

A PRESENTATION ON DRAFTING OF DEEDS, DOCUMENTS, STAMPING & REGISTRATION



CA. Rajkumar S Adukia

B.Com (Hons), FCA, ACS, ACWA, LLB, DIPR, DLL &LP,
IFRS(UK), MBA

email id: rajkumarradukia@caaa.in

Mob: 09820061049/09323061049

To receive regular updates kindly send test email to

: rajkumarfca-

subscribe@yahogroups.com & rajkumarfca+subscribe@googlegroups.com



AGENDA

- Overview
- Scope & Practice opportunities
- Drafting
- Stamping
- Registration
- How to get Drafting Work
- Habits of a Successful Professional
- ICAI Activities



Certain Myths

- To do drafting one should be LLB
- Only lawyers can do drafting
- There can be errors in documents
- There is huge responsibility
- We have not studied the subjects



Certain myths

- I have been practicing for the last 30 years in income tax it is difficult to venture into a new area
- There are members who done CA after retirement CA.
Balasubramanian - author of many books along with CA.M
P Vijay Kumar
- Mother and daughter doing CA together



ATTITUDE

“He is able ,who
thinks he is
able.”-Buddha



JESSICA COX

DRAFTING – Meaning , History

- Draft –preparatory document for discussion
- Rough draft
- Earlier patwari/clerk used to draft
- First draft prepared when human being started writing



Meaning of Drafting

- Drafting may be defined as
 - the synthesis of law and fact
 - in a language form
- It can also be described as
 - the practice, technique or skill
 - involved in preparing legal documents
 - that set forth the rights of the parties.
- According to Chamber's 20th Century Dictionary, the word "to draft" means
 - to draw an outline of;
 - to compose and writing;
 - to draw off and to detach.



Oxford Dictionary on Drafting

“Drafting is a specific type of legal writing dealing with legislation, instruments, or other legal documents that are to be construed by others. Statutes, rules, regulations, contracts and wills are examples of legal drafting.”



DRAFTING, PLEADINGS & CONVEYANCING

- DRAFTING – Agreements arising out of contracts
- PLEADINGS-formal statement of cause of action or defence
 - a.Civil pleadings
 - b.Criminal pleadings
 - c.Writs

CONVEYANCING-convey or transfer between living persons



**Professional
Opportunities
In
Drafting, Stamping and
Registration of
Documents**



Professional Opportunities

- Look a subject from global perspective
- Consultation
- Drafting of Various Documents
- Vetting of drafted agreements
- Modifications
- Due Diligence
 - Limitation
 - Filing Claim

Other drafting opportunities- trade report, committee reports, KPO, stamping, registration, business laws impact



“Make fair
agreements and stick to
them”

—

Confucius

China's most famous teacher,
philosopher, and political
theorist, 551-479 BC



**Document,
Deeds,
Agreement,
Instrument**



What is a Document?

- A Writing
- A Textual Record
- Words printed, lithographed or photographed are document;
- A map or plan is a document;
- An inscription on a metal plate or stone is a document;
- A caricature is a document.
- Includes instruments, deeds, agreements etc. Documents will also include Electronic records.



'Document' defined

- Section 3 of the Indian Evidence Act, 1872
- Section 3(18) of the General Clauses Act, 1897
- Section 29 of the Indian Penal Code, 1860



S 3(18) of the General Clauses Act, 1897

"Document" shall include any matter written, expressed or described upon any substance by means of letters, figures, or marks or by more than one of those means, which is intended to be used or which may be used for the purpose of recording that matter.



S 29 of the Indian Penal Code, 1860

“The word ‘Document’ denotes any matter expressed or described upon any substance by means of letters, figures, or marks or by more than one of those means, intended to be used or which may be used as evidence of that matter”.



- Explanation 1 to Section 29 of the Indian Penal Code 1860:- It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or no.



What is an Agreement?

- A Legal and binding document
- A Contract
- A Treaty



What is Drafting?

- Early version of a written work or a preliminary sketch,
- Rough outline.
- Essay written in paragraph form.
- A first version
- A preliminary sketch



What is an Instrument?

- A legal document (a deed, will, mortgage, or insurance policy)
- A trade able asset
- A negotiable item (security, commodity, derivative or index, or any item that underlies a derivative)



On Drafting



Stages in Business Contracts



Why good drafting is important?

- ✓ Life Time Document.
- ✓ Once made difficult to prove to other party or court.
- ✓ Avoids consequences like:
 - Financial losses
 - Loss of time & image



Skills of a Good Draftsman

1. Gather all facts
2. Prepare an outline.
3. Use Single principle of division
4. Divide the subject matter into major topics.
5. Arrange matters in a logic sequence.
6. Give Appropriate headings.
7. Remember the audience
8. Clear writing.



Skills of a Good Draftsman

9. Concrete words.
10. First word/ phrase of important part of deed in capitals
11. Avoid gender-specific words
12. Short sentences.
13. Proper punctuations.
14. No drafting in the passive voice



Skills of a Good Draftsman

15. Statements in a positive form.
16. Avoid non-committal language.
17. Co-ordinate ideas in similar form.
18. Keep related words together In summaries, keep to one tense, especially the present tense.
19. State dates, sums and numbers in both figures and words
20. The emphatic words at the end



Skills of a Good Draftsman

21. Document should be in simple words
22. Logical Arrangement
23. Proper word usage
24. Legal Compliance
25. Short and brief
26. Use terms like 'not exceeding' instead of 'less than' and 'more than'
27. Clear expression of opinion



Aids to a Good Draftsman

1. Roman/Arabic numerals, capital/ lower case letters for sub-divisions
2. Capitalization to show essentials of the document
3. Paragraphing, spacing, and indenture



Aids of a Good Draftsman

5. Latin, Roman and purely technical terms in English italicised / underlined
6. Headings and sub-headings
7. Use of good quality paper
8. No spelling/ grammatical/ typing mistake



Applicable Laws on Drafting of Documents



Applicable Legislations in Drafting

- ❑ Transfer of Property Act, 1882
- ❑ Registration Act, 1908
- ❑ Indian Evidence Act, 1872
- ❑ Indian Contract Act, 1872
- ❑ Indian Stamp Act, 1899
- ❑ Constitution of India
- ❑ Companies Act, 1956
- ❑ Indian contract act 1872



Applicable Legislations in Drafting

- Sale of goods act 1930
- Negotiable instruments act 1882
- Arbitration and conciliation act 1996
- Relevant applicable law



Compulsory Clauses

- Cover the worst possibility to avoid litigation
- Arbitration clause is a must in every agreement



“What we call reality is an agreement that people have arrived at to make life more livable.”

-

Louise Nevelson quotes
(Russian born American
Abstract Expressionist
Sculptor. 1900-1988)



Understanding Deeds & Documents



Deed

- ❑ Of some legal/equitable right, title/claim
- ❑ Undertaking/concurring in some other act
- ❑ Affecting the legal relations/position
- ❑ Of a party to the instrument
- ❑ Or of some other act affecting other person/ corporation



Components of Deeds

1. Deed title
2. Place & date of execution
3. Description of parties
4. Recitals
5. Consideration
6. Receipt clause
7. Operative clause
8. Description of property



Components of Deeds

10. Exceptions & Reservations
11. in property documents-Land Boundary Clause (Parcel)
12. To Have & to Hold Clause (Premises – qty of estate)
13. Covenants & undertakings
14. Testimonial Clause
15. Signature and attestation
16. Endorsement & Supplemental deeds.
17. Annexure or schedules.



Classes of Documents

- **Statutory drafting** – It covers statutes and enactments and quasi-judicial documents like Memorandum or Articles of Association, bye-laws of a society etc.
- **Conveyancing** - means the act of conveying or transferring from one person to another or transfer *inter vivos* and covers documents like sale deed, mortgage, lease, will etc.



“There is nothing more likely
to start disagreement
among people or countries
than an agreement.”

-

E. B. White quotes (American
writer 1899-1985)



“Nobody agrees with anybody else anyhow, but adults conceal it and infants show it”

-

Ogden Nash quotes
(American Writer of humorous poetry who won a large following for his audacious verse. 1902-1971)



Types of Stamp Paper

- **Judicial stamp papers:** These are used for legal and court work.
- **Non-judicial stamp papers:** These are use for making contracts, agreements, registration of documents, entering into leases or sale/purchase transactions etc.



Illustrative List of Business & Other Documents



Classification of Documents

1. *Business Documents related to Formation of Entity*
2. *Running Business Documents*
3. *Capital Market Related Documents*
4. *Internal Audit & Statutory Audit Documents*
5. *Corporate Governance*
6. *Intellectual Property Rights*
7. *Family & Finance Matters*
8. *Property related documents*
9. *Documents under business laws*



1. Business Documents - Formation of Entity

- Partnership Deed (Formation, Admission, Retirement, & Dissolution)
- LLP (Agreement & Incorporation)
- Companies (Memorandum & Articles of Association, pvt public Section 25 Non Profit Companies, Chapter IX of Companies Act i.e. Registration)
- Charitable Trust Deed
- NPO Society-Memorandum of Association & Rules & Regulations.
- Joint Venture Agreement
- AOP Agreement
- Private Trusts under Indian Trusts Act, 1882.



Memorandum & Articles of Association

- Memorandum is the company's charter
- Articles is an official document governing the running of a company
- Contains the rules and regulations of the internal management



Partnership Deed

- Governed by the Indian Partnership Act, 1932
- Deed of Partnership is not necessary
- Signed by all partners and witnessed by independent persons.
- Specify the duties and authority of all the partners
- Details of salary and other payments to partners
- Registration not compulsory



LLP Incorporation document & LLP Agreement

- A hybrid between a company and a partnership
- LLP Incorporation Document
- LLP Agreement



Trust Deed

- Prima facie evidence of existence of a trust
- Facilitates devolution of trust property
- Specifies the trust-objectives
- To control, regulate and manage the working and operations
- For appointment and removal of the trustee(s),
- Essential for
 - registration of conveyance of immovable property
 - obtaining registration under the Income-tax Act and claiming exemption from tax



Society – Memorandum of Association and Rules and Regulations

- Main instrument of any society (no stamp paper reqd.)
- All societies in India have to be registered under the Societies Registration Act 1860.
- Memorandum - contains name, registered office, area of operation, objects, name of members of governing body and names of promoters.
- Rules and Regulations - includes all the provisions that would regulate functioning of the proposed Society



2. Running Business Documents

- Foreign Collaboration Agreement
- Arbitration Agreement
- Meetings (Notices, Minutes of Board Meeting, General Meetings, Resolution)
- Employee Appointment Agreement
- Power of Attorney
- Mortgage Deed
- Hypothecation Agreement
- Shareholders' Agreement
- Term sheet
- Indemnity bond



3. Capital Market Related Documents

- Prospectus
- ESOP



4. Internal Audit & Statutory Audit Documents

- Engagement Letter
- Stock Audit Report
- Internal Audit Report
- Report to those charged with governance.
- Due Diligence Report



5. Corporate Governance

- Code of Conduct
- Risk Management Framework
- Internal control Framework
- Internal Audit Manual
- Whistle Blower Policy
- Audit Committee Charter



6. Intellectual Property Rights

- Assignment Agreement
- Transfer Agreement
- Anti Counterfeiting Trade Agreement
- Agreement on IPR
- Non Disclosure Agreement
- International Agreements on IPR



7. Family & Finance Matters

- Deed of Family Settlement
- Wills- codicil
- HUF – formation, partial, complete partitions
- Divorce settlement deed
- Adoption deed
- Gift deed
- Specific family laws related documents like wakf etc



Wills

- A legal declaration of intention by the testator.
- With respect to property of the testator
- Effective and operative only after the death of the testator.
- Testator has the liberty to revoke the will at anytime during his life time.
- Will made by a Hindu, Buddhist, Sikh or Jain is governed by the provisions of the Indian Succession Act, 1925



Gift Deed

- A transfer without any element of consideration



Documents related to properties

- Sale deed and agreement to sell
- Leave and licence agreement
- Lease deed
- Development agreement



Documents related to properties

- Mortgage deeds-section 58 of transfer of property act 1882
- 58(a) definition of mortgage-transfer of interest in specific immovable property for securing advance
- 58(b) simple mortgage
- 58(c) mortgage by conditional sale



- 58(d) usufructuary mortgage
- 58(e) english mortgage
- 58(f) mortgage by deposit of title deeds
- 58(g) anomalous mortgage



Stamp Duty

- What is stamp duty?
 - Stamp duty is a form of tax on documents.
 - A revenue earner for the government.



Law relating to Stamping

- The basic purpose of Indian Stamp Act, 1899 is to raise revenue to Government.
- There are 78 sections under the Act.
- There are seven chapters under this Act.
- States such as Maharashtra, Karnataka and Kerala have their State Stamp Act, while many States follow the 1899 legislation.



Instruments chargeable to stamp duty

- According to section 2(14) of Indian Stamp Act, Instrument includes every document by which any right or liability, is, or purported to be created, transferred, limited, extended, extinguished or recorded.
- Any instrument mentioned in Schedule I to Indian Stamp Act is chargeable to duty as prescribed in the schedule



Duly stamped

- ‘Duly stamped’ means that the instrument bears an adhesive or impressed stamp not less than proper amount and that such stamp has been affixed or used in accordance with law in force in India.



Impressed Stamps

- Impressed stamps include
 - labels affixed and impressed by the proper officer and
 - stamps embossed or engraved on stamped paper and
 - impression by franking machines



Adhesive Stamps

Adhesive stamps are further categorized as

- ***Postal stamps***
 - used only for transactions with the post office and related functions.
- ***Non-postal stamps***



Non Postal Stamps - Examples

1. Judicial stamps
2. Court fee stamps
3. Coping sheets
4. Non-judicial stamp papers
5. Revenue stamps
6. Special adhesive stamps (labels)
7. Notarial stamps
8. Foreign Bill stamps
9. Brokers note
10. Insurance policy stamps
11. Share transfer stamps
12. Hundi
13. Insurance agency stamps



Registration of Documents

- Governed by central act namely the Registration Act, 1908
- Deals with cases where transactions are reduced to writing
- Provides for compulsory registration - section 17 or optional registration - section 18
- Not for transaction not reduced to writing.
- 91 sections divided into XV Parts.



Compulsory Registration S-17

- Transfer or assignment of decree / order of a Court or any award if it creates, assigns, limit or extinguishes in present or future, any right, title or interest in an immovable property, wherein the value exceed Rs.100/-.
- Authority to adopt a son and not conferred by a Will.



Section 17(1) of Registration Act 1908

- The following documents shall be registered
 - (a) **instruments of gift of immovable property;**
 - (b) **other non- testamentary instruments** 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, of the value of one hundred rupees and upwards, to or in immovable property;
 - (c) **non- testamentary instruments** which acknowledge the receipt or payment of any consideration on account of the creation declaration, assignment, limitation



Section 17(1) of Registration Act 1908

or extinction of any such right, title or interest; and

(d) **leases of immovable property** from year to year, or for any term exceeding one year, or reserving a yearly rent;

(e) **non- testamentary instruments** transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property



Section 17(2) of Registration Act 1908

Nothing in clauses (b) and (c) of sub-section (1) applies to—

- (i) any **composition deed**; or
- (ii) any **instrument relating to shares in a joint stock company**,
- (iii) **any debenture** issued by any such company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument



Section 17(2) of Registration Act 1908

- (iv) **any endorsement** upon or transfer of any debenture issued by any such company; or
- (v) **any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest** of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or
- (vi) **any decree or order of a Court**; or
- (vii) **any grant of immovable property** by the Government; or



Section 17(2) of Registration Act 1908

- (viii) **any instrument of partition** made by a Revenue-officer; or
- (ix) **any order granting a loan or instrument of collateral security** granted under the Land Improvement Act, 1871 (26 of 1871), or the Land Improvement Loans Act, 1883 (19 of 1883); or
- (x) **any order granting a loan under the Agriculturists Loans Act, 1884**, or instrument for securing the repayment of a loan made under that Act; or [\(xa\)](#) 2[any order made under the Charitable Endowments Act, 1890 (6 of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or]



Section 17(2) of Registration Act 1908

(xi) **any endorsement on a mortgage- deed**

acknowledging the payment of the whole or any part of the mortgage money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) **any certificate of sale** granted to the purchaser of any property sold by public auction by a Civil or Revenue officer.



Optional registration

- Sec.18 prescribes the situations / documents where registration is optional:
 - Instruments which create, assign, declare or limit any title or interest, wherein the value of the immovable property is less than Rs.100/-.
 - Lease of immovable property not exceeding one year.
 - Wills



Time for presenting documents for registration

- Every document other than a Will should be presented for registration within 4 months from the date of execution. Section 23
- Where there are several persons executing a document at different times, such document may be presented for registration and re registration within four months from the date of each execution.
- Wills can be presented or deposited at any time. Section 40 & 41



Place of registration

- Every document relating to immovable property should be presented for registration in the office of a Sub-Registrar within whose sub-district, the whole or some portion of the property is situated.



Process of registration

- Document required to be registered in duplicate.
- Two passport size photos of both parties
- Two witnesses
- Proof of identification of each party and witnesses



Certain Requirements for Registration

- In case the property is/was under a lease from any government authority, then permission of lessor for registration of the document.
- No objection Certificate to the effect that the property is not under acquisition.



Few websites of State Registration Departments

- www.igrmaharashtra.gov.in –
Registration department -
Maharashtra
- www.tnreginet.net - Registration
department – Tamil Nadu
- www.keralaregistration.gov.in –
Registration Department, Kerala



Few websites of State Registration Departments

- [http://www.wbfin.nic.in/page/dirc StampReg.aspx](http://www.wbfin.nic.in/page/dirc_StampReg.aspx) - Registration Department, West Bengal
- <http://www.karigr.org/> - Department of Stamps & Registration, Karnataka
- <http://igrs.ap.gov.in/> - Registration department, Andhra Pradesh
- www.rajstamps.gov.in/ - Registration & Stamps Department, Rajasthan



How to get work

- Have goal of very successful draftsman
- Demonstrate you know the subject
- Have confidence to execute
- Believe that you can do better than others
- Do networking
- Have learning attitude



How to get work

- Comply with code of ethics & CA act 1949
- Address on subject
- Write in business periodicals
- Write a book
- Create a website
- Become active in chamber of commerce, state, central



how to enhance skills

- Practice, practice
,practice



FEW WEBSITES

- www.outsource2india.com
- www.legalhelplineindia.com
- www.netlawman.co.in
- www.lawyers-india.com
- www.draftncraft.com



Habits of successful professional

- Is a member of study circle
- Spent on technical books
- Spent on seminar
- First draft is prepared & vetted in details by self



ICAI ACTIVITIES

- ABOUT 40 COMMITTEES
- TECHNICAL BACKGROUND MATERIAL
- ASSIST IN GIVING FEEDBACK
- ADDRESSING THE PROGRAMME



Questions



About the Author

- *CA. Rajkumar S Adukia is an eminent business consultant, academician, writer, and speaker. He is the senior partner of Adukia & Associates.*
- *In addition to being a Chartered Accountant, Company Secretary, Cost Accountant, MBA, Dip IFR (UK), Mr. Adukia also holds a Degree in Law and Diploma in Labour Laws and IPR.*
- *Mr. Adukia, a rank holder from Bombay University completed the Chartered Accountancy examination with 1st Rank in Inter CA & 6th Rank in Final CA, and 3rd Rank in Final Cost Accountancy Course in 1983.*
- *He started his practice as a Chartered Accountant on 1st July 1983, in the three decades following which he left no stone unturned, be it academic expertise or professional development.*



About the Author

- He has been coordinating with various Professional Institutions, Associations, Universities, University Grants Commission and other Educational Institutions.
- Authored more than 50 books on a vast range of topics including Internal Audit, Bank Audit, SEZ, CARO, PMLA, Anti-dumping, Income Tax Search, Survey and Seizure, IFRS, LLP, Labour Laws, Real estate, ERM, Inbound and Outbound Investments, Green Audit etc.
- The author can be reached at rajkumarradukia@caaa.in
Mob – 09820061049 / 09323061049
- For more details log on to www.caaa.in



