

- Judge may Consider Some logically relevant facts as too unrelated or not important enough for a legal case.

Lecture - 1
Chapter 12

30/Sep/24.

* Indian Stamp act

* Union list → The union legislature has [Entry 91] the authority to levy Stamp duties on specific instruments primarily Commercial ones such as bill of exchanges, cheques and insurance policies.

* State list :- States have power to set [Entry - 63] rates for Stamp duties on other instruments that do not fall under union purview.

* Concurrent list → The principles for levying duties can be addressed at both levels reflecting shared Jurisdiction.

Amendment * State Amendments → States can amend the Central act, introducing new sections or modifying Schedules. Some States have opted for separate legislation to handle their responsibilities leading to variations in Stamp duty rates for similar instruments across States.

Date _____
Page _____

* Impressed Stamps [Section 2(13)]

• It includes :-

(a) labels affixed and impressed by proper officer and

(b) Stamps embossed or engraved on stamp paper.

Adhesive Stamps :-

• Adhesive stamps are those stamps which can be stuck to a document using any form of adhesive.

• There are 2 types of adhesive stamps and they are as follow :-

(a) Postal Stamps → Postal stamps have limited application, they are used for post office related transactions.

(b) Non Postal Stamps → Non postal stamps have wider application. Non postal stamps are reserve stamps, Court fee stamp, insurance policy stamp etc.

* Bill of lading →

• It is a shipping document that

→ Serves as a receipt for goods given to Ships Captain.

→ which excludes Mate's receipts.

→ It has 3 Copies, one for Sender [Consignor] one for Captain [Master] and one for the receiver [Consignee] who gains Ownership of goods.

→ Acts as a proof of the Contract for transporting goods by Sea.

* Instruments :-

- An unsigned draft document is not an Instrument.
- A letter which acknowledges receipt of certain sum as having been borrowed at a particular rate of interest and for particular period is an instrument.
- Photocopy of an agreement is not an instrument.
- Instruments does not include ordinary letters.
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- Court Orders Sanctioning amalgamation Scheme is an instrument.

- A document transferring movable or immovable property is an Instrument.
- Court stated in Commissioner of Inland Revenue vs. Cr Angus that stamp duty applies to instruments not to the transactions themselves. If a purchase and sale occur without an instrument, no tax is imposed.
- Goodwill can be conveyed without executing formal conveyance.
- If sale can proceed without written document the vendor could avoid stamp duty.
- This ruling indicated govt must demonstrate its right to collect stamp duty. If individuals can find ways to evade it, they benefit from loopholes.

Lecture - 02

04/oct/24.

* Lease → It is transfer to Right for Enjoy property for certain time in consideration of price paid or promised.

* When Section 4 does not apply :-

(a) if you buy land and signed a mortgage for part payment, stamp duty will be paid on mortgage too, Sec 4 does not apply here.

(b) if you sign a lease and then sign a second document changing the terms, both are treated separately, 2nd document needs to pay full stamp duty.

* Sections

e.g. → (i) lease and service agreement.

(ii) Partnership dissolution and bond

(iii) Dissolution of Partnership and charge on asset.

* Example where Section 5 doesn't apply (Non distinctive matter)

(i) Grant of annuity by several person

(ii) lease to joint tenants.

(iii) Ancillary clause (Arbitration clause)

Lecture → 03

05/10/24.

* Substance over form : -

- Under stamp act, when we are deciding the stamp duty what matters is real nature of transaction not title and label on the document
- Even if document is called something like sales agreement the actual content of document determines if it's about a sale, lease or something else.

- Stamp duty is based on what document is really about not just what it's named.

* Section → 26.

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- if document is under stamped, deficiency can be corrected and corrected stamped duty is considered as valid from the time document was executed.

* Section → 28 (Apportionment)

- if property sold in separate parts, stamp duty is charged based on consideration of each part.
- if property is sold to multiple buyers, each buyer pays stamp duty on consideration of their share.
- if property is sold to sub-purchaser directly, stamp duty is paid on final consideration paid by sub-purchaser, avoiding double duty.

* Section → 12

- if document appears to be duly stamped and cancel at time of execution it is presumed valid.

- If someone claims cancellation was done later they must prove it.

* Section 14 :-

- No second instrument can be written on a stamp paper that has already been used for another instrument.

- Exceptions → Endorsements like transferring rights or acknowledging payments are allowed if they are duly stamped or not chargeable with duty.

Lecture → 04

6/oct/24.

* Section 33 :-

→ The purpose of this section is to protect state revenue by ensuring that all instruments subject to stamp duty are duly stamped before being admitted as evidence.

Exceptions → In Criminal Court Judges and Magistrate are not required to examine or impound instrument unless they deem it necessary.

* Section 35 { most imp }

* Exception :-

- if instrument is lost you cannot use copy or secondary evidence unless it is properly stamped and penalty is paid

* Section 37 - Admissibility of improperly stamped instruments.

- It provides Mechanism to correct instruments that have a stamp of sufficient value but an improper description.
- State govt can make rules for certifying such instruments as duly stamped upon payment of correct duty.
- Once corrected instrument is treated as properly stamped from date of execution.

* Section 38 → Dealing with impounded instruments.

- If instrument is impounded the officer impounding it must send:

(i) Authenticated copy of instruments to Collector of Stamp.

(ii) Duty and penalty amount levied

(iii) Collected duty / Penalty to Collector.

* Section 39 → Collector's power to refund Penalty.

- Collector can refund entire penalty if it was

Imposed for violation of Sec 13 and 14.

- Collector can act on his own without any formal application from the affected party.

* Section 40 Collector's power to stamp impounded instrument.

- (i) If instrument is already correctly stamped Collector certifies it as duly stamped.
- (ii) If not stamped Collector will require payment of correct duty and penalty.
- (iii) Penalty can be waived if instrument was impounded due to violation of Sec 13 & 14.

* Section 42 :- Endorsement of instrument on which duty has been already paid.

- instrument are considered duly stamped once duty / penalty is paid and endorsed (certify) by authority.
- The instrument becomes admissible in evidence and can be registered.

* Section 43 :- Prosecution for offence.

- Paying a penalty doesn't stop criminal prosecution for evading stamp duty.

- Date _____
Page _____
- Collector Can initiate prosecution if there is intent to evade (int)

* Section 44 → Recovery of Duty or Penalty.

- If a person is mistakenly pays Stamp Duty on behalf of other party.
- The payer can seek to recover the amount from responsible party.

Lecture - 05

07/10/24.

* Section 46 → Non liability for loss of Instrument

- If instrument is sent to collector u/s 38 is lost or destroyed during transmission, sender is not liable for the loss, destruction or damage.

* Section 47 → Power to Stamp in Certain Cases.

If Bill or Notice presented unstamped and duties chargeable upto 10 Naya Paisa recipient can affix the stamp and recover the duty from person liable.

* Section 48 → Recovery of Duties and Penalties.

- Collector can recover unpaid duties, penalties or sums by distress or sale of movable property or through other revenue recovery method.

Section 55 → Allowance on renewal of Certain Debentures.

- It provides relief to Companies renewing debentures with same terms as original Co. does not need to pay stamp duty on both original and renewed Debentures.
- Company can apply to Collector for refund of Stamp duty paid on either original or renewed whichever ever is less.
- Application to be made within 1m. of issuing renewed debentures.

★ Section 24. →

- If 'A' Mortgage House to B for 5000/- and Stamp duty is paid when house was mortgaged, 'B' later buys the house from A for 10,000, since 'B' already paid Stamp duty on ₹ 5000/- from Mortgage this can be deducted.

So, final Stamp duty will be payable on ₹ 5000/-