



UNIT 5: DRAFTING OF COMMERCIAL CONTRACTS

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GIFT

- 1. Section 122 of the Transfer of Property Act, 1882 states that 'Gift' is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.
- 2. Gift should be made only for the existing property as gift of future property is void under Section 124 of the TOPA.
- 3. Section 125 provides that the gift of a thing to two or more donees of whom one does not accept it, is void as to the interest which he would have taken had he accepted.
- As per Section 126, the donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked, but a gift which the parties agree shall be revocable wholly or in part at the mere will of the donor is void, wholly or in part as the case may be.
- Under Hindu Law a gift once completed is binding upon the donor and it cannot be revoked by him unless it was obtained by fraud or undue influence

. Power of attorney

- **1. a power of attorney includes an instrument empowering a specified person to act for and in the name of the person executing it. It is always kept by the attorney**
- **2. Who can become an attorney?**
- **Ans: A power of attorney can be executed by any person, who can enter into a contract, i.e., a person of sound mind who has attained majority**
- **3. Section 2 of the Powers-of-Attorney Act, 1882 provides that the signature of the agent will be deemed to be the signature of the principal.**
- **Section 5 of the Powers-of-Attorney Act, 1882, relating to married women's power to execute a power of attorney provides that a married woman of full age shall, by virtue of this Act, have power, as if she were unmarried.**
- **The powers conferred on the attorney should be specifically stated after the appointment, preferably, in separate paragraphs.**
- **VERY IMP: Sometimes, after giving specific powers, a general clause empowering the attorney to do all such lawful acts as the attorney should think reasonable is added, but this is not ordinarily necessary, as according to authorities such a clause does not extend or widen the authority**

AUTHENTICATION OF POA

- 1. A power of attorney need not be attested. However, it would be advisable to execute the power of attorney before and have it authenticated by a Notary Public or any Court Judge/Magistrate, Indian Consul or Vice-Consul or representatives of the Central Government. It is accepted as evidence under Indian evidence act, 1872.
- Under Section 32(c) of the Indian Registration Act, 1908, a power of attorney can be granted to an agent to present a document for registration; but, under Section 33(1) of that Act, only certain powers of attorney are recognised. But if a power of attorney gives authority to present documents for registration under Section 32 of the Registration Act, 1908 it must be executed before and authenticated by the Registrar or Sub-Registrar within whose District or Sub-District the principal resides or where the Registration Act is not in force, before any Magistrate, or if it is executed outside India, before a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul or representative of the Central Government (Section 33 of the Registration Act, 1908). But a power of attorney empowering an agent to execute a deed conveying the property in an immovable property and get the deed registered, thereby, perfecting the transaction of conveyance, need not be executed before the Officer appointed to authenticate and register documents in as much as when the agent executes the document in the name of the principal, he is the executant thereof and as such can himself present the document for registration.

- **Duration:**

- Unless expressly or impliedly limited for a particular period, a general power of attorney will continue to be in force until expressly revoked or determined by the death of either party. In the case of a company, the power of attorney executed by the directors ceases to be operative as soon as an order for winding up is made as the directors cease to function
- . A special power of attorney to do an act is determined when the act is done.

- **Revocation:**

- A power of attorney executed in favour of a person can always, at the discretion of the donor thereof, be revoked unless the donee himself has an interest in the POA. Example: powers of attorney executed in favour of the financial institutions by a company who offer financial assistance to the latter. \

- **Stamp Duty:**

- Power of attorney is liable to stamp duty. . Further, if a power of attorney executed in one State has to be sent to another State where the stamp duty payable is higher, for use, then the power of attorney should be stamped with the difference in the duty before it is so used.
- Otherwise, the power of attorney could be impounded. If a power of attorney is executed in a foreign country, it should be stamped within three months of its being received in India. If it is not so stamped within the period of three months of it being brought to India, then the same will be deemed to be unstamped and cannot be acted upon.
- The proxy lodged with the Company under Section 105 of the Companies Act, 2013, is also a power of attorney. In that case, a shareholder who is not able to attend the meeting authorises another person on his behalf to attend and vote at the meeting. It is a particular power of attorney.

RULES OF CONSTRUCTING POA

- **The following two well known rules of construction should be borne in mind while interpreting a power of attorney (Mulla: Contract Act, Page 539):**
- **1. That regard must be had to the recitals, if any, as showing the scope and object of the power, as such recitals will control any general terms in the operative part of the instrument. Thus, when it was recited that the principal was going abroad, and the operative part gave authority in general terms, it was held that the authority continued only during the principal's absence.**
- **2. Where special powers are afforded by general words, the general words are to be construed as limited to what is necessary for the exercise of the special power and as enlarging those powers only when necessary for the carrying out the purposes for which the authority is given.**
- **Some of the principles governing the construction of a power of attorney are:**
- **(1) the operative part of the deed is controlled by the recitals;**
- **(2) where an authority is given to do particular acts, followed by general words, the general words are restricted to what is necessary for the performance of the particular acts;**
- **(3) the general words do not confer general powers, but are limited to the purpose for which the authority is given and are construed as enlarging the special powers only when necessary for that purpose;**
- **(4) a power of attorney is construed so as to include all incidental powers necessary for its effective execution [A.I.R. 1972 Gauhati 122 (125)].**

○ **REGISTRATION**

- **Registration of a power of attorney is not compulsory. Section 4 of the Powers-of-Attorney Act, 1882 provides that it may be deposited in the High Court or District Court within the local limits of whose jurisdiction the instrument is with an affidavit verifying its execution, and a copy may be presented at the office and stamped as the certified copy and it will then be sufficient evidence of the contents of the deed.**
- **A power which authorises the donee to recover rents of immovable property belonging to the donor for the donee's own benefit is an assignment and requires registration under clause (b) of Sub-section (1) of Section 17 of the Registration Act. Similarly, a power of attorney which creates a charge on the immovable property referred to therein in favour of the donee of the power requires registration**
- **In other cases, a mere general power of attorney, even though it deals with immovable property, need not be registered.**

5. FAMILY SETTLEMENT DEED

- **(1) The family settlement must be a bona fide 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.**
- **(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence.**
- **(3) The family arrangement may be even oral in which case no registration is necessary.**
- **(4) It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing.**
- **(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest or even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties of the settlement has no title but, under the arrangement, the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same.**
- **(6) Even in bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable, the family arrangement is final and binding on the parties to the settlement.**

TYPES OF E-CONTRACTS

<p>Click wrap or shrink wrap agreement</p>	<p>1. I accept + Submit Take-it-or-leave-it. 2. OK/ I agree</p>	<p>i. Type and Click where the user must type “I accept” or other specified words in an on-screen box and then click a “Submit” or similar button. This displays acceptance of the terms of the contract. A user cannot proceed to download or view the target information without following these steps. ii. Icon Clicking where the user must click on an “OK” or “I agree” button on a dialog box or pop-up window. A user indicates rejection by clicking “Cancel” or closing the window. Upon rejection, the user can no longer use or purchase the product or service. A click wrap contract is a “take-it-or-leave-it” type of contract that lacks bargaining power.</p>
<p>Shrink wrap agreement</p>	<p>Agreements which can only be read and accepted after opening the CD ROM</p>	<p>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</p>

TYPES OF E-CONTRACTS

EDI	Transfer of data from one computer to another	These contracts, used in trade transactions which enable the transfer of data from one computer to another in such a way that each transaction in the trading cycle (for example, commencing from the receipt of an order from an overseas buyer, through the preparation and lodgment of export and other official documents, leading eventually to the shipment of the goods), can be processed with virtually no paperwork. Here unlike the other two, there is exchange of information and completion of contracts between two computers and not an individual and a computer.
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1. LLP (module)
2. JDR (module)
3. dealership v/s distributorship (module)

ILLUSTRATED BY
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Agar shuru karne ki himmat thi toh...

Khatam karne se kyu Ghabre rahe ho?