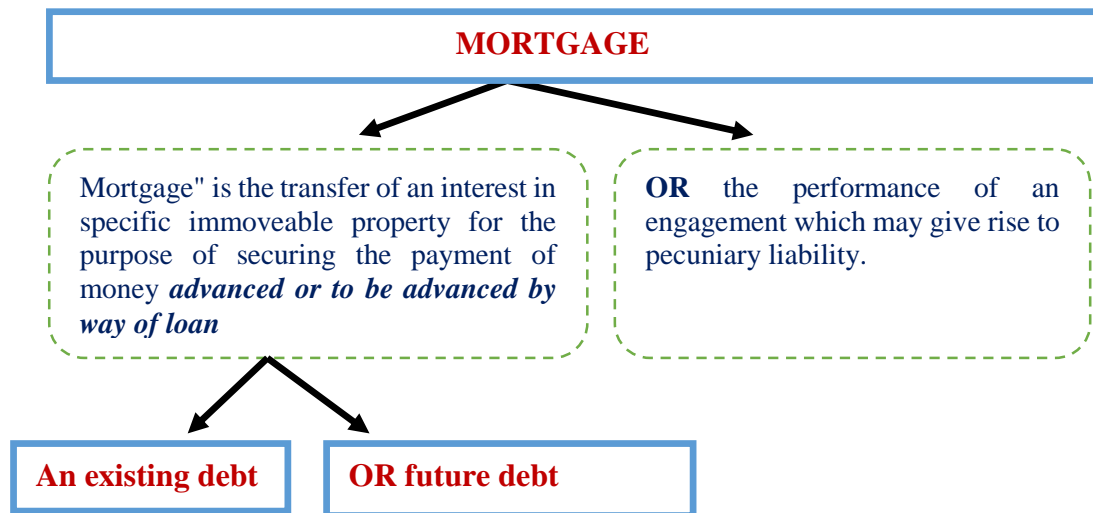
AB

Witness:

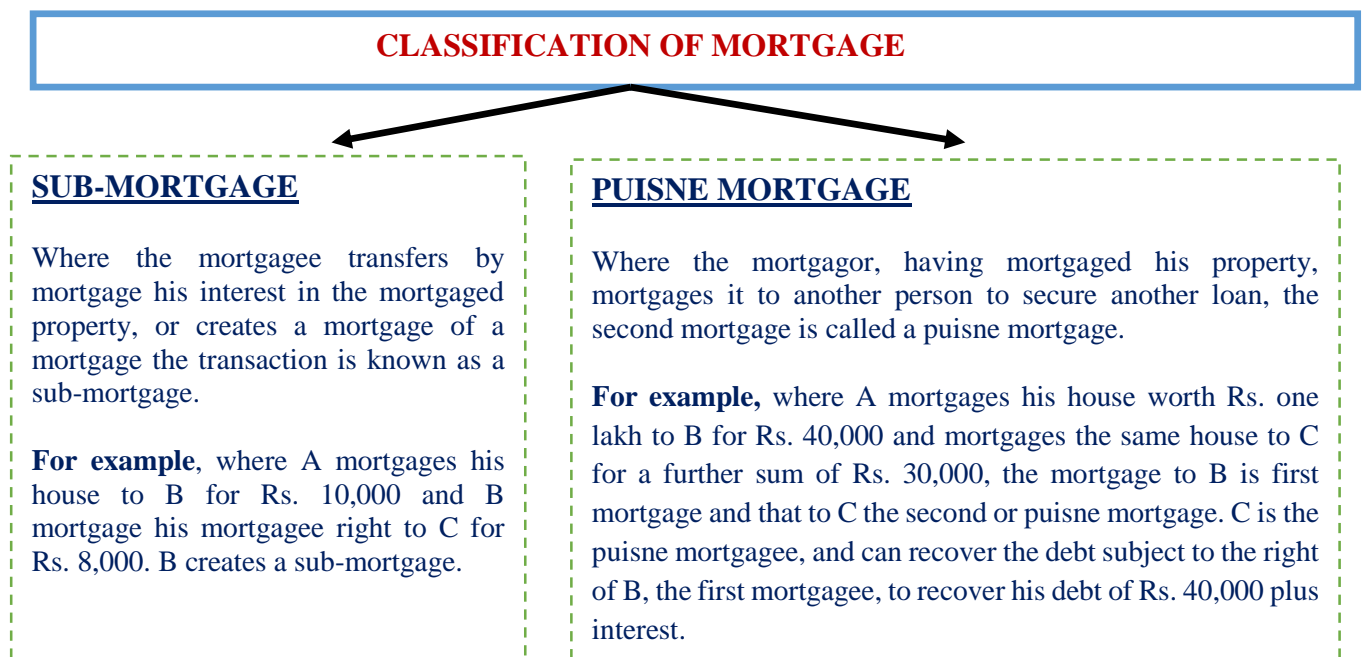
CD

## CHAPTER-14

## Mortgage, Charges and Hypothecation



### CLASSIFICATION OF MORTGAGE



### DRAFTING OF DEED OF MORTGAGE

The following points should be borne in mind while drafting a Deed of Mortgage:

S.NO.	PARTICULARS	PROVISIONS
1	<b>Parties</b>	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.
2	<b>Covenant for re-payment</b>	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.
3	<b>Covenant to insure</b>	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.
4	<b>Covenant to pay outgoings</b>	The borrower undertakes to pay and discharge and indemnify the mortgagee against all rates, taxes, duties, charges, assessments, outgoings, whatever.
5	<b>Power of sale</b>	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.
6	<b>Power to appoint Receiver</b>	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 installments is in arrear under Section 69A of Transfer of Property Act.
7	<b>Proviso for redemption</b>	Under this clause, the mortgagee covenants and declares that on payment of his dues, he shall re-transfer the mortgaged property to the mortgagor or his nominee at his expense.
8	<b>Possession</b>	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.

## **MARSHALLING**

## **(SECTION 56)**

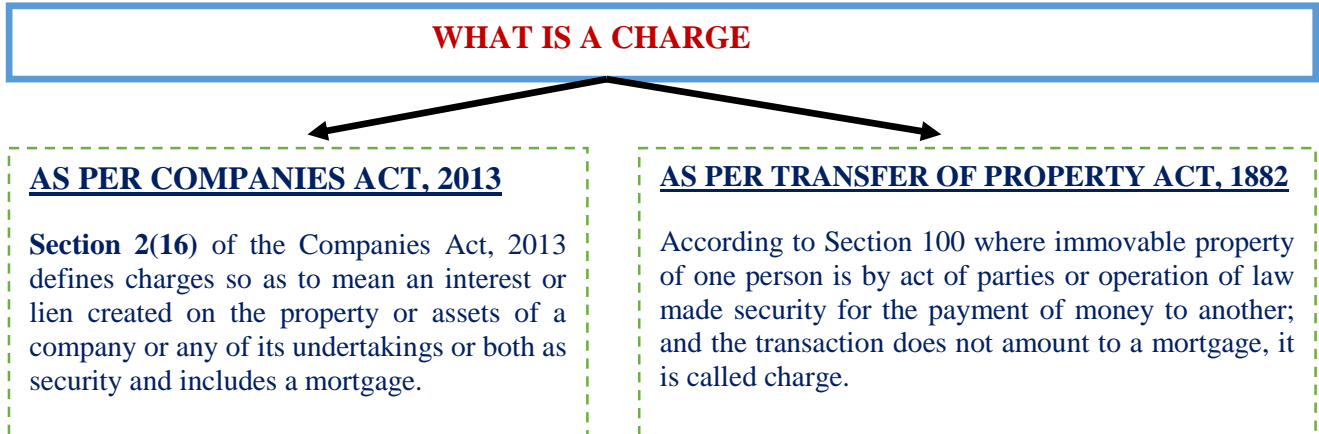
According to Section 56, if the owner of two or more properties mortgages them to one person and then sells one of the properties to another person, the purchaser is, in the absence of a contract to the contrary, entitled to have the prior mortgage-debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so as to prejudice the rights of the mortgagee.

## **SUBROGATION**

## **(SECTION 92)**

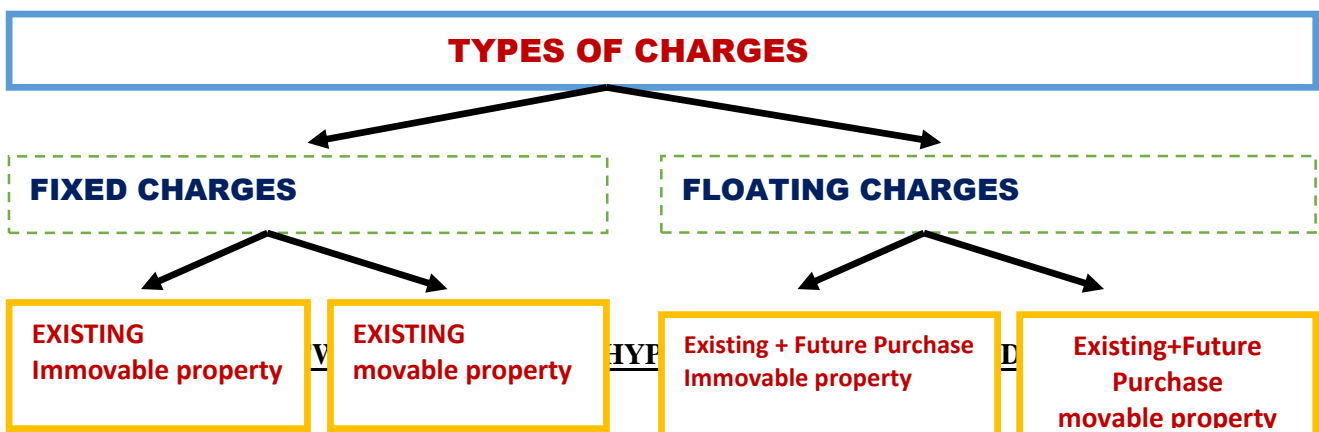
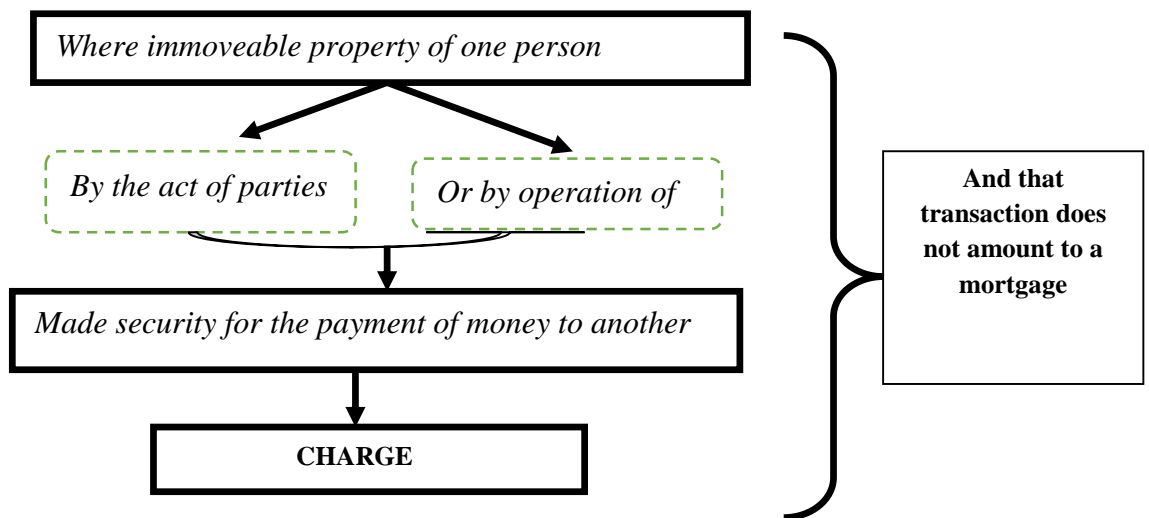
Section 92 incorporates the principle of "subrogation". It provides that any of the persons referred to in Section 91 (other than the mortgagor) and any co-mortgagor shall, on redeeming property subject to the mortgage, have so far as regards redemption, foreclosure or sale of such property, the same rights as

the mortgagee whose mortgage he redeems may have against the mortgagor or any other mortgagee. The right conferred by this Section is called the "right of subrogation", and a person acquiring the same is said to be subrogated to the rights of the mortgagee whose mortgage he redeems.



**CHARGE AS PER TPA 1882 (SECTION 100)**

Charge" has been defined under Section 100 as follows: "Where immoveable property of one person is by the 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".'



<b>S.NO</b>	<b>MORTGAGE</b>	<b>PLEDGE</b>	<b>HYPOTHECATION</b>
1.	It is a security on immovable property	It is a security of movable goods.	It is a security of movable goods.
2.	It is governed by Transfer of Property Act, 1882.	It is governed by Indian contract Act, 1872.	Not governed by any specific Act in India.
3.	In case of default, the mortgagee may sell/foreclose/possess the property.	In case of default, the pledgee can sell the goods after giving notice of sale.	The creditor has no right to sell the goods, as he has no possession. He can only file a suit for recovery of his debt and for the sale of hypothecated goods.
4.	Possession may or may not be transferred.	The possession of goods is transferred from the pawner to the pawnee.	The possession of goods remains with the borrower. Only a charge is created upon the goods by agreement.

## CHAPTER -15

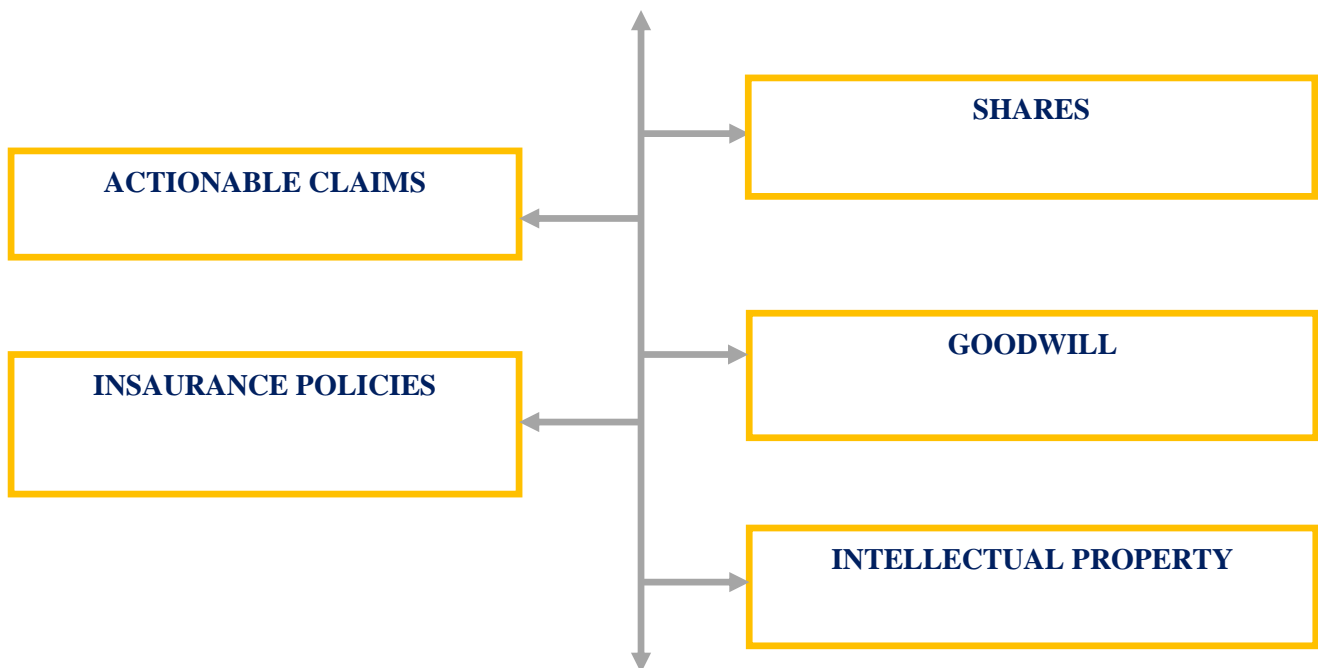
## ASSIGNMENT DEED

### MEANING OF ASSIGNMENT

Assignment is an act by which one person transfers or conveys to another or cause to rest in another his right or title to something. It may be noted that the benefit of a contract can be assigned, but not the burden.



### ASSIGNMENT COULD BE DONE FOR FOLLOWING



### SPECIMEN OF DEED OF ASSIGNMENT OF BUSINESS DEBTS/ACTIONABLE CLAIMS

#### DEED OF ASSIGNMENT

**THIS DEED OF ASSIGNMENT** made at \_\_\_\_\_ on \_\_\_\_\_ 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 where of the several person 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 WHEAREAS** the assignor has contracted with assignee for the absolute sale to him of

the said business debt for the sum of Rs. \_\_\_\_\_(Rupees \_\_\_\_\_).

**NOW THIS DEED WITNESSES AS FOLLOWS.**

1. In consideration of the sum of Rs.\_\_\_\_ (Rupees\_\_\_\_\_ ) now paid to the assignor by the assignee, the said assignor as beneficial owner, does here transfer, sell and assign 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.
2. That the assignor does hereby covenant with the assignee that all several debts are lawfully due to him and the parties by whom they are payable are alive.
3. Assignor further covenant 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 realisation of the said debts.
4. If the assignee is not able to recover the assigned debts, he shall not have a right to take recourse to the assignor.

**IN WITNESS WHEREOF** the parties hereto have hereunder signed this deed on the dates mentioned against their respective signatures.

Witnesses:

- |    |          |
|----|----------|
| 1. | Assignor |
| 2. | Assignee |

## CHAPTER -16

## DRAFTING OF PARTNERSHIP DEED

### DEFINITION & MEANING OF PARTNERSHIP

Section 4 of the Indian Partnership Act, 1932 defines the term 'partnership'. According to this, "Partnership is the relation between persons, who have agreed to share the profits of a business, CARRIED ON BY ALL OR ANY OF THEM ACTING FOR ALL".

Persons who have entered into partnership with one another are individually called "partners" and collectively called "a firm"; and the name under which their business is carried on is called the "firm name".

The Indian  
Partnership  
Act, 1932



### **CLASSIFICATION OF PARTNESHIP**

#### PARTICULAR PARTNERSHIP

When two or more persons agree to do business in a particular adventure or undertaking, such a partnership is called "particular partnership"

#### PARTNERSHIP AT WILL

A partnership is deemed to be a "partnership at will", when no provision is made by contract between the partners for the duration of their partnership or for the determination of their partnership

### **GROUND OF DISSOLUTION OF A FIRM**

#### Without intervention of Court

1. **By mutual agreement:** A firm may be dissolved, where all the partners agree that it shall be dissolved.
2. **By insolvency of all the partners but one:** If all the partners except one become insolvent, the firm must come to an end, as a partnership with only one partner cannot continue.
3. **By business becoming illegal:** If the business of the firm becomes illegal because of some subsequent event, such as change of law, it is automatically or compulsorily dissolved by the operation of law.
4. **By notice of dissolution:** Where the partnership is at will, the firm may be dissolved at any time, by any partner giving notice in writing of his intention to dissolve, to all the other partners.

#### With intervention of Court

1. when a partner becomes of unsound mind
2. permanent incapacity of a partner to perform his duties
3. misconduct of partner affecting the business
4. persistent disregard of partnership agreement by a partner
5. transfer or sale of the whole interest of a partner
6. business working at loss
7. Where just and equitable

**SPECIMEN OF DEED OF PARTNERSHIP**

**DEED OF PARTNERSHIP**

**THIS DEED OF PARTNERSHIP** IS MADE ON the .....day of .....2015 Between A.B.....S/o.....R/o.....aged.....(Hereinafter called the ‘First Party’) AND C.D.....aged .....years, son of ..... resident of .....(Hereinafter called the ‘Second Party’).

**WHEREAS** the parties hereto have agreed to commence business in partnership and it is expedient to have a written instrument of partnership.

**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 these lives into a firm of partners under the name and style of, M/s.....(here give the name of the firm).

**NOW THIS DEED IS WITNESSES AS FOLLOWS**

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**.....

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 account.
5. No apprentice, clerk or servant shall be employed or dismissed without the consent of all the partners.
6. The firm shall regularly maintain in the ordinary course of business a true and correct account of all its incoming and outgoing and also all its assets and liabilities in proper books of accounts which shall ordinarily be kept at the firm’s place of business.
7. The partnership shall be deemed to be continuing on the admission of a fresh partner or partners, provided the admission is on the terms herein laid down and is approved by all the partners.
8. Every partner shall be entitled to dissolve the partnership in the event of the other committing breach of the conditions herein covenanted.

**IN WITNESS WHEREOF** the said A.B. and C.D. have hereto at .....Signed the day and the year first above mentioned.

WITNESSES

Sd/- A.B.

Sd/- C.D.

WITNESSES

**DEED OF AGREEMENT OF ADMISSION INTO FIRM OF A NEW PARTNER**

**THIS DEED OF AGREEMENT** IS made.....day of .....2015 BETWEEN A .....son of.....aged.....R/o.....and B ..... son-of.....aged R/o .....partners in the firm AB & Co. of the one part, AND C.....son of.....aged.....years resident of .....of the other part.

**WHEREAS** the said A and B are partners in the firm AB & Co. Situated at .....and are bound as such under a deed of partnership executed by them on the.....day of.....2015 hereinafter referred to as the “**partnership deed**”.

**WHEREAS** the said C is desirous of being admitted as a member in the aforesaid firm of AB & Co. and invest a sum of Rs.....AND the said A and B are willing to admit him as an additional partner.

**NOW THIS DEED WITNESSES AS FOLLOWS**

That in pursuance of the said agreement and in consideration of the said C bringing in and contributing the sum of Rupees..... (Rs.....) only as additional capital of the above partnership firm, it is mutually agreed as follows:

1. The parties hereto shall, as from the date hereof be and continue partners for the unexpired residue of the terms mentioned in para.....of the partnership deed subject in all respects to the conditions, stipulations and provisions of the aforesaid partnership deed, so far as applicable, and except as varied by this deed of agreement.
2. The capital mentioned in the partnership deed shall hereafter be changed to the sum of Rupees.....only and the partners shall hereafter have the shares in the capital.
  - A shall have Rs.....in the said capital
  - B shall have Rs.....in the said capital
  - C shall have Rs.....in the said capital.
3. The profits and losses of the partnership shall continue to be borne by the partners hereto in proportion to their above named respective shares.

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

**WITNESSESS:**

- |    |         |
|----|---------|
| 1. | Sd/- A. |
| 2. | Sd/- B. |
| 3. | Sd/- C. |

## CHAPTER -17

## POWER OF ATTORNEY

### DEFINITION AND MEANING OF POWER OF ATTORNEY

#### MEANING OF POWER OF ATTORNEY

POWER OF ATTORNEY IS A DOCUMENT

WHEREBY ONE OR MORE PERSONS GIVE AUTHORITY

TO ONE OR MORE PERSONS TO ACT IN HIS OR THEIR PLACE.

#### GENERAL POWER OF ATTORNEY AND SPECIAL POWER OF ATTORNEY

##### General Power of Attorney

A Power of Attorney executed for the purpose of generally representing another person or for performing more than one act is called a General Power of Attorney.

##### Special Power of Attorney

A Special Power of Attorney means when a Power of Attorney is executed for the purpose of a specific act. It is also called a 'Particular Power of Attorney'. A specific act is meant to imply either a specific act or acts related to each other so as to form one judicial transaction.

## **REGISTRATION OF POWER OF ATTORNEY**

### **REGISTRATION OF POWER OF ATTORNEY**

#### **REGISTRATION WHEN NECESSARY**

In general, registration of Power of Attorney is not compulsory even if it deals with immovable property.

#### **TWO ALTERNATIVES OF REGISTRATION**

1. Registration as per Registration Act.
2. As per Power-of-Attorney Act, 1882, where a Power of Attorney is deposited in a concerned High Court or a district Court along with an affidavit verifying its execution, it is as good as the registration of Power of Attorney.

#### **However, registration of Power of Attorney is compulsory in the following cases**

1. Power of Attorney which authorizes the donee to recover the rents of immovable property belonging to the donor for the donee's own benefit.
2. Power of Attorney which authorizes the donee to create a charge on certain immovable property belonging to the donor in his favor.

In the aforesaid two cases, since the donee has got the personal interest, registration of power of attorney is required and it is irrevocable in nature. In other words, if the donee does not have any personal interest, registration of power of attorney is optional and it is revocable in nature.

## **SPECIMEN OF GENERAL POWER OF ATTORNEY**

### **GENERAL POWER OF ATTORNEY**

#### **KNOW ALL MEN BY THIS POWER OF ATTORNEY**

**WHEREAS** \_\_\_\_\_, a Company registered under the Companies Act, 2013, 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, revision and other legal proceedings in various courts, offices and before other authorities in India and outside;

**WHEREAS** the Company has to enter into various agreements and contracts and execute various sorts of documents, including lease, guarantee and counter guarantee, indemnity bond etc.;

**WHEREAS** it is considered necessary and expedient to execute a General Power of Attorney in favor of Mr. \_\_\_\_\_, Managing Director of the Company.

**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 favor of Mr. \_\_\_\_\_, Managing Director of the Company and have authorized Mr. \_\_\_\_\_, Director, to execute, sign, seal, register and deliver the said Power of Attorney:

**NOW THIS POWER OF ATTORNEY WITNESSES AS FOLLOWS**

1. The Company hereby appoints Mr. \_\_\_\_\_ (hereinafter called “the Attorney”) so long as he is the Managing Director of the Company to do, the following acts, deeds and things in the name and on behalf of the Company
2. 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 judgment or withdraw, compromise, compound or refer any matter or dispute to arbitration, as they enter or either of them may think fit
3. 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, complaints, written statement, affidavits, applications, review or revision petitions.
4. To engage and appoint advocates, solicitors, pleaders as the case may be
5. 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
6. To file in and receive back from any or all courts or offices documents of all kinds and to give receipts therefore
7. To execute, sign, seal and where necessary to register all documents including deeds, leases, agreements, contracts, letters of appointments, powers of attorneys
8. 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
9. And generally to do all acts, deeds or things as may be necessary or proper for the purposes mentioned above.

**IN WITNESS WHEREOF** this deed has been signed and sealed by Mr. \_\_\_\_\_, Director, authorized in this behalf vide Board Resolution No \_\_\_\_\_ dated \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in presence of:

WITNESSESS:  
Company)

Designation:

For (Name of the

Signature:


Name:

## CHAPTER -18

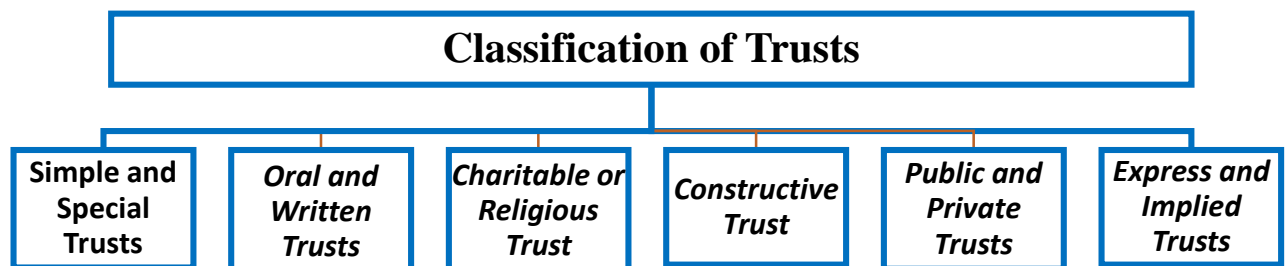
## DRAFTING OF TRUST DEED

### INDIAN TRUSTS ACT 1882

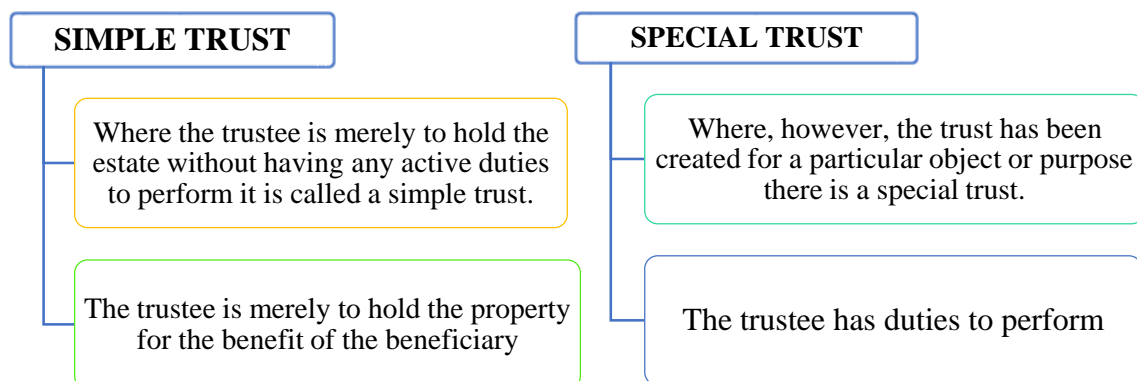
#### BASICS, MEANING & ORIGIN OF TRUST

<b>Meaning of trust</b> <b>Section 3</b>	<ul style="list-style-type: none"> <li>✚ An obligation annexed to the ownership of property and</li> <li>✚ Arising out of confidence reposed in and</li> <li>✚ Accepted by the owner or declared and accepted by him,</li> <li>✚ For the benefit of another or of another and the owner.</li> </ul> 
<b>Author of the trusts</b>	The person who reposes or declares the confidence
<b>Trustee</b>	Person who accepts the confidence
<b>Beneficiary</b>	The person for whose benefit the confidence is accepted
<b>Trusts Money/ Trust Property</b>	The subject matter of the trust
<b>Instrument of trust</b>	The instrument declaring the trust

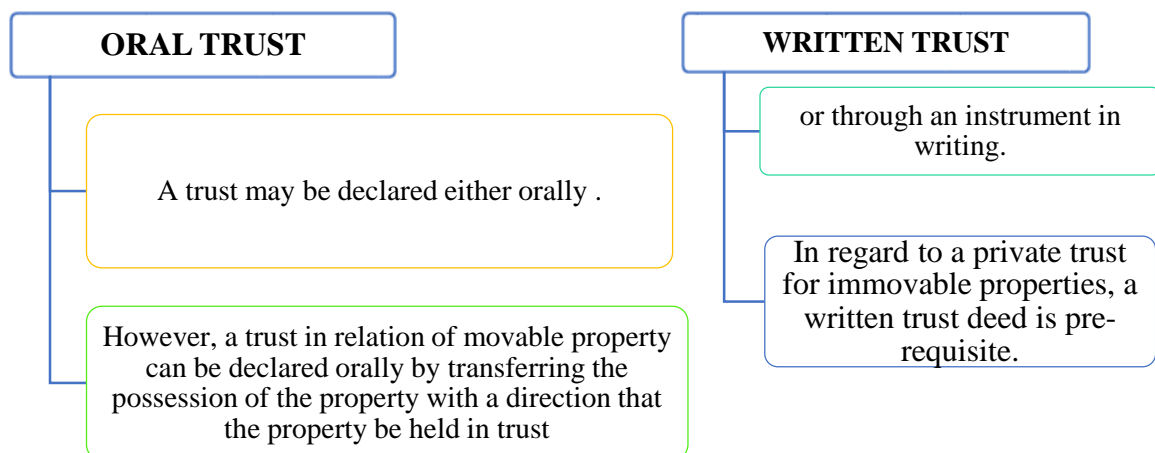
#### CLASSIFICATION OF TRUST



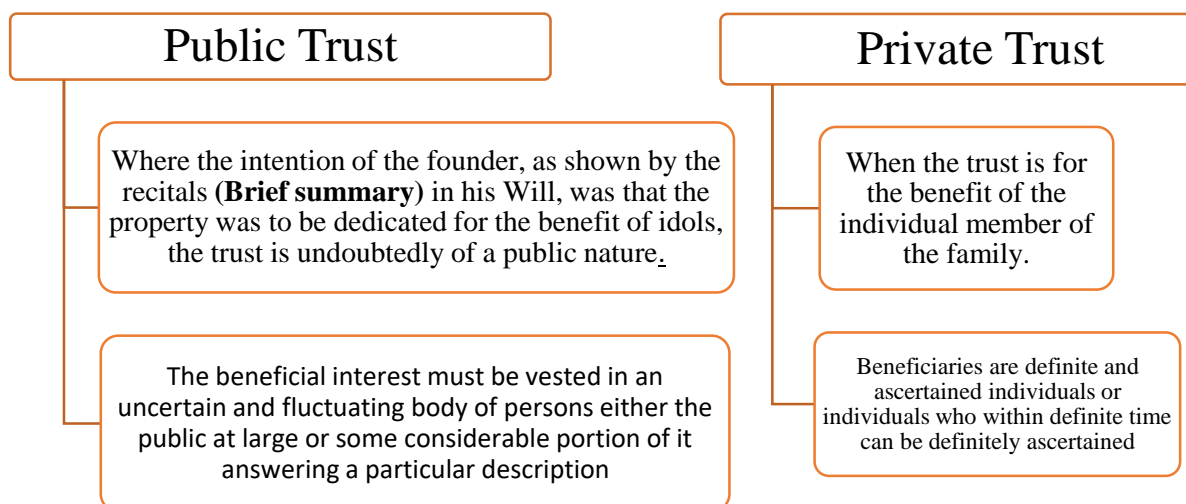
#### SIMPLE AND SPECIAL TRUST



## ORAL AND WRITTEN TRUST



## PUBLIC AND PRIVATE TRUSTS



## DEBENTURE TRUST DEED

**THIS TRUST DEED** is made at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 200, between \_\_\_\_\_ incorporated under the Companies Act, 2013 with its registered office at \_\_\_\_\_ (hereinafter called "the Company") of the One part, and \_\_\_\_\_ (hereinafter called "the Trustees") of the Other part.

**WHEREAS** by Sub-clause \_\_\_\_\_ of Clause \_\_\_\_\_ of its Memorandum of Association, the company is authorized to borrow or raise and secure the payment of money by the issue of debentures charged upon any of the company's property.

**WHEREAS** the directors of the company have decided by a resolution passed in pursuance to Section 179 of the Companies Act, 2013 in the meeting of the Board held on \_\_\_\_\_ to raise a sum of Rs. \_\_\_\_\_ by issue of \_\_\_\_\_ Debentures of Rs. \_\_\_\_\_ each, bearing interest at \_\_\_\_\_ per cent per annum and to secure the same by mortgaging with the trustees the properties described in the Schedule hereto.

**WHEREAS** the trustees above mentioned have consented to act as trustees for the debenture holders.

**NOW THE DEED WITNESS AS FOLLOWS:-**

- (1) The debentures entitled to the benefit of these presents shall consist of a series of number of debentures of Rs. \_\_\_\_\_ each, aggregating to Rs. \_\_\_\_\_ in all to rank Pari Passu without any preference or priority by reason of the date of issue or otherwise and secured by the mortgage hereby created on the mortgaged premises.
- (2) The company hereby covenants with the trustees that the company will on the \_\_\_\_\_ day of \_\_\_\_\_ pay the debenture holders the amounts secured by their debentures and in the meantime will pay interest to the debenture holders on the day of \_\_\_\_\_ 2015 \_\_\_\_\_ in each year,
- (3) In consideration of the debentures hereby authorized aggregating to Rs. \_\_\_\_\_ the company, as the beneficial owner, hereby charges unto the trustees on the fixed plant and machinery and fixture at present existing at the company's factory and described in Schedule hereto.
- (4) The company shall hold and enjoy all the mortgaged premises and carry on therein and therewith its business until the security hereby constituted shall become enforceable under the terms of these presents, in which case the trustees may, in their discretion, enter upon or take possession of the mortgaged premises.
- (5) As soon as the principal money shall become payable and the security enforceable, the trustees shall enter upon and take possession of the mortgaged premises and shall forthwith take steps to consult the debenture holders for the purpose of determining whether the business of the company may be allowed to be carried on or whether the mortgage premises shall be realized by sale or otherwise.

**IN WITNESS WHEREOF THE COMPANY** has caused its Common seal to be affixed to these presents and the trustees have here to set their hands the day and year above written.

Common Seal of the \_\_\_\_\_

Witnesses:

affixed in the presence of

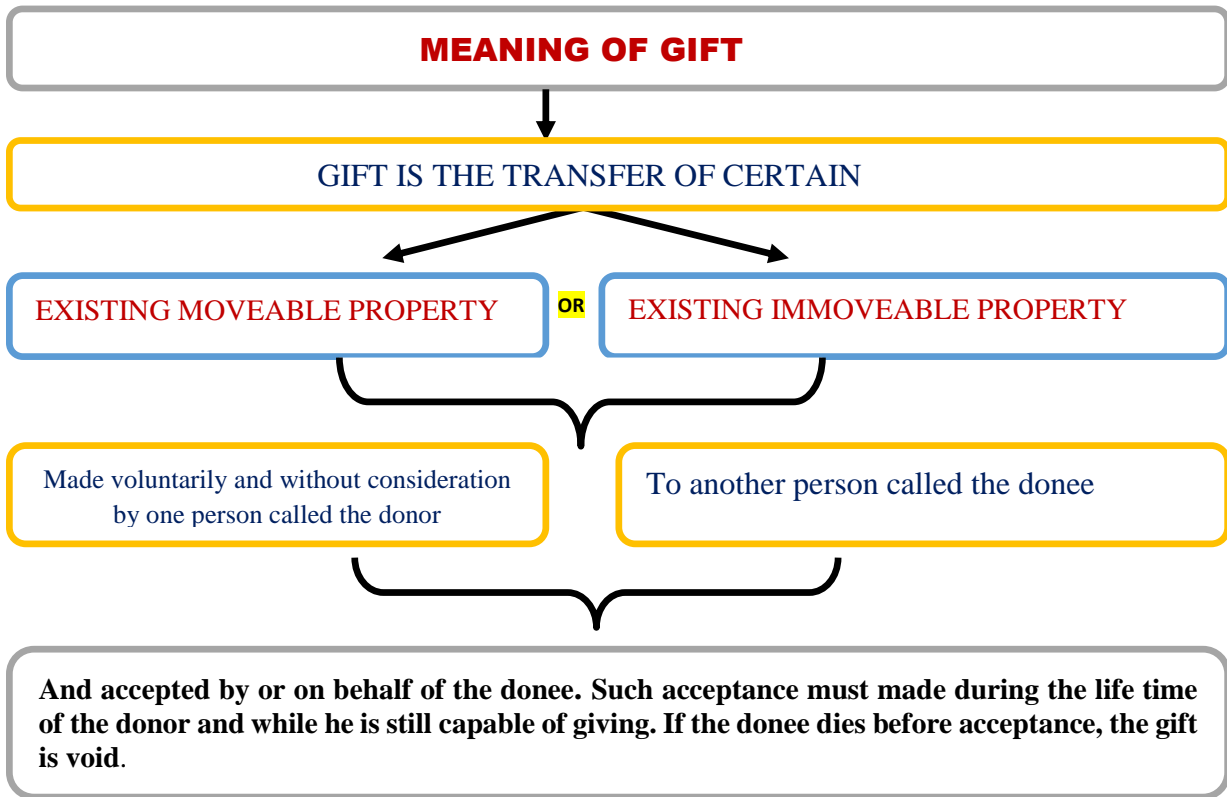
*Schedule of Description of Property*

(DIRECTOR)

(TRUSTEES)

# CHAPTER -19

# DRAFTING OF GIFT DEED



### Deed of Gift for Love and Affection

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

**WHEREAS** the donor is owner of the property described in the Schedule and out of his paternal affection for his daughter, (the donee), is desirous of making a gift of the said property to the donee at the time of her marriage.

### NOW THIS DEED WITNESSES AS FOLLOWS:

1. In consideration of the natural love and affection of the donor for the donee, the donor transfers to the donee free from encumbrances ALL the property described in the Schedule TO HOLD the same to the donee absolutely forever.
2. The donee accepts the transfers.

**IN WITNESS WHEREOF** the parties a fore said have sat their respective hands in the presence of the witnesses here under.

Witness: AB

Witness: CD

### DEED OF GIFT OF PROPERTY FOR PARTICULAR PURPOSE

THIS GIFT is made..... day of..... BETWEEN AB of, etc. (hereinafter called “the Donor”) of the one part, and CD of, etc. (hereinafter called “the Donee”) of the other part.

**WHEREAS** the donee intends to start a school in his village ..... for the education of girls **WHEREAS** the donor is desirous of donating the land fully mentioned and described in the Schedule hereto to be used as a site for the said School.

**NOW THIS DEED IS WITNESS AS FOLLOWS**

1. The donor do hereby freely and voluntarily grant, convey, transfer, give to the use of the donee and his successor all property mentioned in schedule to be used exclusively for the purpose of a girls’ school.
2. The donee accepts the gift of the said property hereunder made solely and exclusively for the purpose.
3. That it is expressly agreed and understood by and between the parties that this gift of land will stand *ipso facto* revoked in the event the land hereunder given is not used for the purpose of the intended school for which the same is given within a period of one year from the date of these presents.

**IN WITNESS WHEREOF** the parties a fore said have sat their respective hands in the presence of the witnesses here under.

Witness: AB

Witness: CD

# DRAFTING UNDER COMPANIES ACT 2013



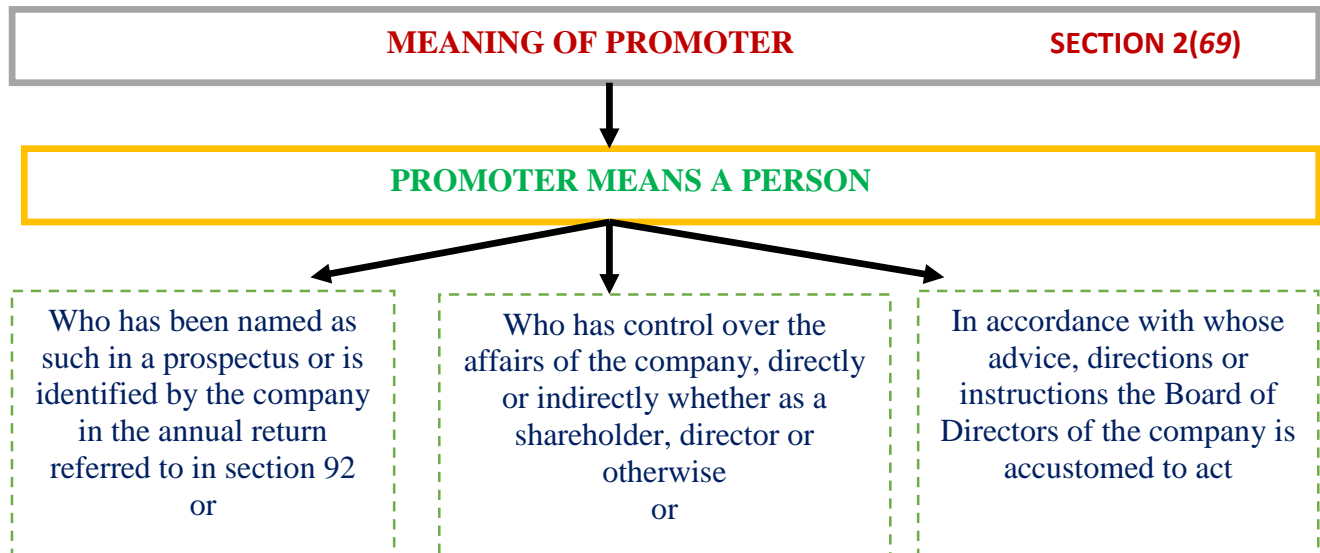
Start Career As A Company Secretary



## CHAPTER- 20 DRAFTING OF AGREEMENTS UNDER COMPANIES ACT 2013

### MEANING OF PROMOTER

### SECTION 2(69)



**Provided** that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity

### STAGES IN PROMOTION

‘Promotion’ involves the following four stages

- Generation of idea of starting a new company
- Registration of the company
- Floatation, i.e. raising of capital or arranging the financial resources so as to carry on its business operations.



### DRAFTING OF PROMOTERS CONTRACT

#### SPECIMEN OF PROMOTERS' CONTRACT FOR THE PURCHASE OF AN INDUSTRIAL PLOT FOR SETTING UP INDUSTRIAL UNIT OF THE PROPOSED COMPANY ABC LTD.

#### PROMOTERS' CONTRACT

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") and Mr. "V" son of Mr. .... resident ..... (Hereinafter referred as "Vendor")

**WHEREAS** the promoters have been engaged for quite some time 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;

**WHEREAS** the memorandum and articles of association of the proposed ABC Ltd., empower the company and its direction 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;

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

**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**

- (1) The price of the property more fully set out in the Schedule is fixed at Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) free of all encumbrances.
- (2) The promoter 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, and it is agreed that time fixed herein for the performance shall be the essence of this contract.
- (4) The promoters 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 promoters before registration of the sale deed.
- (6) The vendor shall execute the sale deed in favor of the promoters.
- (7) The vendor shall hand over all the title deeds of the property to the promoters or his advocate nominated by him within \_\_\_\_\_ days from the date of this Agreement for scrutiny of title and the opinion of the promoters Advocate regarding title of the property shall be final and conclusive. The promoters shall duly intimate the vendor about the approval of the title within \_\_\_\_\_ days after delivering the title deeds to him or his Advocate.

- (8) If the promoters 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 promoters the sum of Rs. \_\_\_\_ (Rupees \_\_\_\_\_) received by him as earnest money, but shall also pay to the promoters an equal sum by way of liquidated damages.

**IN WITNESS WHEREOF** the parties herein under have signed this agreement on the date and year hereinabove mentioned in the presence of the witnesses.

*Witnesses:*

1.

VENDOR

2.

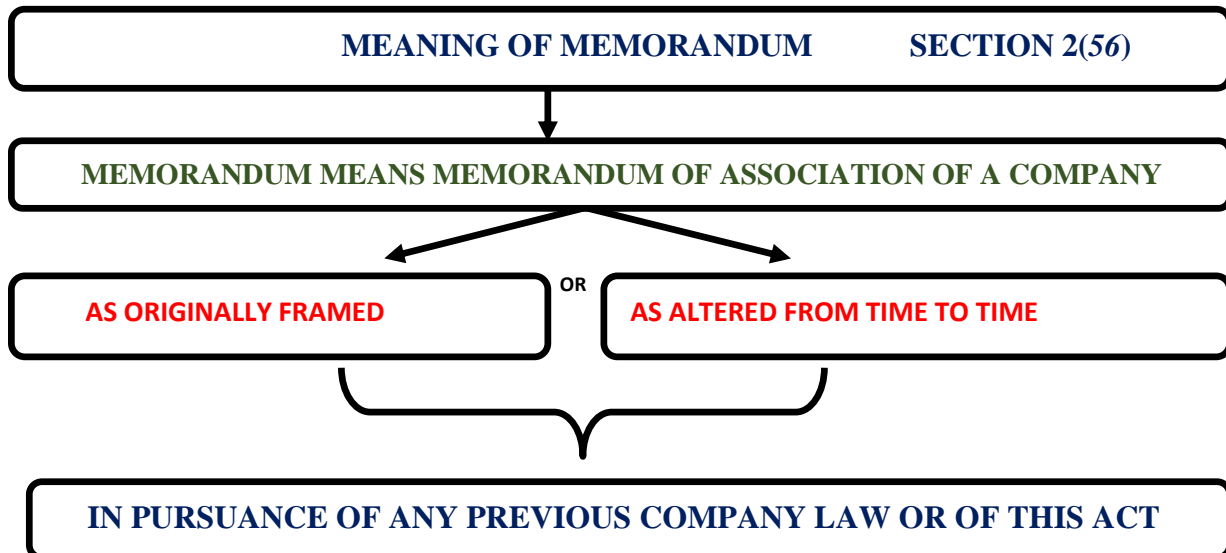
PROMOTER

## CHAPTER-21

## DRAFTING OF MOA AND AOA

### MEMORANDUM OF ASSOCIATION

#### STATUTORY DEFINITION



#### FORMAT OF MOA (SEC. 4(6))

TABLE A	MOA of Company Limited by Shares
TABLE B	MOA of Company limited by guarantee not having share capital
TABLE C	MOA of Company limited by guarantee having share capital
TABLE D	MOA of unlimited Company not having share capital
TABLE E	MOA of unlimited Company having share capital

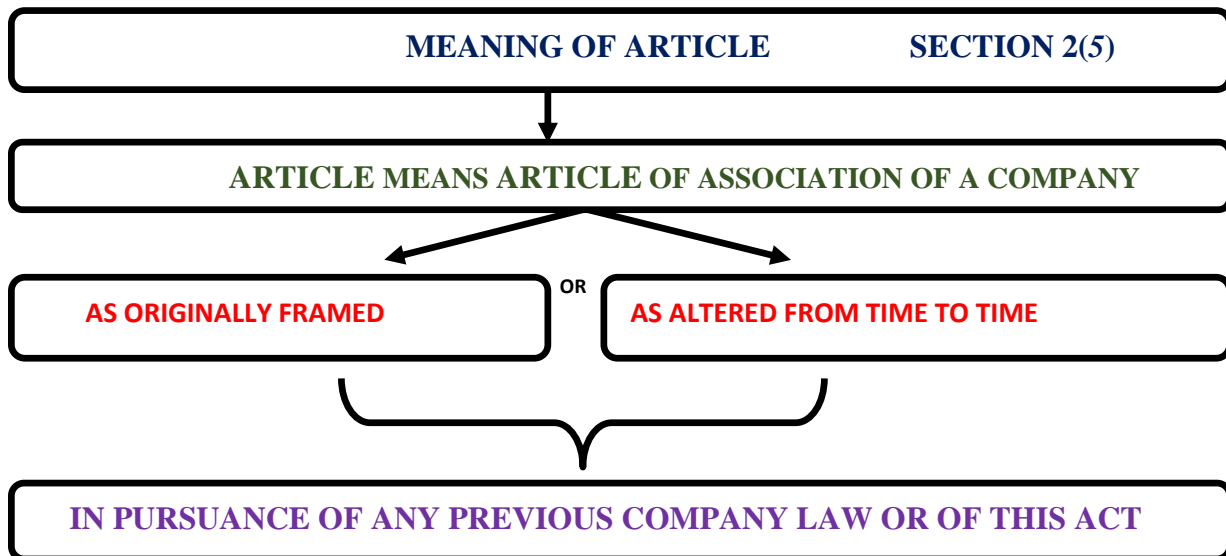
#### CONTENTS OF MEMORANDUM

(SEC. 4 (1))

1. Name clause
2. Registered Office clause
3. Objects clause
4. Liability clause
5. Capital clause
6. Declaration clause
7. Nomination clause in case of (One Person Company)

## ARTICLES OF ASSOCIATION

### MEANING OF ARTICLES OF ASSOCIATION



### FORMAT OF AOA (SEC. 5(6))

TABLE F REGULATIONS)	AOA of Company Limited by Shares	(TOTAL	91
TABLE G	AOA of Company limited by guarantee having share capital		
TABLE H	AOA of Company limited by guarantee not having share capital		
TABLE I	AOA of unlimited Company having share capital		
TABLE J	AOA of unlimited Company not having share capital		

## **CHAPTER-22**

## **Drafting of Underwriting Agreements**

When shares are offered to the public, a company would naturally like to ensure success of the issue. It may, therefore, make an agreement with financial institutions, bank, etc., who in consideration of a commission, agree to subscribe for the shares to the extent to which the shares are not taken by the public. This is called **underwriting agreement**.

### **UNDERWRITING VS BROKERAGE**

<b>UNDERWRITING</b>	<b>BROKERAGE</b>
It is a <b>contract</b> entered into between the company and underwriters whereby the underwriter <b>agree to subscribe the shortfall</b> in minimum subscription.	Broker Merely undertakes 'to place shares' i.e. finds person who will buy shares for an agreed <b>brokerage</b> . (Brokerage is the sum paid by company for <b>placing</b> its shares)
Underwriter is liable to take the shares when there is failure by public to subscribe.	Broker <b>does not have any liability</b> to subscribe to the shares he merely finds buyers.
The risk associated with underwriting is the <b>devolvement of underwriters</b> in case of failure of public to subscribe.	<b>No risk</b> because broker does not undertake to subscribe for the shares
Risk is <b>suitably compensated</b> by way of underwriting commission	Broker gets <b>Brokerage only when he places</b> the shares, else, no brokerage.
Commission is payable only when there is an <b>express authority</b> in the AOA	Brokerage may be paid even if the AOA is <b>silent</b> about it.

### **UNDERWRITING CONTRACT**

**An agreement** made the ..... day of ..... 20 ..... between ..... of ..... (Hereinafter called the underwriters) of the one part, and ..... Ltd., a company incorporated under the provisions of the Companies Act, 2013, having its registered office at ..... (Hereinafter called the 'the company') of the other part:

**Whereas** the company is about to offer for public subscription an issue of ..... shares of ..... each in accordance with the terms of the draft prospectus a copy of which is annexed hereto, or with such modification therein as may be mutually agreed upon between the company and the underwriters:

### **NOW IT IS HEREBY AGREED AS FOLLOWS:**

1. If the said ..... Shares shall on or before the ..... day of ..... be offered by the company for subscription by the public at par on the terms of such prospectus as aforesaid, the underwriters shall on or before the closing of the subscription list apply at par for the said ..... Shares.
2. If on the closing of the lists under the said prospectus the said ..... shares shall be allotted in respect of applications from the public the responsibility of the underwriters is to cease and no allotment is to be made under this agreement but if the said ..... Shares shall not be allotted to the public but any smaller number of such shares is so allotted, the undertaking of the underwriters is to stand for the difference between the said ..... shares and the number of the shares allotted to the public.
3. The company shall pay to the underwriters in cash within ..... days from the allotment of the said ..... shares a commission at the rate of .....
4. This agreement is to be irrevocable on the part of the underwriters.

**Signed and delivered by within named Underwriter in presence of:**

Witness – 1 .....  
Witness – 2 .....

.....  
Signature of Underwriter

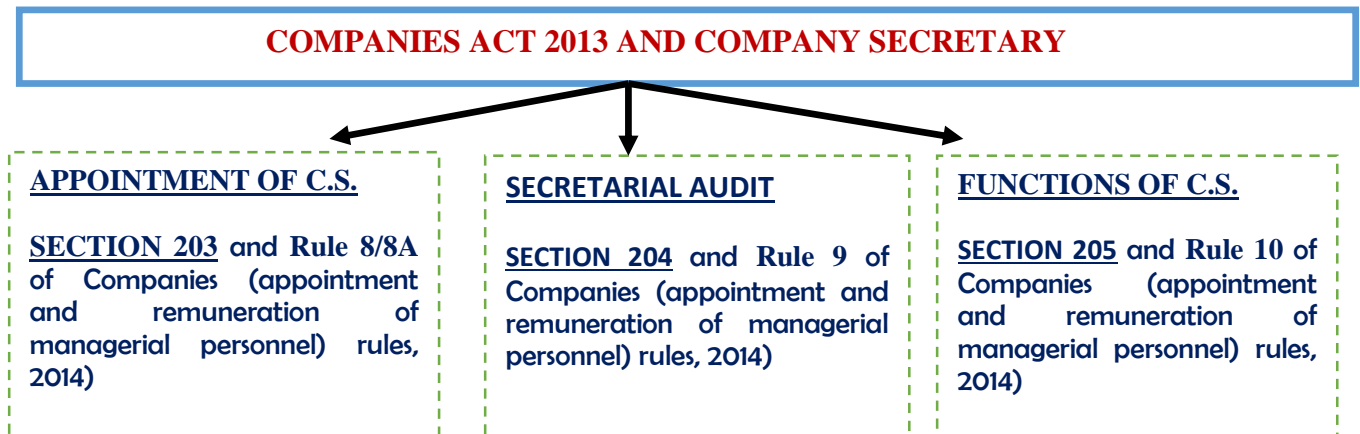
Signed, sealed within named Company  
(Name of the Company)

Through its Director

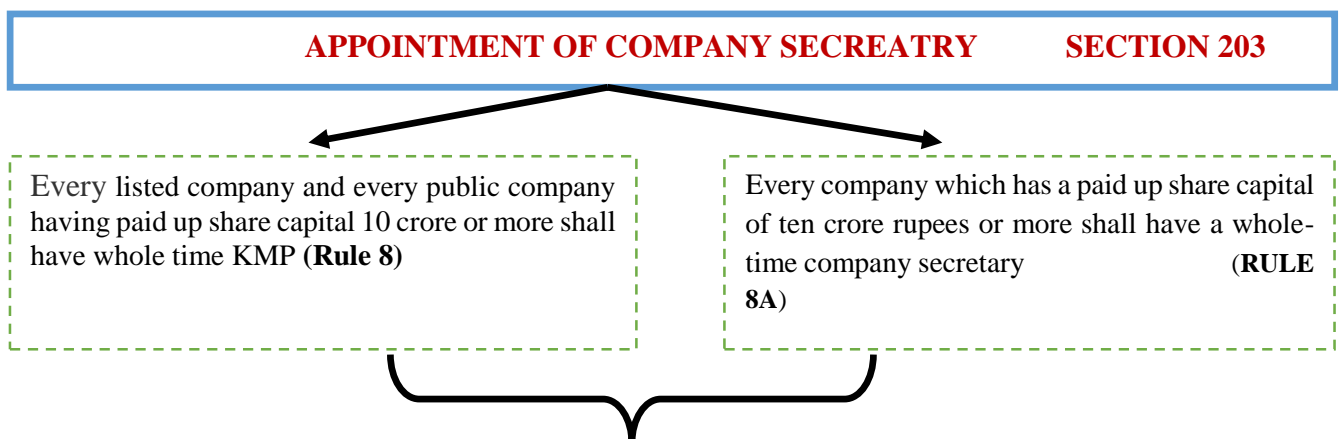
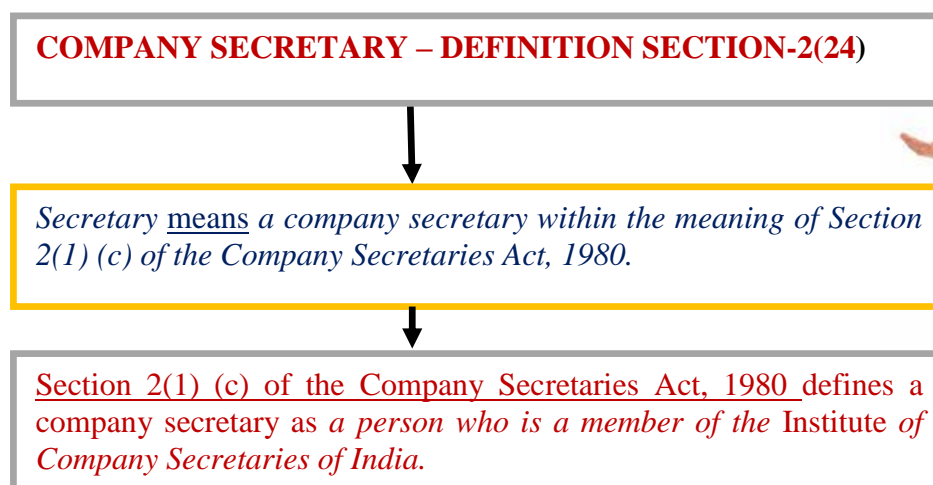
Signature.....

## CHAPTER-23 Drafting of Agreements of Appointment of Managerial Person

Under section 2 (51) of the Companies Act, 2013, Company Secretary has been defined as KEY MANAGERIAL PERSON.



### MEANING OF COMPANY SECRETARY

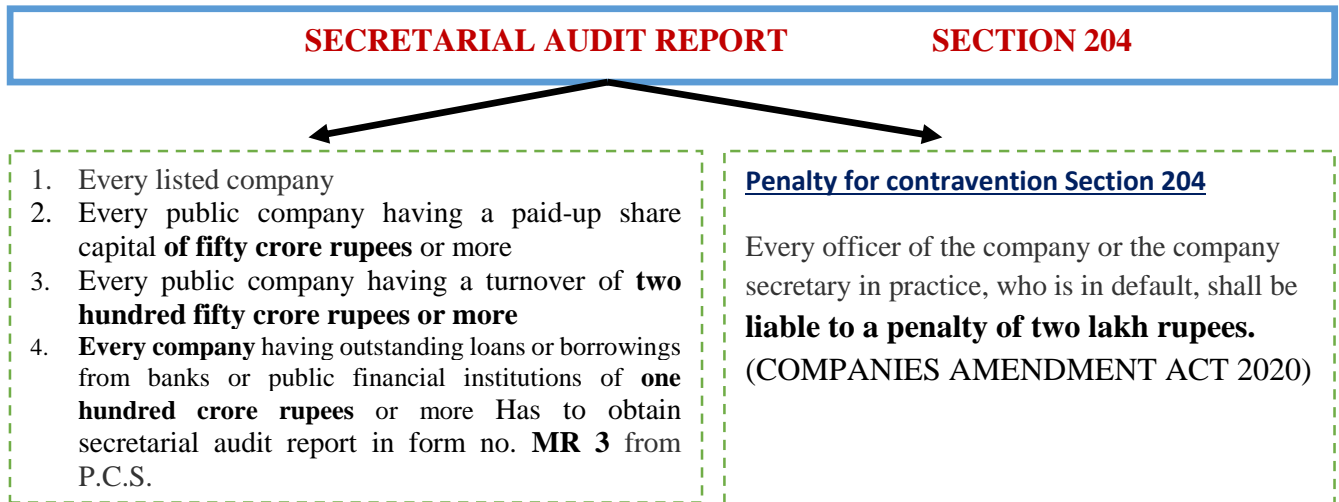


If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees. (Companies Amendment Ordinance 2018)

**IN SHORT:** Every Company (Private or Public) having paid up share capital 10 crore or more is required to appoint a whole time company secretary.

## **SECRETARIAL AUDIT**

(A NEW PROVISION)



### **PROFESSIONAL RESPONSIBILITY AND PENALTY FOR INCORRECT AUDIT REPORT**

#### **1. PENALTIES UNDER COMPANY SECRETARIES ACT, 1980**

Any failure or lapse on the part of secretarial auditor may attract penalty for incorrect report and disciplinary action for professional or other misconduct under the provisions of the Company Secretaries Act, 1980.

#### **2. PENALTIES UNDER COMPANIES ACT, 2013**

**Further section 448 of Companies Act, 2013** deals with penalty for false statements. The section provides that if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for the purposes of any of the provisions of this Act or the rules made there under, any person makes a statement,

a) which is false in any material particulars, knowing it to be false or

b) which omits any material fact, knowing it to be material

He shall be liable under **section 447 (Fraud)**.



**SPECIMEN SERVICE AGREEMENT AS A MANAGERIAL PERSON OF A COMPANY**

**This Agreement** made the ..... day of ..... 20 ..... between \_\_\_\_\_, a company incorporated under the provisions of the Companies Act, 2013, having its registered office at ..... (Hereinafter called the 'the company') of the one part and ..... Resident of ..... (Hereinafter called the Managing Director) of the other part.

**WHEREAS** the Board of Directors of the Company, in its meeting held on \_\_\_\_\_, had appointed \_\_\_\_\_ as Managing Director of the Company for a period of five (5) years, with remuneration, with effect from \_\_\_\_\_.

**WHEREAS** the said appointment of \_\_\_\_\_ as Managing Director was approved by the Shareholders of the Company in the Annual General Meeting held on \_\_\_\_\_.

**WHEREAS** it is necessary in the interest of the business of the Company to enter into an Agreement with the said Managing Director and the parties hereto agreed to enter into an Agreement on the following terms and conditions

**NOW THIS DEED WITNESS AS FOLLOWS:**

1. That \_\_\_\_\_ be appointed as Managing Director of the Company for a period of five (5) years, with remuneration, with effect from \_\_\_\_\_ on the terms and conditions hereinafter set forth.
2. That \_\_\_\_\_ Managing Director shall carry out such duties as may be entrusted to him subject to the supervision and control of the Board of Directors and shall also perform such other duties and services as shall from time to time be entrusted to him by the Chairman of the Company.
3. That \_\_\_\_\_ Managing Director shall be paid remuneration by the Company by way of salary and perquisites as listed below:-  
Salary – Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) per month.
4. The Agreement is for a period of five (5) years with effect from \_\_\_\_\_ which may be terminated by either party giving the other party six months' notice.
5. The Managing Director shall not be liable to retire by rotation.
6. The Managing Director shall be in the whole-time employment of the Company and thus devote the whole of his attention to the business of the Company. During the terms of the service with the Company, the Managing Director hereby undertakes not to take up any other employment / assignment and further shall not draw any remuneration, commission, fees etc. from any other source, whether in India or abroad.

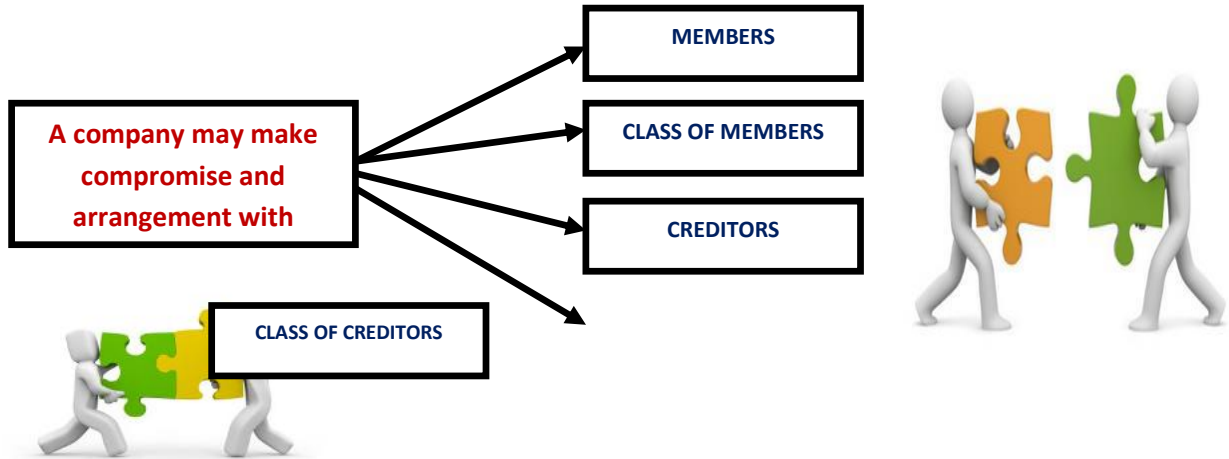
**In witnessed whereof the parties hereto have duly executed these presents the day, month and year first above written.**

Witness – 1 .....  
Witness – 2 .....

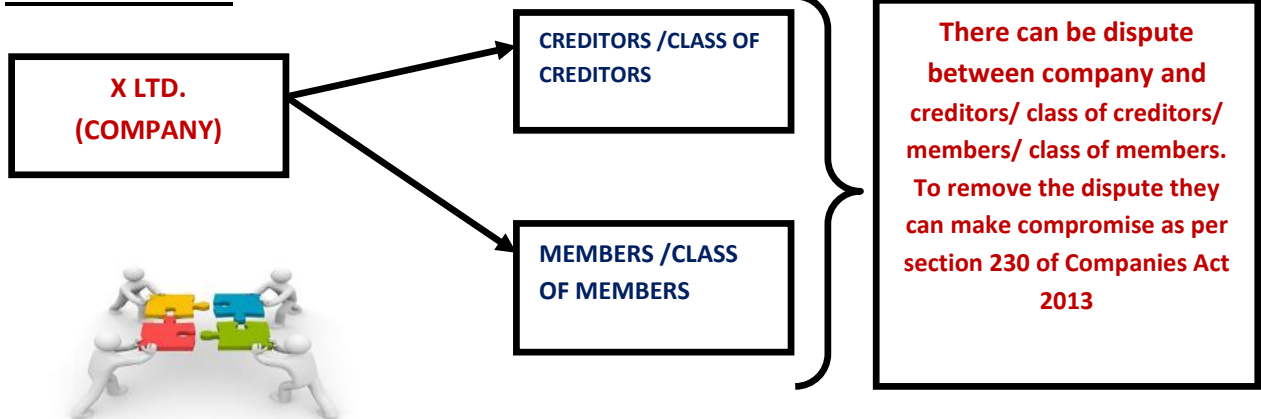
Signature  
Signature

## CHAPTER-24      Compromise, Arrangement, Merger and Amalgamation

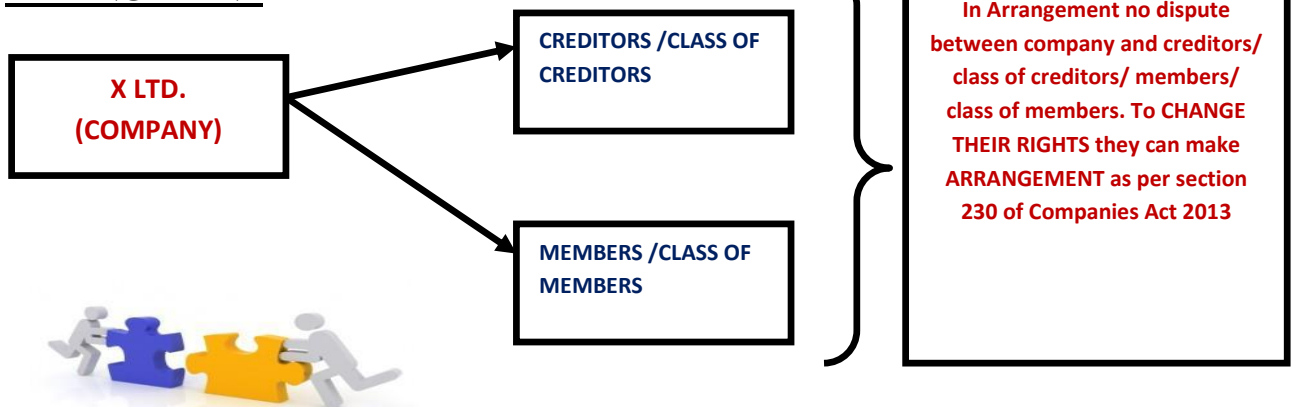
### COMPROMISE AND ARRANGEMENT



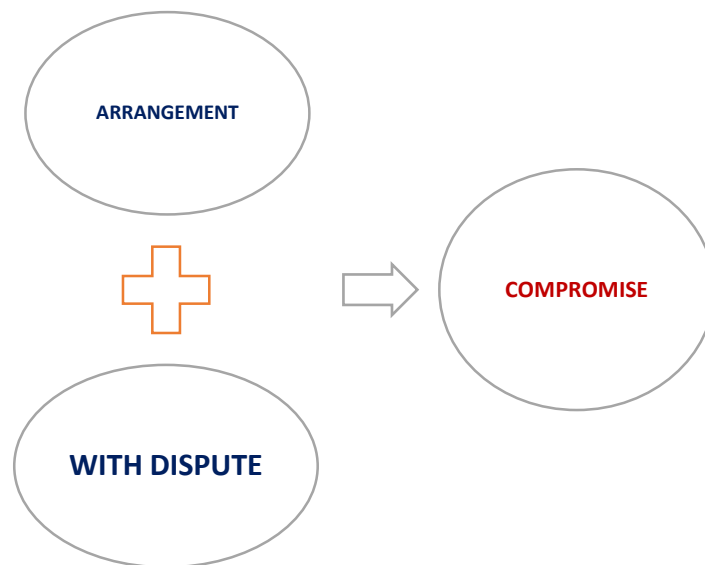
### COMPROMISE



### ARRANGEMENT



**ARRANGEMENT IS WIDER TERM THAN COMPROMISE COMMENT**

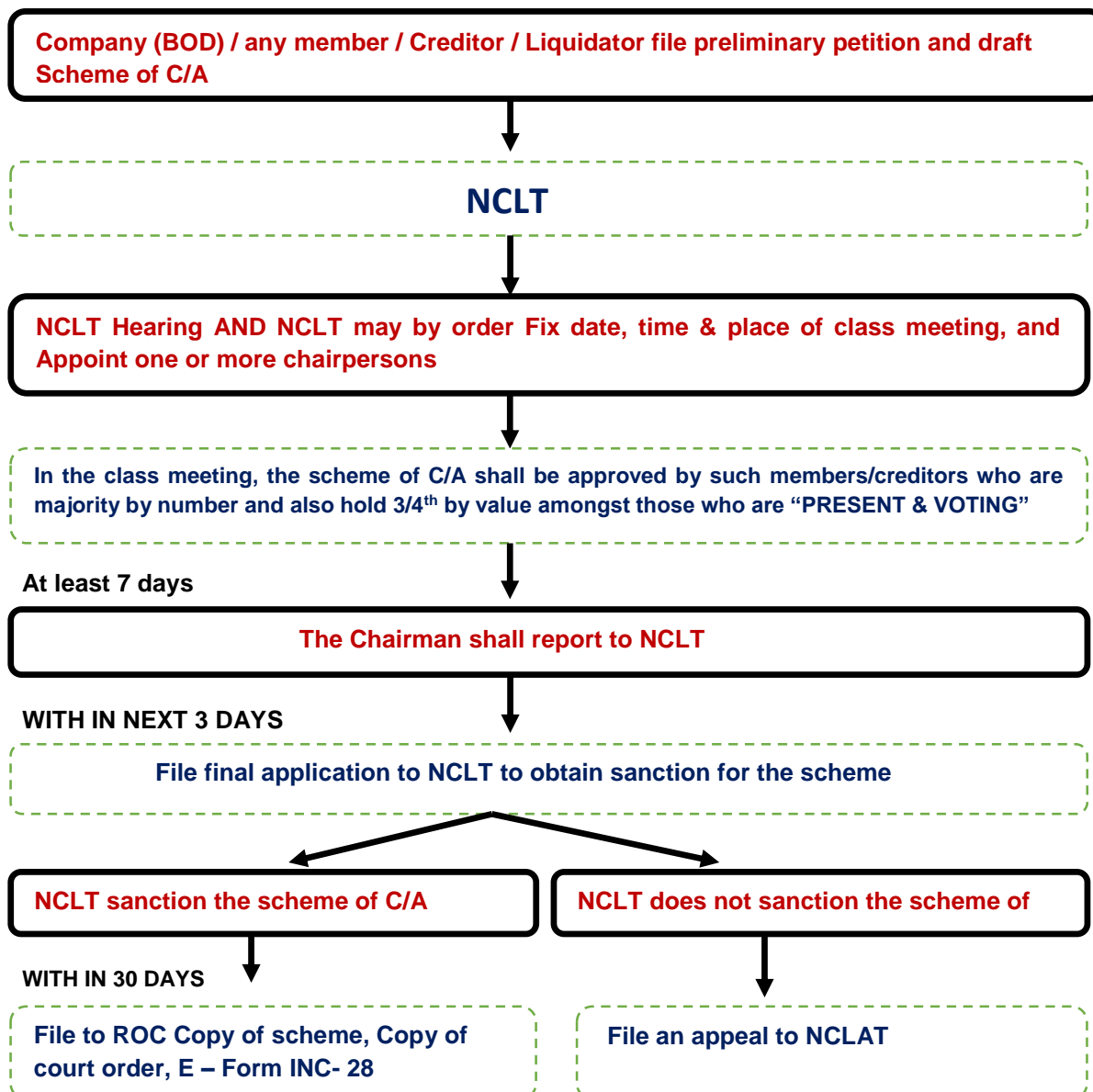


**SPECIAL NOTE:** With the help of this chart we can say

- Arrangement is wider term than Compromise
- All Compromise are Arrangement but all Arrangement are not Compromise

PARTICULARS	COMPROMISE	ARRANGEMENT
<b>DEFINITION</b>	The term “Compromise” has not been defined in the Act.	Arrangement” includes a re - organization of the Share Capital of the Company by – consolidation of Shares of different classes, and / or Division of Shares into Shares of different classes.
<b>MEANING</b>	Compromise” denotes an agreement between two or more parties, for the ascertainment of their mutual rights and obligations, when there is an existing dispute or controversy between them, or some difficulty in the enforcement of their rights.	Arrangement” – Involves re – adjustment of rights and liabilities of Members or Creditors or any class thereof.
<b>EXISTENCE OF DISPUTE</b>	Compromise implies the existence of a dispute. Without dispute, there cannot be any compromise as such. Amicable settlement of dispute constitutes compromise.	There need not be any existing dispute, to arrive at an “arrangement”
<b>SCOPE</b>	Comparatively limited in scope	Wider in scope

**PROCEDURE FOR (C/A) Section 230 of companies Act 2013 – IN CHART FORM**



**Specimen Agreement between two Companies to Amalgamate by Sale of one to the other**

This AGREEMENT is made on this ..... day of ..... between ..... Ltd., a company incorporated under the Companies Act, 2013 and having its Registered Office at ..... (hereinafter referred to as the Vendor) and ..... Ltd., a company incorporated under the Companies Act, 2013 and having its Registered Office at ..... (hereinafter referred to as the company)

**WHEREAS** the vendor was incorporated in the year ..... with an authorised share capital of Rs. ten lakhs divided into one lakh Equity Shares of Rs. ten each and its Memorandum of Association contains a provision that the company shall have the power to sell, transfer or otherwise dispose of the whole or any part of the business and undertaking of the vendor company and to accept in consideration, cash or shares or debentures or debenture

stock or other securities of any other company and to distribute among the members in specie or otherwise any surplus assets remaining in the winding-up of the vendor company.

**WHEREAS** the company was incorporated under the Companies Act, 2013 in the year ..... with an authorised share capital of Rs. fifty lakhs divided into five lakh Equity Shares of Rs. ten each and its Memorandum of Association contains a provision that the company may acquire by purchase or otherwise the business and undertaking, in part or whole of any other company or companies having any of the purposes or objects same or similar to those of the company.

**WHEREAS** the Articles of Association of the company also provide that the company is empowered to increase its share capital.

**NOW THIS AGREEMENT WITNESS AS FOLLOWS**

1. The vendor shall sell and the company shall purchase the whole of the business undertaking, assets and property of the vendor, benefits of subsisting contracts, and debts due to the vendor relating to the business of the vendor as a running concern from the day of .....
2. The company shall be liable for all the debts and liabilities of the vendor and shall be liable to perform all its engagements.
3. The vendor shall be indemnified by the company against all claims and demands. The company shall defend all actions and proceedings against the vendor who shall also be indemnified in respect of such actions and proceedings.
4. The company shall pay to the vendor Rs. seven lakhs as consideration for the aforesaid purchase.
5. The company shall create and issue 7 lakh Equity Share of Rs. ten each to increase its shares capital as aforesaid and for the same purpose the company shall pass a resolution in accordance with the Articles of Association of the company and in accordance with the provisions of the Companies Act, 2013.
6. The title deeds to all the immovable and other properties of the vendor and an abstract of all the properties of the vendor, the sale of which is hereby agreed shall be handed over to the company within thirty days from this day ..... of .....

**IN WITNESS WHEREOF** the parties hereto have set their hands and seals. Signatures and seals of the parties.

## **CHAPTER-25 SHAREHOLDERS' AGREEMENTS**

### **SHAREHOLDERS' AGREEMENTS**

Shareholders' agreements (SHA) are quite common in business. In India shareholder's agreement have gained popularity with bloom in newer forms of businesses.

There are numerous situations where such agreements are entered into – family companies, JV companies, venture capital investments, private equity investments, strategic alliances, and so on.



Shareholders' agreement is a contractual arrangement between the shareholders of a company describing how the company should be operated and the defining inter-se shareholders' rights and obligations. Shareholders' agreement.

SHAs are the result of mutual understanding among the shareholders of a company to which, the company generally becomes a consenting party. Such agreements are specifically drafted to provide specific rights, impose definite restrictions over and above those provided by the Companies Act.

### **SPECIMEN SHAREHOLDERS AGREEMENT**

THIS AGREEMENT made the \_\_\_\_ day of \_\_\_\_\_, 2013 BETWEEN MR. A residing at \_\_\_\_\_ (hereinafter referred to as "A") of the First Part And MR. B residing at \_\_\_\_\_ (hereinafter referred to as "B") of the Second Part And \_\_\_\_\_ (P) LTD., a Company incorporated under the Companies Act, 2013 and having its registered office at \_\_\_\_\_ herein represented by its \_\_\_\_\_ (hereinafter referred to as "XYZ") of the Third Part

#### **WHEREAS**

- a. A and B hereto have agreed to jointly manage a company in India named "XYZ Pvt Ltd.
- b. A and B have agreed to become Equity Partners by investing in the shares of the Company subject to the condition that they shall enter into a Shareholders Agreement in terms of these presents
- c. The Company "XYZ PVT. LTD. " has been requested to, and has agreed to, join in the execution of these presents and to take this Agreement on record so that it is aware of the rights and obligations of A AND B, the parties hereto and ensure that they comply with the same

### **NOW THIS AGREEMENT WITNESS AS FOLLOWS**

1. A and B shall jointly invest in the Company which is an existing company limited by shares under the Companies Act, 2013 and known as "XYZ PVT LTD
2. The registered office of the Company shall be situate at \_\_\_\_\_, or at such other places as may be mutually agreed upon between the parties in writing
3. The Company shall carry on the business of running and managing restaurants and (Description of the business and complete address), either by itself or through other agencies or company industries and may carry on any other business as may be decided by

B hereto and shall ensure that no other business activity is undertaken by the Company at any time without the consent of A hereto.

4. The authorised share capital of the Company is Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only) consisting of \_\_\_\_\_ (\_\_\_\_\_) equity shares of Rs.10/- (Rupees ten) each.
5. The subscription by A hereto to the aforesaid authorised share capital of the Company shall be 1,00,000 (One lakh) equity shares of Rs.10/- (Rupees ten only) and the subscription by B to the aforesaid authorised share capital of the Company shall be 1,00,000 (One lakh) equity shares of Rs.10/- (Rupees ten only).
6. There shall be no further issue of capital without the consent of both the parties hereto, and unless otherwise agreed upon in writing further investment shall be as mutually decided by both parties.
7. The Board of Directors of the Company shall consist of A and B
8. A shall have the right to nominate two (2) Additional Directors onto the Board and B shall have the right to nominate three or more Additional Directors on the Board. Both parties shall be entitled at any time to remove any of the representatives on the Board by written notice to the other party and to appoint another or other/s in their place.
9. The Auditors of the Company shall be M/s. \_\_\_\_\_.
10. The Auditors of the Company shall not be changed without the prior written consent of both A and B.
11. A and B agree and undertake not to disclose or divulge directly or indirectly to any third party any trade or business secret or other secret or confidential information pertaining to the business, affairs or transactions of each other or of the Company or of their clients or customers, that may have been disclosed, imparted to or acquired by either of them from the other or from the Company.
12. No modification or alteration of this Agreement or any of its terms or provisions shall be valid or binding on A and/or B unless made in writing duly signed by both.
13. This Agreement is personal to A and B and shall not be transferred or assigned in whole or in part by either party without the prior written consent of the other.

**In witnessed whereof the parties hereto have duly executed these presents the day, month and year first above written.**

Witness – 1 .....

Witness – 2 .....

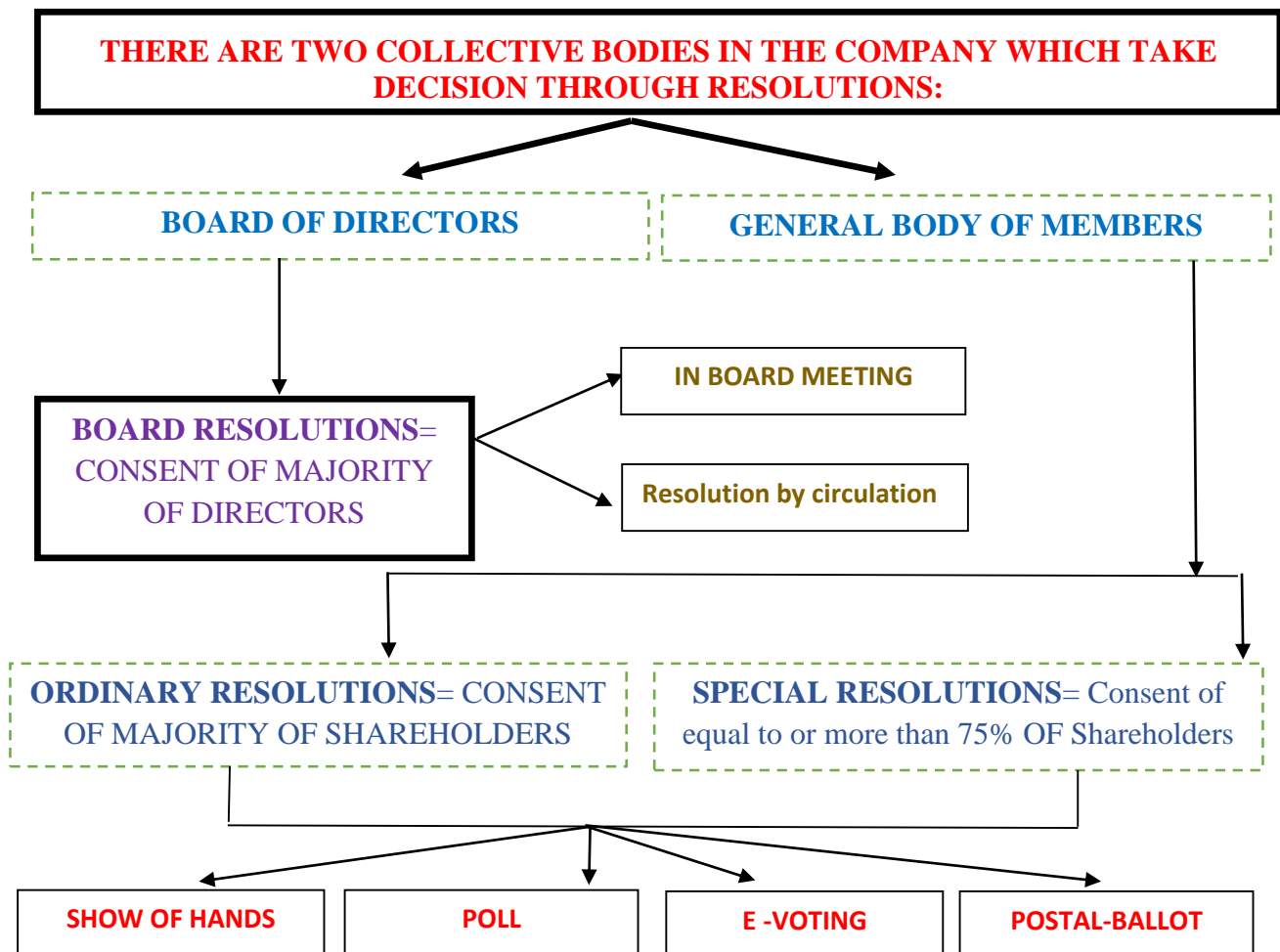
Witness – 2 .....

Signature by MR. A

Signature by MR. B

Signature on behalf of XYZ

## CHAPTER-26 DRAFTING UNDER COMPANIES ACT 2013



### SPECIMEN OF THE SPECIAL RESOLUTION FOR ALTERING ARTICLES OF A PRIVATE COMPANY CONVERTING IT INTO A PUBLIC COMPANY

**TYPE OF REOLUTION  
TYPE OF MEETING**

**SPECIAL RESOLUTION  
GENERAL MEETING**

**“RESOLVED THAT**

- A. Pursuant to the applicable provisions of the Companies Act, 2013, the company be and is hereby converted into a public company
- B. The name of the company be and is hereby changed from..... Private Limited to..... Limited
- C. The regulations contained in the document submitted for consideration and approval of this meeting, and initialled by the chairman of the meeting for the purpose of identification, be and are hereby approved and adopted as the articles of association of the company in substitution for, and to the exclusion of, the present articles of association of the company.”

**EXPLANATORY STATEMENT**

The Board of directors of the company, at its meeting held on ....., discussed the pros and cons of a public limited company and a private limited company, and decided to convert the company into a public limited company and also decided that the present articles of association of the company, which were adopted by the company when it was incorporated as a private limited company, be also substituted by a new set of articles.

Since the proposed alterations, deletions, insertions etc. to the present articles of association were numerous; the Board decided that it would be convenient to adopt an altogether new set of articles of association incorporating all the proposed alterations.

Your directors commend the proposed special resolution for your consideration and adoption of the new set of articles of association of the company in place of the existing articles of association of the company.

None of the directors is concerned or interested in the proposed resolution.

**MINUTES OF THE MEETING OF THE BOARD**

***MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF (NAME OF THE COMPANY) HELD ON \_\_\_\_\_ (DAY), \_\_\_\_\_ (DATE, MONTH & YEAR) AT (TIME) AT (VENUE)***

**PRESENT**

**MR. A** - **CHAIRMAN**  
**MR. B** - **MANAGING DIRECTOR**  
**MR. C** - **DIRECTOR**

**SPECIAL INVITEE**

**MR. CA** - **REPRESENTING (NAME OF THE STATUTORY AUDITORS)**

**IN ATTENDANCE** - **MR. -----, Company Secretary**

**CHAIRMAN** - **Mr. A Presided.**

**LEAVE OF ABSENCE**

Mr. D and Mr. E, who had expressed their inability to attend the meeting, were granted leave of absence.

**1. CONFIRMATION OF THE MINUTES OF THE LAST BOARD MEETING**

The minutes of the previous Board Meeting held on ----- as circulated to the Directors were confirmed and signed.

**2. TO CONSIDER, APPROVE AND AUTHENTICATE THE BALANCE SHEET AND PROFIT & LOSS ACCOUNT FOR THE YEAR ENDED 31<sup>ST</sup> MARCH, 2016**

The Draft Balance Sheet and Profit & Loss Account for the year ended 31<sup>st</sup> March, 2016 along with Schedules and Notes to Accounts were placed before the Board for consideration and approval. After some discussion, the Board passed the following resolutions:

**“RESOLVED THAT** The draft Balance Sheet and Profit & Loss Account as at 31<sup>st</sup> March, 2016 be and are hereby approved and that Mr. B, Managing Director, Mr. C, Director and Mr. CS, Company Secretary of the Company be and are hereby authorized to sign the same and the said accounts be

submitted to the Auditors for their report thereon.”

(The aforesaid accounts duly signed by the said Directors were then submitted to the Auditors for their signatures and report. For this, the Chairman decided to adjourn the meeting for a short while and after receiving the Auditors Report on the Accounts, the Directors re-assembled to transact the further business of Agenda).

**3. TO RECEIVE AND CONSIDER AUDITORS; REPORT ON THE ACCOUNTS FOR THE YEAR ENDED 31<sup>ST</sup> MARCH, 2016**

The Auditors' Report on Accounts for the year ended 31<sup>st</sup> March, 2016 was placed on the table for perusal. The Board noted the Same.

**4. TO DECIDE ABOUT THE DIRECTORS WHO WILL RETIRE BY ROTATION AT THE ANNUAL GENERAL MEETING OF THE COMPANY**

The Board was informed that as per the provisions of the Companies Act, 2013 at least 2/3 of the total number of Directors should be the persons whose period of office shall be liable for retirement by rotation and 1/3 of such Directors should retire by rotation at every Annual General Meeting.

In order to comply with the aforesaid provisions, the Board passed the following resolution

“RESOLVED THAT pursuant to the provisions of Section 152 of the Companies Act, 2013 Mr. C, Director of the Company shall retire by rotation at the Annual General Meeting of the Company.

**5. TO RECOMMEND APPOINTMENT OF AUDITORS FOR THE NEXT FINANCIAL YEAR**

The letter dated August 5, 2016 received from M/s. (Name of the Auditors), Chartered Accountants informing that their appointment, if approved, will be within requirement as per Companies Act, 2013, was placed before the Board for information. The Board recommended the appointment of Auditors to the Shareholders of the Company by passing the following resolution:

“RESOLVED THAT M/s. (Name of the Auditors), Chartered Accountants, be recommended for the appointment as Auditors of the Company for the Financial Year 2015-2016.”

**6. TO CONSIDER AND APPROVE THE DIRECTORS REPORT TO THE SHAREHOLDERS**

A Draft of Directors' Report to the members of the Company was placed before the Board for approval. The Board considered the report and approved the same by passing the following resolution:

“RESOLVED THAT the Directors' Report for the year ended 31<sup>st</sup> March, 2016 as per the draft submitted to this meeting be and is hereby approved and the Chairman of the Company be and is hereby authorized to sign the same for and on behalf of the Board.

RESOLVED FURTHER THAT the Chairman be and is hereby also authorized to make such changes / amendments in the report as may be deemed necessary before issuing the same to the members”

**7. TO DECIDE DATE, TIME AND VENUE OF THE ANNUAL GENERAL MEETING OF THE COMPANY**

The Board noted that Annual General Meeting of the Company is statutorily required to be held on 30<sup>th</sup> September, 2016. In view of the above, the Board passed the following resolution:

“RESOLVED THAT the Annual General Meeting-of the Company be held at (Address of Registered Office) on Thursday, the 31<sup>th</sup> day of September, 2016 at 11.00 am.”

**8. TO CONSIDER AND APPROVE THE NOTICE TO THE SHAREHOLDERS FOR THE ANNUAL GENERAL MEETING OF THECOMPANY**

A draft of the Notice for Annual General Meeting of the Company is statutorily required to be held on or before 30<sup>th</sup> September, 2016. In view of the above, the Board passed the following resolution:

“RESOLVED THAT the draft Notice with agenda be and is hereby approved and Mr. CS, Company Secretary of the Company be and is hereby authorised to issue the same under his signature to the persons specified under Section 101 of the Companies Act, 2013.”

**CHAIRMAN**

## **CHAPTER-27                      SECRETARIAL STANDARDS**

### **SECRETARIAL STANDARD-1                      BOARD MEETING**

#### **Scope of SS-1**

SS-1 is applicable with effect from 1 st July, 2015

SS-1 is applicable to all companies except OPC.

SS-1 is also applicable to Meetings of Committees of the Board, unless stated otherwise herein.

The provisions of the Companies Act (the Act) shall prevail over SS-1, if SS-1's provisions are inconsistent with that of the Act.

Following are the provisions mentioned in SS-1 which are required to be complied in addition to the provisions mentioned in the Companies Act and its Rules made thereunder.

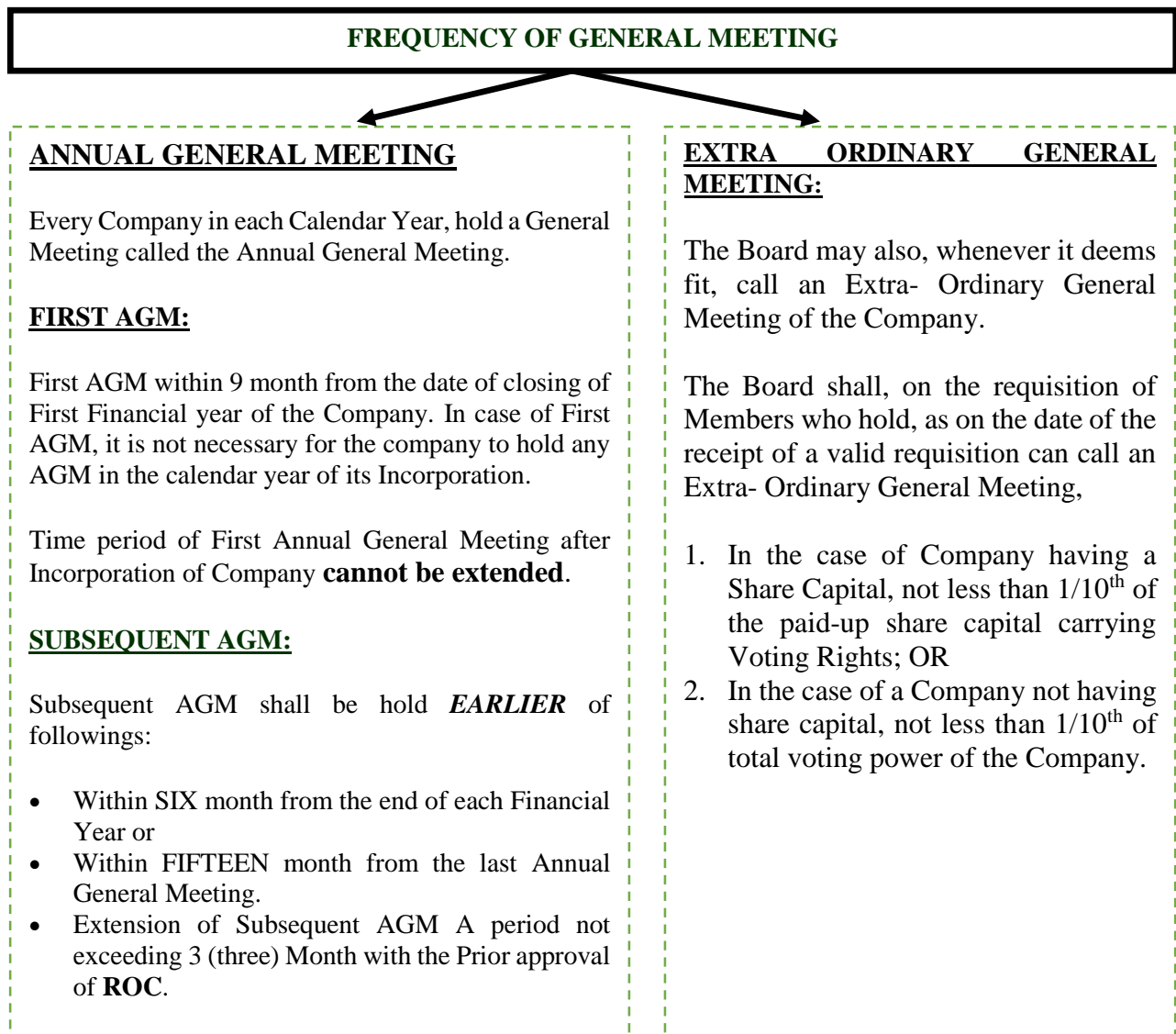
1. Every meeting shall have serial number. E.g. 09th Board meeting, 18th Board meeting etc.
2. Notice and Agenda of Board Meeting
  - Notice of the Meeting, wherein the facility of participation through Electronic Mode is provided, shall clearly mention a venue, whether registered office or otherwise, to be the venue of the Meeting and it shall be the place where all the recordings of the proceedings at the Meeting would be made.
  - Proof of sending notice and its delivery shall be maintained by the Company.
  - The Notice shall specify the serial number, day, date, time and full address of the venue of the Meeting.
  - In case the company sends the Notice by speed post or by registered post or by courier, an additional two days shall be added for the service of Notice.
  - The Agenda and notes on such agenda shall be given to the Directors atleast 7 days before the date of Board meeting.
  - The Notice, Agenda and Notes on Agenda shall be sent to the Original Director also at the address registered with the company, even if these have been sent to the Alternate Director.
3. Notice in case of meeting of the Board through electronic mode
  - In case the facility of participation in Board meeting through Electronic Mode is being made available, the Notice shall inform the Directors about the availability of such facility, and provide them necessary information to avail such facility.
  - Where such facility is provided, the Notice shall seek advance confirmation from the Directors as to whether they will participate through Electronic Mode in the Meeting. The Notice shall also contain the contact number or e-mail address (es) of the Chairman or the Company Secretary or any other person authorised by the Board, to whom the Director shall confirm in this regard.
4. Notice of Adjourned meeting
  - Notice of an adjourned Meeting shall be given to all Directors including those who did not attend the Meeting on the originally convened date and unless the date of adjourned Meeting is decided at the Meeting, Notice thereof shall also be given not less than seven days before the Meeting.
5. Each item of business requiring approval at the Meeting shall be supported by a note setting out the details of the proposal, relevant material facts that enable the Directors to understand the meaning, scope and implications of the proposal and the nature of concern or interest, if any, of any Director in the proposal, which the Director had earlier disclosed.

6. Where approval by means of a Resolution is required, the draft of such Resolution shall be either set out in the note or placed at the Meeting.
7. Each item of business to be taken up at the Meeting shall be serially numbered.
8. Items not included in Agenda
  - Any item not included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting, which shall include at least one Independent Director, if any.
  - In case the company does not have an Independent Director, the Minutes shall be final only on ratification of the decision taken in respect of such item by a majority of the Directors of the company, unless such item was approved at the Meeting itself by a majority of Directors of the company.
9. The fact that the Meeting is being held at a shorter Notice shall be stated in the Notice.
10. Frequency of Board meetings
  - The Board shall meet at least once in every calendar quarter, with a maximum interval of one hundred and twenty days between any two consecutive Meetings of the Board, such that at least four Meetings are held in each Calendar Year.
  - The Board shall hold its first Meeting within thirty days of the date of incorporation of the company.
  - An adjourned Meeting being a continuation of the original Meeting, the interval period in such a case, shall be counted from the date of the original Meeting.
11. a company is required to appoint Independent Directors under the Act, such Independent Directors shall meet at least once in a Calendar Year.
12. Quorum shall be present throughout the Meeting.
13. Any Director participating through Electronic Mode in respect of restricted items with the express permission of Chairman shall however, neither be entitled to vote nor be counted for the purpose of Quorum in respect of such restricted items.
14. Where the number of Directors is reduced below the minimum fixed by the Articles, no business shall be transacted unless the number is first made up by the remaining Director(s) or through a general meeting.
15. Attendance Register
  - Every company shall maintain separate attendance registers for the Meetings of the Board and Meetings of the Committee.
  - The pages of the respective attendance registers shall be serially numbered.
  - If an attendance register is maintained in loose-leaf form, it shall be bound periodically depending on the size and volume.
  - Now, the attendance register shall also contain the name and signature of Invitees (other than directors).
  - The attendance register shall be deemed to have been signed by the Directors participating through Electronic Mode, if their attendance is recorded by the Chairman or the Company Secretary in the Attendance Register and the Minutes of the Meeting.
16. Resolution by Circulation
  - Each business proposed to be passed by way of Resolution by circulation shall be explained by a note setting out the details of the proposal, relevant material facts, the nature of concern or interest, if any, of any Director in the proposal, which the Director had earlier disclosed and the draft of the Resolution proposed. The note shall also indicate how a Director shall signify assent or dissent to the Resolution proposed and the date by which the Director shall respond.
  - Not more than seven days from the date of circulation of the draft of the Resolution shall be given to the Directors to respond and the last date shall be computed accordingly.
  - Every such Resolution shall carry a serial number.

- The Resolution, if passed, shall be deemed to have been passed on the last date specified for signifying assent or dissent by the Directors or the date on which assent from more than two-third of the Directors has been received, whichever is earlier, and shall be effective from that date, if no other effective date is specified in such Resolution.
  - Directors shall signify their assent or dissent by signing the Resolution to be passed by circulation or by e-mail or any other electronic means.
  - In case the Director does not respond on or before the last date specified for signifying assent or dissent, it shall be presumed that the Director has abstained from voting.
  - If the approval of the majority of Directors entitled to vote is not received by the last date specified for receipt of such approval, the Resolution shall be considered as not passed.
  - Resolutions passed by circulation shall be noted at the next Meeting of the Board and the text thereof with dissent or abstention, if any, shall be recorded in the Minutes of such Meeting.
  - Minutes shall also record the fact that the Interested Director did not vote on the Resolution.
17. Minutes
- Minutes may be maintained in electronic form in such manner as prescribed under the Act and as may be decided by the Board. Minutes in electronic form shall be maintained with Timestamp.
  - Minutes of the Board Meetings, if maintained in loose-leaf form, shall be bound periodically depending on the size and volume and coinciding with one or more financial years of the company.
  - There shall be a proper locking device to ensure security and proper control to prevent removal or manipulation of the loose leaves.
  - Minutes of the Board Meeting shall be kept at the Registered Office of the company or at such other place as may be approved by the Board.
18. Contents of Minutes
- Minutes shall state, at the beginning the serial number and type of the Meeting, name of the company, day, date, venue and time of commencement and conclusion of the Meeting.
  - The names of the Directors shall be listed in alphabetical order or in any other logical manner, but in either case starting with the name of the person in the Chair.
  - The capacity in which an Invitee attends the Meeting and where applicable, the name of the entity such Invitee represents and the relation, if any, of that entity to the company shall also be recorded.
19. Minutes shall be written in third person and past tense. Minutes need not be an exact transcript of the proceedings at the Meeting.
20. In case any Director requires his views or opinion on a particular item to be recorded verbatim in the Minutes, the decision of the Chairman whether or not to do so shall be final.
21. Within fifteen days from the date of the conclusion of the Meeting of the Board or the Committee, the draft Minutes thereof shall be circulated by hand or by speed post or by registered post or by courier or by e-mail or by any other recognized electronic means to all the members of the Board or the Committee for their comments.
22. Proof of sending draft Minutes and its delivery shall be maintained by the company.
23. Signing of Minutes
- Any blank space in a page between the conclusion of the Minutes and signature of the Chairman shall be scored out.
  - If the Minutes are maintained in electronic form, the Chairman shall sign the Minutes digitally.
  - A copy of the signed Minutes certified by the Company Secretary or where there is no Company Secretary, by any Director authorised by the Board shall be circulated to all Directors within fifteen days after these are signed.
24. The Annual Report and Annual Return of a company shall disclose the number and dates of Meetings of the Board and Committees held during the financial year indicating the number of Meetings attended by each Director.

## SECRETARIAL STANDARD - 2                      GENERAL MEETINGS

This Standard is applicable to all types of General Meetings of all companies incorporated under the Act except One Person Company (OPC) and a company licensed under Section 8 of the Companies Act, 2013 or corresponding provisions of any previous enactment thereof class or classes of companies which are exempted by the Central Government through notification.



Two Members Personally Present

### PUBLIC LIMITED:

In case of Public Company “Minimum Present of Members required”

- 5 (five members) personally present if the number of Members as on the date of Meeting is up to 1000 (one thousand).

- 15 (Fifteen members) personally present if the number of Members as on date of Meeting is more than 1000 (one thousand) but upto 5000 (five thousand)
- 30 (thirty member) personally present if the number of members as on date of the Meeting exceeds 5000 (five thousand)

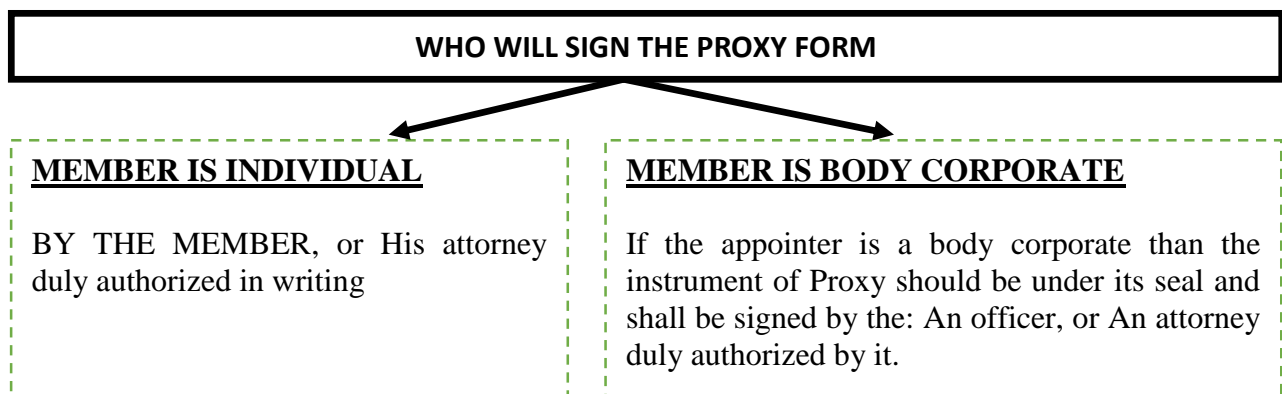
### **DISTRIBUTION OF GIFTS:**

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

### **PROXY:**

- |   |
|---|
| <ul style="list-style-type: none"><li>• A member entitled to attend and vote is entitled to Appoint Proxy.</li></ul>  |
| <ul style="list-style-type: none"><li>• A proxy can't act on behalf of more than 50 members and members holding aggregate more than 10% of the total share capital of the Company carrying voting rights.</li></ul> |

### **SIGNING OF PROXY FORM**



### **MINUTES**

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

### **IMPORTANT PROVISIONS**

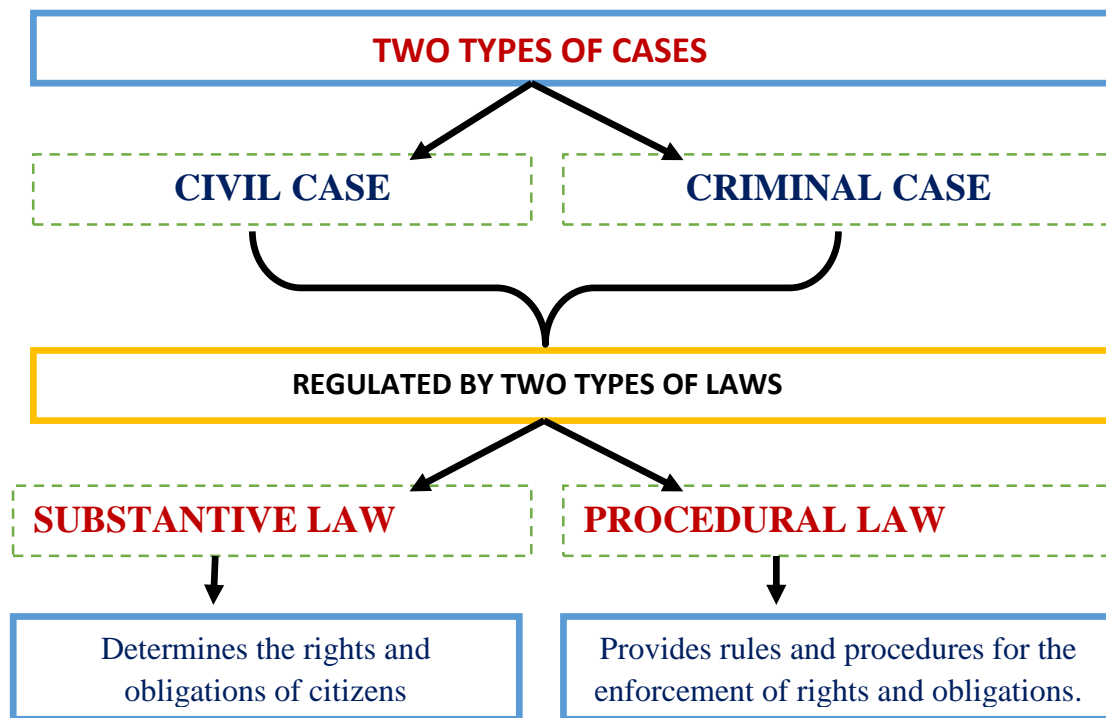
- |  |
|--|
| <ul style="list-style-type: none"><li>• Minutes shall be recorded in books maintained for that purpose.</li></ul>  |
| <ul style="list-style-type: none"><li>• A distinct Minutes Book shall be maintained for Meetings of the Members of the company, creditors and others as may be required under the Act. The pages of the Minutes Books shall be consecutively numbered.</li></ul> |
| <ul style="list-style-type: none"><li>• Minutes of Meetings, if maintained in loose-leaf form, shall be bound periodically depending on the size and volume.</li></ul>   |
| <ul style="list-style-type: none"><li>• Minutes Books shall be kept at the Registered Office of the company or at such other place, as may be approved by the Board.</li></ul>   |
| <ul style="list-style-type: none"><li>• Minutes shall state, at the beginning the Meeting, name of the company, day, date, venue and time of commencement and conclusion of the Meeting.</li></ul>   |
| <ul style="list-style-type: none"><li>• Minutes shall record the names of the Directors and the Company Secretary present at the Meeting.</li></ul>  |

<ul style="list-style-type: none"><li>• The Company Secretary shall record the proceedings of the Meetings. Where there is no Company Secretary, any other person authorised by the Board or by the Chairman in this behalf shall record the proceedings.</li></ul>
<ul style="list-style-type: none"><li>• Minutes shall be written in third person and past tense. Resolutions shall however be written in present tense. Minutes need not be an exact transcript of the proceedings at the Meeting.</li></ul>
<ul style="list-style-type: none"><li>• Minutes shall be entered in the Minutes Book within thirty days from the date of conclusion of the Meeting.</li></ul>
<ul style="list-style-type: none"><li>• Minutes of a General Meeting shall be signed and dated by the Chairman of the Meeting or in the event of death or inability of that Chairman, by any Director who was present in the Meeting and duly authorised by the Board for the purpose, within thirty days of the General Meeting.</li></ul>
<ul style="list-style-type: none"><li>• The Chairman shall initial each page of the Minutes, sign the last page and append to such signature the date on which and the place where he has signed the Minutes.</li></ul>
<ul style="list-style-type: none"><li>• If the Minutes are maintained in electronic form, the Chairman shall sign the Minutes digitally.</li></ul>
<ul style="list-style-type: none"><li>• Minutes of all Meetings shall be preserved permanently in physical or in electronic form.</li></ul>
<ul style="list-style-type: none"><li>• Minutes Books shall be kept in the custody of the Company Secretary. Where there is no Company Secretary, Minutes shall be kept in the custody of any Director duly authorised for the purpose by the Board.</li></ul>

## **DRAFTING OF SUITS, APPEAL AND APPLICATIONS**



## CHAPTER 28 PROCEDURAL ASPECTS OF WORKING OF CIVIL COURTS



### PROCEDURAL ASPECTS OF WORKING OF CIVIL COURTS

#### 1. DIFFERENT STAGES OF A SUIT

1. INSTITUTION OF SUIT.
↓
2. ISSUE AND SERVICE OF SUMMONS.
↓
3. WRITTEN STATEMENT.
↓
4. DISCOVERY AND INSPECTION.
↓
5. APPEARANCE OF PARTIES.
↓
6. HEARING OF THE SUIT.
↓
7. JUDGMENT AND DECREE
↓
8. EXECUTION.

#### 2. CONCEPT OF DECREE AND ORDER

**Decree" is defined in Section 2(2) of the Code as: -** the formal expression of an adjudication which, conclusively determines the rights of the parties, With regard to all or any of the matters in controversy.

### TWO TYPES OF DECREE

**PRELIMINARY:** A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of.

**FINAL:** A decree is FINAL when NO further proceedings have to be taken before the suit can be completely disposed of.

**DECREE HOLDER 2(3)}**  
Decree holder means any person in whose favor a decree has been passed or an order capable of execution has been passed

**JUDGMENT DEBTOR 2(11)}**  
Judgment debtor means any person against whom a decree has been passed or an order capable of execution has been made.

### **DOCTRINE OF RES SUB-JUDICE /STAY OF SUIT** [Section 10 of CPC]

Section 10 provides that **no Court** shall **proceed** with the **trial** of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties where such suit is pending in the same or any other Court (**in India**) having jurisdiction to grant the relief claimed,

However, the pendency of a suit in a foreign court does not preclude the Courts in India from trying a suit founded on the same cause of action.

### **Essential conditions for stay of suits**

- There must be two suits instituted at different times;
- The matter in issue in the later suit should be directly and substantially in issue in the earlier suit;
- Such suit should be between the same parties;
- Such earlier suit is still pending either in the same Court or in any other competent Court.
- The court in which previous suit is pending has the jurisdiction to try such suit.

Section 10 is enacted to prevent the Courts of Concurrent jurisdiction from simultaneously trying two parallel suits in respect of same matter in issue.

<p><i>[M/s. Wings Pharmaceuticals (P) Ltd. and another v. M/s. Swan Pharmaceuticals and others]</i></p>	<p>A suit was instituted by the plaintiff company alleging infringement by the defendant company by using trade name of medicine and selling the same in wrapper and carton of identical design with same colour combination etc. as that of plaintiff company. A subsequent suit was instituted in different Court by the defendant company against the plaintiff company with same allegation. The Court held that subsequent suit should be stayed as simultaneous trial of the suits in different Courts might result in conflicting decisions as issue involved in two suits was totally identical.</p>
---	--

**DOCTRINE OF RES JUDICATA [Section 11]**

<p>Section 11 of the Civil Procedure Code deals with the doctrine of Res Judicata which imposes, bar or restraint on repetition of litigation of the same issues. It <b>prevents two different decrees on the same subject</b>. The doctrine underlines the general principle that one shall <b>not be twice vexed</b> for the <b>same cause</b>. Section 11 says that once a <i>resjudicata</i>, it shall not be adjudged again.</p>	<p><b>This doctrine is based on the following grounds of public policy</b></p> <ul style="list-style-type: none"> <li>(a) There should be an end to litigation;</li> <li>(b) The parties to a suit should not be harassed to agitate the same issues or matters already decided.</li> <li>(c) The time of Court should not be wasted.</li> </ul>
<p><b>For the applicability of the principle of res judicata the following conditions are required to be satisfied</b></p> <ul style="list-style-type: none"> <li>(a) The matter must be directly and substantially in issue in two suits;</li> <li>(b) The prior suit should be between the same parties or persons claiming under them;</li> </ul>	

<b>Meaning</b>	(c) The parties should have litigated under the same title; (d) The court which determined the earlier suit must be competent to try the latter suit; (e) The same question is directly and substantially in issue in the latter suit.
<b>Construction of Res Judicata</b>	The doctrine which provides that any matter which might or ought to have been made a ground of defence in such former suit shall be deemed to have been a matter directly or substantially in issue in such (former) suit. Hence as per doctrine of constructive Res judicata also, subsequent suit will be barred.
<b>Bar of further suit</b>  [Section 12]	Section 12 of Civil Procedure Code provides that abatement of suit or its dismissal, for not bringing the legal representative on record bars a further suit.

**AFFIDAVIT**

**IN THE HON'BLE HIGH COURT OF \_\_\_\_\_/SUPREME COURT-----**

Petition No. \_\_\_\_\_/2005

**IN THE MATTER OF:**

\_\_\_\_\_,s/o \_\_\_\_\_,aged \_\_\_\_\_,r/o \_\_\_\_\_  
....Petitioner

Versus

\_\_\_\_\_,s/o \_\_\_\_\_,aged \_\_\_\_\_,r/o \_\_\_\_\_  
....Respondent

I, \_\_\_\_\_, son of \_\_\_\_\_, aged \_\_\_\_\_, resident of \_\_\_\_\_, do hereby solemnly affirm and declare as under:

1. I am the petitioner in the aforesaid petition and fully aware of the facts of the case.
2. That the facts stated in the petition are true and correct to the best of my knowledge and belief.
3. The legal submissions made in the petition are believed to be true and all these may kindly be treated as a part of this affidavit, since not repeated for the sake of brevity.

Verification:

Verified at \_\_\_\_\_ on \_\_\_\_\_ that the contents of the present affidavit are true and correct. Nothing material has been concealed there from.

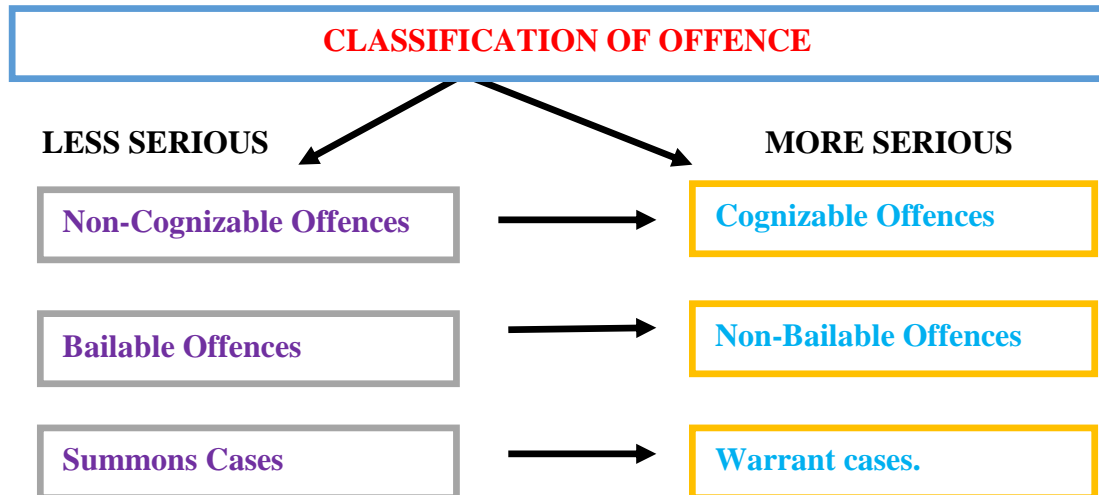
SD/-  
Deponent

## CHAPTER 29

### PROCEDURAL ASPECTS OF WORKING OF CRIMINAL COURTS

#### OFFENCE

Section 2(n) of the Cr.P.C. defines the word "offence" to mean any act or omission made **punishable** by any law for the time being in force or Section 40 of the I.P.C. which states that "offence" *denotes a thing made punishable by the Code.*



**Different Stages of Criminal Trial in a Warrant Case when instituted by the police report**

**First Information Report:** An FIR is information given by someone (aggrieved) to the police relating to the commitment of an offense.



**Investigation:** The next step after the filing of FIR is the investigation by the investigating officer and then conclusion is filed to the Magistrate as a police report.



**Charges:** If after considering the police report and other important documents the accused is not discharged then the court frames charges under which he is to be tried.



**Plea of guilty:** After framing of the charges, the accused is given an opportunity to plead guilty, and the responsibility lies with the judge to ensure that the plea of guilt was voluntarily made. The judge may upon its discretion convict the accused.



**Prosecution evidence:** After the charges are framed, and the accused pleads not guilty, then the court requires the prosecution to produce evidence to prove the guilt of the accused. The prosecution is required to support their evidence with statements from its witnesses. This process is called examination in chief.



**Statement of the accused:** Section 313 of the Criminal Procedure Code gives an opportunity to the accused to be heard and explain the facts and circumstances of the case.

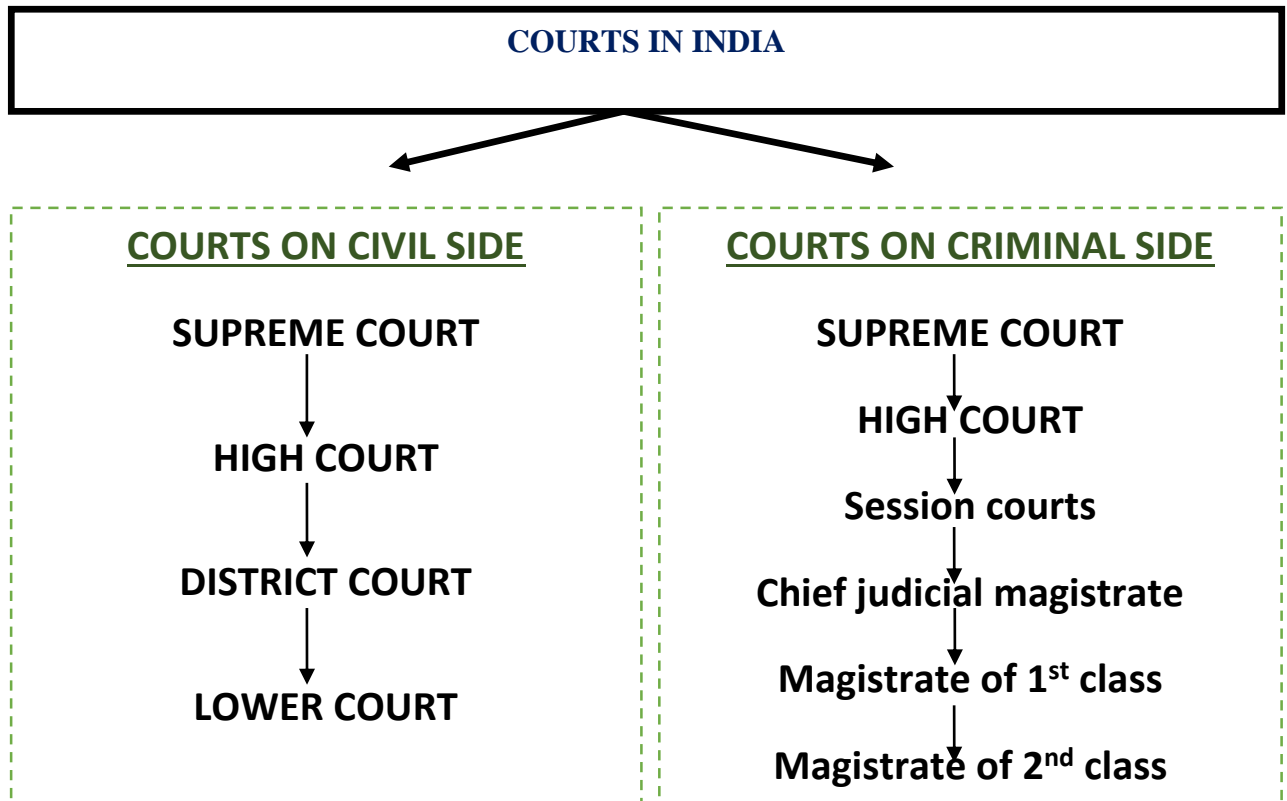


**Defence evidence:** An opportunity is given to the accused to produce evidence so as to defend his case. The defense can produce both oral and documentary evidence.



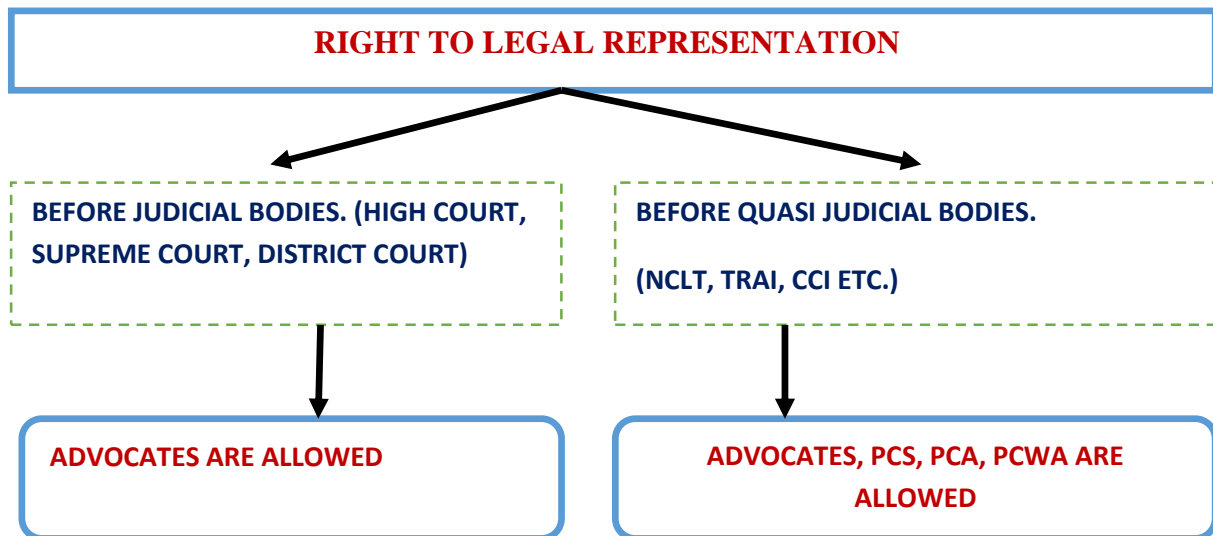
**Judgement:** The final decision of the court with reasons given in support of the acquittal or conviction of the accused is known as judgement.

COURTS IN INDIA

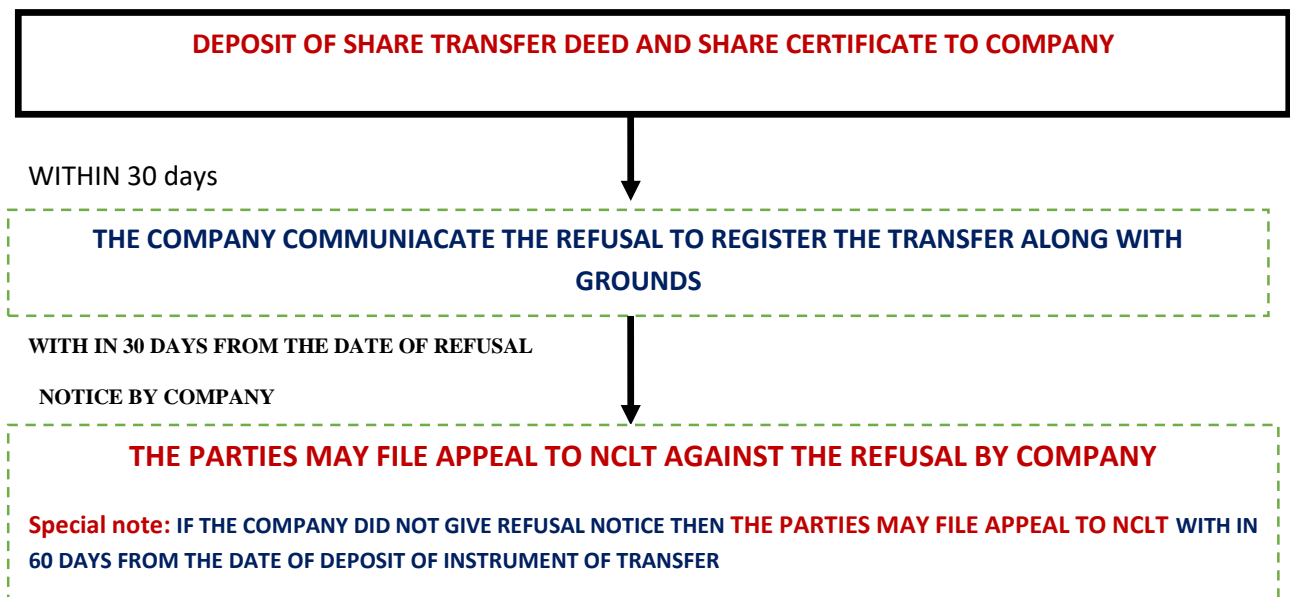


## CHAPTER-30

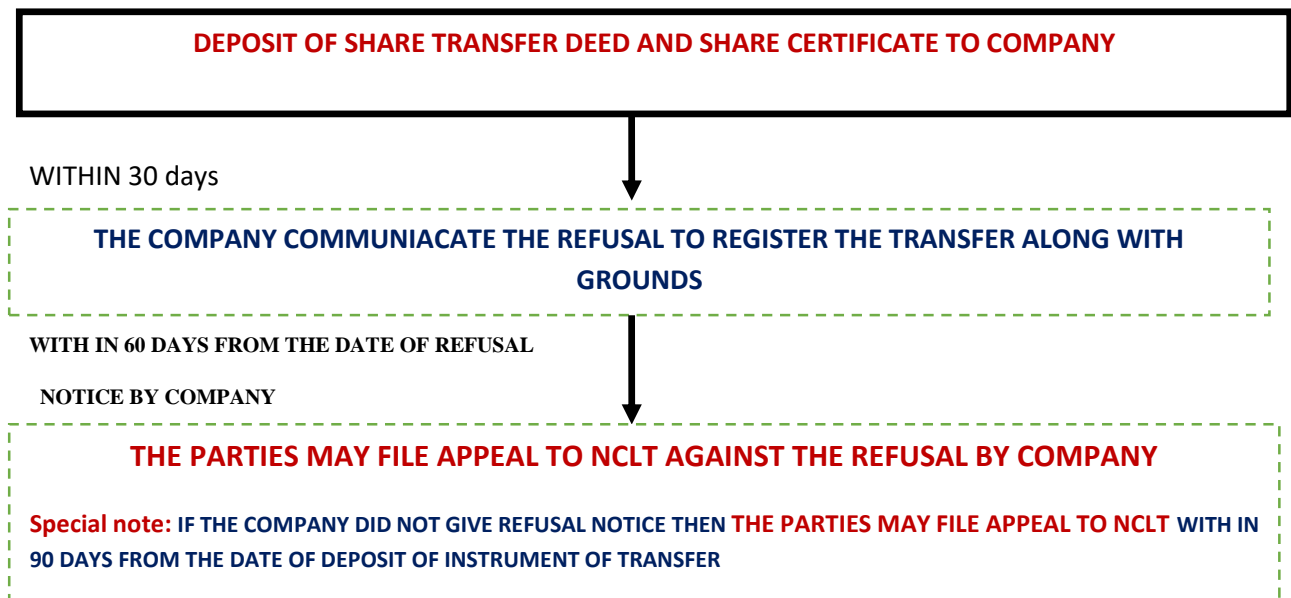
## APPEARANCES AND PLEADINGS-1



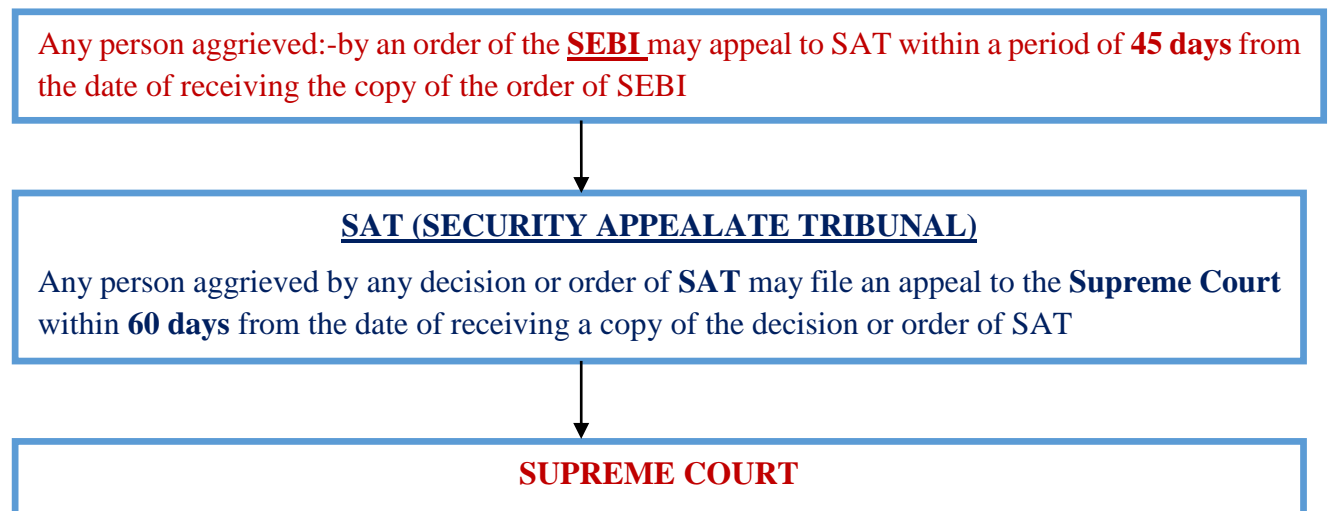
### CHART ANALYSIS ON SECTION 58 (PRIVATE COMPANY)



**CHART ANALYSIS ON SECTION 58 (PUBLIC COMPANY)**



**APPELLATE AUTHORITIES UNDER SEBI**



**APPELLATE AUTHORITIES UNDER COMPETITION ACT**

Any person aggrieved by any decision of **Competition Commission of India** may prefer an appeal **NCLAT** within a period of **60 days** from the date of receiving the copy of the order of CCI



**NCLAT**

**Section 53T** of the Act provides that any person aggrieved by any decision or order of Appellate Tribunal may file an appeal to the Supreme Court. (Within **60 days** from the date of receiving a copy of the decision or order of Appellate Tribunal)



**SUPREME COURT**

## CHAPTER-31

## APPEARANCES AND PLEADINGS-II

### FUNDAMENTAL RULES OF PLEADINGS

1)	That a pleading shall contain, only a statement of facts, and not Law;
2)	That a pleading shall contain all material facts and material facts only.
3)	That a pleading shall state only the facts on which the party pleading relies and not the evidence by which they are to be proved,
4)	That a pleading shall state such material facts concisely, but with precision and certainty.

### Points should be kept in mind while drafting a pleading

1.	The names of persons and places should be accurately given and correctly spelt; spellings adopted at one place should be followed throughout the pleading.
2.	Facts should be stated in active and not in the passive voice omitting the nominative.
3.	All 'its' and 'buts' should be avoided.
4.	Pronouns like "he" "she" or "that" shoud be avoided if possible.
5.	The plaintiff and the defendant should be referred not only by their names. It is better to use the word "plaintiff" or "defendant".
6.	Things should be mentioned by their correct names and the description of such things should be adhered to throughout.
7.	Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph (Order VI Rule 2).
8.	The division of the pleading into paragraphs should be so done as to endure that each paragraph deals with one fact.
9.	Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

## FORMS OF DEFENCE

### 1. Traverse or Denials

Where a defendant totally and categorically denies the allegations of the plaintiff

### 2. Special Defence

Where the defendant admits the allegations but seeks to destroy their effect by alleging affirmatively certain facts of his own.

### 3. Objection in point of law or Demurrer

Where the defendant pleads that the plaint allegations do not disclose^ a cause of action, or that the special damages claimed are too remote.

### 4. Dilatory Pleas

Where the defendant pleas go to the root of the case.

### 5. Set off

It has the effect of extinguishing the plaintiff's claims to the extent of the amount claimed by the defendant.

## SPECIMEN OF SUITS

### SUIT UNDER XXXVII OF CPC

IN THE COURT OF SENIOR CIVIL JUDGE: NEW DELHI

CIVIL SUIT NO. ----- OF 2013

[UNDER ORDER XXXVII CPC]

IN THE MATTER OF:

AB

PLAINTIFF

VERSUS

1. CD

2. EF

DEFENDANTS

**PLAINT UNDER ORDER XXXVII CPC FOR RECOVERY OF AN AMOUNT OF RS.1, 15,000/- (RUPEES ONE LAC FIFTEEN THOUSAND) TOGETHER WITH INTEREST PENDENT LITE AND FUTURE AND COST.**

RESPECTFULLY SHOWETH:

1. That the plaintiff above-named is an iron merchant dealing in iron angles, pipes, casting sheets etc. and operating his business from the address mentioned in the title of the plaint.
2. That defendant no. 1 is a partnership concern of which, defendant no. 2 is the partner as had been disclosed to the plaintiff by defendant no. 2 in the course of business dealings that took place between the plaintiff on the one hand and defendants on the other hand. The plaintiff is unaware of the other partners of defendant no. 1 and seeks indulgence of this Hon'ble Court in issuing necessary directions to defendants to disclose the status of defendant no. 1 firm as also the details of the other partners of the said firm so as to facilitate impleadment of such other partners also as party to the present suit.
3. That defendants maintained commercial transaction with the plaintiff above named by purchasing goods i.e. iron/steel items sold/supplied by the plaintiff to the defendant from time to time against invoices raised/issued by the plaintiff. Defendants made part payments towards the invoice value of the goods so supplied/sold by the plaintiff thereby leaving balance outstanding in the accounts as maintained by the plaintiff in the ordinary course of business.
4. That as on 30<sup>th</sup> June 2012, a sum of Rs. 1,00,000/- was outstanding against defendants in the accounts maintained by the plaintiff and in discharge of the said liability, the defendants had issued cheque bearing No. 128038 dated 25<sup>th</sup> July 2012 for an amount of Rs. 1,00,000/- drawn on Canara Bank, Branch Office Connaught Circus, New Delhi. The original cheque leaf as issued by the defendants is annexed and marked as ANNEXURE-A.
5. That after issuing the aforesaid cheque, the defendants, by citing reasons of some accounting problems existing in the defendant no. 1 firm, required the plaintiff to defer presentment of the cheque for encashment till November, 2012. Resultantly, the plaintiff presented the cheque for encashment with his bankers in the month of November, 2012. However, the said cheque was returned back unpaid/dishonoured by the bankers of the defendants for the reasons "Exceeds Arrangement". The return memo as issued by the bankers of the defendants has been received by the plaintiff on 27<sup>th</sup> November 2012. The original return memo is annexed herewith as ANNEXURE-B.
6. That repeated requests and reminders were thereafter sent by the plaintiff to the defendants for payment of the aforesaid outstanding dues, however, the defendants failed to pay the same. As such the plaintiff was constrained to issue a legal notice of demand dated 7<sup>th</sup> December 2012 calling upon the defendants to pay the aforesaid outstanding dues. However, despite receipt of the aforesaid notice of demand, the defendants failed to make payment of the aforesaid outstanding dues. Office copy of legal notice of demand dated 7<sup>th</sup> December 2012 along with Postal Receipts is annexed herewith as ANNEXURE-C.
7. That the amount outstanding against defendants is legally recoverable by plaintiff from defendants who are liable to pay the same jointly and severally. Furthermore, since the claim in suit has arisen out of commercial transactions between the parties, the plaintiff is

entitled to claim interest on the aforesaid outstanding amounts at the prevalent market rate of interest as per custom/market usage. The rate of interest at the time when transactions took place between the parties was not less than 18% p.a. and as such plaintiff is entitled to claim and defendants are liable to pay interest on the foresaid outstanding amount at the rate of 18% per annum from the date the amounts remained due and payable by the defendants. Interest calculated at the said rate of 18% p.a. on the outstanding amount of Rs. 1,00,000/- (Rupees one lac) calculates to Rs. 15,000/- (Rupees fifteen thousand) as on the date of filing of the suit and the total adds up to Rs. 1,15,000/- (Rupees one lac fifteen thousand only). Defendants are liable to pay the said amount of Rs. 1,15,000/- to the plaintiff.

8. That the aforesaid claim of the plaintiff is legal, valid and enforceable. Defendants are liable to pay the same to the plaintiff. There is no impediment in plaintiff's entitlement to the relief prayed.
9. That by the present suit, plaintiff seeks to recover claim of money payable by defendants by virtue of the negotiable instrument/cheque which has remained unpaid because of the acts directly attributable to the defendants. Suit claim of the plaintiff even otherwise consists of a debt or a liquidated demand in money payable with interest arising out of written contract.
10. That no relief which does not fall within the ambit of Order XXXVII Rule 2 CPC is claimed in the suit. The suit claim is liable to be tried under the summary procedure prescribed by Order XXXVII CPC.
11. That the defendants are residing/carrying on business within jurisdiction of the Hon'ble Court at the address described in the title of the plaint. Plaintiff is also having his business premises within the jurisdiction of this Hon'ble Court. Cause of action for filing the present suit has also arisen within the jurisdiction of this Hon'ble Court. As such, this Hon'ble Court has got jurisdiction to entertain and try the present suit.
12. That the plaintiff values the suit for the purposes of court fee and jurisdiction at Rs. 1,15,000/- on which *ad valorem* court fee has been paid.

### **PRAYER**

In the aforesaid facts and circumstances, it is, therefore, respectfully prayed that the Hon'ble Court may be pleased to:

- a) Try the plaintiffs suit claim under summary procedure prescribed under Order XXXVII CPC by ordering summons of suit in accordance with provisions of Order XXXVII CPC
- b) Pass a decree for money in the sum of Rs. 1,15,000/- (Rupees One Lac Fifteen Thousand Only) in favour of the plaintiff and against the defendants liable jointly and severally
- c) Allow interest pendente lite and future @ 18% p.a. on the suit amount in favour of the plaintiff and against the defendants liable jointly and severally together with cost of the suit;
- d) Hon'ble Court may also pass such further order(s) considered just, fit, proper and expedient in the facts and circumstances of the case.

THROUGH: PLAINTIFF

ADVOCATE FOR THE PLAINTIFF

NEW DELHI

DATED: April, 2013

## CHAPTER 32

## Drafting of Appeal and Writ Petition

### LAWS WHICH DEALS WITH APPEAL

#### CIVIL PROCEDURE CODE, 1908

1. **APPEALS FROM ORIGINAL DECREES**

According to sections 96 to 99 OF **code of civil procedure, 1908** Appeals from original decrees may be preferred from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decision of such Court on points of law as well as on facts. In this case, there is always a right to appeal, until and unless there is a specific prohibition to such a right.

2. **SECOND-APPEALS**

According to sections 100 to 103 of **code of civil procedure, 1908** Second Appeals lie to the High Court from every decree passed in an 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 ex parte.

3. **APPEALS FROM ORDERS**

Appeals from Orders would lie only from certain orders on grounds of defects or irregularity of law.

4. **APPEALS TO THE SUPREME COURT**

Appeals to the Supreme Court, lie Subject to the provisions of the Constitution an appeal from any judgement, decree or final order in a civil proceeding of a High Court, if the High Court certifies

- That the case involves a substantial question of law and
- That in the opinion of the High Court the said question needs to be decided by the Supreme Court.

#### CONSTITUTION OF INDIA

**ARTICLES 132 TO 135 DEAL WITH APPEALS TO THE SUPREME COURT**

1. **Appeals in Constitutional cases:** 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.
2. **Appeals in civil cases:** Article 133 deals with appeals to the Supreme Court from decisions of High Court in civil proceedings. If the High Court certifies
  - That the case involves a substantial question of law and
  - That in the opinion of the High Court the said question needs to be decided by the Supreme Court.
3. **Appeals in criminal cases:** A limited criminal appellate jurisdiction is conferred upon the Supreme Court by Article 134. It is limited in the sense that the Supreme Court has been constituted a Court of criminal appeal in exceptional cases where the demand of justice requires interference by the highest Court of the land.

**Modes by which a criminal appeal can be brought before the Supreme Court**

- a) Without a certificate of the High Court.
- b) With a certificate of High Court.
- c) Appeal by Special Leave

### SPECIMEN FORM OF APPEAL TO THE HIGH COURT

**APPEAL TO THE HIGH COURT**

IN THE HIGH COURT OF.....AT.....

CIVIL APPELLATE JURISDICTION

REGULAR CIVIL APPEAL NO.....OF.....

IN THE MATTER OF:

\_\_\_\_\_, a company incorporated under the provisions of the Companies Act and having its  
Registered office at\_\_\_\_\_.

**...Appella  
nt**

Versus

\_\_\_\_\_, a partnership concern having its place of business at\_\_\_\_\_.

**...Respond  
ent**

May it please the Hon'ble Chief Justice of the High Court of \_\_\_ and His Lordship's Companion Justice,

**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 reduced to writing. The appellant supplied goods worth Rs. 15 lakh over a period of\_\_\_\_\_months to the respondents. A statement of account regarding the goods supplied is annexed hereto and marked as **Annexure A-1**.
3. That the respondents have made a total payment of Rs. 6 lakh 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 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 the 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 judgment and decree passed on\_\_\_\_\_dismissed the appellant's suit on the ground that the evidence led by the parties does not establish the claim of the appellant-plaintiff. Copies of the judgment and decree of the court below are annexed hereto and are marked as **Annexure A-3 and A-4, respectively.**

Aggrieved by the aforesaid judgment and decree of the court below dismissing the suit of the plaintiff, this appeal is hereby filed on the following, amongst other

### **GROUND**

1. That the judgment and decree under appeal are erroneous both on facts as well as law.
2. That the learned trial court has failed to properly appreciate the evidence, and has fallen into error in not finding that the preponderance of probability was in favor of the plaintiff- appellant.
3. 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.

In the above facts and circumstances the appellant prays that this appeal be allowed, the judgment and decree under appeal be set aside and the decree prayed for by the appellant in his suit before the court below be passed together with up-to-date interest and costs of both courts.

**APPELLANT THROUGH**

(Counsel's name)

## **CHAPTER-33 COURT CRAFT AND ART OF ADVOCACY**

### **IMPORTANT PRINCIPLES OF ADVOCACY**

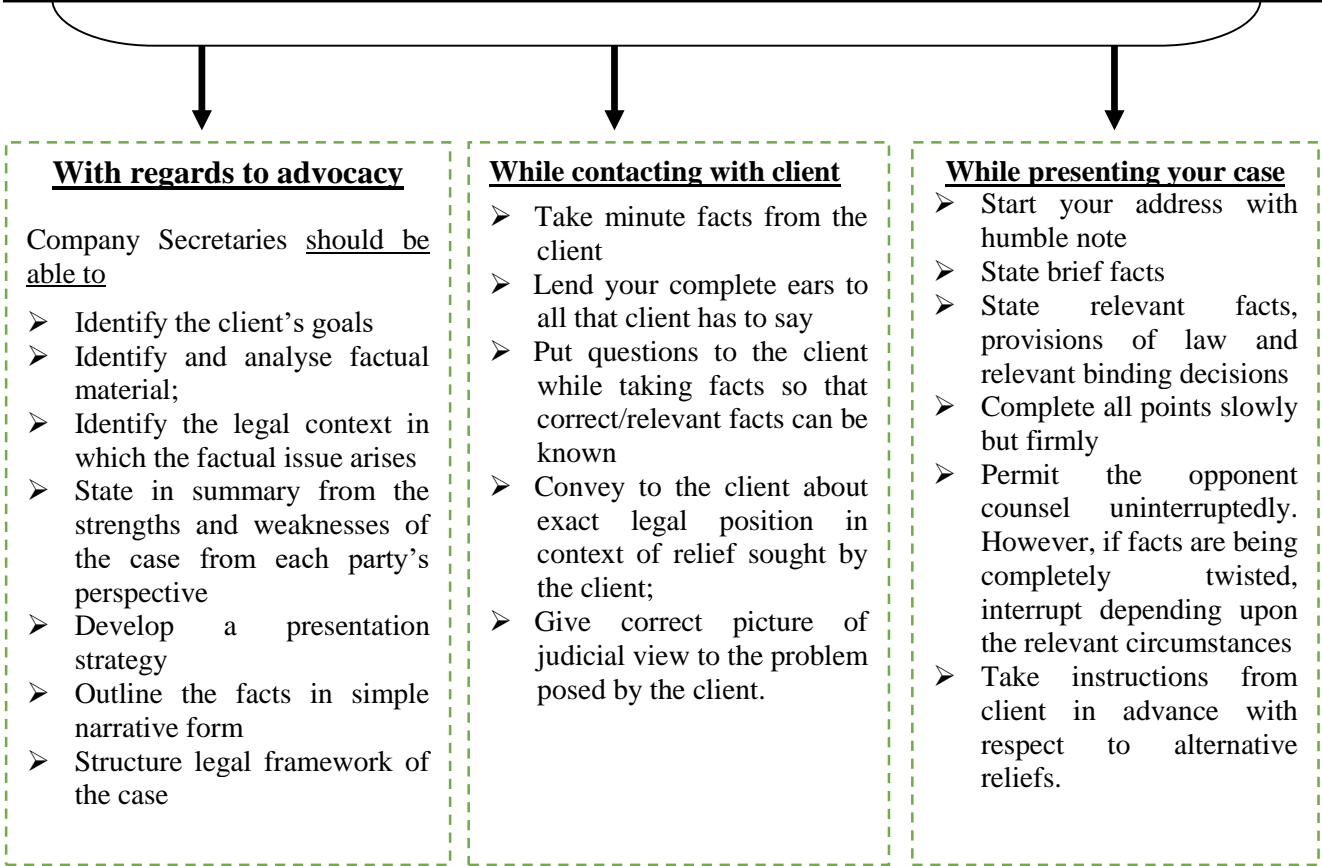
- (1) Act in the best interest of the client;
- (2) Act in accordance with the client's wishes and instructions;
- (3) Keep the client properly informed;
- (4) Carry out instructions with diligence and competence;
- (5) Maintain client confidentiality.
- (6) Act impartially and offer frank, independent advice;

### **IMPORATANT ADVOCACY TIPS**

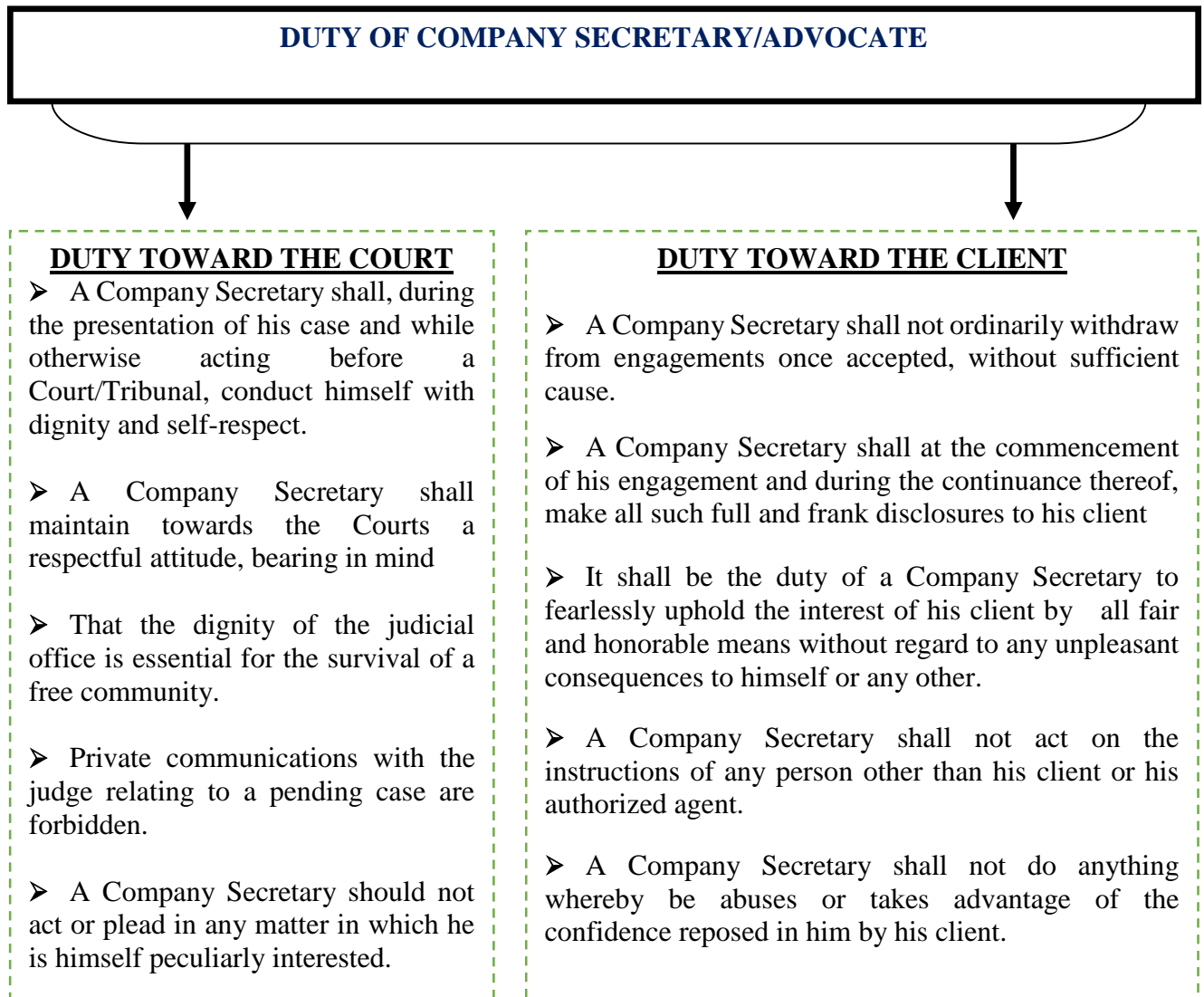
S.NO.	PARTICULARS	PROVISIONS
1	<b>Clarity</b>	The judge's time is limited, so make the most of it.
2	<b>Credibility</b>	The judge needs to believe that what you are saying is true and that you are on the right side.
3	<b>Eye contact</b>	While pleading, maintain eye contact with your judge.
4	<b>Psychology</b>	Understand judge's psychology as your job is to make the judge prefer your version of the truth. Be likeable. At least be more likeable than your opponent. Learn to listen. Entertain your judge
5	<b>Humour</b>	Humour will often bail you out of a tough spot
6	<b>Voice modulation</b>	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

**SOME IMPORTANT PREPARATORY POINTS**

**Some important preparatory points which a company secretary should bear in mind**



**DUTY OF COMPANY SECRETARY/ADVOCATE**



## CHAPTER-34

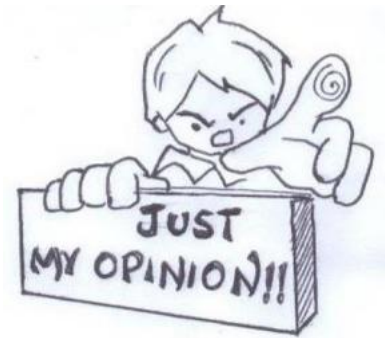
## OPINION WRITING

### OPINION WRITING

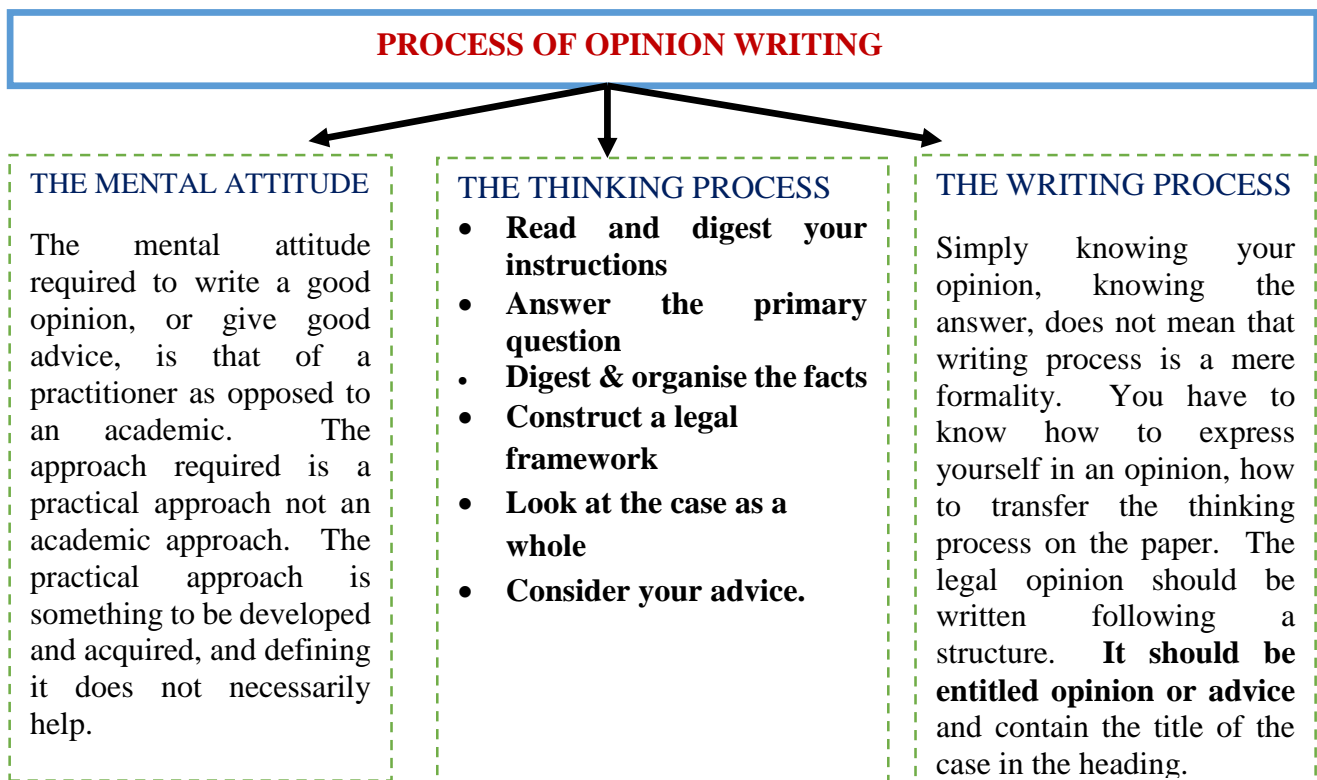
An opinion is a professional's written response to client's instructions to advice in writing. It follows that it must contain advice. Professionals do not advise someone simply by telling them what to do, but supplement it with the basic reasoning behind it. Advising is inextricably bound up with and is part of the mental attitude with which professionals approach opinion writing, with the thinking process that precedes the actual writing of the opinion, and with the writing process itself.

### NEED FOR A LEGAL OPINION

1. Interpretation of statues or documents
2. Advise a transaction structure
3. Opinion for guidance of decision makers in commerce, industry or government
4. Opinion to Lenders on enforceability of Finance Documents
5. Opinion for Investors for compliance by Target Companies
6. Opinion on Foreign Direct Investment



### PROCESS OF OPINION WRITING



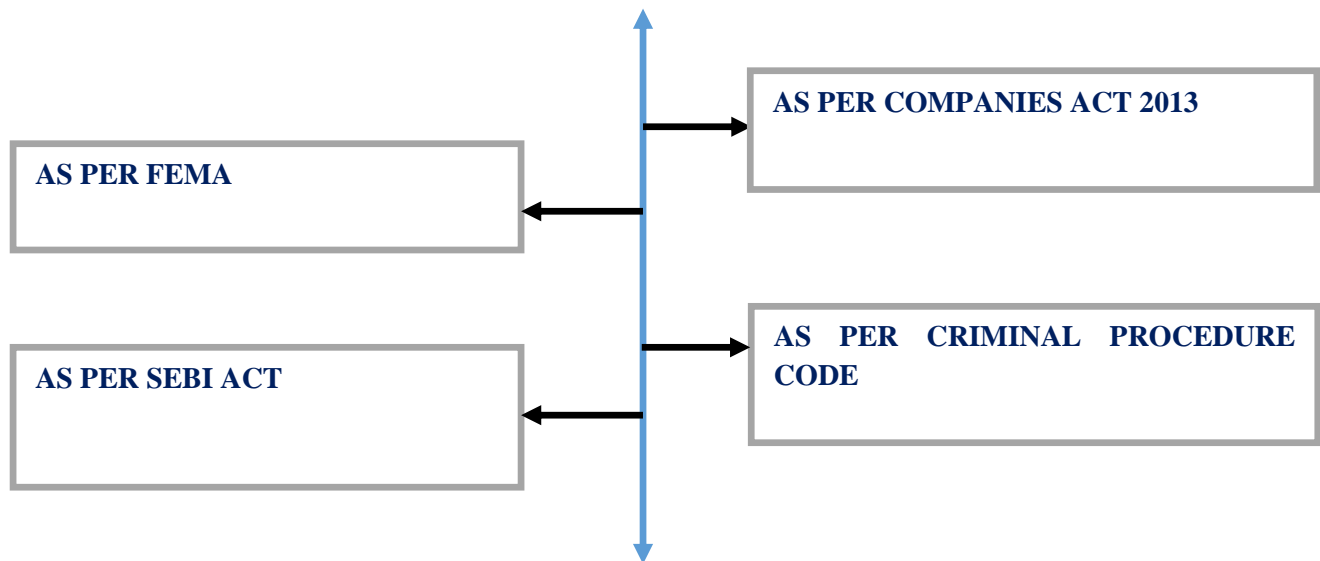
### TYPES OF LEGAL OPINION

1. **Advices on Transaction:** Due diligence is the principal reason for opinion letters in business transactions. An opinion letter may be one component of a party's due diligence, but it is not normally a substitute for due diligence performed by the opinion recipient and its counsel.

2. **Advices on Law:** Sometimes the client would want to know how the law will apply to a given situation. Without in-depth knowledge of law and legal research one cannot give an opinion to the satisfaction of the client. The proper way is to start with the cases and work through to reach a deduction as to the principle of law that covers the situation. Quite often however one forms a value judgment as to what the conclusion ought to be from first principles and moral feelings and then searches for the authorities to support this conclusion. This is top down reasoning should be avoided.
3. **Opinions on Facts:** The third type of opinion is one which is predominantly related to facts. One is given a series of statements and documents and asked whether on that material there are reasonable prospects of prosecuting or defending the claim. The matter may be a simple personal injury case in which the law is well settled.
4. **Advices on Evidence:** A special type of opinion is a brief to advice on evidence. When advising on fact or law one should not be too positive. In relation to advices on quantum of damages one can never be sure so it is advisable to not give a precise figure but a range. Where the law is in a state of flux or doubtful the legal expert should always draw attention to this explaining why one cannot be more positive.

## CHAPTER-35 COMPOUNDING OF OFFENCES

### COMPOUNDING OF OFFENCES UNDER VARIOUS ACT



### COMPOUNDING OF CERTAIN OFFENCES UNDER COMPANIES ACT 2013

#### SECTION 441

Three kinds of offences are permitted to be compounded under this section:-

- |  |
|--|
| (a) An offence is punishable with fine only  |
| (b) An offence is punishable with imprisonment or fine                                 |
| (c) An offence which is punishable with imprisonment or fine or with both imprisonment |

### **COMPOUNDING AUTHORITIES UNDER FEMA**

#### **RESERVE BANK OF INDIA**

Rule 4 empowers the RBI to compound only quantifiable contravention committed by any person of the provisions of section 7 or section 8 or section 9, or third schedule to the foreign exchange management (current account transactions) rules, 2000.

#### **ENFORCEMENT DIRECTORATE**

Rule 5 specifies the cases in which only quantifiable contraventions of the provisions of the act [**other than** section 7 or section 8 or section 9 or third schedule to the foreign exchange (current account transactions) rules, 2000] can be compounded by the enforcement directorate.

**COMPOUNDING OF OFFENCES UNDER SEBI ACT 1992**

**THERE ARE TWO WAYS OF COMPOUNDING UNDER SEBI ACT**

**CONSENT ORDER**

This is used where compounding is to be done for those offences punishable with fine only.

**COMPOUNDING OF OFFENCE**

This is used where compounding is to be done for those offences punishable

- Imprisonment only
- Imprisonment or fine
- Imprisonment and fine