General principles of Drafting

Lesson 2

KEY CONCEPTS

■ Drafting ■ Conveyancing ■ Fowler's rules of Drafting ■ Components of Deeds ■ Indentures ■ Endorsements ■ Engrossing

Learning Objectives

To understand:

- The meaning of Drafting and Conveyancing
- Principles of drafting of Deeds and Conveyancing
- Important clauses of Deeds and Agreements
- Structure of Deeds and Agreements
- Usage of appropriate words in Drafting
- How to interpret Deeds
- Endorsements
- Stamping

Lesson Outline

- Introduction
- Drafting
- Conveyancing
- Drafting and Conveyancing: Distinguished
- Distinction between Conveyance and Contract
- General principles of Drafting all sorts of Deeds and Conveyancing
- Basic Components of Deeds
- Important terms and conditions in the Agreement
- Guidelines for use of particular words and phrases for Drafting and Conveyancing
- Use of appropriate Words and Expressions
- Aids to Clarity and Accuracy
- Endorsements
- Stamping of the Deeds
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References (including websites/video links)

REGULATORY FRAMEWORK

- Indian Stamp Act, 1899,
- Transfer of Property Act, 1882
- General Clauses Act, 1897
- Sale of Goods Act, 1930
- Companies Act, 2013
- Notaries Act, 1952
- Indian Evidence Act, 1872
- Negotiable Instrument Act, 1881
- Registration Act, 1908

INTRODUCTION

Importance of drafting and conveyancing for a company's executive could be well imagined as the company has to enter into various types of agreements with different parties and have to execute various types of documents in favour of its clients, banks, financial institutions, employees and other constituents.

The importance of the knowledge about drafting and conveyancing for the corporate executives has been felt particularly for the three reasons viz.:

(i) for obtaining legal consultations;

(ii) for carrying out documentation departmentally;

(iii) for interpretation of the documents.

With the knowledge of drafting and conveyancing, better interaction could be had by the corporate executives while seeking legal advice from the legal experts in regard to the matters to be incorporated in the documents, to decide upon the coverage and laying down rights and obligations of the parties therein. Knowledge in advance on the subject matter facilitates better communication, extraction of more information, arriving on workable solutions, and facilitates settlement of the draft documents, engrossment and execution thereof.

Knowledge of drafting and conveyancing for the corporate executives is also essential for doing documentation departmentally. An executive can make a better document with all facts known and judging the relevance and importance of all aspects to be covered therein.

A number of documents are required to be studied and interpreted by the corporate executives. In India, in the absence of any legislation on conveyancing, it becomes imperative to have knowledge about the important rules of law of interpretation so as to put right language in the documents, give appropriate meaning to the words and phrases used therein, and incorporate the will and intention of the parties to the documents.

DRAFTING

Drafting, in legal sense, means an act of preparing the legal documents like agreements, contracts, deeds etc.

Drafting may be defined as the synthesis of law and fact in a language form [Stanley Robinson: Drafting Its Application to Conveyancing and Commercial Documents (1980); (Butterworths); Chapter 1, p.3]. This is the essence of the process of drafting. In other words, legal drafting is the crystallization and expression in definitive form of a legal right, privilege, function, duty, or status. It is the development and preparation of legal

instruments such as constitutions, statutes, regulations, ordinances, contracts, wills, conveyances, indentures, trusts and leases, etc.

The process of drafting operates in two planes: the conceptual and the verbal. Besides seeking the right words, the draftsman seeks the right concepts. Drafting, therefore, is first thinking and second composing.

A proper understanding of drafting cannot be realised unless the nexus between the law, the facts, and the language is fully understood and accepted. Drafting of legal documents requires, as a pre-requisite, the skills of a draftsman, the knowledge of facts and law so as to put facts in a systematised sequence to give a correct presentation of legal status, privileges, rights and duties of the parties, and obligations arising out of mutual understanding or prevalent customs or usages or social norms or business conventions, as the case may be, terms and conditions, breaches and remedies etc. in a self-contained and self-explanatory form without any patent or latent ambiguity or doubtful connotation. To collect, consolidate and co-ordinate the above facts in the form of a document, it requires serious thinking followed by prompt action to reduce the available information into writing with a legal meaning, open for judicial interpretation to derive the same sense and intentions of the parties with which and for which it has been prepared, adopted and signed.

Question: Good Drafting is required only for the purpose of preparing agreements and contracts.

Options: True/False

Answer: False, drafting is required in varied fields such as documentations for business, creating legal documents including agreements.

CONVEYANCING

Technically speaking, conveyancing is the art of drafting of deeds and documents whereby land or interest in land i.e. immovable property, is transferred by one person to another; but the drafting of commercial and other documents is also commonly understood to be included in the expression.

Mitra's legal and commercial dictionary defines "conveyance" as the action of conveyancing, a means or way of conveyancing, an instrument by which title to property is transferred, a means of transport, vehicle. In England, the word "conveyance" has been defined differently in different statutes. Section 205 of the Law of Property Act, 1925 of England provides that the "conveyance includes mortgage, charge, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of any interest therein by any instrument except a will. "Conveyance", as defined in clause 10 of Section 2 of the Indian Stamp Act, 1899, "includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided by Schedule I of this Act." Section 5 of the Transfer of Property Act, 1882 (Indian) makes use of the word "conveyance" in the wider sense as referred to above.

Thus, conveyance is an act of conveyancing or transferring any property whether movable or immovable from one person to another permitted by customs, conventions and law within the legal structure of the country. As such, deed of transfer is a conveyance deed which could be for movable or immovable property and according to the Transfer of Property Act, 1882, transfer may be by sale, by lease, by giving gift, by exchange, by will or bequeathment. But acquisition of property by inheritance does not amount to transfer under the strict sense of legal meaning.

In India the forms of conveyancing are based on the present English Forms. It is to be taken note that no legislation in India has ever been passed on the law of conveyancing.

Question: What is conveyed in conveyancing?

Answer: Generally, Rights and interest is transferred by one person to another in the document prepared for conveyancing.

DRAFTING AND CONVEYANCING: DISTINGUISHED

Both the terms "drafting and conveyancing" provide the same meaning although these terms are not interchangeable. Conveyancing gives more stress on documentation much concerned with the transfer of property from one person to another, whereas "drafting" gives a general meaning synonymous to preparation of drafting of documents. Document may include documents relating to transfer of property as well as other "documents" in a sense as per definition given in Section 3(18) of the General Clauses Act, 1897 which include any matter written, expressed or described upon any substance by means of letters, figures or mark, which is intended to be used for the purpose of recording that matter. For example, for a banker the document would mean loan agreement, deed of mortgage, charge, pledge, guarantee, etc. For a businessman, 'document of title to goods' would mean something as defined under Section 2(4) of the Sale of Goods Act, 1930 so as to include "Bill of lading, dock-warrant, warehouse-keepers' certificate, wharfingers' certificate, railway receipt multi-model transport document warrant or order for the delivery of goods and any other document used in ordinary course of business as proof of the possession or control of goods or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented." As per Section 2(36) of the Companies Act, 2013 the term "document" includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form. Thus, drafting may cover all types of documents in business usages.

In India, the commercial houses, banks and financial institutions have been using the term "documentation" in substitution of the words "drafting and conveyancing". Documentation refers to the activity which symbolises preparation of documents including finalisation and execution thereof.

DISTINCTION BETWEEN CONVEYANCE AND CONTRACT

Having understood the meaning of conveyance, it becomes necessary to understand the distinction between conveyance and contract before discussing basic requirements of conveyance or deed of transfer. Apparently, conveyance is not a contract. The distinction between conveyance and contract is quite clear. Contract remains to be performed and its specific performance may be sought but conveyance passes on the title to property to another person. Conveyance does not create any right of any action but at the same time it alters the ownership of existing right. There may be cases where the transaction may pertain both contract as well as conveyance. For example, lease, whereby obligation is created while possession of the property is transferred by lessor to lessee. More so, contracts are governed by provisions of the Indian Contract Act, 1872 whereas the cases of transfer of immovable property are governed by the Transfer of Property Act, 1882 in India. A mere contract to mortgage or sale would not amount to actual transfer of interest in the property but the deed of mortgage or sale would operate as conveyance of such interest. In other words, once the document transferring immovable property has been completed and registered as required by law, the transaction becomes conveyance. Any such transaction would be governed under the provisions of the Transfer of Property Act, 1882.

Question: Does drafting and conveyancing both intends to create documents?

Answer: In both drafting and conveyancing documents are purported to be created. However, the purpose of creation of document is different.

GENERAL PRINCIPLES OF DRAFTING ALL SORTS OF DEEDS AND CONVEYANCING

As discussed above, drafting of legal documents is a skilled job. A draftsman, in the first instance, must ascertain the names, description and addresses of the parties to the instrument. He must obtain particulars about all necessary matters which are required to form part of the instrument. He must also note down with provision any particular directions or stipulations which are to be kept in view and to be incorporated in the instrument. The

duty of a draftsman is to express the intention of the parties clearly and concisely in technical language. With this end in view, he should first form a clear idea of what these intentions are.

When the draftsman has digested the facts, he should next consider as to whether those intentions can be given effect to without offending against any provision of law. He must, therefore, read the introductory note, or, if time permits, the literature on the subject of the instrument. A corporate executive, therefore, must note down the most important requirements of law which must be fulfilled while drafting complete instrument on the subject. Validity of document in the eye of law cannot be ignored and at the same time the facts which should be disclosed in the document cannot be suppressed. Nothing is to be omitted or admitted at random. Therefore, knowledge of law of the land in general and knowledge of the special enactments applicable in a particular situation is an essential requirement for a draftsman to ensure that the provisions of the applicable law are not violated or avoided. For example, in cases where a deed to be executed by a limited company, it is necessary to go into the question as to whether the company has got power or authority under its memorandum to enter into the transaction. A company can do only that much which it is authorised by its memorandum. Further, a company being a legal entity, must necessarily act through its authorised agents. A deed, therefore, should be executed by a person duly authorised by the directors by their resolution or by their power of attorney.

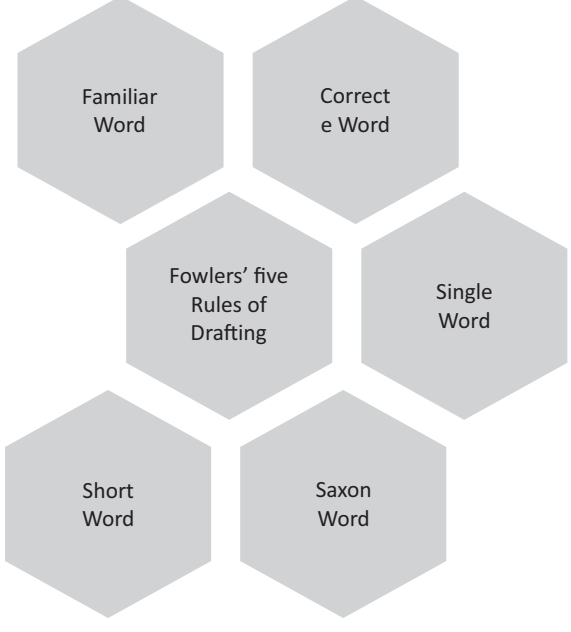
It is also to be ensured that the format of documents adopted adheres to the customs and conventions in vogue in the business community or in the ordinary course of legal transactions. For any change in the form of such document, use of juridical and technical language should invariably be followed. The statements of negatives should generally be avoided. The order of the draft should be strictly logical. Legal language should be, to the utmost possible extent, precise and accurate. The draft must be readily intelligible to laymen. All the time the draftsman must keep his eye on the rules of legal interpretation and the case-law on the meaning of particular words and choose his phraseology to fit them. [*Piesse and Giechrist Smith book on The Elements of Drafting, 2nd Ed. pp. 7-12*].

Document should be supported by the schedules, enclosures or annexures in case any reference to such material has been made in that.

Rules to be followed while drafting of documents

In addition to above facts, following rules should also be followed while drafting the documents:

(i) Fowlers' five rules of drafting



According to Fowler, "anyone who wishes to become a good writer should endeavour, before he allows himself to be tempted by more showy qualities, to be direct, simple, brief, vigorous and lucid."

The principle referred to above may be translated into general in the domain of vocabulary as follows:

(a) Prefer the familiar word to the far fetched (familiar words are readily understood).

(b) Prefer the concrete word to the abstract (concrete words make meaning more clear and precise).

(c) Prefer the single word to the circumlocution (single word gives direct meaning avoiding adverb and adjective).

(d) Prefer the short word to the long (short word is easily grasped).

(e) Prefer the Saxon word to the Roman (use of Roman words may create complications to convey proper sense to an ordinary person to understand).

Further, Active voice may be used over passive voice.

(ii) Sketch or scheme of the draft document

It is always advisable to sketch or outline the contents of a document before taking up its drafting. This rule is suggested by Mr. Davidson, a celebrated authority on conveyancing in his book on Conveyancing, 4th Ed., Vol. I, p. 20, where the learned author says as follows:

"The first rule on which a draftsman must act is this-that before his draft is commenced, the whole design of it should be conceived, for if he proceeds without any settled design, his draft will be confused and incoherent, many things will be done which ought to be done and many left undone which ought to be done. He will be puzzled at every step of his progress in determining what ought to be inserted and what is to guide him in his decision because he does not know what his own object is."

The importance of the above rule cannot be overemphasized and it should be observed by every draftsman.

(iii) Skelton draft and its self-appraisal

After the general scheme of the draft has been conceived, the draftsman should note down briefly the matters or points which he intends to incorporate in his intended draft. In other words, he should frame what is called a "skeleton draft" which should be filled in or elaborated as he proceeds with his work. Once the draft of the document is ready, the draftsman should appraise it with reference to the available facts, the law applicable in the case, logical presentation of the facts, use of simple language intelligible to layman, avoidance of repetition and conceivable mis-interpretation, elimination of ambiguity of facts, and adherence to the use of Fowlers' Rules of drafting so as to satisfy himself about its contents.

(iv) Special attention to be given to certain documents

Certain documents require extra care before taking up the drafting. For example, it must be ensured that contractual obligations are not contrary to the law in the document, where the facts so warrant to ensure. Further, in all the documents where transfer of immovable property is involved through any of the prescribed legal modes, it is necessary to ensure the perfect title of the transferor to such property proposed to be transferred by causing investigation and searches in relation to such title done through competent lawyers or solicitors in the concerned offices of Registrar of Assurance, local authorities, Registrar of Companies (in the case of the vendor being a corporate unit) etc. In addition, the requisite permissions required under different enactments viz., Income-tax Act, Land Ceiling Laws, Companies Act, 2013, Lessor's consent in the case of leasehold land, or any compliance desired under other Central or State Laws or personal laws etc. should be planned to be obtained in advance and recited in the documents wherever thought necessary.

(v) Expert's opinion

If the draft document has been prepared for the first time to be used again and again with suitable modification depending upon the requirements of each case it should be got vetted by the experts to ensure its suitability and legal fitness if the corporate executive feels it so necessary.

To sum up, the draftsman should bear in mind the following principles of drafting:

(i) As far as possible the documents should be self-explanatory.

(ii) The draftsman should begin by satisfying himself that he appreciates what he means to say in the document.

(iii) The well drafted document should be clear to any person who has competent knowledge of the subject matter.

(iv) The draft must be readily intelligible to a layman.

(v) The document may not be perfect because it says too much or too little or is ambiguous or contains one or more of the facts because it has to be applied in circumstances which the draftsman never contemplated. This should be avoided in the drafting of the documents.

(vi) Nothing is to be omitted or admitted at random on the document that is to say negative statements should generally be avoided.

(vii) Use of juridical language should be made.

(viii) The text of the documents should be divided into paragraphs containing the relevant facts. Each paragraph should be self-explanatory and should be properly marked by use of Nos. of letters for clause, sub- clause and paragraphs.

(ix) Schedule should be provided in the documents. Schedule is a useful part of the document and should contain the relevant information which forms part of the document. Whether any portion of the document should be put into the schedule(s) will depend upon the circumstances. The schedule is important in the document as it explains useful matters which forms part of the document and should not be ignored and should not be inserted in the body of the document. The main function of the schedule is to provide supplementary test to the document with clarity and convenience.

(x) The active voice is preferable to the passive voice, unless the passive voice in a particular connection makes the meaning more clear. [See Sir Rohland Burrow's Book on Interpretation of Documents, pp. 119 to 121].

Some Do's

1. Reduce the group of words to single word;
2. Use simple verb for a group of words;
3. Avoid round-about construction;
4. Avoid unnecessary repetition;
5. Write shorter sentences;
6. Express the ideas in fewer words;
7. Prefer the active to the passive voice sentences;
8. Choose the right word;

9. Know exactly the meaning of the words and sentences you are writing; and
10. Put yourself in the place of reader, read the document and satisfy yourself about the content, interpretation and the sense it carries.

Some Don'ts

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. When the clause in the document is numbered it is convenient to refer to any one clause by using single number for it. For example, "in clause 2 above" and so on;
3. Negative in successive phrases would be very carefully employed;
4. Draftsman should avoid the use of words "less than" or "more than", instead, he must use "not exceeding";
5. If the draftsman has provided for each of the two positions to happen without each other and also happen without, "either" will not be sufficient; he should write "either or both" or express the meaning of the two in other clauses.

While writing and typing, the following mistakes generally occur which should be avoided:

1. "And" and "or";
2. "Any" and "my";
3. "Know" and "now";
4. "Appointed" and "Applied";
5. "Present" and "Past" tense.

BASIC COMPONENTS OF DEEDS

Having understood, the meaning of drafting and conveyancing it is necessary to familiarise with various terms such as deeds, documents, indentures, deed poll etc. These terms are frequently used in legal parlance in connection with drafting and conveyancing. Out of these, the meaning of deeds and documents, have a common link, and used in many a time interchangeably, but it is very essential to draw a line in between.

Deed

In legal sense, a deed is a solemn document. Deed is the term normally used to describe all the instruments by which two or more persons agree to effect any right or liability. To take for example Gift Deed, Sale Deed, Deed of Partition, Partnership Deed, Deed of Family Settlement, Lease Deed, Mortgage Deed and so on. Even a power of Attorney has been held in old English cases to be a deed. A bond is also included in the wide campass of the term deed.

For such an instrument covering so wide field it is difficult to coin a suitable definition. A deed may be defined as a formal writing of a non-testamentary character which purports or operates to create, declare, confirm, assign, limit or extinguish some right, title, or interest. Many authorities have tried to define the deed. Some definitions are very restricted in meaning while some are too extensive definitions. The most suitable and comprehensive definition has been given by *Norten on 'Deeds'* as follows:

A deed is a writing –

(a) on paper, vallum or parchment,

(b) sealed, and

(c) delivered, whereby an interest, right or property passes, or an obligation binding on some persons is created or which is in affirmance of some act whereby an interest, right or property has been passed.

In *Halsbury's Laws of England*, a deed has been defined as "an instrument written on parchment or paper expressing the intention or consent of some person or corporation named therein to make (otherwise than by way of testamentary disposition, confirm or concur in some assurance of some interest in property or of some legal or equitable right, title or claim, or to undertake or enter into some obligation, duty or agreement enforceable at law or in equity or to do, or concur in some other act affecting the legal relations or position of a party to the instrument or of some other person or corporation, sealed with the seal of the party, so expressing such intention or consent and delivered as that party's act and deed to the person or corporation intended to be affected thereby.

A deed is a present grant rather than a mere promise to be performed in the future. Deeds are in writing, signed, sealed and delivered.

Deeds are instruments, but all instruments are not deeds.

Document

"Document" as defined in Section 3(18) of General Clauses Act, 1897 means any matter expressed or described upon any substance by means of letters, figures or marks, or by the more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustration:

- A writing is a document.
- Words printed, lithographed or photographed are documents. A map or plan is a document.
- An inscription on a metal plate or stone is a document. A caricature is a document. Thus, document is a paper or other material thing affording information, proof or evidence of anything.
- All deeds are documents. But it is not always that all documents are deeds. A document under seal may not be a deed if it remains undelivered, e.g. a will, an award, a certificate of admission to a learned society, a certificate of shares or stocks and share warrant to bearer, an agreement signed by directors and sealed with the company's seal, license to use a patented article, or letters of co-ordination.
- Documentary evidence as such is an important piece of evidence of which the Courts and Tribunals take judicial cognizance.

Various Kinds of Deeds

Particular statutory definitions cover different sets of deeds. In the re-statement of American Law in Corpus

Juris Secundum, the following kinds of deeds have been explained:

- A good deed is one which conveys a good title, not one which is good merely in form.
- A good and sufficient deed is marketable deed; one that will pass a good title to the land it purports to convey.
- An inclusive deed is one which contains within the designated boundaries lands which are expected from the operation of the deed.

- A latent deed is a deed kept for twenty years or more in man's escritoire or strong box. A lawful deed is a deed conveying a good or lawful title.
- A pretended deed is a deed apparently or *prima facie* valid.
- A voluntary deed is one given without any "valuable consideration", as that term is defined by law, one founded merely on a "good", as distinguished from a "valuable", consideration on motives of generosity and affection, rather than a benefit received by the donor, or, detriment, trouble or prejudice to the grantee.
- A warranty deed is a deed containing a covenant of warranty.
- A special warranty deed which is in terms a general warranty deed, but warrants title only against those claiming by, through, or under the grantor, conveys the described land itself, and the limited warranty does not, of itself, carry notice of title defects.

Some other terms connected with deeds are of importance of general legal knowledge. These terms are mentioned herein below:

(i) Deed Pool

A deed between two or more parties where as many copies are made as there are parties, so that each may be in a possession of a copy. This arrangement is known as deed pool.

(ii) Deed Poll

A deed made and executed by a single party e.g. power of attorney, is called a deed poll, because in olden times, it was polled or cut level at the top. It had a polled or clean cut edge. It is generally used for the purpose of granting powers of attorney and for exercising powers of appointment or setting out an arbitrator's award. It is drawn in first person usually.

(iii) (a) Indenture

Indenture are those deeds in which there are two or more parties. It was written in duplicate upon one piece of parchment and two parts were severed so as to leave an indented or vary edge, forging being then, rendered very difficult. Indentures were so called as at one time they are indented or cut with uneven edge at the top. In olden times, the practice was to make as many copies or parts as they were called, of the instruments as they were parties to it, which parts taken together formed the deed and to engross all of them of the same skin of parchment. This practice of indenting of deeds is no more used in England and at present indenture means a deed between two or more persons / parties importing the meaning of executed contract of conveyancing.

(b) Cyrographum

This was another type of indenture in olden times. The word "Cyrographum" was written between two or more copies of the document and the parchment was cut in a jugged line through this word. The idea was that the difficulty of so cutting another piece of parchment that it would fit exactly into this cutting and writing constituted a safeguard against the fraudulent substitution of a different writing for one of the parts of the original. This practice of indenting deeds also has ceased long ago and indentures are really now obsolete but the practice of calling a deed executed by more than one party as an "indenture" still continues in England.

(iv) Deed Escrow

A deed signed by one party will be delivered to another as an "escrow" for it is not a perfect deed. It is only a mere writing (Scriptum) unless signed by all the parties and dated when the last party signs it. The

deed operates from the date it is last signed. Escrow means a simple writing not to become the deed of the expressed to be bound thereby, until some condition should have been performed. (*Halsbury Laws of England*, 3rd Edn., Vol. II, p. 348).

Question: Which of the given sections defines the term "Document"?

Options:

(A) Section 3(18) of General Clauses Act, 1897

(B) Section 2(19) of Indian Contract Act, 1872

(C) Section 3(16) of Companies Act, 2013

(D) 2(99) of Indian Penal Code, 1860

Answer: (A)

Broad Outlines of Deeds

As explained what is a deed, it is now appropriate to know more about drafting of Deed as a document. Out of various types of deeds, Deeds of Transfer of Property is the most common one. Deeds of Transfer include Deed of Sale, Deed of Mortgage, Deed of Lease, Deed of Gift etc. These deeds effect a transfer of property or interest.

A deed is divided into different paragraphs. Under each part relevant and related information is put in paragraph in simple and intelligible language as explained in the earlier chapter. If a particular part is not applicable in a particular case that part is omitted from the document.

The usual parts or components or clauses of deeds in general are mentioned as follows:

1. ***Description of the Deed Title***

   A deed usually begins with the name of the deed and as such the deed should contain the correct title such as "This Deed of Sale", "This Deed of Mortgage", "This Deed of Lease", "This Deed of Conveyance", "This Deed of Exchange", "This Deed of Gift" etc. These words should be written in capital letters in the beginning of document. Where it is difficult to locate the complete transaction out of number of transactions covered under the deed, it may not be possible to give single name to the deed like 'Deed of Gift' and as such it would be better to describe the deed as "This Deed" written in capital letters like "THIS DEED".

   This part hints the nature of the deed and gives a signal to the reader about the contents of the Deed.

   Sometimes a question may arise whether a particular instrument or document is a deed of conveyance of transfer. To ascertain the nature of the document it becomes necessary to read the language of the document and locate the intention of the parties which is the sole determining factor. Besides the intention of the parties, consideration paid for conveyance is another important aspect in assessing the document as a conveyance. Consideration may be paid initially or may be agreed to be paid in future also. However, in those cases where any condition is stipulated as precedent to the title being passed on to the purchaser then the document does not become conveyance unless the condition is performed. The document may be couched in ambiguous terms then the interpretation of the wordings would throw light on the intention of the parties so as to treat a particular document as conveyance or contract or otherwise. Therefore, naming a deed does not control or change the basic nature and purpose of the deed.

2. ***Place and Date of Execution of a Deed***

   The date on which the document is executed comes immediately after the description of the deed. For

example, "This Deed of Mortgage made on the first day of January, 2023". It is the date of execution which is material in a document for the purpose of application of law of limitation, maturity of period, registration of the document and passing on the title to the property as described in the document. Thus, the "date" of the document is important.

Date of execution of document is inscribed on the deed. The date is not strictly speaking an essential part of the deed. A deed is perfectly valid if it is undated or the date given is an impossible one, e.g. 30th day of February.

If no date is given oral evidence will always be admissible to prove the date of execution only it leaves necessary to prove it. However, it is of great importance to know the date from which a particular deed operates. In India there is a short period of 4 months (Section 23 of Registration Act) for its registration from the date of execution within which a deed must be presented for registration. The date is important for application of law of limitation also. In view of the extreme importance of date of execution of deed it should be regarded as an essential requirement. The date of deed is the date on which parties sign or executing it. If several parties to a deed sign the deed on different dates, in such cases, the practice is to regard the last of such dates as the date of deed.

In order to avoid mistake and risk of forgery, the date be written in words and in figures.

The place determines the territorial and legal jurisdiction of a document as to its registration and for claiming legal remedies for breaches committed by either parties to the document and also for stamping the document, as the stamp duty payable on document differs from State to State. An Illustration of this part follows:

"This Deed of Lease made at New Delhi on the Twenty Second day of February Two Thousand and Twenty Three (22.02.2023)" etc.

3. Description of Parties

The basic rule is that all the proper parties to the deed including inter-parties should be properly described in the document because inter-parties are pleaded as they take benefit under the same instrument. While describing the parties, the transferor should be mentioned first and then the transferee. Where there is a confirming party, the same may be placed next to the transferor. In the order of parties, transferee comes in the last.

Full description of the parties should be given to prevent difficulty in identification. Description must be given in the following order:

Name comes first, then the surname and thereafter the address followed by other description such as s/o, w/o, d/o, etc. It is customary to mention in India caste and occupation of the parties before their residential address.

However, presently mention of caste is not considered necessary. But to identify the parties if required under the circumstances, it may be necessary to mention the profession or occupation of a person/ party to the deed. For example, Company Secretary Medical Practitioner, Chartered Accountant, or Advocate or likewise.

In the case of juridical persons like companies or registered societies it is necessary that after their names their registered office and the particular Act under which the company or society was incorporated should be mentioned. For example, "XYZ Co. Limited, the company registered under the Companies Act, 2013 and having its registered office at 1, Parliament Street, New Delhi".

In cases where the parties may be idol then name of the idol and as represented by its "Poojari" or "Sewadar", or so, should be mentioned. For example, "the idol of Shri Radha Mohan Ji installed in

Hanuman Temple in Meerut being 10, Jawahar Chowk, Lale Ka Bazar, Meerut City acting through its Sewadar Pt. Krishan Murari Lal Goswami of Mathura".

In the case of persons under disability like minor, lunatic, etc. who cannot enter into a contract except through a guardian or a ward, in certain cases through guardian with the permission of the court where necessary, full particulars of the same should be given with the authority from whom a guardian draws power. For example, "Mohan, a minor, acting through Rajender as guardian appointed by Civil Judge Class I, Delhi by order on _____ passed under section_____ of _____ _____ Act or "Mohan, Minor acting through his father and natural guardian Rajender etc." In this way, particulars for the sake of identification of the party should be given. Similarly, in the case of partners, trustees, co-partners, etc. full details of the parties should be given for the sake of identification.

Reference label of parties are put in Parenthesis against the name and description of each party to avoid repetition of their full names and addresses at subsequent places. The parties are then prepared to by their respective lables e.g. "lesser" and "lessee" in a lease deed.

The form is illustrated as under:

(i) Individual

"This lease deed is made at New Delhi on the Monday, _____ day of February 2023.

between

Shri Vinod s/o _____ resident of _____ _____ (Hereinafter called 'lessor' which term shall mean and unless, it be repugnant to the context or meaning thereof mean and include the heirs, legal representative or assigns) of the one part;

and

Shri Rohil s/o _____ resident of _____ _____ (Hereinafter called 'lessee' which term shall unless it be repugnant to the context or meaning thereof mean and include the heirs, legal representative or assigns) of the other part."

(ii) Companies and organisations

"This lease deed is made at New Delhi on the Monday, _____ day of February 2023.

between

XYZ Retainers Limited, a Public Limited Company incorporated under Companies Act, 2013 having its registered office at _____ represented through _____, Company Secretary, (Which term or expression unless repugnant to the context or meaning thereof shall be deemed to include its successors and permitted assigns) hereinafter referred to as the "XYZ Co.", of the "FIRST PART".

and

MNO LLP, a Limited Liability Partnership formed under Limited Liability Partnership Act, 2008 having its office at _____ represented through _____, Managing Partner, (Which term or expression unless repugnant to the context or meaning thereof shall be deemed to include its successors and permitted assigns) hereinafter referred to as the "MNO LLP.", of the "SECOND PART".

4. Recitals

Recitals contain the short story of the property up to its vesting into its transferors. Care should be taken that recitals are short and intelligible. Recitals may be of two types. One, narrative recitals which relates to the past history of the property transferred and sets out the facts and instrument necessary to show the title and relation to the party to the subject matter of the deed as to how the property was originally acquired and held and in what manner it has developed upon the grantor or transferor. The extent of interest and the title of the person should be recited. It should be written in chronological order i.e. in order of occurrence. This forms part of narrative recitals. This is followed by introductory recitals, which explain the motive or intention behind execution of deed.

Introductory recitals are placed after narrative recitals. The basic objective of doing so, is to put the events relating to change of hand in the property.

Recitals should be inserted with great caution because they precede the operative part and as a matter of fact contain the explanation to the operative part of the deed. If the same is ambiguous recitals operate as estoppel. Recital offers good evidence of facts recited therein. Recitals are not generally taken into evidence but are open for interpretation for the courts. If the operative part of the deed is ambiguous anything contained in the recital will help in its interpretation or meaning. In the same sense, it is necessary that where recitals contain chronological events that must be narrated in chronological order.

Recitals carry evidentiary importance in the deed. It is an evidence against the parties to the instrument and those claiming under and it may operate as estoppel [*Ram Charan v. Girija Nandini, 3 SCR 841 (1965)*].

Recital generally begins with the words "Whereas" and when there are several recitals instead of repeating the words "Whereas" before each and every one of them, it is better to divide the recitals into numbered paragraphs for example, "Whereas" –

1.
2.
3.

etc.

5. Testatum

This is the "witnessing" clause which refers to the introductory recitals of the agreement, if any, and also states the consideration, if any, and recites acknowledgement of its receipt. The witnessing clause usually begins with the words "NOW THIS DEED WITNESSES". Where there are more than one observations to be put in the clause the words, "NOW THIS DEED WITNESSES AS UNDER" are put in the beginning and then paragraphs are numbered.

6. Consideration

As stated above, consideration is very important in a document and must be expressed. Mention of consideration is necessary otherwise also, for example, for ascertaining stamp duty payable on the deed under the Indian Stamp Act, 1899. There is a stipulation of penalty for non-payment of stamps, but non-mention of consideration does not invalidate the document.

In the absence of mention of consideration the evidentiary value of document is reduced that the document may not be adequately stamped and would attract penalty under the Stamp Act.

7. Receipt

Closely connected with consideration is the acknowledgement of the consideration amount by the transferor, who is supposed to acknowledge the receipt of the amount. An illustration is as follows:

"Now this Deed witnesses that in pursuance of the aforesaid agreement and in consideration of sum

of ₹ 100,000/- (Rupees One Lakh Only) paid by the transferee to the transferor before the execution thereof (receipt of which the transferee does hereby acknowledge)".

8. Operative Clause

This is followed by the real operative words which vary according to the nature of the property and transaction involved therein. The words used in operative parts will differ from transaction to transaction.

For example, in the case of mortgage the usual words to be used are "Transfer by way of simple mortgage" (usual mortgage) etc. The exact interest transferred is indicative after parcels by expressing the intent or by adding *habendum*. (The parcel is technical description of property transferred and it follows the operative words).

9. Description of Property

Registration laws in India require that full description of the property be given in the document which is presented for registration under Registration Act. Full description of the property is advantageous to the extent that it becomes easier to locate the property in the Government records and verify if it is free from encumbrances. If the description of the property is short, it shall be included in the body of the document itself and if it is lengthy a schedule could be appended to the deed. It usually contains area, measurements of sides, location, permitted use, survey number etc. of the property.

10. Parcels Clause

This is a technical expression meaning methodical description of the property. It is thereby a brief description of the property which is the subject matter of the deed. It is necessary that in case of non-testamentary document containing a map or plan of the property shall not be accepted unless it is accompanied by the True Copy. Usually the Parcel Clause starts with the words "All Those _____ and further or description covers as per the type of property subjected to transfer under the deed. This clause includes words such as: Messuages, Tenements, Hereditaments, Land, Water etc. But use of these now has been rendered unnecessary in view of Section 8 of Transfer of Property Act, 1882 given herein below.

"*Section 8. Operation of transfer — Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof."*

This Section has cut down the length of the deeds and do away with description of minute details of the incidents of the property intended to be conveyed.

Examples

And, where the property is machinery attached to the earth, the movable parts thereof;

And, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;

And, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

And, where the property is money or other property yielding income, the interest or income thereof accruing *after the transfer takes effect."*

11. Exceptions and Reservations Clause

It refers to admission of certain rights to be enjoyed by the transferor over the property to be agreed to by the transferee. All exceptions and reservations out of the property transferred should follow the parcels and operative words. It is the contractual right of the parties to the contract or to the document to provide exceptions and reservations which should not be uncertain, repugnant or contrary to the spirit of law applicable to a particular document or circumstances. For example, Section 8 of the Transfer of Property Act, 1882 provides for transfer of all the interest to the transferee in the property and any condition opposing the provisions of law will be void. Further, Section 10 of the said Act provides that any condition or limitation absolutely restraining the transferee of property in disposing of his interest in the property is void. So, nothing against the spirit of law can be provided in the document.

The clause generally is signified by the use of words "subject to" in deeds, where it is mentioned, it is advisable that both the parties sign, to denote specific understanding and consenting to this aspect.

12. Premises and Habendum

Habendum is a part of deed which states the interest, the purchaser is to take in the property. The habendum clause can define how long the interest granted will extend. *Habendum* clause starts with the words "TO HAVE AND TO HOLD". Formerly in England if there was a gratuitous transfer, the transferee was not deemed to be the owner of the beneficial estate in the property, the equitable estate wherein remained with the transferor as a resulting trust for him. It was therefore, necessary to indicate in the deed that it was being transferred for the use of the transferee if it was intended to confer an equitable estate in him. It was for that reason that the *habendum* commenced with the words: "to have to hold to the use of". Now it is not necessary to express it so. In the modern deeds, however, the expression "to have and" are omitted. The *habendum* limits the estate mentioned in the parcels. The transferee is mentioned again in the *habendum* for whose use the estate is conveyed. Whatever precedes the *habendum* is called the premises. The parcels or the description of the property usually again included in the premises. If the property conveyed in encumbered, reference thereto should be made in the *habendum*. If the parties to transfer enter into covenants, they should be entered after the *habendum*.

In India such phrases as "to have and to hold" or such an expression as "to the use of the purchaser" can very well be avoided as in cases except those of voluntary transfers such an expression is superfluous.

13. Reddendum

It is peculiar to a deed of lease. Here is mentioned the mode and time fixed for payment of rent. It begins with the word "rendering or paying" with reference to the rent. Thus it is a reserving clause in a deed, especially the clause in a lease that specifies the amount of the rent and when it should be paid.

14. Covenants and Undertakings

The term "covenant" has been defined as an agreement under seal, whereby parties stipulates for the truth of certain facts. In *Whasten's Law Lexicon*, a covenant has been explained as an agreement or consideration or promise by the parties, by deed in writing, signed, sealed and delivered, by which either of the parties, pledged himself to the other than something is either done or shall be done for stipulating the truth of certain facts. Covenant clause includes undertakings also. Usually, covenant is stated first. In some instances the covenants and undertakings are mixed, i.e. can not be seperated in that case, they are joint together, words put for this as "The Parties aforesaid hereto hereby mutually agree with each other as follows:" Such covenants may be expressed or implied.

15. Testimonium Clause

Testimonium is the clause in the last part of the deed. *Testimonium* signifies that the parties to the

document have signed the deed. This clause marks the close of the deed and is an essential part of the deed.

The usual form of *testimonium* clause is as under:

"In witness whereof, parties hereto have hereunto set their respective hands and seals the date and year first above written".

In India, seals are not commonly used and in those cases *testimonium* clause reads as under:

"IN WITNESS WHEREOF the parties hereto have signed this DEED on the date above written".

Thus *testimonium* clause can be worded according to the status and delegation of executants. Moreover, this clause in the deed presupposes that the proper parties are signing the document.

16. Signature and Attestation Clause

After *Testimonium* clause, signatures of the executants of the documents and their witnesses attesting their signatures follow. If the executant is not competent enough to contract or is juristic person, deed must be signed by the person competent to contract on its behalf. For example, if the deed is executed by the company or co- operative society then the person authorised in this behalf by and under the articles of association or rules and regulations or by resolution as the case may be should sign the document and seal of the company/society (if applicable) should be so affixed, thereto by mentioning the same.

In India, the Deed of Transfer is not required to be signed by the transferee even though the transferee is mentioned as party in the document. All conditions and covenants are binding upon him without his executing the conveyance, if he consents to it by entering into the lease granted under the conveyance. However, in case the deed contains any special covenant by the transferee or any reservation is made by the transferee then it is always proper to have the deed signed by the transferee also.

Attestation is necessary in the case of some transfers, for example, mortgage, gift, sale, and revocation of will. In other cases, though it is not necessary, it is always safe to have the signatures of the executant attested. Attestation should be done by at least two witnesses who should have seen the executant signing the deed or should have received from the executant personal acknowledgement to his signatures. It is not necessary that both the witnesses should have been present at the same time. There is no particular form of attestation but it should appear clearly that witnesses intended to sign is attesting the witnesses. General practice followed in India is that the deed is signed at the end of the document on the right side and attesting witnesses may sign on the left side. If both the parties sign in the same line then the transferor may sign on the right and the transferee on the left and witnesses may sign below the signatures.

It is essential that the attesting witness should have put his signature, *amino attestandi*, intending for the purpose of attesting that he has seen the executant sign or has received from him, a personal acknowledgement of his signature.

17. Supplemental Deeds

Supplemental deed is a document which is entered into between the parties on the same subject on which there is a prior document existing and operative for adding new facts to the document on which the parties to the document have agreed which otherwise cannot be done by way of endorsement. Thus, supplemental deed is executed to give effect to the new facts in the deed. When a deed or document is required to be supplemented by new facts in pursuance of or in relation to a prior deed this can be affected by either endorsement on the prior deed when short writing would be sufficient, or by executing a separate deed described as supplemental deed. For example, if lessee transfers his

right in the lease to another person such transfer may be done by way of endorsement. On the other hand, if the terms of the lease document are to be altered then it becomes necessary to give effect to such alteration through a supplementary deed. In case the alteration to be made in the terms and conditions and is of minor nature and can be expressed by a short writing execution of supplementary deed may not be considered necessary as this can be done by endorsement only. Thus, this is a matter of convenience which of the two alternatives whether endorsement or a supplementary deed is to be used by the parties to a particular document.

For giving effect to the supplemental deed the form of the deed of agreement will be more or less the same as endorsement as explained later in this lesson with the difference that with the other names of the parties the words, "Supplemental (intended to read as annexed) to a deed of _____ dated _____ made between the parties thereto (or between _____) hereinafter called the principal deed", shall be added. In case the particulars of a principal deed are somewhat long it is more convenient to refer to the principal deed in the first recital and to say that this deed (the one under preparation) is supplemental to that (the former) deed; for example, "Whereas this deed is supplemental to a deed of sale made, etc. hereinafter called the 'principal deed'.

There may be situations when the supplemental deed is supplemental to several deeds. In such a case, each prior deed should be mentioned clearly by way of recitals to make the deed with reference to the existing deed intelligible and free from ambiguity.

All supplemental deed should be stamped according to the nature of the transaction which they evidence. In case it is an agreement, it must be stamped as an agreement.

18. Annexures or Schedules

A deed remains incomplete unless particulars as required under registration law about the land or property are given in the Schedule to be appended to the deed. It supplements information given in the parcels. A Site Plan or Map Plan showing exact location with revenue no. Mutation No., Municipal No., Survey No., Street No., Ward Sector/Village/Panchayat/Taluka/District /Plot No., etc. so that the demised property could be traced easily.

IMPORTANT TERMS AND CONDITIONS IN THE AGREEMENT

An agreement which is enforceable at law is called a contract. Generally, when a contract is reduced to writing, the document itself is called an agreement. Accordingly, there cannot be an agreement unless there are two or more parties that agree to perform certain acts or refrain from doing something. A company has to execute numerous commercial agreements and other contracts during the course of its business. But how many company executives possess the simple, easily cultivable, yet rare acumen of concluding their contracts precisely, comprehensively and unambiguously? It is very much desirable and useful to keep in view certain important points in regard to the drafting of contracts, particularly commercial and international trade contracts.

There is no particular form prescribed for the drawing up of trade contracts, except that they must fulfil all the essential requirements of a valid contract under the law applicable to the contract. If the law requires any particular category of contracts to be in writing or to be registered, these formalities must be complied with. A contract may be hand written, type written or printed. It may be as brief or as detailed as the circumstances of a particular trade transaction demand.

However, it is extremely desirable and essential that precise and comprehensive terms and conditions relating to the subject matter and performance of the contract should be incorporated by companies in both domestic and international contracts. In sale-purchase contracts well defined provisions relating to the quality and quantity of goods, the shipment period, price (C.I.F./C&F/F.O.B., etc.), delivery, port of shipment and of destination packing and marketing, mode of payment, insurance, brokerage/commission etc. should also be stipulated. In international contracts additional provisions relating to the applicable law, licences and permits, taxes, duties

and charges, exchange rate, etc. also become relevant and important. Some of the important matters that deserve to be provided for in the agreements are discussed briefly hereunder:

1. ***Description of Parties to the Contract:*** Parties to the contract should properly be defined by mentioning their names, status and address. In case of an individual, father's name; and in case of a company, the place where registered office is situated should also be given. In case of firms and companies, the particulars of persons representing them should be invariably given, including detailed particulars of the firm.

2. ***Legal Nature of the Contract:*** In the title or in the introductory part of the contract, the parties should clearly indicate the legal nature of the contract as to whether it is a sale/purchase contract or a commercial agency contract or a contract for technical assistance and advice or building construction and erection contract, etc. so as to avoid any doubt as regards the nature of the contract and the legal position of the parties thereunder.

3. ***Licences and Permits:*** It is desirable to provide for, particularly in international trade contracts, as to which party would be responsible for obtaining export/import licences and the effects of delay, refusal or withdrawal of a license by Government authority, etc. Generally, it is the commercial practice to provide that each party to the contract may obtain the requisite licences in its own country.

4. ***Taxes, Duties and Charges:*** A provision regarding the responsibility for payment of taxes, duties and other charges, if any, may also be included in the contract. In international contracts, it is generally provided that the seller would be responsible for taxes, duties and charges levied in the country of export and the buyer with such charges levied in the country of import. Provision should also be made for fluctuations in the rate of taxes, duties and fees, after the conclusion of the contract and it may be agreed upon whether any increase in such rates would be borne by the buyer or the seller.

5. ***Quality, Quantity and Inspection of Goods:*** Quality of the goods is very important to the buyer in a sale-purchase contract and it is in this area that a number of disputes arise and, therefore, it is necessary to include a suitable provision relating to the description and inspection of the quality and quantity of the goods in the contract. Inspection of the goods may be provided either in the seller's country before shipment or in the buyer's country after delivery of the goods, depending upon the relative convenience of the parties in this regard. Some tolerance of 10 to 15% is generally provided for in regard to the quantity of the goods stipulated in the contract. It has to be provided whether the additional quantity will be calculated at the price quoted in the contract or at a different price.

6. ***Packing:*** Proper packing is very important, particularly in the case of goods which have to be set over a long voyage. Sometimes goods are spoiled during the transit because of poor packing and dispute may arise regarding the responsibility for damage to the merchandise during the transit. Therefore, a proper stipulation regarding packaging of goods according to the nature of the merchandise should be included in the contract. Where the goods are of a fragile or inflammable nature, specialised packaging will have to be provided for them. Similarly, goods which require to be protected from humidity or chemical action of sea water, etc., will require to be packed suitably, to meet the requirements. Another very important matter which needs to be provided for regarding packaging in the contract is the legal specifications, if any, regarding the packing material.

   For example, in certain countries, particular type of grass, etc. cannot be used for packing and if it is used, the customs authorities of the particular country may confiscate the consignment. In such cases, it should be stipulated in the contract that the buyer will inform the seller of any such legal specifications or requirements with regard to the packaging of the goods and that a damage or loss occurring for lack of such information will not be the responsibility of the seller.

7. ***Shipment of the Goods:*** It is desirable to stipulate precise particulars regarding the rights and duties of the parties towards shipment of the goods, i.e., the time, date and port of shipment, name of the ship and other ship particulars. It may also be stipulated as to whether and up to what time the shipment may be delayed by the seller. Sometimes, a penalty is provided for delay in shipment according to the time of delay.

8. ***Insurance:*** A provision regarding insurance of the merchandise is also made in the contract, as it is usual to insure the goods during transit particularly when the goods are to be shipped overseas. The insurance provision will state as to which party will be responsible for taking out insurance and what type of insurance cover has to be taken.

9. ***Documentation:*** In modern business transactions, it is sometimes necessary for the seller to supply detailed specifications, literature, etc. relating to the goods particularly if the goods are of scientific or technical nature. In such cases, it is usual to provide in the contract as to whether the technical documentation supplied by the seller will become the property of the buyer or it has to be returned to the seller after a stipulated time. It is also desirable to provide that the technical and confidential information contained in the documentation should be kept confidential by the buyer and that it will not be transmitted by him to a third-party without the permission of the seller.

10. ***Guarantee:*** Sometimes the goods sold are of such a nature that the buyer insists for guarantee regarding their use and performance for a particular period. Under a guarantee clause, the seller is held responsible for the defects appearing in the goods during the period of the guarantee. The seller is usually given an option to remove the defects in the goods either by replacement or by repair. The replaced or repaired goods will usually be given a new guarantee of the same length of time as the original goods but a different period can also be provided for the replaced goods.

11. ***Passing of the Property and Passing of the Risks:*** It is very important to provide for the exact point of time when the title or the property in the goods and the risk will pass from the seller to the buyer. This is important to ascertain as to whether the seller or the buyer will be responsible for the damage or loss to the goods during transit at a particular point of time. Moreover, the control over the goods will be with the person in whom the title or the property in the goods vests. Similarly, it is necessary and useful to provide for the point of time at which the risk in the goods will pass from the seller to the buyer.

12. ***Amount, Mode and Currency of Payment:*** It is useful to provide for the amount, mode and currency in which the price for the goods has to be paid. Modes of payment may be on Documents against Acceptance (D/A) or Documents against Payment (D/P) basis or it may be a Letter of Credit or otherwise as per the agreement of the parties. One of the most important matters which needs to be provided in international contracts relates to the exchange rate. It is advisable to provide the exchange rate of the currency of payment in terms of dollar, pound or any other currency agreed to by the parties, so that if a devaluation, revaluation or fluctuation takes place before the payment of price, the liability of the buyer and the seller regarding the amount of payment may be clearly known.

13. ***Force Majeure:*** Another very important provision witnessed in modern commercial contracts relates to force majeure or excuses for non-performance. This provision defines as to what particular circumstances or events beyond the control of the seller would entitle him to delay or refuse the performance of the contract, without incurring liability for damage. It is usual to list the exact circumstances or events, like strike, lockout, riot, civil commotion, Government prohibition, etc. which would provide an excuse to the seller to delay or refuse the performance. It may be further provided that events of a similar nature, which are beyond the control of the seller and which could not have been avoided with due diligence would also furnish the above relief.

14. ***Proper Law of Contract:*** When both the parties to a contract are resident in the same country, the contract is governed by the laws of the same country. However, in international contracts, the parties

are subject to different legal systems and, therefore, they have to choose a legal system which will govern the rights and duties of the parties. Therefore, it is desirable and necessary to stipulate the proper law of contract in international contracts.

15. ***Settlement of Disputes through Alternate Dispute Resolution (ADR)*:** The last, but not the least, important is the provision regarding settlement of disputes under the contract by ADR. It is usual to provide for an ADR clause in the contract. A suitable ADR clause may be provided by the parties by mutual agreement. It is also desirable to provide for the mode of appointment under ADR and also for the venue for the purpose of resolving disputes through ADR.

Below mentioned matter are necessary for all the agreements but should be given special attention for Agreement to Sell/Purchase

1. **Contracting Parties:** The vendor and the purchaser must be sufficiently described, irrespective of the fact that the parties know each other. There must be reciprocity of interest between the person who wants to enforce the agreement and the person against whom it is sought to be enforced. A stranger to the agreement has no enforceable claim, and as such, no court shall entertain his claim for specific performance. However, specific performance may be enforced not only against a party to the contract, but also against a person claiming title under it. If one of the parties to the agreement is acting in his representative capacity, such capacity must be clearly and precisely disclosed and his authority to act in that capacity must form part of the agreement.

   Legal representatives of parties have a right to require specific performance of a contract or are bound by the promise to perform the contract in the absence of a contrary intention. This rule does not apply where the obligation is personal in nature. As a rule, obligation under a contract cannot be assigned except with the consent of the promisee. On the other hand, rights under a contract are assignable unless the contract is personal in nature or the rights are incapable of assignment either under the law or under the agreement between the parties. If one of the parties to the agreement is acting in his representative capacity, such capacity must be clearly and precisely disclosed and his authority to act in that capacity must form part of the agreement. It is, however, usual to have a clause in a deed specifically stating that the parties shall include their executors, administrations, heirs, legal representatives and assigns.

2. **Consideration:** Price is the essence of an agreement of sale/purchase and unless the price is clearly and precisely disclosed in the agreement, there is no enforceable contract between the parties because if no price is named in the agreement, the law does not imply, as in the case of sale of goods, that a contract to buy/sell at a reasonable price is implied. Therefore, in all sales, the price is an essential ingredient and where it is neither ascertained nor rendered, the contract is void for incompleteness and is incapable of enforcement. Price may not necessarily be in the form of money, it may be any other consideration. The word “price” is comprehensive enough to include any other lawful consideration. If any earnest money is paid, the same should be stated and the consequences arising in breach of the agreement may be stipulated for, namely, by forfeiture of the deposit, payment of a fixed sum by the vendor, if the breach is committed by the purchaser or the vendor, respectively.

3. **Subject Matter:** Property of any kind subject to the provisions of the Transfer of Property Act, 1882, and those of any other applicable law or custom may be sold/purchased. Transferability is the general rule and the right to property includes the right to transfer the property to another person. The property, i.e., the subject-matter of the agreement, must be described in detail giving its precise situation and the extent of interest agreed to be conveyed therein should be clearly stated. If the property is subject to certain charges, easements, encumbrances, restrictions, covenants etc., the same should be clearly stated so that the purchaser knows the real nature of the property he is purchasing. The vendor should not conceal any material particular with regard to the property he is selling, which the purchaser has a right to know.

4. **Time for Performance:** If the time for performance is the essence of the agreement, the same should be clearly stipulated and the consequences of non-performance within the stipulated time should also be clearly and precisely declared.

GUIDELINES FOR USE OF PARTICULAR WORDS AND PHRASES FOR DRAFTING AND CONVEYANCING

There cannot be any clear cut rule which can be laid down as guideline for using the particular words and phrases in the conveyancing. However, the draftsman must be cautious about the appropriate use of the words and should be clear of its meaning. The following rules may be prescribed for the guidance of the draftsman for using any particular word and phrase in the drafting of the documents:

(1) For general words refer to ordinary dictionary for ascertaining the meaning of the words. For example, Oxford Dictionary or Webster's Dictionary or any other standard dictionary may be referred to for this purpose.

(2) For legal terms refer to legal dictionary like Wharton's Law Lexicon or other dictionaries of English Law written by eminent English Lexicographers as Sweet Cowel, Byrne, Stroud, Jowit, Mozley and Whiteley, Osborn etc. In India, Mitra's Legal and Commercial Dictionary is quite sufficient to meet the requirements of draftsman.

(3) As far as possible current meaning of the words should be used and if necessary, case law, where such words or phrases have been discussed, could be quoted in reference.

(4) Technical words may be used after ascertaining their full meaning, import of the sense and appropriate use warranted by the circumstances for deriving a technical or special meaning with reference to the context.

(5) The choice of the words and phrases should be made to convey the intention of the executor to the readers in the same sense he wishes to do.

(6) The draftsman should also use at times the recognised work of eminent legal expert on the interpretation of statutes. In Maxwell's Interpretation of Statutes use of some of the words is explained for the guidance of the readers.

The above guidelines acquaint the students of a few instances leading to the choice of appropriate word or phrase. As a matter of fact, much will depend upon the executives own skills and talents as to how they express the wishes of the company in limited words befitting to an expression of a certain event or description of facts.

USE OF APPROPRIATE WORDS AND EXPRESSIONS

After discussing the guidelines for use of particular words and phrases in drafting of documents, meaning of some of the terms commonly used in drafting of deeds and documents is discussed hereunder:

Instrument: The word "instrument" has been interpreted in different judgements by different courts with reference to the different enactments. As such, the meaning of instrument has to be understood with reference to the provision of a particular Act. For example, under Section 2(b) of the Notaries Act, 1952, and Section 2(14) of the Indian Stamp Act, 1899, the word "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, modified, limited, extended, suspended, extinguished or recorded.

The expression is used to signify a deed *inter partes* or a charter or a record or other writing of a formal nature.

But in the context of the General Clauses Act, it has to be understood as including reference to a formal legal writing like an order made under constitutional or statutory authority. Instrument includes an order made by the President in the exercise of his constitutional powers (*Mohan Chowdhary v. Chief Commissioner, AIR 1964 SC 173*).

In another context, "Instrument" includes awards made by Industrial Courts (*Purshottam v. Potdar, AIR 1996 SC 856*).

"Instrument" does not include Acts of Parliament unless there is a statutory definition to that effect in any Act (*V.P. Sugar Works v. C.I. of Stamps U.P. AIR 1968 SC 102*).

A will is an instrument (*Bishun v. Suraj Mukhi , AIR 1966 All. 563*).

The word "instrument" in Section 1 of the Interest Act is wide enough to cover a decree (*Savitribai v. Radhakishna, AIR 1948 Nag. 49*).

Considering various meanings of the term instrument, it becomes necessary that the words with specific meaning should be used unless the context otherwise require.

Usage of *"AT", "NEAR", "ON":*

"AT", "NEAR", "ON", "in the vicinity" and the like: In construing a description, the word "at" when applied to a place, is less definite in meaning than "in" or "on". Primarily, "at" signifies nearness, and is thus a relative term. When used in describing the location of real estate the word "near" signifies relativity in a greater or less degree. It may be equivalent to "at" or it may import the sense of "at" or "along" as in the expression "along the sea shore".

The word "on" when used in describing the location of the land with reference to some geographical feature may mean, "in the vicinity of". The phrase "in the vicinity" imports nearness to the place designated but not adjoining or abutting on it. The word "immediate" when used to qualify the word "vicinity" may signify adjoining.

Usage of "Adjoining", "Adjacent" or "Contiguous"

In the absence of anything to the contrary indicated by the deed itself words descriptive of the land conveyed are construed according to their proper and most generally known signification, rather than according to their technical sense with the view of giving effect to the probable intention of the parties. Nevertheless, specific terms of description may be regarded as having a technical meaning unless controlled by something else in the deed.

The word "adjoining" does not necessarily import that the boundary of the land conveyed is conterminous with the boundary of the adjoining land, for all that the word implies is contiguity, and hence it is equally applicable where one boundary is shorter than the other. It has been held that a common corner will make two tracts of land "contiguous".

The term "adjacent" is not synonymous and "abutting". It may imply contiguity but the term is more often a relative one depending for its meaning on the circumstances of the case.

Therefore, it is pertinent that the correct word with intended meaning is used while drafting.

Usage of LOT

"LOT": The term "lot" is sometimes used in restrictive sense as a wood lot, a house lot, or a store lot, but where the term is used unqualifiedly, especially if it refers to a lot in a certain range or right, it is almost uniformly used in a technical sense and means a lot in a township as duly laid out by the original proprietors. Lots from lands

which have been surveyed and laid out in ranges and townships which are numbered in regular sequence may be sold and described by number and range without a more particular description. In the absence of qualifying words, the designation of the number of a lot will be taken to refer to the original place of the city or town. Generally speaking, in a conveyance of fractional part of a designated lot, the word "lot" refers to that portion of the premises set aside for private use, and hence does not include the right to occupancy of any part of a street on which it abuts.

Usage of "And", "Or"

As used in deeds, the word "and" ordinarily implies the conjunctive, while "or" ordinarily implies the alternative or is used as a disjunctive to indicate substitution. There is a presumption that when the word "or" is used in the *habendum* of deed, the grantor intended it to express its ordinary meaning as disjunctive, and that he did not intend to use the word "and" which will be read "or" and "or" will be read "and" but such construction is never resorted to for the purpose of supplying an intention not otherwise appearing.

Usage of "Subject to"

The words "subject to" in a deed conveying an interest in real property are words of qualification of the estate granted. Even though the words "Subject to" mentioned in the phrase "subject to a specified encumbrance" bear the obvious meaning that only the equity of redemption belonging to the grantor passes by a deed, such words may, under the circumstances of the particular case, be ambiguous. To ascertain the intention in such an ambiguous case, all the circumstances are taken into consideration, and the primary meaning of the words "subject to" will be departed from, if necessary, in order to effectuate what seems best to accord with intention of the parties. Of course, the rights of an earlier grantee to which a later grant is expressed to be subject are neither abridged nor enlarged by the later grant.

Use of the terms "excepting", "reserving" and the like

While there is a well defined distinction between a "reservation" and an "exception" in deed, the use, in the instrument of conveyance, of one or the other of these terms is by no means conclusive of the nature of the provisions. In fact, it may be said that since these two terms are commonly used interchangeably little weight is given to the fact, that the grantor used one or the other. The use of the technical word "exception" or "reservation" will not be allowed to control the manifest intent of the parties, but that such words will be given a fair and reasonable interpretation looking to the intention of the parties, which is to be sought from a reading of the entire instrument, and when their intention is determined it will be given effect, provided no settled rules of law are thereby violated. In cases of doubt, the question will be determined in the light of the subject matter and circumstances of the case, and the deed will be construed, where possible, so as to give it validity.

Usage of "More or less", "about", "estimated" and the like

The words "more or less" when related to the description of the property in a deed, are generally construed with reference to the particular circumstances involved. In relation to the quantity of land conveyed, the description is not rendered indefinite by the addition of the words "more or less" to the specified area. Such words are used as words of precaution and safety and are intended to cover unimportant inaccuracies. They and other words of like import regarding the quantity of acres intended to be conveyed are regarded as matters of description of the land, and not of essence of the contract, and the buyer as a general rule takes the risk of quantity in the absence of any element of fraud. But in case of a considerable and material discrepancy in quantity, relief may be had after the conveyance. Accordingly, where the deed purports to convey the whole of a designated tract, described whatever may be its acreage, the grant is not defeated by a discrepancy between the recited and the actual area. When used with reference to the quantity of land conveyed, the words "estimated" and "about" are synonymous with the phrase "more or less".

In construing a description as to the length of a line, the words "more or less" may be deemed to have some meaning so as not to fix the distance absolutely even though they may be often construed as having practically no effect.

Words indicating compass points

The words "north", "south", etc. indicating points of the compass, may, no doubt, be controlled or qualified in their meaning by other words of description used in connection with them, but unless qualified or controlled by other words, they mean "due north", "due south" etc. Moreover, the words "Easterly", "Westerly", etc. when used alone in the description of land, will be construed to mean "due East", "due West", etc. unless other words are used to qualify their meaning. Where, however, the land is described as being the "West half" of a city lot and a North to South line will divide the lot almost diagonally, it has been held that parol evidence can be introduced on the theory that such evidence neither enlarges nor diminishes the grant, but merely identifies the land.

AIDS TO CLARITY AND ACCURACY

The following discussion is devoted to devices that are resorted to provide clarity and accuracy in documents:

Interpretation of Deeds and Documents

In India, in the absence of any legislation on conveyancing, it becomes imperative to have knowledge about the important rules of law of interpretation so as to put right language in the documents, give appropriate meaning to the words and phrases used therein, and incorporate the will and intention of the parties to the documents. There is no law in India on the interpretation of documents also. On the subject of interpretation of statutes Maxwell's works published by Butterworth commands wide acceptance by the judiciary all over India. Based on the said work a set of principles has been evolved for the interpretation and construction of documents, assessing the language and assigning the exact meaning to the words and phrases to be used in the documents. Some of the relevant principles of interpretation of deeds and documents are discussed below:

(A) **Informal Agreements:** In interpretation of informal agreements, the rule to be applied is that of reasonable expectation; that is to say, the agreement is to be interpreted in the sense in which the party who used the words in question should reasonably have apprehended that the other party may apprehend them. If the intention is manifested ambiguously, the party manifesting the same in an ambiguous manner ought to have had reason to know that the manifestation may reasonably bear more than one meaning and the other party believes it to bear one of those meanings, having no reason to know that it bears another meaning that is given to it.

(B) **Formal Agreements:** Where the agreement is formal and written, the following rules of the interpretation may be applied:

(1) A deed constitutes the primary evidence of the terms of a contract, or of a grant, or of any other disposition of property (Section 91 of the Indian Evidence Act). The law forbids any contradiction of, or any addition, subtraction or variation in a written document by any extrinsic evidence, though such evidence will be admissible to explain any ambiguity (Section 92 of the Indian Evidence Act). The document should, therefore, contain all the terms and conditions, preceded by recital of all relevant and material facts.

(2) In cases of uncertainty, the rules embodied in provisos 2 and 6 of Section 92 of the Indian Evidence Act can be invoked for construing a deed. The sixth proviso enables the court to examine the facts and surrounding circumstances to which the language of the document may be related, while the second proviso permits evidence of any separate oral agreement on which the document is silent and which is not inconsistent with its terms.

(3) The cardinal rule is that clear and unambiguous words prevail over any hypothetical considerations or supposed intention. But if the words used are not clear and unambiguous the intention will have to be ascertained. In other words, if the intention of the parties can be gathered from the words and expressions used in a deed, such an intention does not require to be determined in any other manner except giving the words their normal or natural and primary meanings. It is the dominant intention of the document as disclosed from its whole tenor, that must guide the construction of its contents.

(4) In case the terms are not unambiguous it is legitimate to take into account the surrounding circumstances for ascertaining the intention of the parties. The social milieu, the actual life situations and the prevailing conditions of the country are also relevant circumstances.

(5) Sometimes a contract is completed in two parts. At first an executory contract is executed and later on an executed contract. In case of any difference between the preliminary contract and final contract, the terms of the latter must prevail.

(6) If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the latter clause is to be rejected as repugnant and the earlier clause prevails.

(7) The court must interpret the words in their popular, natural and ordinary sense, subject to certain exceptions as;

(i) where the contract affords an interpretation different from the ordinary meaning of the words; or

(ii) where the conventional meanings are not the same with their legal sense.

(8) Hardship to either party is not an element to be considered unless it amounts to a degree of inconvenience or absurdity so great as to afford judicial proof that such could not be the meaning of the parties.

(9) All mercantile documents should receive a liberal construction. The governing principle must be to ascertain the intention of the parties through the words they have used. The Court should not look at technical rules of construction, it should look at the whole document and the subject matter with which the parties are dealing, take the words in their natural and ordinary meaning and look at the substance of the matter.

The meaning of such a contract must be gathered by adopting a commonsense approach and it must not be by a narrow, pendantic and legalistic interpretation.

(10) No clause should be regarded as superfluous, since merchants are not in the habit of inserting stipulations to which they do not attach some value and importance. The construction adopted, should, as far as possible, give a meaning to every word and every part of the document.

(11) Construction given to mercantile documents years ago, and accepted in the mercantile world should not be departed from, because documents may have been drafted in the faith thereof.

(12) If certain words employed in business, or in a particular locality, have been used in particular sense, they must prima facie be construed in technical sense.

(13) The ordinary grammatical interpretation is not to be followed, if it is repugnant to the general context.

(14) Antecedent facts or correspondence, or words deleted before the conclusion of the contract cannot be considered relevant to ascertain the meaning.

(15) Evidence of acts done under a deed can, in case of doubt as to its true meaning, be a guide to the intention of the parties, particularly when acts are done shortly after the date of the instrument.

(16) Unless the language of two documents is identical, and interpretation placed by courts on one document is no authority for the proposition that a document differently drafted, though using partially similar language, should be similarly interpreted. However, judicial interpretation of similar documents in the past can be relied on, but as the effect of the words used must inevitably depend on the context and would be conditioned by the tenor of each document such decisions are not very useful unless words used are identical.

(17) If the main clause is clear and the contingency mentioned in the proviso does not arise, the proviso is not attracted at all and its language should not be referred to for construing the main clause in a manner contradictory to its import.

(18) The fact that a clause in the deed is not binding on the ground that it is unauthorised cannot *ipso facto* render the whole deed void unless it forms such an integral part of the transaction as to render it impossible to severe the good from the bad.

(19) As a general rule of construction of documents, the recitals are not looked into, if the terms of the deed are otherwise clear. If in a deed the operative part is clear, or the intention of the parties is clearly made out, whether consistent with the recitals or not, the recitals have to be disregarded. It is only when the terms of a deed are not clear or are ambiguous or the operative part creates a doubt about the intention of the parties that the recitals may be looked into to ascertain their real intention. If there are several recitals in a deed, as is the case with indentures, and there is at the same time some ambiguity in the operative part of the deed, it may be resolved by giving preference to such a recital as may appear to be the most important to convey the intention of the parties. An ambiguity in the recitals, when the terms of the contract or the intentions of the parties are clear from the operative part, has no importance. If the recitals refer to an earlier transaction evidenced by a deed, such reference does not amount to an incorporation of the terms and conditions of the earlier deed unless the parties so intended.

(20) Sometimes a standard form is used, particularly in contracts with government departments or big corporations. In these standard printed forms, words not applicable are deleted according to the requirements of individual transactions. A question often arises, whether reference may be made to the deleted words for interpretating the terms of the contract. The true rule is that the court must first look at the clause without the deleted words, and only if that clause is ambiguous then for solving the ambiguity assistance may be derived by looking at the deleted words. If something is added in handwriting or by typewriter to a printed form, such addition should prevail over the language in print.

(21) If an alteration by erasure, interlineations, or otherwise is made in a material part of a deed after its execution by, or with the consent of, any party thereto or person entitled thereunder, but without the consent of the party or parties liable thereunder, the deed is thereby made void, but only with prospective effect. However, an alteration which is not material i.e., which does not vary the legal effect of the deed in its original state but which merely express that which was implied by law in the deed as originally written, or which carries out the intention of the parties already apparent on the face of the deed and does not otherwise prejudice the party liable thereunder will not make the deed void.

Legal Implications and Requirements

Drafting of documents is very important part of legal documentation. Documents are subject to interpretation when no clear meaning could be inferred by a simple reading of the documents. The legal implications of drafting, therefore, may be observed as under:

(a) Double and doubtful meaning of the intentions given shape in the document.

(b) Inherent ambiguity and difficulties in interpretation of the documents.

(c) Difficulties in implementation of the objectives desired in the documents.

(d) Increased litigation and loss of time, money and human resources.

(e) Misinterpretation of facts leading to wrongful judgement.

(f) Causing harm to innocent persons.

ENDORSEMENTS

Endorsement means to write on the back or on the face of a document wherein it is necessary in relation to the contents of that document or instrument. The term "endorsement" is used with reference to negotiable documents like cheques, bill of exchange etc. For example, on the back of the cheque to sign one's name as Payee to obtain cash is an endorsement on the cheque. Thus, to inscribe one's signatures on the cheque, bill of exchange or promissory note is endorsement within the meaning of the term with reference to the Negotiable Instrument Act, 1881. Endorsement is used to give legal significance to a particular document with reference to new facts to be added in it. Endorsement helps in putting new facts in words on such document with a view to inscribe with a title or memorandum or to make offer to another by inscribing one's name on the document or to acknowledge receipt of any sum specified by one's signatures on the document or to express definite approval to a particular document. Thus, endorsement is an act or process of endorsing something that is written in the process of endorsing when a provision is added to a document altering its, scope or application. Under the Registration Act, 1908 the word endorsement' has significant meaning and it applies to entry by the Registry Officer on a rider or covering slip tendered for registration under the said Act.

In conveyancing practices, endorsements which are of general use and for which no supplementary deed is necessary are those which relate to part payment or acknowledgement of a debt by a debtor. The main stress is that endorsement should represent or exhibit the intention of the parties to the document. Thus, in the context of negotiable instruments, endorsements which are made on the document will definitely differ with reference to the nature and content of the prior document and will be added to the endorsement explained above. Endorsements are common for negotiating a negotiable document or instrument or transfer of bill of exchange or policy or insurance or Government securities and there is no particular form of endorsement prescribed in such cases. Endorsements follow the forms by customs, conventions and trade practices or banking norms.

The following forms of endorsement respectively could be used by business executives while facing a situation of altering the documents:

Form of Endorsement: The endorsement on the document may begin either by saying:

This deed made on this _____ day of _____, 2023 between within named and within named or directly like, "The parties to the within written deed hereby agree as follows:

The operative part of the deed then follows usually without any recital unless any recital is considered necessary to make the deed intelligible. Generally, no recital is added but there may be exception in different situations to this rule. The original deed on which endorsement is made as referred to in the endorsement is

within the written deed and the parties, recital covenants in the original deed are referred to as within named "Lessor" or "within named parties" or "within mentioned covenants" or "within described use" or "the garden described in the schedule of the within written deed".

These are the examples when endorsement is to be made for the first time in the document.

There may be situations where subsequent endorsement becomes necessary on the document which bears already an endorsement. In such eventuality when endorsement is made one after another reference in the latter to the former endorsement shall be made by the use of the word "above" instead of M/s "within". After the operative part of endorsement the usual *testimonium* clause shall be added ending with signatures of executants and of witnesses, if necessary.

2. For giving effect to the supplemental deed the form of the deed of agreement will be more or less the same as the prior document with the difference that with the other names of the parties the words, "Supplemental (intended to read as annexed) to a deed of _____ dated _____ made between the parties thereto (or between _____) hereinafter called the principal deed", shall be added. In case the particulars of a principal deed are somewhat long it is more convenient to refer to the principal deed in the first recital and to say that this deed (the one under preparation) is supplemental to that (the former) deed; for example, "Whereas this deed is supplemental to a deed of sale made, etc. hereinafter called the 'principal deed'.

There may be situations when the supplemental deed is supplemental to several deeds. In such a case, each prior deed should be mentioned clearly by way of recitals to make the deed with reference to the existing deed intelligible and free from ambiguity.

All endorsements should be stamped according to the nature of the transaction which they evidence. In case the endorsement is made for receipt of money which should be stamped as a receipt. In case it is an agreement, it must be stamped as an agreement. Some documents if endorsed are exempted from stamp duty, for example, endorsement made on the prior deed, receipt of mortgage money, endorsement on mortgage deed. Similarly, transfer of bill of exchange or policy of insurance or security of Government of India can be endorsed without attracting the stamp duty.

STAMPING OF THE DEEDS

The draft of document is required to be approved by the parties. In case of companies it is approved by Board of Directors in their meeting or by a duly constituted committee of the board for this purpose by passing requisite resolution approving and authorising of its execution. The document after approval is engrossed i.e. copied fair on the non-judicial stamp-paper of appropriate value as may be chargeable as per Indian Stamp Act. In case document is drafted on plain paper but approved without any changes, it can be lodged with Collector of Stamps for adjudication of stamp duty, who will endorse certificate recording the payment of stamp duty on the face of document and it will become ready for execution.

E-stamping is a computer based application and a secured electronic way of stamping documents. The prevailing system of physical stamp paper/franking is being replaced by E-stamping system. The Stock Holding Corporation of India Limited (SHCIL) is the Central Record Keeping Agency (CRA). E-Stamping is a computer-based procedure and a secure manner for the state to pay non-judicial stamping duties. The prevailing system of physical stamp paper / franking is being replaced by E-Stamping system.

E-stamping is beneficial for varied reasons such as E-stamps are less time-consuming; They are very easily accessible; They save cost; e-Stamp Certificate generated is tamper proof; e-Stamp Certificate generated has a Unique Identification Number; they are Easily accessible, they are Secure and user friendly.

LESSON ROUND-UP

- Importance of drafting and conveyancing for a company's executive could be well imagined as the company has to enter into various types of agreements with different parties and have to execute various types of documents in favour of its clients, banks, financial institutions, employees and other constituents.
- Technically speaking, conveyancing is the art of drafting of deeds and documents whereby land or interest in land i.e. immovable property, is transferred by one person to another; but the drafting of commercial and other documents is also commonly understood to be included in the expression.
- Having understood the meaning of conveyance, it becomes necessary to understand the distinction between conveyance and contract before discussing basic requirements of conveyance or deed of transfer.
- As discussed above, drafting of legal documents is a skilled job. A draftsman, in the first instance, must ascertain the names, description and addresses of the parties to the instrument. He must obtain particulars about all necessary matters which are required to form part of the instrument.
- According to Fowler, "anyone who wishes to become a good writer should endeavour, before he allows himself to be tempted by more showy qualities, to be direct, simple, brief, vigorous and lucid."
- A deed between two or more parties where as many copies are made as there are parties, so that each may be in a possession of a copy. This arrangement is known as deed pool.
- A deed made and executed by a single party e.g. power of attorney, is called a deed poll, because in olden times, it was polled or cut level at the top. It had a polled or clean cut edge. It is generally used for the purpose of granting powers of attorney and for exercising powers of appointment or setting out an arbitrator's award. It is drawn in first person usually.
- As explained what is a deed, it is now appropriate to know more about drafting of Deed as a document. Out of various types of deeds, Deeds of Transfer of Property is the most common one. Deeds of Transfer include Deed of Sale, Deed of Mortgage, Deed of Lease, Deed of Gift etc. These deeds effect a transfer of property or interest.
- There is no particular form prescribed for the drawing up of trade contracts, except that they must fulfil all the essential requirements of a valid contract under the law applicable to the contract. If the law requires any particular category of contracts to be in writing or to be registered, these formalities must be complied with. A contract may be hand written, type written or printed. It may be as brief or as detailed as the circumstances of a particular trade transaction demand.
- There cannot be any clear cut rule which can be laid down as guideline for using the particular words and phrases in the conveyancing. However, the draftsman must be cautious about the appropriate use of the words and should be clear of its meaning.
- In India, in the absence of any legislation on conveyancing, it becomes imperative to have knowledge about the important rules of law of interpretation so as to put right language in the documents, give appropriate meaning to the words and phrases used therein, and incorporate the will and intention of the parties to the documents.
- Endorsement means to write on the back or on the face of a document wherein it is necessary in relation to the contents of that document or instrument. The term "endorsement" is used with reference to negotiable documents like cheques, bill of exchange etc.

- The draft of document is required to be approved by the parties. In case of companies it is approved by Board of Directors in their meeting or by a duly constituted committee of the board for this purpose by passing requisite resolution approving and authorising of its execution.

GLOSSARY

Lexicographers: Dictionary Writer

Cyrographum: Word written between two or more copies of the document and the parchment was cut in a jugged line through this word.

Conveyancing: Conveyancing is an art of drafting of deeds and documents whereby immovable property is transferred by one person to another.

Habendum: Habendum is a part of deed which states the interest, the purchaser is to take in the property.

TEST YOURSELF

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation.)

1. As a company secretary, please advise what are the preliminary requirements of drafting which a company executive should consider before drafting a document?
2. Draw guidelines for use of particular words or phrases in drafting and conveyancing.
3. As a company secretary, please advise what are the principles which a corporate executive should keep in mind while drafting company's documents?
4. What are the "do's" and "don'ts" which a draftsman should keep in mind while drafting company's documents?
5. Discuss briefly the Components of Deed of Transfer of Property.
6. What do you understand by endorsement and supplemental deeds? Does such an endorsement or supplemental deed attract stamp duty?
7. Explain "Habendum". What does a Habendum clause signify in a document? How does the absence of a Habendum clause in a document effect the validity of the document?
8. Write short note on "Conveyance of Property".
9. Discuss briefly the benefits of Fowler's five rules of Drafting.
10. Prepare a draft rent agreement by assuming necessary facts after completion of this topic and analyse the same carefully that whether all important ingredients of agreements are covered in the draft.

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