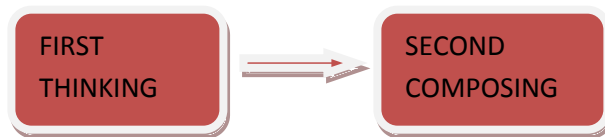


# CHAPTER 1 GENERAL PRINCIPLES OF DRAFTING AND RELEVANT SUBSTANTIVE RULES

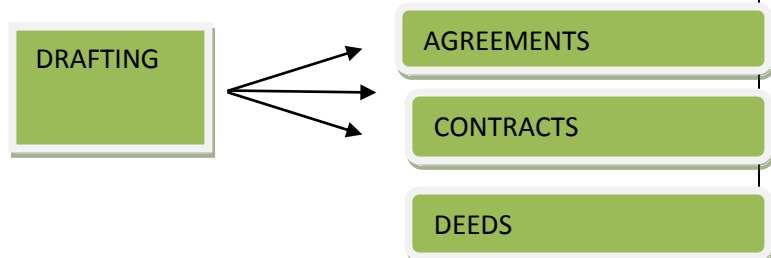
INTRODUCTION	<ul style="list-style-type: none"> <li>• Importance of drafting and conveyancing for a company executive could be well imagined as the company has to enter into various types of agreements with different parties and have to execute various types of documents in favour of its clients, banks, financial institutions, employees and other constituents.</li> <li>• The importance of the knowledge about drafting and conveyancing for the corporate executives has been felt particularly for the three reasons viz., <ul style="list-style-type: none"> <li>(i) for obtaining legal consultations;</li> <li>(ii) for carrying out documentation departmentally;</li> <li>(iii) for interpretation of the documents.</li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>• With the knowledge of <b><u>drafting and conveyancing</u></b>, better interaction could be had by the corporate executives while seeking legal advice from the <b><u>legal experts</u></b> 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</li> <li>• Knowledge of drafting and conveyancing for the corporate executives is also essential for <b><u>doing documentation departmentally</u></b>. An executive can make a better document with all facts known and judging the relevance and importance of all aspects to be covered therein.</li> <li>• Its becomes imperative to have <b><u>knowledge about the important rules of law of interpretation</u></b> 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.</li> </ul>
DRAFTING – ITS MEANING	<ul style="list-style-type: none"> <li>• Drafting may be defined as the synthesis of law and fact in a language form [<i>Stanley Robinson</i>]:</li> <li>• It is the development and preparation of legal instruments such as constitutions, statutes, regulations, ordinances,</li> </ul>

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.



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



- 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.


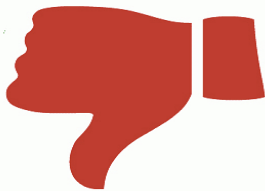
**To collect, consolidate and co-ordinate the facts** in the form of a document, it requires serious thinking followed by prompt action to reduce the available information into writing with a legal meaning, open for judicial interpretation to derive the same sense and intentions of the parties with which and for which it has been prepared, adopted and signed.

- Draftsman: *One who draws documents like a will, gift deed etc.*
- Dragoman: *One who interprets pleadings and other writings.*

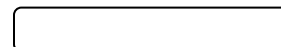
<b>CONVEYANCING- its meaning</b>	<ul style="list-style-type: none"><li>Conveyancing is the art of drafting of deeds and documents whereby land or interest in land i.e. <b><u>immovable property, is transferred by one person to another;</u></b> but the drafting of commercial and other documents is also commonly understood to be included in the expression.</li></ul> <div><div>DRAFTING</div><div>+</div><div>CREATION OF RIGHTS IN PPROPERTY</div><div>→</div><div>CONVEYANCE</div></div> <ul style="list-style-type: none"><li>Mitra’s legal and commercial dictionary defines <b><u>“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.</u></b></li><li>“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, <b>whether movable or immovable, is transferred <i>inter vivos</i></b> and which is not otherwise specifically provided by Schedule I” of the 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</li></ul> <p>NOTES:</p> <ul style="list-style-type: none"><li>DRAFTING IS A WIDER TERM WHILE CONVEYANCING IS NARROW.</li><li>ALL CONVEYANCING IS DRAFTING WHILE ALL DRAFTING IS NOT CONVEYANCING.</li></ul>									
<b><u>DISTINGUISH BETWEEN DRAFTING AND CONVEYANCING</u></b>	<table><tr><th>S. NO</th><th>DRAFTING</th><th>CONVEYANCING</th></tr><tr><td>1</td><td>Drafting is the way and manner of preparation of any document.</td><td>Conveyancing is the way and the manner of preparation of only those documents which are pertaining to the transfer of property . It is more emphasized on the documents relating to transfer of property.</td></tr><tr><td>2</td><td>The concept of drafting is wider than the concept of</td><td>The concept of conveyancing is narrower than the concept of</td></tr></table>	S. NO	DRAFTING	CONVEYANCING	1	Drafting is the way and manner of preparation of any document.	Conveyancing is the way and the manner of preparation of only those documents which are pertaining to the transfer of property . It is more emphasized on the documents relating to transfer of property.	2	The concept of drafting is wider than the concept of	The concept of conveyancing is narrower than the concept of
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		conveyancing	drafting.															
	3	Drafting relates to every document as defined in different context such as General Clause Act 1897, Sale of Goods Act .	Conveyancing relates to the term conveyance as defined in the Indian Stamp Act, 1899															
	4	Eg. Outsourcing agreement.	e.g Sale Deed															
<b><u>DISTINGUISH BETWEEN CONVEYANCING CONTRACT.</u></b>	<table><tr><th>S.no.</th><th>CONTRACT</th><th>CONVEYANCING</th></tr><tr><td>1</td><td>Contract is an agreement which is enforceable by law</td><td>Conveyancing is the art of drafting of any documents by which transfer of property takes place.</td></tr><tr><td>2</td><td>Contract consists of reciprocal promises and each party to the contract is bound to perform the promise.</td><td>There is no such promise and title in respect of the property in question already passes in favour of the vendee.</td></tr><tr><td>3</td><td>Contract creates a right of action on favour of parties. Thus in case of breach of contract the aggrieved party may claim number of remedies such as compensation specific performance act against the defaulting party.</td><td>Conveyance does not create any right of any action but at the same time it alters the ownership of existing right.</td></tr><tr><td>4</td><td>Contract is governed by the provisions of Indian Contract Act 1872.</td><td>It is governed under the provisions of the Transfer of Property Act, 1882</td></tr></table>			S.no.	CONTRACT	CONVEYANCING	1	Contract is an agreement which is enforceable by law	Conveyancing is the art of drafting of any documents by which transfer of property takes place.	2	Contract consists of reciprocal promises and each party to the contract is bound to perform the promise.	There is no such promise and title in respect of the property in question already passes in favour of the vendee.	3	Contract creates a right of action on favour of parties. Thus in case of breach of contract the aggrieved party may claim number of remedies such as compensation specific performance act against the defaulting party.	Conveyance does not create any right of any action but at the same time it alters the ownership of existing right.	4	Contract is governed by the provisions of Indian Contract Act 1872.	It is governed under the provisions of the Transfer of Property Act, 1882
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<b><u>GENERAL RULES OF DRAFTING</u></b>	<ul style="list-style-type: none"><li>• A draftsman, in the first instance, must ascertain the names, description and addresses of the parties to the instrument.</li><li>• He must obtain particulars about all necessary matters which are required to form part of the instrument.</li></ul>																	
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<b>1.FOWLERS’ PRINCIPLES OF DRAFTING.</b>	The principle referred to above may be translated into general in the domain of vocabulary as follows:																	


	<ul style="list-style-type: none"> <li>(a) Prefer the familiar word to the far fetched (familiar words are readily understood).</li> <li>(b) Prefer the concrete word to the abstract (concrete words make meaning more clear and precise).</li> <li>(c) Prefer the single word to the circumlocution (single word gives direct meaning avoiding adverb and adjective).</li> <li>(d) Prefer the short word to the long (short word is easily grasped).</li> <li>(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).</li> <li>(f) Always prefer active voice to the passive voice in the drafting of documents.</li> </ul>
<i>SKELTON DRAFT AND ITS SELF-APPRAISAL</i>	<ul style="list-style-type: none"> <li>• 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</li> </ul>
3. SPECIAL ATTENTION TO BE GIVEN TO CERTAIN DOCUMENTS	<ul style="list-style-type: none"> <li>• 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.</li> <li>• Further, in all the documents where transfer of immovable property is involved through any of the prescribed legal modes, it is</li> </ul>
4.EXPERT’S OPINION	<ul style="list-style-type: none"> <li>• 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.</li> </ul> <p>To sum up, the draftsman should bear in mind the following principles of drafting:</p> <ul style="list-style-type: none"> <li>(i) As far as possible the documents should be self-explanatory.</li> <li>(ii) The draftsman should begin by satisfying himself that he appreciates what he means to say in the document.</li> <li>(iii) The well drafted document should be clear to any person who has competent knowledge of the subject matter.</li> <li>(iv) The draft must be readily intelligible to layman.</li> <li>(v) The document may not be perfect because it says too much</li> </ul>

	<p>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.</p> <p>(vi) Nothing is to be omitted or admitted at random on the document that is to say negative statements should generally be avoided.</p> <p>(vii) Use of juridical language should be made.</p>
<p>SOME DO'S of drafting</p> 	<ol style="list-style-type: none"> <li>1. Reduce the group of words to single word;</li> <li>2. Use simple verb for a group of words;</li> <li>3. Avoid round-about construction;</li> <li>4. Avoid unnecessary repetition;</li> <li>5. Write shorter sentences;</li> <li>6. Express the ideas in fewer words;</li> <li>7. Prefer the active to the passive voice sentences;</li> <li>8. Choose the right word;</li> <li>9. Know exactly the meaning of the words and sentences you are writing; and</li> <li>10. Put yourself in the place of reader, read the document and satisfy yourself about the content, interpretation and the sense it carries</li> </ol>
<p>AND DON'TS</p> 	<p>The following things should be avoided while drafting the documents:</p> <ol style="list-style-type: none"> <li>(a) Avoid the use of words of same sound. For example, the words "Employer" and "Employee";</li> <li>(b) 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.</li> <li>(c) Negative in successive phrases would be very carefully employed.</li> <li>(d) Draftsman should avoid the use of words "less than" or "more than", instead, he must use "not exceeding".</li> <li>(e) 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.</li> </ol> <p>In writing and typing, the following mistakes always occur which should be avoided:</p> <ol style="list-style-type: none"> <li>1. "And" and "or";</li> <li>2. "Any" and "my";</li> </ol>

	<ol style="list-style-type: none"> <li>3. "Know" and "now";</li> <li>4. "Appointed" and "Applied"</li> <li>5. "Present" and "Past" tense.</li> </ol>
LEGAL IMPLICATIONS AND REQUIREMENTS	<p>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:</p> <ol style="list-style-type: none"> <li>(a) Double and doubtful meaning of the intentions given shape in the document.</li> <li>(b) Inherent ambiguity and difficulties in interpretation of the documents.</li> <li>(c) Difficulties in implementation of the objectives desired in the documents.</li> <li>(d) Increased litigation and loss of time, money and human resources.</li> <li>(e) Misinterpretation of facts leading to wrongful judgement.</li> <li>(f) Causing harm to innocent persons</li> </ol>



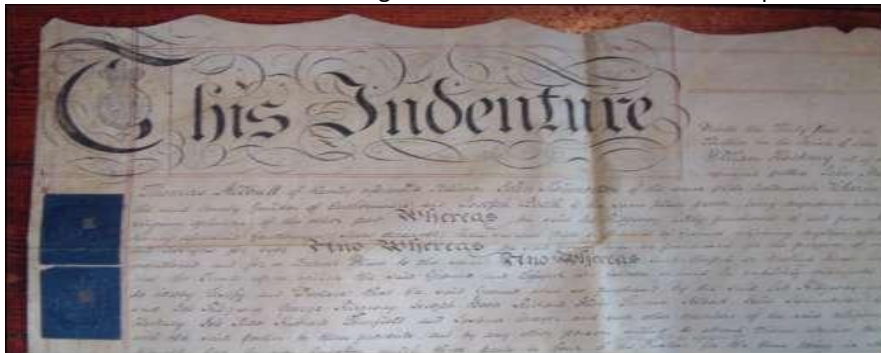
## CHAPTER 1 PART B DEED, DOCUMENTS AND VARIOUS KINDS OF DEEDS.


<p>DOCUMENT</p> 	<ul style="list-style-type: none"> <li>• piece of written, printed, or electronic matter that provides information or evidence or that serves as an official record.</li> <li>• “Document” as defined in <b>Section 31(18) of General Clauses Act, 1894</b> 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.</li> </ul> <p><b>Illustration:</b></p> <ul style="list-style-type: none"> <li>• A writing is a document.</li> <li>• Words printed, lithographed or photographed are documents.</li> <li>• A map or plan is a document.</li> <li>• An inscription on a metal plate or stone is a document.</li> <li>• A caricature is a document.</li> </ul> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p>Thus document is a paper or other material thing affording information, proof or evidence of anything.</p> </div> <ul style="list-style-type: none"> <li>• All deeds are documents.</li> <li>• But it is not always that all documents are deeds.</li> </ul> <p><b>EXAMPLE:</b></p> <ul style="list-style-type: none"> <li>• 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.</li> </ul>
<p>INSTRUMENT</p>	<p>Section 2(14) of the Indian Stamp Act 1899 defines instrument as including <b>every document by which any right or liability is or purported to be created , transferred, limited, extinguished or recorded. E.G promissory notes.</b></p>
	<div style="border: 1px solid black; border-radius: 15px; padding: 10px;"> <ul style="list-style-type: none"> <li>• The term document is wider than the term instrument.</li> <li>• All instruments are documents and all documents are not instruments.</li> </ul> </div>



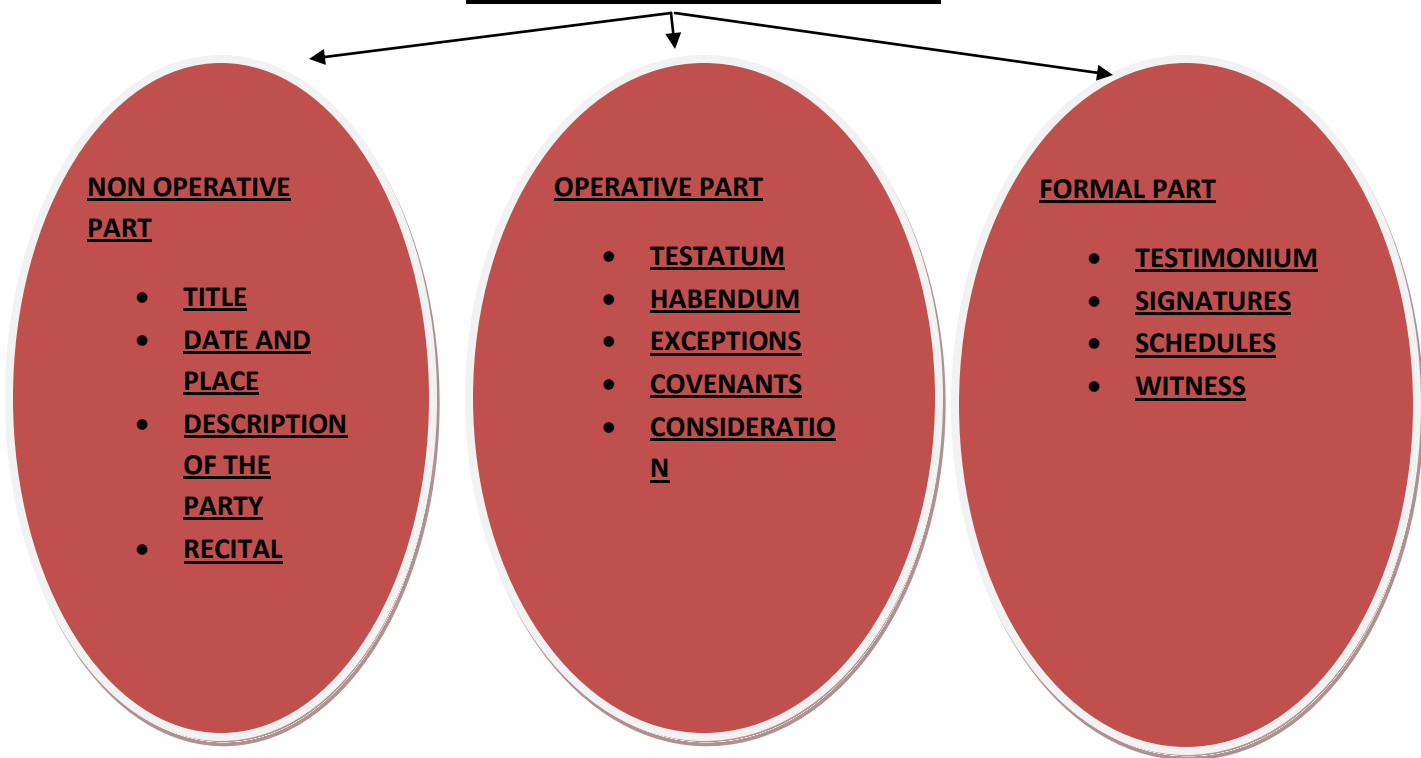
	<ul style="list-style-type: none"> <li>• “Instrument” includes awards made by Industrial Courts (<b><u>Purshottam v. Potdar</u></b>, AIR 1996 SC 856).</li> <li>• “Instrument” does not include Acts of Parliament unless there is a statutory definition to that effect in any Act (<b><u>V.P. Sugar Works v. C.I. of Stamps U.P.</u></b>, AIR 1968 SC 102).</li> <li>• A will is an instrument (<b><u>Bishun v. Suraj Mukhi</u></b>, AIR 1966 All. 563).</li> <li>• The word “instrument” in Section 1 of the Interest Act is wide enough to cover a decree (<b><u>Savitribai v. Radhakishna</u></b>, AIR 1948 Nag. 49).</li> </ul>
DEED	<ul style="list-style-type: none"> <li>• Deed is the term normally used to describe all the instruments by which two or more persons agree to effect any right or liability.</li> <li>• for example Gift Deed, Sale Deed, Deed of Partition, Partnership Deed, Deed of Family Settlement, Lease Deed, Mortgage Deed and so on.</li> <li>• Even a power of Attorney has been held in old English cases to be a deed. A bond is also included in the wide compass of the term deed</li> </ul> <p>A deed is a writing –</p> <ul style="list-style-type: none"> <li>➤ on paper, vellum or parchment</li> <li>➤ sealed, and</li> <li>➤ 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.</li> </ul> <ul style="list-style-type: none"> <li>• A deed is a present grant rather than mere promise to be performed in the future.</li> <li>• Deeds are in writing, signed, sealed delivered.</li> <li>• Deeds are instruments, but all instruments are not deeds.</li> </ul>
VARIOUS KINDS OF DEED	
<b><u>GOOD DEED</u></b>	<ul style="list-style-type: none"> <li>• A good deed is one which conveys a good title, not one which is good merely in form.</li> <li>• A good and sufficient deed is marketable deed; one that will pass a good title to the land it purports to convey.</li> </ul>
<b><u>LAWFUL DEED</u></b>	<ul style="list-style-type: none"> <li>• A lawful deed is a deed conveying a good or lawful title.</li> </ul>
<b><u>PRETENDED DEED</u></b>	<ul style="list-style-type: none"> <li>• A pretended deed is a deed apparently or <i>prima facie</i> valid.</li> </ul>
<b><u>WARRANTY DEED</u></b>	<ul style="list-style-type: none"> <li>• A pretended deed is a deed apparently or <i>prima facie</i> valid.</li> </ul>
<b><u>A SPECIAL WARRANTY DEED</u></b>	<ul style="list-style-type: none"> <li>• 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</li> </ul>
<b><u>INCLUSIVE DEED</u></b>	<ul style="list-style-type: none"> <li>• An inclusive deed is one which contains within the designated</li> </ul>

	boundaries lands which are expected from the operation of the deed.
<b><u>VOLUNTARY DEED</u></b>	<ul style="list-style-type: none"> <li>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</li> </ul>
<b><u>LATENT DEED</u></b>	<ul style="list-style-type: none"> <li>A latent deed is a deed kept for twenty years or more in man’s escritoire or strong box.</li> </ul>

<b><u>SOME IMPORTANT POINTS RELATING TO DEED</u></b>	
<b><u>DEED POOL</u></b>	<ul style="list-style-type: none"> <li>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.</li> <li>This arrangement is known as deed pool.</li> </ul>
<b><u>DEED POLL</u></b>	<ul style="list-style-type: none"> <li>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.</li> <li>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.</li> </ul>
<b><u>INDENTURE</u></b>	<ul style="list-style-type: none"> <li>Indenture are those deeds in which there are two or more parties.</li> <li>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.</li> <li>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</li> </ul> 
<b><u>CYROGRAPHUM</u></b>	<ul style="list-style-type: none"> <li>This was another type of indenture in olden times. The word “<b><u>CYROGRAPHUM</u></b>” was written between two or more copies of the document and the parchment was cut in a jugged line through this word.</li> <li>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</li> </ul>

	<p>of the original.</p> <ul style="list-style-type: none"> <li>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</li> </ul> 
<p><b><u>DEED ESCROW</u></b></p>	<ul style="list-style-type: none"> <li>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.</li> <li>Escrow means a simple writing not to become the deed of the expressed to be bound thereby, until some condition should have been performed.</li> </ul>

## COMPONENTS OF DEED



<b><u>DESCRIPTION OR THE TITLE OF THE DEED</u></b>	<ul style="list-style-type: none"> <li>• 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</li> </ul>
<b><u>DATE AND THE PLACE OF THE EXECUTION OF THE DEED</u></b>	<ul style="list-style-type: none"> <li>• 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, two thousand and eighteen”. 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</li> </ul>
<b><u>DESCRIPTION OF THE DEED</u></b>	<ul style="list-style-type: none"> <li>• Full description of the parties should be given to prevent difficulty in identification. Description must be given in the following order:</li> <li>• 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.</li> </ul>
<b><u>RECITAL</u></b>	<ul style="list-style-type: none"> <li>• Recitals contain the short story of the property up to its vesting into its transferors.</li> </ul>

	<ul style="list-style-type: none"> <li>• Care should be taken that recitals are short and intelligible.</li> <li>• Recitals may be of two types <table border="1" data-bbox="667 310 1430 1409"> <thead> <tr> <th data-bbox="667 310 1040 369"><u><b>NARRATIVE RECITAL</b></u></th><th data-bbox="1040 310 1430 369"><u><b>INTRODUCTORY RECITAL</b></u></th></tr> </thead> <tbody> <tr> <td data-bbox="667 369 1040 1409"> <ul style="list-style-type: none"> <li>➤ 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.</li> <li>➤ 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.</li> </ul> </td><td data-bbox="1040 369 1430 1409"> <ul style="list-style-type: none"> <li>➤ 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.</li> </ul> </td></tr> </tbody> </table> </li> </ul> <ul style="list-style-type: none"> <li>•</li> <li>• 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.</li> <li>• If the same is ambiguous recitals operate as estoppel.</li> <li>• Recital offers good evidence of facts recited therein. Recitals are not generally taken into evidence but are open for interpretation for the courts.</li> <li>• Recitals carry evidentiary importance in the deed. It is an evidence against the parties to the instrument and those</li> </ul>	<u><b>NARRATIVE RECITAL</b></u>	<u><b>INTRODUCTORY RECITAL</b></u>	<ul style="list-style-type: none"> <li>➤ 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.</li> <li>➤ 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.</li> </ul>	<ul style="list-style-type: none"> <li>➤ 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.</li> </ul>
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	<p>claiming under and it may operate as estoppel [<i>RAM CHARAN V. GIRIJA NANDINI</i>, 3 SCR 841 (1965)].</p> <ul style="list-style-type: none"> <li>Recital generally begins with the words “WHEREAS”</li> </ul>
<b><u>TESTATUM</u></b>	<ul style="list-style-type: none"> <li>This is the “<b>witnessing</b>” 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.</li> <li>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 FOLLOWS” are put in the beginning and then paragraphs are numbered</li> </ul>
<b><u>CONSIDERATION</u></b>	<ul style="list-style-type: none"> <li>consideration is very important in a document and must be expressed.</li> <li>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</li> </ul>
<b><u>HABENDUM</u></b>	<ul style="list-style-type: none"> <li><i>Habendum</i> is a part of deed which states the interest, the purchaser is to take in the property.</li> <li><i>Habendum</i> clause starts with the words “<b><u>THE HAVE AND TO HOLD</u></b>”.</li> <li>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.</li> <li>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.</li> <li>It was for that reason that the <i>habendum</i> commenced with the words: “to have to hold to the use of.....”.</li> <li>Now it is not necessary to express it so. In the modern deeds, however, the expression “to have and” are omitted. The <i>habendum</i> limits the estate mentioned in the parcels. The transferee is mentioned again in the <i>habendum</i> for whose use the estate is conveyed.</li> <li>Whatever precedes the <i>habendum</i> is called the premises.</li> <li>If the property conveyed is encumbered, reference thereto should be made in the <i>habendum</i>. If the parties to transfer enter into covenants, they should be entered after the <i>habendum</i>.</li> </ul>
<b><u>COVENANTS AND UNDERTAKING</u></b>	<ul style="list-style-type: none"> <li>The term “covenant” has been defined as an agreement under seal, whereby parties stipulates for the truth of certain facts.</li> </ul>

	<ul style="list-style-type: none"> <li>● 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</li> <li>● Covenant clause includes undertakings also. Usually, covenant is stated first.</li> <li>● In some instances the covenants and undertakings are mixed, i.e. can not be separated in that case, they are joint together, words put for this as "The Parties aforesaid hereto hereby mutually agree with each other as follows:".</li> </ul>
<b><u>EXCEPTIONS AND RESERVATIONS</u></b>	<ul style="list-style-type: none"> <li>• It refers to admission of certain rights to be enjoyed by the transferor over the property to be agreed to by the transferee.</li> <li>• In this part all the exceptions and reservations which are intended to be attached to the transfer should be clearly stated.</li> <li>• Eg in the sale transaction if the owner wants to retain with him the upper floor that can mention in this clause.</li> </ul>
<b><u>PARCEL CLAUSE</u></b>	<ul style="list-style-type: none"> <li>• This is a technical expression meaning methodical description of the property. 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.</li> <li>• 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.</li> <li>• But use of these now has been rendered unnecessary in view of Section 8 of Transfer of Property Act</li> </ul>
<b><u>TESTIMONIUM</u></b>	<ul style="list-style-type: none"> <li>• <i>Testimonium</i> is the clause in the last part of the deed. <i>Testimonium</i> 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.</li> <li>• The usual form of <i>testimonium</i> clause is as under:</li> <li>• "IN WITNESS WHEREOF, PARTIES HERETO HAVE HEREUNTO SET THEIR RESPECTIVE HANDS AND SEALS THE DATE AND YEAR FIRST ABOVE WRITTEN".</li> </ul>
<b><u>SIGNATURES AND ATTESTATION CLAUSE</u></b>	<ul style="list-style-type: none"> <li>• After attestation clause, signatures of the executants of the documents and their witnesses their signatures</li> <li>• Where a deed requires attestation then the executants, must sign in the presence of their witnesses must sign in the presence of the executants. In such a case, after the signatures of the</li> </ul>



	<p>executants.</p> <ul style="list-style-type: none"> <li>• “In witness whereof the parties hereto have signed this day on the date above written”</li> <li>•</li> </ul>
<b><u>ANNEXURES AND SCHEDULE OF THE PROPERTY</u></b>	<ul style="list-style-type: none"> <li>• 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</li> <li>• . It supplements information given in the parcels. A Site Plan or Map Plan showing exact location with revenue no. Mutation No., Munipal No., Survey No., Street No., Ward Sector/Village/Panchayat/Taluka/District etc..... Plot No., etc. so that the demised property could be traced easily</li> </ul>
<ul style="list-style-type: none"> <li>• <b><u>ENDORSEMENT AND SUPPLEMENTARY DEED.</u></b></li> </ul>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> <li>• Thus, supplemental deed is executed to give effect to the new facts in the deed.</li> </ul>
<b><u>ENGROSSMENT AND STAMPING OF A DEED</u></b>	<ul style="list-style-type: none"> <li>● The draft of document is required to be approved by the parties.</li> <li>● 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</li> <li>● 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 Stamp Act.</li> <li>● If a document is not properly stamped, it is rendered inadmissible in evidence nor it will be registered with Registrar of Assurances.</li> </ul>

**REDDENDUM**


This is peculiar to a deed of lease. Here is mentioned this mode and time fixed for the payment. It begins with the word “RENDERING OR PAYING” with reference to the reserved rent is payable during the terms



of the lease. Place where payable and installment where mentioned. If there is any apportionment of the rent that is also mentioned.

## CHAPTER 2 PART A

### AGREEMENTS AND CONTRACTS

<b><u>AGREEMENT</u></b>	<ul style="list-style-type: none"> <li>An agreement is defined u/s 2 (e) as ‘ every promise and every set of promises, forming consideration for each other.</li> <li>When a proposal is accepted it becomes a promise. Thus an agreement is an accepted proposal. Therefore, in order to form an agreement there must be a proposal or an offer by one party and its acceptance by other party. In short <b>Agreement=Proposal + Acceptance.</b></li> </ul>
<b><u>CONTRACT</u></b>	<p><b>ENFORCEABILITY BY LAW.</b> An agreement is enforceable u/s 10 if it is made by competent parties, out of their free consent and for lawful object and consideration. Therefore, a <b><u>Contract = Agreement + Enforceability. Thus all contracts are agreements but all agreements are not necessarily contracts.</u></b></p>
	 <p><i>Agreement</i> — <i>Obligation</i> — <i>Legal</i></p> <p><i>Contract</i></p> <p><i>“All agreements are contracts but all contracts are not agreements.”</i></p> <p><b>CONTRACT = AGREEMENT + ENFORCIBILITY BEFORE LAW</b></p>
<b><u>ESSENTIAL ELEMENTS OF VALID CONTRACT</u></b>	<p><b>Essential Elements of a Valid Contract.</b></p> <ol style="list-style-type: none"> <li>Agreement - Offer and Acceptance</li> <li>Legal purpose</li> <li>Lawful Consideration</li> <li>Capacity to contract</li> <li>Consent to contract</li> <li>Lawful object</li> <li>Certainty</li> <li>Possibility of Performance</li> <li>Not expressly declared void</li> <li>Legal formalities like Writing, Registration etc.</li> </ol> <p><b><u>ALL THE ABOVE INGREDIENTS MUST BE SATISFIED IN EVERY VALID CONTRACT. IT CAN BE NOTED THAT ALL CONTRACTS ARE AGREEMENTS, BUT NOT ALL AGREEMENTS ARE CONTRACTS.</u></b></p>
	<p>The term '<u>Contract</u>' has been defined in <u>Section 2(h)</u> of the Indian Contract Act,</p>

	<p>1872. It defines the Contract as an agreement enforceable by law. An agreement cannot become a contract unless it can be enforceable by law. To be enforceable by law, a contract must contain all the essential elements of a valid contract as defined in <a href="#">Section 10</a>.</p> <p>According to Section 10, "All agreements are contracts, if they are made by the free consent of the parties, competent to contract, for a lawful consideration, with a lawful object and are not expressly declared by the Act to be void.</p>
	<p>Section 25</p> <p>Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law.—An agreement made without consideration is void, unless— —An agreement made without consideration is void, unless—"</p> <p><a href="#">(1)</a> it is expressed in writing and registered under the law  <a href="#">(2)</a> it is a promise to compensate, wholly or in part,  <a href="#">(3)</a> It is a promise, made in writing and signed by the person</p>
<b><u>DISCHARGE OF CONTRACT</u></b>	<p>A Contract may be discharged in any of the following ways</p> <ol style="list-style-type: none"> <li>1. Discharge by Performance.</li> <li>2. Discharge by Mutual Consent or Agreement             <ol style="list-style-type: none"> <li>1. Novation - When a new contract is substituted for an existing contract</li> <li>2. Alteration</li> <li>3. Rescission</li> <li>4. Remission - Accepting the lesser sum of amount than what was contracted for</li> </ol> </li> <li>3. Discharge by subsequent illegality or impossibility             <ol style="list-style-type: none"> <li>1. Destruction of Subject-matter</li> <li>2. Failure of ultimate purpose</li> <li>3. Death or personal incapacity of Promisor</li> <li>4. Change of Law</li> </ol> </li> <li>4. Discharge by lapse of time</li> <li>5. Discharge by operation of law</li> <li>6. Discharge by breach of contract             <ol style="list-style-type: none"> <li>1. Anticipatory breach</li> <li>2. Actual breach</li> </ol> </li> </ol>

IMPORTANT POINTS IN REGARDS TO THE DRAFTING OF CONTRACTS	
<b><u>DESCRIPTION OF THE PARTIES TO THE CONTRACT</u></b>	<ul style="list-style-type: none"> <li>Parties to the contract should properly be defined by giving 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 be also given.</li> <li>In case of firms and companies the particulars of persons representing them be invariably given including details of particulars of the firm</li> </ul>
<b><u>LEGAL NATURE TO THE CONTRACT</u></b>	<ul style="list-style-type: none"> <li>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 <b>technical a a sale/purchase contract or a commercial agency contract or a contract for Assistance and advice or building construction and erection contract</b>, etc.</li> </ul>
<b><u>LICENCES AND PERMITS:</u></b>	<ul style="list-style-type: none"> <li>It is desirable to provide 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</li> </ul>
<b><u>TAXES, DUTIES AND CHARGES</u></b>	<ul style="list-style-type: none"> <li>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</li> </ul>
<b><u>QUANTITY , QUALITY AND INSPECTION OF GOODS</u></b>	<ul style="list-style-type: none"> <li><b>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.</b></li> </ul>
<b><u>PACKING</u></b>	<ul style="list-style-type: none"> <li>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.</li> </ul>
<b><u>SHIPMENT OF GOODS</u></b>	<ul style="list-style-type: none"> <li>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.</li> <li>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</li> </ul>
<b><u>INSURANCE</u></b>	<ul style="list-style-type: none"> <li>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</li> </ul>
<b><u>DOCUMENTATION</u></b>	<ul style="list-style-type: none"> <li>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</li> </ul>
<b><u>GAURANTEEE</u></b>	<ul style="list-style-type: none"> <li>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.</li> <li>The seller is usually given an option to remove the defects in the goods either by replacement or by repair.</li> </ul>

<b><u>PASSING OF THE PROPERTY AND THE PASSING OF THE RISK.</u></b>	<ul style="list-style-type: none"> <li>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.</li> <li>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</li> </ul>
<b><u>AMOUNT, MODE AND CURRENCY OF PAYMENT</u></b>	<ul style="list-style-type: none"> <li>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 D/A or 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 matter which needs to be provided in international contracts relates to the exchange rate.</li> </ul>
<b><u>FORCE MAJEURE</u></b>	<ul style="list-style-type: none"> <li><b><u>important provision witnessed in modern commercial contracts relates to force majeure or excuses for non-performance.</u></b></li> <li><b><u>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.</u></b></li> <li><b><u>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.</u></b></li> </ul>
<b><u>PROPER LAW OF CONTRACT</u></b>	<ul style="list-style-type: none"> <li>When both the parties to a contract are resident in the same country, the contract is governed by the laws of the same country.</li> <li>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.</li> </ul>
<b><u>SETTLEMENTS, DISPUTES AND ARBITRATION</u></b>	<ul style="list-style-type: none"> <li>The last but not least important is the provision regarding settlement of disputes under the contract by arbitration or otherwise. It is usual to provide for an arbitration clause in the contract, particularly under the auspices of an arbitral institution. A suitable arbitration clause may be provided by the parties by mutual agreement.</li> </ul>
<b>ATTESTATION, REGISTRATION AND STAMP DUTY</b>	
<b><u>ATTEST</u></b>	<p>Attest means • <b>Executant- a person who has a certain right over a property and makes a document.....to make changes to his right over that property.</b></p> <ul style="list-style-type: none"> <li>Execute- the act of an executant writing and signing on an instrument.</li> <li>Attest- as per TP Act,- that a person has signed the document by way of testimony of the fact that he saw it executed.</li> <li>The party who sees the document executed is a <b>'witness'</b></li> </ul>
	<p>example • Ramesh is the owner of a land in TVM. • He wishes to mortgage the land in favour of Suresh. • Ramesh wants Sunanda to be a witness to this event. • While Ramesh executes the mortgage deed in favour of Suresh..., Sunanda being a witness to the event 'attests' over the mortgage deed. • Ramesh is the executant • Sunanda is the witness • Sunanda has attested the document. The attestation is a testimony that Ramesh executed the document in her presence and out of his free will. This prevents coercion</p>
<b><u>MEANING OF ATTESTATION</u></b>	<p>SECTION 3 of TP Act •</p> <ul style="list-style-type: none"> <li>In relation to an instrument, means and <b><u>shall be deemed always to have</u></b></li> </ul>

	<p><u>meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument</u>, or</p> <ul style="list-style-type: none"><li>has seen some other person sign the instrument in the <u>presence and by the direction of the executant</u>, or has received from the executant a personal acknowledgement of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executants</li><li>but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary</li></ul>
<p><b><u>ESSENTIALS OF A VALID ATTESTATION</u></b></p>	<div><div><div>1) Definition under section is confined only to non-testamentary instrument. It will not apply to will etc</div><div>2) . 2) Minimum two attesting witnesses are needed. Maximum is not mentioned</div><div>3) . 3) Three modes of attestation are recognized</div></div><div><div>a. Each sees the executant signing or fixing mark, or,</div><div>b. Each sees some other person signing in the presence, and by the direction of the executant</div><div>c. Each has received from the executant the personal acknowledgement of executant sign, of executants mark, sign of one who signed for the executant in his presence and by his direction</div></div></div>
	<ul style="list-style-type: none"><li>Each witness signs the instrument in presence of executants</li><li>Presence of both or all attesting witnesses one and at the same time is not essential.</li><li>No particular form of attestation is prescribed.</li></ul> <div>In Kundan Lal v. Musharaf Begum, the executant was a pardanashin lady and was sitting behind a thin curtain when the attestors signed. The P.C. held that the attestation was valid as the executant, if so minded, could have seen the witnesses, even if she did not actually see them, through the curtain. It is tantamount to say that an attesting witness should sign his name in the presence of the executant</div>
<p><b><u>MODE OF ATTESTATION</u></b></p>	<ul style="list-style-type: none"><li>There is no particular form of attestation, and a mere signature is sufficient. •</li><li>The definition of attestation specifically mentions that ‘no particular form of attestation shall be necessary’. However the signing should be visible from the document. • The main purpose of attestation is to testify to the voluntary execution of the document by the transferor.</li></ul> <div><div>1. <a href="#">13.</a> Case Law • In Shant Ram v. Kamala Prasad, on a transfer deed prepared by a lawyer, before the transferor could sign some person from the side of transferor and transferee, who call themselves attesting witnesses signed on the document. While presenting for registration without the sign of the transferor, the Registrar pointed out that discrepancy. Then transferor signed in the presence of Registrar, but none of the said witnesses were present. • Held- the deed was not validly attested, as, the said witnesses has already signed the document before it was executed. • Attestation means testifying the voluntary execution of the transfer deed, and therefore attestation can never be prior to the execution of the document, and must always be subsequent to it.</div><div><a href="#">14.</a> Legal effect of attestation • Mere attestation of a document does</div></div>

	<p>not show that the attestor had notice of its contents (Banga Chandra v. Jagat Kishore 44 Cal. 186 p.c.). It estops him from denying the factum of execution. • There may be circumstances attending the attestation, such as, that the contents were read over to the attestator, which may estop him from challenging the right of the transferee or denying the authority of the executant to execute the document.</p>
<b><u>LAW RELATING TO REGISTRATION OF DOCUMENTS</u></b>	<ul style="list-style-type: none"> <li>• Registration of a document inter alia, ensures its proper preservation and record.</li> <li>• The Registration Act, 1908 is the law relating to registration of documents.</li> <li>• Registration is of a document and not of a transaction.</li> <li>• <b><u>Registration means recording of the contents of a document with a Registering Officer and preservation of copies of the original document</u></b></li> <li>• The Registration Act, 1908 is the law relating to registration of documents.</li> </ul>
<b><u>OBJECT</u></b>	<ul style="list-style-type: none"> <li>• The object and purpose of the Act among other things is <ol style="list-style-type: none"> <li>1) to give information to people regarding legal rights and obligations arising or affecting a particular property,</li> <li>2) and to perpetuate documents which may afterwards be of legal importance, and</li> <li>3) to prevent fraud.</li> </ol> </li> </ul>
	<div style="text-align: center;"> <p>Documents can be classified into two classes:</p> <pre> graph TD     A[Documents can be classified into two classes:] --&gt; B[Those whose registration is compulsory; (Section 17)]     A --&gt; C[Those whose registration is optional. (Section 18)]           </pre> </div>
<b><u>DOCUMENTS WHOSE REGISTRATION IS COMPULSORY</u></b>	
	<p>According to Section 17 of the Registration Act, 1908, documents whose registration is compulsory are the following:</p>
<b><u>GIFT</u></b>	<p>(a) Instruments of gift of immovable property</p> <ul style="list-style-type: none"> <li>• In a case where the donor dies before registration, the document may be presented for registration after his death and if registered it will have the same effect as registration in his life time.</li> <li>• On registration the deed of gift operates as from the date of execution.</li> </ul> <p>It was held by the Privy Council in <b>Kalyana Sundram v. Karuppa</b>, AIR 1927 PC 42, that while registration is a necessary solemnity for the enforcement of a gift of immovable property, it does not suspend the gift until registration actually takes place, when the instrument of gift has been handed over by the donor to the donee and accepted by him, the former has done everything in his power to complete the donation and to make it effective. And if it is presented by a</p>



	<p>person having necessary interest within the prescribed period the Registrar must register it. Neither death nor the express revocation by the donor, is a ground for refusing registration, provided other conditions are complied with</p>
<b><u>NON TESTAMENTARY INSTRUMENTS</u></b>	<p>non-testamentary instruments (other than instruments of gift of immovable property) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title of interest whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property situated in a district in which this Act is in force.</p>
<b><u>ACKNOWLEDGE AND RECEIPT</u></b>	<p>Non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right, title or interest.</p> <p>This clause requires an acknowledgement in the form of a receipt to be registered, but not an acknowledgement of the fact that a transaction has taken place. To be registrable under this clause a receipt must satisfy the following two conditions:</p> <ul style="list-style-type: none"> <li>(i) it must be the receipt of a consideration; and</li> <li>(ii) it must on the face of it be an acknowledgement of payment or some consideration on account of the creation, declaration, assignment, limitation or extinction of an interest of the value of `100 or upwards in immovable property.</li> </ul>
<b><u>LEASE OF IMMOVABLE PROPERTY</u></b>	<p>Lease of Immovable Property</p> <ul style="list-style-type: none"> <li>(a) if it is from year to year; or</li> <li>(b) if it is for a term exceeding one year; or 620 EP-ECL</li> <li>(c) if it reserves a yearly rent.</li> </ul>
<b><u>DECREE OF THE COURT</u></b>	<p>Non-testamentary instruments transferring or assigning any decree or order of a Court or any award in order to create interests as mentioned in Clause (b).</p> <p>A transfer of a decree or order of a court or of any award when such decree or order or award operates to create, declare, etc. any interest of the value of `100 and upwards in immovable property</p>
<b>EXCEPTIONS OF SECTION 17</b>	
	<p>The registration of the non-testamentary documents mentioned in clauses (b) and (c) of Section 17(1) is subject to the exceptions provided in Sub-section (2) of Section 17. These are as follows:</p> <ul style="list-style-type: none"> <li>(i) any composition deed, i.e., every deed the essence of which is composition; or</li> <li>(ii) any instrument relating to shares in Joint Stock Company; or</li> <li>(iii) any debentures issued by any such Company; or</li> <li>(iv) any endorsement upon or transfer of any debenture; or</li> <li>(v) any decree or order of a court; or</li> <li>(vi) any grant of immovable property by the Government; or</li> <li>(viii) any instrument of partition made by Revenue-officer; or</li> </ul>
<b><u>DOCUMENTS FOR WHICH REGISTRATION IS OPTIONAL</u></b>	
	<ul style="list-style-type: none"> <li>• Whereas Section 17 of the Act has made registration of certain</li> </ul>



	documents compulsory, Section 18 specifies documents, registration of which is optional. It provides that any of the following documents may be registered under this Act
<u>INSTRUMENTS (OTHER THAN INSTRUMENTS OF GIFT AND WILLS)</u>	instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest whether vested or contingent, <b>of value less than one hundred rupees, to or in immovable property;</b>
	instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment; limitation or extinction of any such right, title or interest of value less than rupees 100, in immovable property
<u>LEASE</u>	leases of immovable property for any term not exceeding one year and leases exempted under Section 17;
<u>WILL</u>	WILL
	Other documents not required by Section 17(2) to be registered.
<p><b>TIME FOR PRESENTING DOCUMENTS FOR REGISTRATION</b></p> <div style="display: flex; justify-content: space-around;"> <div style="border: 1px solid black; padding: 10px; width: 45%;"> <p><b><u>DOCUMENTS EXECUTED IN INDIA</u></b></p> <p>A document other than a will must be presented within four months of its execution. In cases of urgent necessity, etc. <b>the period is eight months</b>, but higher fee has to be paid (Sections 23-26).</p> </div> <div style="border: 1px solid black; padding: 10px; width: 45%;"> <p><b><u>DOCUMENTS EXECUTED OUT OF INDIA</u></b></p> <p>As per Section 26 Where the registering officer is satisfied that the document was <b><u>executed outside India and it has been presented for registration within four months after its arrival in India</u></b>, he may accept such document for registration on payment of proper registration fee. A document executed outside India is not valid unless it is registered in India (Nainsukhdas v. Gowardhandas, AIR 1948 Nag. 110)</p> </div> </div>	
<p><b><u>PLACE OF REGISTRATION</u></b></p> <ul style="list-style-type: none"> <li>Section 28 provides that documents affecting immovable property mentioned in Sections 17(1) and (2) and shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the relevant property is situated</li> <li>any other document may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed or in the office of any other Sub-Registrar under the State Government at which all the persons executing desire the document to be registered. (All these documents relate to immovable property).</li> <li>Registration of a document elsewhere has been held to be void (Harendra Lal Roy Chowdhuri v. Hari Dasi Debi, (1914) ILR 41 Cal. 972, 988 (PC); Mulla, Registration Act (1998),</li> </ul>	
<b><u>REGISTERED DOCUMENT RELATING TO PRIORITY WHEN</u></b>	<ul style="list-style-type: none"> <li>Generally, priority to rights accorded by different transfers is governed by the principles embodied in the maxim qui prior tempore potior est jure that is "he who is first in time is better in law".</li> <li>But this general rule is subject to exceptions created by Sections 48 and</li> </ul>

<b><u>TO TAKE EFFECT AGAINST ORAL AGREEMENT</u></b>	50. Section 48 refers to the priority of the registered agreements over oral agreements and Section 50 refers to the priority of registered agreements over nonregistered agreements. (Section 48)
<b><u>REGISTERED DOCUMENTS WHEN OPERATIVE</u></b>	<ul style="list-style-type: none"> <li>• a) A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. (Section 47)</li> <li>• (b) As between two registered documents, the date of execution determines the priority. Of the two registered documents, executed by same persons in respect of the same property to two different persons at two different times, the one which is executed first gets priority over the other, although the former deed is registered subsequently to the later one (K.J. Nathan v. S.V. Maruthi Rai, AIR 1965 SC 430;</li> <li>•</li> </ul>
<b><u>EFFECTS OF NON REGISTRATION</u></b>	<p>Section 49 of the Act provides that no document required by Section 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall:</p> <p>(a) affect any immovable property comprised therein; or</p> <p>(b) confer any power to adopt; or</p> <p>(c) be received as evidence of any transaction affecting such property or conferring such power unless it has been registered.</p>

**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.
<b><u>INFORMAL AGREEMENTS:</u></b>	<ul style="list-style-type: none"> <li>In these interpretation <b><u>the rule to be applied is that of reasonable expectation</u></b>; 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.</li> <li>If the intention is manifested ambiguously, the party manifesting the same in an ambiguous man to have had reason to know that the manifestation may reasonably bear more than one meaning</li> </ul>
<b><u>FORMAL AGREEMENT</u></b>	<ul style="list-style-type: none"> <li>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 Evidence Act). The law forbids any contradiction of, or any addition, subtraction or variation in a written document.</li> <li>The document should, therefore, contain all the terms and conditions, preceded by recital of all relevant and material facts.</li> </ul>
	<ul style="list-style-type: none"> <li>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.</li> </ul>
	<ul style="list-style-type: none"> <li>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.</li> </ul>
	<ul style="list-style-type: none"> <li>The court must interpret the words in their popular, natural and ordinary sense, subject to certain exceptions as,               <ul style="list-style-type: none"> <li>(i) where the contract affords an interpretation different from the ordinary meaning of the words; or</li> <li>(ii) where the conventional meanings are not the same with their legal sense.</li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>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.</li> </ul>
	<ul style="list-style-type: none"> <li>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.</li> </ul>
	<ul style="list-style-type: none"> <li>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.</li> </ul>
	<ul style="list-style-type: none"> <li>No clause should be regarded as superfluous, since merchants are not in the</li> </ul>

	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.
	<ul style="list-style-type: none"> <li>The fact that a clause in the deed is not binding on the ground that it is unauthorised cannot <i>ipso facto</i> render the whole deed void unless it forms such an integral part of the transaction as to render it impossible to sever the good from the</li> </ul>
	<ul style="list-style-type: none"> <li>As a general rule of construction of documents, the recitals are not looked into, if the terms of the deed are otherwise clear.</li> </ul>
	<ul style="list-style-type: none"> <li>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</li> </ul>
	<ul style="list-style-type: none"> <li>judicial interpretation of similar documents in the past can be relied upon</li> </ul>



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	<ul style="list-style-type: none"> <li>judicial interpretation of similar documents in the past can be relied upon</li> </ul>





**CHAPTER 3 PART A****DRAFTING OF AGREEMENT AND CONTRACT****MASTER FORMAT TO DRAFT ANY AGREEMENT**

DESCRIPTION OR TITLE TO THE DEED.....DATE AND PLACE OF THE EXECUTION OF THE DEED.....DESCRIPTION TO THE PARTY (HEREIN AFTER CALLED THE FIRST PARTY TO THE DEED)

AND

DESCRIPTION TO THE PARTY (HEREIN AFTER CALLED THE SECOND PARTY TO THE DEED)

(THE EXPRESSIONS “VENDOR” AND “PURCHASER” WHEREVER THEY OCCUR IN THESE PRESENTS, SHALL UNLESS THE CONTEXT OTHERWISE ADMITS, ALSO MEAN AND INCLUDE THEIR RESPECTIVE HEIRS, EXECUTORS, ADMINISTRATORS, LEGAL REPRESENTATIVES AND ASSIGNS). (ONLY IN CERTAIN AGREEMENTS)

RECITALS...

TESTATUM

..

CLAUSES O THE AGREEMENT

1.....

2.....

3.....

4.....

5.....

## SCHEDULE OF THE PROPERTY

## TESTIMONIUM

**WITNESS 1**

NAME

FATHER'S NAME

ADDRESS

SIGN

**WITNESS 2**

NAME

FATHER'S NAME

ADDRESS

SIGN

**PARTIES TO THE  
DEED**

1.....

2.....

**AGREEMENT TO SELL****A Specimen Agreement of Sale of House Property**

THIS AGREEMENT OF SALE executed on the..... day of..... two thousand and  
eighteen, between AB son  
of..... residing at  
..... hereinafter called the vendor of the one part

AND

CD son of ..... resident at  
..... hereinafter called the purchaser of the other part,

(The expressions "vendor" and "purchaser" wherever they occur in these presents, shall unless the context otherwise admits, also mean and include their respective heirs, executors, administrators, legal representatives and assigns).

WHEREAS the vendor is the sole and absolute owner of the property more fully set out in the Schedule hereunder:

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

NOW THIS AGREEMENT OF SALE WITNESSETH AS UNDER:

1. The price of the property more fully set out in the Schedule hereunder is fixed at Rs..... (Rupees.....) free of all encumbrances.
2. The purchaser has paid to the vendor this day, a sum of Rs..... (Rupees ..... ) by way of earnest money for the due performance of the agreement, the receipt whereof the vendor doth hereby admit and acknowledge.
3. The time for performance of the agreement shall be..... months from the date hereof and it is agreed that the time fixed herein for performance shall be of the essence of this agreement.
4. The purchaser shall pay to the vendor the balance sale price of Rs..... (Rupees ..... ) before registration of the conveyance deed.
5. The vendor agrees that he will deliver vacant possession of the property to the purchaser before registration of the conveyance deed. Or alternatively, the vendor agrees that he will put the purchaser in constructive possession of the property by causing the tenants in occupation of the property to attorn their tenancy to the purchaser.
6. The vendor shall execute the conveyance deed in favour of the purchaser or his nominee as the purchaser may require.
7. The vendor shall hand over all the title deeds of the property to the purchaser or an advocate nominated by him within..... days from the date of this agreement for scrutiny of title and the opinion of the vendor's advocate regarding title to the property shall be final and conclusive. The purchaser shall duly intimate the vendor about the approval of title within..... days after delivering the title deeds to him or to his advocate.
8. If the vendor's title to the property is not approved by the purchaser, the vendor shall refund the purchaser the earnest money received by him under the agreement and on failure of the vendor to refund the same within..... days, he shall be liable to repay the same with interest thereon at the rate of..... per cent per annum.
9. If the purchaser commits a breach of the agreement, he shall forfeit the earnest amount of Rs..... (Rupees ..... ) paid. If the vendor commits a breach of the agreement, the vendor shall not only refund to the purchaser the sum of Rs.....

(Rupees.....) received by him as earnest money, but shall also pay to the purchaser an equal sum by way of liquidated damages.

10. Nothing contained in paras 9 and 10 above shall prejudice the rights of the parties hereto specific performance of this agreement of sale/purchase.

#### **SCHEDULE OF PROPERTY**

**HOUSE NO.....SITUATED IN....**

**ON ITS NORTH .....**

**SOUTH.....**

**EAST .....**

**WEST.....**

IN WITNESS WHEREOF THE VENDOR AND THE PURCHASER HAVE SET THEIR RESPECTIVE HANDS TO THE AGREEMENT OF SALE/PURCHASE ON THE DAY, MONTH AND THE YEAR ABOVE WRITTEN, IN THE PRESENCE OF THE FOLLOWING WITNESSES:

Witnesses:

(1) Name	:	
Father's Name	:	
Address	:	
Signature	:	Vendor
(2) Name	:	
Father's Name	:	
Address	:	
Signature	:	Purchaser

.2.

#### **FOREIGN COLLABORATION AGREEMENTS.**

- When two parties join hands for exchange of technical know-how, technical designs and drawings; training of technical personnel of one of the parties in the manufacturing and/or research and development divisions of the other party; continuous provision of technical, administrative and/or managerial services, they are said to be collaborating in a desired venture.
- The word "collaboration" has, however, acquired a specific meaning, which refers to cooperation between a party within India and a party abroad. The agreements drawn and executed between such collaborating parties are known as "foreign collaboration agreements".

- With sophistication and technical advance achieved in the developed countries and motivated by the desire of carrying the country into the twenty-first century, the Indian entrepreneurs are seeking all possible avenues for obtaining technical know-how in the fields of industry, agriculture, mining, oil exploration, power generation, etc.
- A large number of Indian industrialists have already entered into long and short-term collaboration arrangements with foreign companies, firms etc. In order to ensure quick processing of the proposed collaboration arrangements and on a uniform basis, the Central Government has issued guidelines for prospective collaborators so that they submit their proposals in accordance with those guidelines.

**GUIDELINES FOR ENTERING INTO FOREIGN COLLABORATION AGREEMENTS**

<b><u>S.NO</u></b>	<b><u>PARTICULARS</u></b>	<b><u>PROVISIONS</u></b>
<b><u>1</u></b>	<b><u>INVESTMENT</u></b>	Where in a foreign collaboration agreement, equity participation is involved, the value of the shares to be acquired should be brought in cash.
<b><u>2</u></b>	<b><u>LUMP SUM PAYMENTS</u></b>	<p>The amount agreed to be paid by an Indian party to a foreign collaborator for technology transfer should be paid in three instalments as follows:</p> <ul style="list-style-type: none"> <li>• one-third to be paid after the agreement has been approved by the Central Government;</li> <li>• one-third on transfer of the technical documents; and</li> <li>• one-third on the commencement of commercial production</li> </ul>
<b><u>3</u></b>	<b><u>ROYALTY</u></b>	<p>Royalty payable to a foreign collaborator has to be calculated on the basis of net ex-factory selling price of the product less excise duties and cost of imported components. The normal rate of royalty may be three per cent to five per cent. This rate will depend upon the nature and extent of the technology involved.</p> <p>Payment of a fixed royalty is preferred by the Government in certain cases. There should be no provision for payment of a minimum guaranteed royalty, regardless of the quantum and value of production.</p>
<b><u>4</u></b>	<b><u>DURATION OF AGREEMENT</u></b>	Normal period of a foreign collaboration agreement is eight years subject to maximum of ten years. <b>The period is approved by the Government usually for five years from the date of the agreement in the first instance or five years from</b>

		<b>the date of commencement of commercial production;</b> the total period, however, not exceeding eight years from the date of the agreement.
<b><u>5</u></b>	<b><u>RENEWAL OR EXTENSION</u></b>	The Central Government may consider an application for renewal of a foreign collaboration agreement or for extension of its period on merit
<b><u>6</u></b>	<b><u>REMITTANCES</u></b>	Remittances to foreign collaborators are allowed only on the basis of the prevailing exchange rates.
<b><u>7</u></b>	<b><u>SUB LICENSING</u></b>	An agreement shall not normally impose any restriction on the sub-licensing of the technical know-how to other Indian parties. The terms of such sub-licensing will be as mutually agreed to between all the concerned parties including the foreign collaborator. Sub-licensing is, however, subject to the Central Government's approval
<b><u>8</u></b>	<b><u>BRAND NAME</u></b>	There should be no insistence on the use of foreign brand names on products for sale in India. There can, however, be no objection for use of foreign brand name on products to be exported to other countries.
<b><u>9</u></b>	<b><u>APPLICABLE LAW</u></b>	All collaboration agreements shall be subject to Indian laws
<b><u>10</u></b>	<b><u>APPROVAL OF CENTRAL GOVERNMENT</u></b>	: Every foreign collaboration agreement shall be approved by the Central Government.

### A Specimen OF FOREIGN COLLABORATION AGREEMENT

THIS AGREEMENT OF FOREIGN COLLABORATION AGREEMENT executed on..... day of ..... between M/s ....., a Foreign Company incorporated in the United Kingdom and having its registered office at ..... hereinafter called the U.K. Company of the ONE PART.

AND

M/s..... a company incorporated in India and having its registered office at ..... hereinafter called the Indian company of the OTHER PART:

WHEREAS the Indian company has been incorporated having for its object the manufacture and production of.....; WHEREAS the Indian company has already constructed factory buildings, installed plant and machinery and commenced manufacture and production of.....; WHEREAS the Indian company with a view to improve still further the quality of the commodities manufactured and to increase production are desirous of procuring the latest technique and know-how relates to the manufacture of the abovesaid commodities; WHEREAS the Indian company therefore approached the U.K. company who have considerable experience in the line of manufacture engaged in by the Indian company, and requested them to extend to them necessary technical assistance in that behalf; AND WHEREAS the U.K. company has agreed to

extend technical assistance and to furnish to the Indian company for improvement of their business the requisite know-how in the form of designs, plans, engineering drawings, technical advice and also to supply technicians to advice for improvement of the existing factories, machineries and plant and also to provide to the Indian personnel necessary technical training to enable them to successfully handle and exploit the technical know-how to be imparted to the Indian company subject to the terms and conditions set out hereunder:

**NOW THIS AGREEMENT WITNESSES AS FOLLOWS:**

(1) In consideration of the remuneration paid by the Indian company to the U.K. company as described hereinafter the U.K. company shall supply to the Indian company:

- (a) technical advice and know-how for the purpose of improving or adding to the existing factories and installing additional plant and machineries if necessary for the manufacture of.....;
- (b) further the necessary plans, factory-design and layouts, charts and drawings, documentation and other forms of technical know-how for the said purpose;
- (c) render advice in the matter of purchase of the further plant and machinery suitable and necessary for the factory;
- (d) lend the services of their technicians to assist the Indian company in carrying out the improvement to the factories and for installing additional plants and machinery;
- (e) provide technicians from their own staff to attend at the Indian company's factory in India whenever necessary;
- (f) impart technical training to selected Indian personnel at their works in England or in their associated companies, to enable them to operate the machinery and plant to be installed and to exploit the imported technical know-how to the best advantage;
- (g) advise the Indian company, promptly and to the best of their ability, in connection with any technical or manufacturing problems or difficulties which may be referred to it by the Indian company during the continuance of this agreement.

(2) For technical know-how and data supplied by the U.K. company to the Indian company as above, the Indian company shall make a lump sum payment of Rs..... to the U.K. company phased as follows:

- (a) one-third on approval of the agreement by the Central Government;
- (b) one-third, on the U.K. company supplying the Indian company necessary charts, plans, engineering drawings, documentation and other technical data and know-how, which shall be done within 15 days from the date of approval, of this agreement by the Central Government;
- (c) the balance one-third in three equal annual instalments thereafter after commencement of production.

(3) This Agreement shall be in force for a period of 5 years at the first instance, subject to extension for a further period of 5 years by mutual agreement and subject to approval by the Central Government.

(4) The Indian company may but not bound to use foreign brand names on their products for internal sale or on products to be exported

(5) The Indian company shall maintain the utmost secrecy in connection with any technical data supplied by the U.K. company under this Agreement, and in particular shall keep all data concerned with the manufacturing processes under lock and key.

(6) It is agreed that the payment made to the U.K. company shall include the compensation for use of the patent rights for the period of its duration and that the Indian company shall have the right for the period of its duration and that the Indian company shall have the right to manufacture their products even after the expiry of this Agreement.

(7) The Indian company shall not during the continuance of the Agreement refer any technical or manufacturing problems or difficulties to any one other than the U.K. company but shall regard and use the U.K. company as its sole technical consultant.

(8) On the expiry of the period prescribed herein or of extended period provided in clause 3 (*supra*) or upon the termination of this agreement for any reason the Indian company shall return to the U.K. company all copies of information data or material sent to it by the U.K. company under this Agreement and then in its possession and shall expressly refrain from communicating any such information, technical data or material received by it hereunder to any person, firm or company whatsoever.

IN WITNESS WHEREOF the parties hereto have signed this Agreement this..... day of..... 2018 in the presence of the following:

WITNESSES:

- 1.
- 2.

#### **SPECIMEN OF JOINT VENTURE AGREEMENT.**

##### **Specimen Joint Venture Agreement (Joint Venture with Foreign Company)**

THIS AGREEMENT IS MADE on this .....day of TWO THOUSAND AND EIGHTEEN BETWEEN AMCO INC. Incorporated under the appropriate laws of the United States of America having its office at 5 Seventh Street, New York of the ONE PART

AND

INCO LTD. a company registered under the Companies Act, 1956 having its office at 99 Chowring Road Calcutta 700071 of the OTHER PART

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

Whereas INCO LTD. (hereinafter referred to as INCO) carries on business as manufacturer of, dealer in and exporter of Computer Softwares and intends to expand its business in India and abroad.

Whereas AMCO and INCO intend to co-operate in manufacturing/dealing in and exporting Computers, Hardwares and Softwares in India and abroad for mutual benefit by setting up a new company.

NOW THESE PRESENTS WITNESSETH and the parties hereby agree as follows:

1. A Joint-stock company would be formed under the name and style of Indo-American Company Pvt.



Ltd. under the Companies Act 1956 having its Registered Office at 99 Chowringhee Road, Calcutta 700 071.

2. AMCO and three of its nominees and INCO and three of its nominees would be the subscribers to the Memorandum and Articles of Association of the said company to be incorporated.
3. The shareholding in the Share Capital of the said company to be incorporated would be in equal proportions between AMCO and INCO.
4. The Memorandum and Articles of Association of the company proposed to be incorporated would be settled in mutual consultation and the same would govern the rights and obligations of AMCO and INCO in relation to the said proposed company.
5. AMCO will be allotted shares in the said new company partly in cash and partly towards the cost of plant, machinery and equipment to be supplied by AMCO to the new company and in consideration for assignments by AMCO of its Patent Rights, Trade Marks, Trade Names and Licences in favour of the new company to be incorporated. The consideration for allotment of shares to AMCO would also include the supply and transfer of technical formula, new inventions, secret processes, technical information concerning the production, manufacturing, testing, specifications, instructions and information as to the manufacture of, development, use and servicing, maintenance and improvement of quality of Computers, Hardwares and Softwares and generally in connection with the successful carrying on of the said business by the said new company to be incorporated.
6. Will furnish necessary technical assistance and expertise to the new company for assembling, installation, start-up and for smooth running of the manufacturing and selling processes as might be required by the new company from time to time.
7. Will furnish to the new company all other technical assistance and advice in relation to the operation of the plant and machinery, repairs thereof, testing facilities, training facilities and Research & Development facilities should be arranged for, provided and continued for successful running of the business of the new company.
8. The shares that would be allotted by the new company should not be transferred by either AMCO or INCO within a period of five years from the date of allotment and thereafter if any of the parties intends to transfer any share then the same shall be offered first to the other party at a price to be determined by a Valuer to be appointed by mutual agreement and in absence by application to the Indian Chamber of Commerce.
9. The new company will manufacture Computers, Hardwares and Softwares and allied accessories and products and the same would be marketed in India and exported to other countries under the Trade name or Brand name made available by AMCO and by any other name and shall obtain new Trade Mark and obtain Patents for further and better manufacturing, selling and exporting the new company's products.
10. AMCO will buy 75% of the products of new company for exporting; to other countries through its own organisations or outlets at a remunerative price not below the price at which the products are sold in India.
11. Neither party shall carry on their own business in a manner which will directly adversely affect the

business and profitability of the new company.

12. The expenses for the setting up and promotion of the new company would be shared equally by AMCO and INCO.
13. The consideration for allotment of shares of the new company to INCO shall be paid in cash and in kind such as by transfer of immovable properties for the setting up of factory and making arrangement for the office accommodation of the new company. The valuation of such immovable properties including office accommodation would be decided by mutual agreement between AMCO and INCO.
14. Any disputes or differences arising in relation to this agreement, its construction, validity, performance, breach or any other question shall be referred to the Indian Chamber of Commerce for settlement by Arbitration or Conciliation in Calcutta and the decision of the said Arbitrator shall be final and binding on both the parties.
15. This agreement is made subject to obtaining approvals of the Indian Government and other concerned authorities.
16. In the event certain additions or alterations are required under this agreement due to imposition of certain terms and conditions by Government of India or appropriate authority granting the approval shall be incorporated in this agreement by way of a supplemental agreement and if required the Memorandum and Articles of Association of the new company would also be in conformity with such directions or approvals of the appropriate authorities.

IN WITNESS WHERE OF THE PARTIES HERETO HAVE SIGNED, SEALED AND DELIVERED THESE PRESENTS  
ON THE DAY, DATE ABOVE MENTION.

WITNESS

PARTY 1

WITNESS

PARTY 2

### **SPECIMEN OF BUILDING CONTRACT**

- Building contracts, being legal documents, have to be drawn in accordance with the provisions of the Indian Contract Act.. Such an agreement or contract must be drawn in accordance with the provisions of the **Indian Contract Act, 1872.**
- All the essential ingredients of a contract, such as, a proposal, its acceptance, its due communication to the proposer, lawful consideration, lawful purpose and competence of parties to the contract etc. must be duly satisfied and ensured while drafting such contracts.

**Specimen of a Building Contract**

THIS AGREEMENT OF BUILDING is made this..... day of..... two thousand and eighteen.between ABC Ltd., a company incorporated under the Companies Act, 2013 having its Registered Office at..... acting through Shri....., its Company Secretary, hereinafter called “the builder”, which term shall, unless repugnant to the context, include its legal representatives, of the one part

And

Shri..... son of Shri..... resident of..... hereinafter called “the owner”, which term shall, unless the context otherwise admits, include his heirs, executors, administrators, legal representatives, nominees and assigns, of the other part.

WHEREAS the owner has a plot of land measuring..... sq. meters situated at..... (as specified in Schedule I) duly registered in his own name with the rights, title and interest therein absolutely vesting in him;

AND WHEREAS the owner has requested the builder to build a bungalow on the said piece of land according to the plan approved by the Municipal authorities, of the area;

AND WHEREAS the builder, has agreed to build the desired bungalow.

NOW THIS AGREEMENT IS REDUCED INTO WRITING AND RESPECTIVE PARTS THEREOF SHALL BE PERFORMED BY THE OWNER AND THE BUILDER IN ACCORDANCE WITH THE FOLLOWING TERMS AND CONDITIONS:

1. The builder will build and complete the bungalow within six months from the date of execution hereof in a thorough manner and with the best material.
2. Subject to the conditions hereinafter contained, the owner will pay to the builder a sum of Rs..... as cost of labour for construction and all other type of labour, cost of materials, electrical and sanitary fittings, wood work, doors and windows, white-washing, painting and polishing etc., as per specifications of the architect of the owner, which have been given in detail on the approved plan of the bungalow and a photo-copy whereof has already been handed over to the builder, who has received the same and has signed the original sanctioned plan in token of having received a photo copy thereof, in the following manner and at varying stages of the construction:
3. The owner shall pay to the builder a sum of Rupees twenty thousand only immediately on execution of this Agreement in the form of earnest money, immediately on receipt whereof, the builder shall procure building materials and start construction work. The said sum of Rupees twenty thousand shall be adjusted by the owner from the last instalment payable to the builder.
4. It is expressly, agreed between the owner and the builder that in respect of the aforesaid payments and in respect of the construction of the bungalow, time is the essence of this agreement.
5. The builder will do and perform all works incidental to the proper execution and completion of the bungalow including all works rendered necessary in consequence of the doing of the works
6. It is agreed by the owner that any amount that will be due and payable to the builder as mentioned in this agreement shall be treated as a charge on the bungalow till such time the same is paid in full.

7. If the owner requires any additional or extra items of work to be carried on by the builder in the bungalow, other than the above specified works, the builder should be informed by the owner in advance and the cost and/or difference of cost for such items of work as per rates mutually agreed upon should be paid by the owner to the builder in advance.

### SCHEDULE I

Details of the plot of land upon which the bungalow is to be built by the builder for the owner:

Plot No..... measuring.....

sq. metres Street.....

Road.....

Bounded on

East.....

West.....

North.....

South.....

### ELECTRONIC CONTRACTS

E CONTRACT	<ul style="list-style-type: none"> <li>• Due to the immoderate advancement of technology E-Commerce has become a part of human daily life. E- Commerce is the selling and purchasing of goods and services using technology.</li> <li>• E-Contracts are basically the contracts analyzed with E-Commerce and other transactions taking place in the digital environment.</li> <li>• E-contract (contract that is not paper based but rather in electronic form) is any kind of contract formed in the course of e-commerce by the interaction of two or more individuals using electronic means, such as e-mail, the interaction of an individual with an electronic agent, such as a computer program, or the interaction of at least two electronic agents that are programmed to recognize the existence of a contract.</li> <li>• The contracts formed through electronic media are treated as the general contracts and their formation and acceptance are governed as per the</li> </ul>
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	<p>Indian Contract Act, 1872.</p> <ul style="list-style-type: none"> <li>Information Technology Act, 2000 governs the law relating to E_CONTRACTS.</li> </ul>
ESSENTIAL ELEMENTS OF E- CONTRACT	<p>As per the Indian Contract Act, the essentials of a contract are:</p> <ul style="list-style-type: none"> <li>(i) An offer or proposal by one party and acceptance of that offer by another party resulting in an agreement consensus-ad- idem.</li> <li>(ii) An intention to create legal relations or an intent to have legal consequences.</li> <li>(iii) The agreement is supported by lawful consideration.</li> <li>(iv) The parties to contract are legally capable of contracting.</li> <li>(v) Genuine consent between the parties.</li> <li>(vi) The object and consideration of the contract is legal and is not opposed to public policy.</li> <li>(vii) The terms of the contract are certain.</li> <li>(viii) The agreement is capable of being performed i.e., it is not impossible of being performed</li> </ul>
TYPES OF E- CONTRACT	<p>Generally there are three types of E-Contract:</p> <ul style="list-style-type: none"> <li>– The Click-wrap or Web-wrap Agreements.</li> <li>– The Shrink-wrap Agreements.</li> <li>– The Electronic Data Interchange or (EDI):</li> </ul>
<b><u>CLICK WRAP OR WEB-WRAP AGREEMENTS</u></b>	<ul style="list-style-type: none"> <li>These are the agreements which we generally come across while surfing internet such as “I AGREE” to the terms or “I DISAGREE” to the above conditions. A click-wrap agreement is mostly found as part of the installation process of software packages. It is also called a “click through” agreement or click-wrap license.</li> </ul> <p>Click-wrap agreements can be of the following types:</p> <ol style="list-style-type: none"> <li>Type and Click where the user must type “I accept” or other specified words in an on-screen box and then click a “Submit” or similar button.</li> <li>Icon Clicking where the user must click on an “OK” or “I agree” button on a dialog box or pop-up window.</li> </ol>
<b><u>SHRINK WRAP AGREEMENTS</u></b>	<ul style="list-style-type: none"> <li>Shrink wrap contracts are license agreements or other terms and conditions which can only be read and accepted by the consumer after opening the product like CD ROM of software.</li> <li>The terms and conditions are printed on the cover of CD ROM. Sometimes additional terms are imposed when in such licenses appear on the screen when the CD is downloaded to the computer. The user has right to return if the new terms and conditions are not to his liking</li> </ul>

<p><b><u>ELECTRONIC</u></b> <b><u>DATA</u></b> <b><u>INTERCHANGE</u></b> <b><u>OR (EDI)</u></b></p>	<ul style="list-style-type: none"> <li>• These contracts used in trade transactions which enables the transfer of data from one computer to another in such a way that each transaction in the trading cycle (for example, commencing from the receipt of an order from an overseas buyer, through the preparation and lodgment of export and other official documents, leading eventually to the shipment of the goods) can be processed with virtually no paperwork</li> <li>• . Here unlike the other two there is exchange of information and completion of contracts between two computers and not an individual and a computer</li> </ul>
<p><b><u>ON LINE</u></b> <b><u>SHOPPING</u></b> <b><u>AGREEMENT</u></b></p>	<p>Suppose X Ltd. wants to offer online shopping services to its customers. X would tie-up with manufacturers of books, toys, clothes etc and offer their products for sale through its website. Some of the products could be stocked in Noodle's warehouses while others could be stocked with the manufacturers.</p> <p>Additionally visitors can post reviews, comments, photos etc on the X website. X would need to enter into a contract with all its potential customers "before" they place an order for a product using X services. This contract must serve the following purposes:</p> <ol style="list-style-type: none"> <li>1. Outline the scope of services provided by XLtd.</li> <li>2. Restrict Kerry's liabilities in case there is any defect in the products sold through the X website.</li> <li>3. Outline the duties and obligations of the customer.</li> <li>4. Grant suitable licence to the customer to use the Xwebsite.</li> </ol> <p>Restrict Noodle's liabilities in case of loss or damage suffered by the customer as a direct or indirect result of the X website</p>

## CHAPTER 3 PART B

**DRAFTING OF AGREEMENTS RELATED TO****AGENCY, ARBITRATION, SERVICE, GAURANTEES**

<b><u>COMMERCIAL AGENCY CONTRACT</u></b>	<ul style="list-style-type: none"> <li>• A commercial agency contract should <i>inter alia</i> include provisions regarding the date of commencement and of termination of the agency, the goods or products to be covered by the agency, the contractual territory, the nature of the agency, e.g. sole or exclusive agency, etc.</li> <li>• The rate and basis of commission payable to the agent should also be clearly indicated. The conditions regarding the reimbursement of expenses incurred by the agent; payment</li> </ul> <div data-bbox="492 606 1169 1381"> <p style="text-align: center;"><b>CONCEPT OF AGENCY</b></p> <pre> graph TD     A[CONCEPT OF AGENCY] --&gt; B[PARTY 1 IN AGENCY IS KNOWN AS AGENT, WHO IS APPOINTED FOR DOING SOME WORK OR TO DO SOMETHING ON BEHALF OF SOMEONE.]     A --&gt; C[PARTY 2 IS KNOWN AS PRINCIPAL, A PERSON WHO APPOINT AGENT]         </pre> <p style="text-align: center;"><b>THE RELATIONSHIP BETWEEN TWO IS KNOWN AS AGENCY</b></p> </div>
<b><u>INGREDIENTS OF AGENCY CONTRACT</u></b>	<p><b><u>The contract of agency is governed by Chapter X (Sections 182 to 238) of the Contract Act, 1872. The basic features of contract of agency are:</u></b></p> <ol style="list-style-type: none"> <li>1. Authority should be given either expressly or impliedly to bind his principal.</li> <li>2. While the principal should not be a minor, an agent could be a minor.</li> <li>3. Consideration is not necessary for an agency contract.</li> <li>4. For the acts of the agent, the principal is liable unless the principal has exceeded his authority.</li> <li>5. The authority of an agent extends to the doing of all that is necessary and collateral to the doing of the main act.</li> <li>6. The obligations under the contract of agency is not assignable unless:</li> </ol>

	<p>(i) the nature of the business necessitates such assignment.</p> <p>(ii) customs of usage of trade in the locality with regard to the business permit such assignment.</p> <p>(iii) such assignment is expressly permitted by the contract of agency</p>
<b><u>DEL CREDERE AGENCY</u></b>	<ul style="list-style-type: none"> <li>• There is a special type of agency, which combines agency with guarantee. This is known as <b><u>del credere agency</u></b>.</li> <li>• A <b><i>del credere</i></b> agent is one who, for an extra remuneration undertakes the liability to guarantee the due performance of the contract by the buyer</li> <li>• . By reason of his charging a <i>del credere</i> commission he assumes responsibility for the solvency and performance of the contract by the vendee and thus indemnifies his principal against loss.</li> <li>• He, therefore, gives an additional security to the seller, but he does not shift the responsibility of payment from the buyer to the seller. A commission <i>del credere</i> is the premium or price given by the principal to the agent for guarantee, which presupposes a guarantee.</li> <li>• A <i>del credere</i> agent like any other agent, is to sell according to the instructions of his principal, to make such contracts as he is authorised to make for his principal and be bound, as soon as he receives the money, to hand it over to the principal.</li> <li>• He is distinguished from other agents simply in this that he guarantees that those persons to whom he sells perform the contracts which he makes with them.</li> </ul>

### **SPECIMEN OF AGENCY CONTRACT**

THIS AGREEMENT OF AGENCY made this..... day of..... between..... (principal) (hereinafter called “the principal”) of the one part and..... (agent) (hereinafter called “the agent”) of the other part.

WHEREAS for the purpose of making and selling principle’s goods, The principle approach the agent and agent accept the same

NOW THIS DEED WITNESSETH AS FOLLOWS

1. That the agent is hereby appointed the sole agent of the principal for the town..... (in the district of) (hereinafter called “the agency town”) for the purpose of making sales of the principal’s goods for a term of..... years commencing from the date hereof on the terms and conditions set forth hereunder.
2. That the agent shall not, while selling the principal’s goods make any representation in the trade or give any warranty other than those contained in the principal’s printed price list.
3. That the agent shall be allowed to deduct and retain as his agency commission with himself..... per cent of the list price of all goods sold on behalf of the principal. The agent shall keep a record of all
4. That the agent shall not make purchases on behalf of nor in any manner pledge the credit of the



principal without the consent in writing of the principal.

5. That the agent shall, at the expense of the principal, take on rent and occupy for the purpose of the agency, suitable premises with prior approval of the principal and shall keep insured for full value against all available risks.
6. That the agent shall, in all his commercial dealings and on documents and on the name-plate or letter-head indicating his place of business, describe himself as selling agent for the principal.
7. That a breach of the condition in clause 6 hereof shall entitle the principal to put an end to this agreement forthwith and also to recover from the said agent by way of liquidated damages the sum of Rs..... for each such article sold in breach.

IN WITNESS WHEREOF the parties have signed this deed.

Witness:

Principal

Witness:

Agent

<b><u>ARBITRATION AGREEMENT</u></b>	
	<ul style="list-style-type: none"> <li>The 'arbitration agreement' under the Arbitration and Conciliation Act, 1996 means an agreement by the parties.</li> <li>to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of defined relationship <b>whether contractual or not.</b></li> <li>It may be in the form of an arbitration clause in a contract or in the form of a separate agreement</li> </ul>
<b><u>ESSENTIAL ELEMENTS</u></b>	<ul style="list-style-type: none"> <li>It has to be in writing.</li> <li>It is in writing if it is contained in a document signed by the parties,</li> <li>the consent in writing to submit dispute to arbitration.</li> <li>An arbitration rests on mutual voluntary agreement of the parties to submit their differences to selected persons.</li> </ul>
<b><u>OBJECT</u></b>	<ul style="list-style-type: none"> <li>The object of arbitration is the final determination of differences between parties in a comparatively less expensive, more expeditious and less formal manner than is available in ordinary court proceedings.</li> </ul>
<b><u>PRE REQUISITES OF ARBITRATION</u></b>	<p>Every arbitration must have the following three pre-requisites:</p> <ol style="list-style-type: none"> <li>(i) a dispute between parties to an agreement, requiring a settlement;</li> <li>(ii) its submission for a settlement to a third person; and</li> <li>(iii) a decision by such third person according to his own judgement based on the facts and circumstances of the dispute, which is binding on both the parties.</li> </ol>
<b><u>CITATION</u></b>	<p><b><u>IN Bipromasz Bipron Trading SA V Bharti Electronics Ltd (2012)</u></b> it was held by the Supreme Court that the court shall have the power to nominate an independent arbitrator.</p> <p>In case of relevant fact upon examination indicate that the name arbitrator is not impartial.</p>

	Thus, the court set a precedent and exception to the normal rule of appointment or arbitrator in accordance to the arbitration agreement.
SUBMISSION OF DISPUTE TO ARBITRATION	<ul style="list-style-type: none"> <li>A submission is an agreement between two contracting parties to take decision from a third mutually-agreed party, to whom they refer the dispute. The arbitration presupposes that the arbitrator must accept the office of arbitrator to perfect his appointment.</li> </ul>
AIM OF ARBITRATOR	<ul style="list-style-type: none"> <li>Civil litigation takes years and years to settle simple disputes. Arbitration is a means devised to quick and economical settlement of a dispute between two contracting parties, who also agree as part of the main agreement to refer dispute or difference arising out of or touching upon the terms and conditions of the agreement to a third person to give his judgement, which shall be binding on both the parties.</li> <li>Where the decision of a person is binding on only one of the parties and not on all the parties to the dispute, it cannot be said that the function, which the person giving the decision is exercising, is arbitral in character</li> </ul>
<b><u>NO.OF ARBITRATORS</u></b>	<ul style="list-style-type: none"> <li>Section 10 of the Act provides that, the parties are free to determine the number of arbitrators, provided that such number shall not be an even number.</li> <li>If they fail to determine the number of arbitrators, the arbitral tribunal shall consist of a sole arbitrator.</li> </ul> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>It is therefore, clear that an arbitration agreement specifying an even number of arbitrators could not be a ground to render the arbitration agreement invalid under the Act (<b>MMTC Ltd. v. Sterlite Industries (India) Ltd., (1996) 8 Scale 305</b>).</p> </div>
<b><u>FORMS AND CONTENT OF ARBITRAL AWARD SECTION 31</u></b>	<ul style="list-style-type: none"> <li>Arbitral Award must be in writing .</li> <li>It must state the reason s, unless the parties have specifically agreed the terms.</li> <li>It must be dated and signed by the arbitrator.</li> <li>It must state the place of arbitration.</li> <li>It must specify that a signed copy of the Arbitral Award is to be delivered to each of the parties to the references.</li> </ul>
<b><u>PROVISIONS REGARDING THE SETTING ASIDE THE AWARD</u></b>	<p>Sub-section (2) of Section 34, stipulates the following grounds on which the award may be challenged before the Court:</p> <ul style="list-style-type: none"> <li>incapacity of a party;</li> <li>invalidity of the arbitration agreement;</li> <li>Award beyond the scope of submission</li> <li>Improper composition of Arbitral Award</li> </ul>

	<ul style="list-style-type: none"> <li>• Disputes not arbitral under the law.</li> <li>• Award being in conflict with the public policy</li> </ul> <p><b><u>. It is further provided that the period of three months could be extended to a maximum of 30 days by the Court but not thereafter if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period</u></b></p>
<b><u>METHODS OF ARBITRATION</u></b>	<ul style="list-style-type: none"> <li>• The parties to the dispute will enter into an agreement to refer the dispute to arbitration and will agree on the terms of reference, that is, to state clearly and precisely the matter the arbitrator is required to decide. An arbitrator is not bound by the strict rules of evidence of courts of law. However, he does follow the practice of presentation and conduct of a case in a court of law. Most of the evidence is in writing. The party adducing evidence has to be present before the arbitrator so that he may be cross-examined on his written evidence. After hearing the evidence of both the parties, the arbitrator makes his award. The award must be within the terms of reference.</li> <li>•</li> </ul>
<b><u>FOREIGN AWARD</u></b>	<ul style="list-style-type: none"> <li>• Any foreign award whether made under <b><u>New York Convention or Geneva Convention</u></b>, which would be enforceable under the Act have been treated as binding for all purposes on the persons as between whom it</li> <li>• was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise</li> <li>• in any legal proceedings in India.</li> <li>• <b><u>In the case of Bharat Aluminium Co. VS. Kaiser Aluminium Technical Service, Inc on 7th September, 2012 the Supreme Court held that the Arbitration Act, 1996 has accepted the territoriality principle which has</u></b></li> <li>• been adopted in the UNCITRAL Model Law. Section 2(2) makes a declaration that Part I of the Arbitration Act, 1996 shall apply to all arbitrations which take place within India.</li> </ul>
<b><u>REQUISITES OF AN AWARD</u></b>	<p>The general requisites of an award are:</p> <ol style="list-style-type: none"> <li>(a) it must be consistent with the submission;</li> <li>(b) it must be certain;</li> <li>(c) it must be fair to the parties;</li> <li>(d) it must be final;</li> <li>(e) its implementation must be possible</li> </ol>

**SPECIMEN OF ARBITRATION****Specimen of Arbitration Agreement**

**to Refer the Dispute to two  
Arbitrators**

THIS AGREEMENT OF ARBITRATION made and entered into between Mr..... and Mr..... on this..... day of (month) and (year)

WHEREAS differences and disputes have arisen between the parties above-mentioned regarding the matter of

..... and the parties could not mutually settle the matter.

NOW THE PARTIES AGREE THAT THE MATTER AS UNDER BE REFERRED TO ARBITRATION TO OBTAIN AN AWARD:

1. For the purpose of final determination of the dispute, the matter will be referred to Mr... ..... nominated by one party and Mr. .... nominated by the other party as arbitrators and their award shall be final and binding on both the parties.
2. If differences should arise between the said two arbitrators on the questions referred to them, the said arbitrators shall select an umpire and the award to be given by the umpire shall be final and both the parties hereby agree that the award so given by the umpire or arbitrators shall be binding on both the parties.
3. A reasonable time-limit may be fixed after consulting the arbitrators for the grant of the award by them and umpire if appointed and the said time may be extended in consultation with the arbitrators or umpire if need be.
4. The provisions of the Arbitration and Conciliation Act, 1996 so far as applicable and as are not inconsistent or repugnant to the purposes of this reference shall apply to this reference to arbitration.
5. Both the parties agree that they would co-operate and lead evidence etc. with the arbitrators so appointed as expeditiously as possible and it is an express condition of this agreement, that if any of the parties non-co-operates or is absent at the reference, the arbitrators would be at liberty to proceed with the reference ex parte.
6. The parties hereto agree that this reference to arbitration would not be revoked either by death of either party or any other cause.
7. If the arbitrators or anyone of them as chosen under this agreement become incapacitated either by death or sickness or other disability, the parties retain the right of nominating substitutes and no fresh agreement therefor would be necessary.

HAVING AGREED TO THE ABOVE BY BOTH THE PARTIES, THE SAID PARTIES AFFIX THEIR SIGNATURES TO THIS AGREEMENT THIS..... DAY OF (MONTH AND YEAR) AT (PLACE).

*Signature 1*

*SIGNATURE 2*

**SERVICE CONTRACT**

- Service contracts are drafted in the same way as other agree-ments. The terms of employment should be definitely fixed and clearly

	<p>expressed and nothing should be left to presumptions.</p> <ul style="list-style-type: none"> <li>They are required to be both affirmative (describing the acts and duties to be performed) as well as negative (putting restrictions on the acts of the employee during and/or after the term of employment). It is therefore necessary to make provision for</li> </ul> <div style="background-color: #c6e0b4; padding: 10px; margin: 10px 0;"> <p>(1) the time or period of employment;</p> <p>(2) the remuneration and other perquisites, if any, including pay, allowances, commission, rent-free house, conveyance, etc.;</p> <p>(3) duties of employment;</p> <p>(4) powers of the employee;</p> <p>(5) leave and the terms on which it will be granted;</p> <p>(6) modes and grounds of determining the employment during the term; and</p> <p>(7) restrictive covenants</p> </div>
<b><u>IMPORTANT POINTS REGARDINGS SERVICE CONTRACT.</u></b>	
<b><u>PERIOD OF SERVICE:</u></b>	<ul style="list-style-type: none"> <li>This may be definite or indefinite. If no period is fixed or an indefinite period is stated, e.g., "so long as the parties respectively please", the contract is terminable by a reasonable notice on either side.</li> <li><b>What is a reasonable notice varies in different cases, according to the characters of the employment and the general custom, from 15 days to six months. When no term is fixed, it is always proper to provide for determination by notice.</b></li> </ul>
<b><u>REMUNERATION:</u></b>	<ul style="list-style-type: none"> <li>Remuneration may be fixed monthly salary, or fees or commission, or salary as well as fees or commission.</li> <li>Sometimes in business firms, employees are allowed a share in the profits in addition to a fixed salary. All these should be clearly provided</li> </ul>
<b><u>LEAVE:</u></b>	<ul style="list-style-type: none"> <li>Conditions and grounds on which, and the period for which leave may be granted as well as allowance payable during leave should be stated.</li> </ul>
<b><u>DETERMINATION OF EMPLOYMENT:</u></b>	<ul style="list-style-type: none"> <li>The determination of employment should be clearly expressed in the agreement. The grounds on which the employment may be determined during the term are generally misconduct, negligence, or want of medical fitness.</li> </ul>

<b><u>RESTRICTIVE COVENANTS</u></b>	<ul style="list-style-type: none"> <li>It is usual to include restrictive covenants in the agreement such as that the employer will not undertake any other work or service or that he will not divulge the employer's secrets or make improper use of his trade secrets or information about the employer's affairs.</li> </ul>
<b><u>EFFECT OF LABOUR LAWS:</u></b>	<ul style="list-style-type: none"> <li>Many Acts have been passed by the Central or State legislatures relating to the conditions of employment of teachers and other employees of aided schools and colleges and of universities, and of workers in factories and commercial establishments, for e.g. the Factories Act, the Industrial Employment (Standing Orders) Act, the Payment of Wages Act, the Workmen's Compensation Act etc</li> </ul>

### **Specimen Agreement of Employment of Manager of a Business Concern**

AN AGREEMENT made on this..... day of..... BETWEEN AB, etc. (hereinafter called the "employer") of the one part AND CD, etc. (hereinafter called the "manager") of the other part.

#### **WHEREAS**

- The employer wants to appoint a suitable person to work as manager for his business concern; and
- CD, the party of the other part, has agreed to serve as manager of the employer for his business concern.

NOW THIS AGREEMENT WITNESSES as follows :

- The manager shall work as such for a term of..... years from the day of..... at..... or any other place as desired by the employer.
  - The manager shall give his whole time and attention to the said business and shall use his best endeavour to improve and expand the same and shall in all respects diligently and faithfully obey and observe all lawful orders.
  - The manager shall keep at the place of business at..... proper books of account showing all goods and moneys received and delivered and disbursed by him with necessary particulars.
  - The employer shall pay to the manager during the continuance of his engagements and provided he shall duly observe and perform the agreement herein on his part contained the salary of Rs..... per mensem on the first day of every calender month commencing from the first day of..... without any deduction.
- The employer shall during the continuance of the manager's engagement provide him with a suitable furnished house for residence free of rent, rates and taxes (except the charges for electricity consumed by him or of extra water used by him) and the manager shall reside in the said house.
  - The manager shall make such tour as may be necessary in the interest of the said business or as he may be directed by the employer to make and the employer shall pay him all reasonable expense actually incurred in undertaking such tours (or a travelling allowance at per mile for all journey by road and first class fare for journeys performed by rail and a halting allowance of Rs..... per diem when a halt of not less than 8 hours is made at one place).
  - The manager shall be entitled during his engagement to leave on full pay for a period equal to 1/11th of the period of service rendered and to a further leave on half pay in case of illness or in capacity to be proved to the

satisfaction of the employer for a period of 15 days in one year.

4. Either party hereto may terminate the engagement of the manager at any time before the expiration of the said term of.....years on giving or sending by registered post to the other party three calendar months, notice in writing,

.

5. The manager will at his own expense find and provide two respectable sureties to the amount of Rs..... each for his good conduct and for the due performance by him of this engagement and if he fails to do so for a period of three months from this date, the employer may terminate his services forthwith.

6. If the manager at any time willfully neglects or refuses or from illness or other cause becomes or is unable to perform any of the duties under this agreement, the employer may suspend his salary (and sum by way of percentage) during such neglect, negligence or inability as aforesaid and may further immediately terminate the engagement of the manager without giving any such notice or making such payment or salary in advance as hereinbefore provided.

7. The manager will at his own expense find and provide two respectable sureties to the amount of Rs..... each for his good conduct and for the due performance by him of this engagement and if he fails to do so for a period of three months from this date, the employer may terminate his services forthwith.

IN WITNESS WHEREOF THE PARTIES HAVE SIGNED THIS DEED ON THE ABOVE MENTIONED DATE.

## GAURANTEES AGREEMENT

- A “contract of guarantee” is a contract to perform the promise, or discharge the liability, of a third person in case of his default. A guarantee may be either oral or written. (Section 126 of the Indian Contract Act, 1872)

The person who gives the guarantee is called the “surety”;

The person in respect of whose default the guarantee is given is called the

The person to whom the guarantee is given is called the

A guarantee which extends to a series of transactions is called a “continuing guarantee”.

A guarantee, guaranteeing an employer against the misconduct of an employee or to answer for the debt or default of another, is called a “fidelity

	<p>guarantee”.</p> <p>A guarantee given by the principal debtor to the surety providing him continuing indemnity against any loss or damage that the surety may suffer on account of default on the part of the principal debtor, is called “counter-guarantee”.</p> <p>A guarantee which ensures the contracted performance of another person and under which the surety undertakes</p>
<b><u>TYPES OF THE GAURANTEE</u></b>	<ul style="list-style-type: none"> <li>• A guarantee which extends to a series of transactions is called a <b><u>“continuing guarantee”</u></b>.</li> <li>• Section 140 of the Act invests a surety with all the rights which the creditor has against the principal debtor, where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety has made the payment or performed all that he is liable for.</li> </ul>
	<ul style="list-style-type: none"> <li>• A guarantee, guaranteeing an employer against the misconduct of an employee or to answer for the debt or default of another, is called a <b><u>“fidelity guarantee”</u></b>. If the employer of a servant whose fidelity has been guaranteed continues to employ him even after a proved act of dishonesty without notice to the guarantor, the surety is discharged. That is a basic principle implicit in the very nature of a fidelity guarantee.</li> </ul>
	<ul style="list-style-type: none"> <li>• A guarantee given by the principal debtor to the surety providing him continuing indemnity against any loss or damage that the surety may suffer on account of default on the part of the principal debtor, is called <b><u>“counter- guarantee”</u></b>.</li> </ul>
	<ul style="list-style-type: none"> <li>• A guarantee which ensures the contracted performance of another person and under which the surety undertakes to compensate the person in whose favour the guarantee is given, in the event of failure on the part of the person on whose behalf the guarantee is given, is known as <b><u>“performance guarantee”</u></b>.</li> </ul>
	<ul style="list-style-type: none"> <li>• A “bank guarantee” is a guarantee given by a bank on behalf of its client or account-holder to another person with whom the client has entered into a contract to perform some job or to do and call upon the bank to pay the guaranteed amount in the event of the contingency, mentioned in the guarantee, happening or not happening, as the case may be</li> </ul>
<b><u>CONSIDERATION</u></b>	<ul style="list-style-type: none"> <li>• Section 127 of the Indian Contract Act, 1872 defines consideration for guarantee as “Anything done, or any promise made, for the benefit</li> </ul>



<b><u>OF GAURANTEE</u></b>	<p>of the principal debtor may be a sufficient consideration to the surety for giving the guarantee”.</p> <ul style="list-style-type: none"> <li>Consideration between the principal debtor and the creditor is good consideration for guarantee given by surety..</li> </ul>
<b>SURETY LIABILITY</b>	<p>According to Section 128 of the Indian Contract Act, 1872, the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.</p> <ul style="list-style-type: none"> <li>The surety’s liability is not deferred until the creditor exhausts his remedies against the principal debtor. In the absence of some special equity the surety has no right to restrain an action against him by the creditor on the ground that the principal debtor is solvent or that the creditor may have relief against the principal debtor in some</li> </ul>

### **Specimen Deed of Guarantee for the Performance of a Contract**

THIS DEED OF GUARANTEE made this ..... day of ..... between Shri ..... son of Shri..... resident of..... (hereinafter called “the Guarantor”), which expression shall, unless repugnant to the context, include his heirs, legal representatives, assigns etc. of the one part and Shri..... son of..... resident of..... (hereinafter called “the Principal”), which expression shall, unless repugnant to the context, include his heirs, legal representatives, assigns etc., of the other part.

WHEREAS BY AN AGREEMENT DATED..... made between Shri..... son of Shri..... resident of..... etc., therein referred to as “the Contractor”, of the one part and the said..... Shri..... herein referred to as “the Principal”, of the other part, it was inter alia agreed by and between the parties as follows:

*(Here state the nature of the work to be done by the Contractor);*

AND WHEREAS the said work was entrusted to the Contractor upon the Guarantor having agreed with the Principal as to its guarantee of performance by the Contractor and to indemnify and keep indemnified the Principal against all losses, damages, costs, charges and expenses arising out of performance or non-performance thereof. Now it is agreed and declared by and between the parties as follows:

1. The Guarantor will see that the Contractor (unless relieved from the performance by operation of any clause of the contract or by statute or by virtue of the decision of any tribunal or court of competent jurisdiction, shall carry out, execute and perform the contract without any exception or reservation and in case he commits any breach thereof, the Guarantor will indemnify and keep indemnified the Principal and his estate against all losses,
2. In case of any dispute or difference as regards the quantum of such losses, damages, costs, charges or expenses, the same shall be decided by reference to arbitration of one architect or engineer if the parties so agree or otherwise to two architects or engineers, one to be appointed by each, whose decision shall be final and binding on all parties.

IN WITNESS WHEREOF, the parties hereto have hereunto set and subscribed their respective hands and seals the day, month and the year first above-written.

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