Handbook on Drafting, Conveyancing, Stamping & Registration

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I. Introduction to drafting

Drafting may be defined as the synthesis of law and fact in a language form. Perfection cannot be achieved in drafting unless the nexus between law, facts and language is fully understood.

The old style of drafting of documents of the Eighteenth Century has given way for comprehensiveness, exactitude and clarity of expressions.

" The particular qualities that distinguish the modern style of drafting – the use of definitions, division into numbered paragraphs and sub-paragraphs with marginal notes, the growing disuse of the form 'shall' in stating circumstances and conditions, the use of one word (as 'convey' or 'assign') for the jumble (grant, bargain, sell, alienate, release, confirm and enforce or bargain, sell, assign, transfer, set-off and confirm) that had often previously been necessary or thought to be so are to be found in any current set of precedents."- E.L Piesse & Gilchrist Smith: The Elements of Drafting.

Drafting will be done of documents. Therefore it is essential to first elaborate the meaning of documents and the provisions in India relating to registration and stamping of documents.

II. Documents

Ordinarily the word "document" denotes a textual record. Increasingly sophisticated attempts to provide access to the rapidly growing quantity of available documents raised questions about which should be considered a "document".

Meaning of Document

The term "Document" has not been defined under the Registration Act, 1908. The object clause of the Registration Act, 1908 merely states that the Act was promulgated to consolidate the enactments relating to the registration of documents.

Two Acts refer to the word "Document" in very similar terms:

1. Section 3 of the Indian Evidence Act, 1872 states that a "Document" means 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, for the purpose of recording that matter.
Writing is a document;
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.

2. Section 3 (18) of the General Clauses Act, 1897, states that a "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.

Thus the word "Document" has been used in a wide sense, and it includes instruments, deeds, agreements etc.

<u>Documents will also include Electronic records.</u>

As per Section 3 of the Indian Evidence Act, 1872, - "Evidence" means and includes -
(1) All statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence.
(2) All documents produced for the inspection of the Court; such documents are called documentary evidence.

Documentary Evidence is an important piece of evidence of which the Court, Jury and Tribunal take judicial cognizance. It is therefore imperative that the document is drafted with utmost precision and application of mind.

As per section 2(r) of the Information Technology Act,2000 - "electronic form" with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device.

As per section 92 of the Information Technology Act, 2000, the Indian Evidence Act, 1872 shall be amended in the manner specified in the Second Schedule to this Act.
As per the Second Schedule to the Information Technology Act,2000, (a) in the definition of "Evidence", for the words "all documents produced for the inspection of the Court", the words "all documents including electronic records produced for the inspection of the Court" shall be substituted;

Therefore we can say that Documents will also include Electronic records.

Drafting may be done with reference to broadly three branches of documents:

1. Statutory Drafting
2. Conveyancing
3. Pleadings

1. Statutory Drafting

The documents which are required to be composed with reference to the principles of legal composition may be generally described as - “All writings expressly intended to be, or which frequently become, the subject of legal interpretation”.
Statutory drafting would cover:

a. Statutes and Enactments – i.e. the legal composition and statutory drafting of laws, enactments or statutes of the legislative body or Parliament.
b. Quasi-Legislative Documents – the term quasi-judicial implies 'having a partly legislative character by possession of the right to make rules and regulations having the force of law'. Therefore quasi judicial documents would mean documents like - the Memorandum or Articles of Association of a Company, By-Laws of a Society, etc.

2. Conveyancing

The term Conveyance in its ordinary legal parlance means the act of conveying or transferring from one person to another or transfer inter vivos. The Latin term Inter vivos is a legal term referring to a transfer made during one's lifetime, as opposed to a testamentary transfer i.e a transfer that takes effect on death.
Conveyancing depends to a large extent on practice, customs and usage, prudence and precedents.

The most common type of documents that illustrate conveyance are a deed of sale, mortgage, lease etc. However, 'Conveyancing', used in relation to drafting deeds, is paradoxical as the term ' conveyancing' has wider use when its referred in relation to drafting of various other documents like a marriage contract, a will, etc. in which no transfer may be involved.

3. Pleadings

Pleading are statements in writing filed in the Court by each party to a case stating what his contentions will be at the trial, and giving all such details as his opponent needs to know in order to prepare his case in answer. It is a submission by the parties wherein they narrate facts and the relief for their cause.
These types of documents include all documents submitted to a court in the progress of a suit and also all other minor or incidental documents or writings prepared and submitted in the course of a suit. They also include the opinion of counsel on the basis of which a suit is brought as well as the opinion of a judge delivered at the end of a suit.

Transactions for which written documents are not necessary

Some Transactions can be effected orally and no written document is necessary to give effect to the intentions of those transactions, like:

1. A Partition of Joint Family Properties

Case Laws:

Satya Kumar v Satya Kripal (1909) 10 CLJ 503

Peddu Reddiar v Kothanda Reddi AIR 1966 Mad 419

2. Compromise of Claim

Case Law: Thiruvengada Chariar v Ranganatha 13 MLJ 500

A transfer made in compromise of a claim is neither a sale nor a gift nor an exchange and no writing is necessary under the Transfer of Property Act, 1882 to validate the same, though such transfer may relate to immovable property.

3. Transfer by Husband to wife for future maintenance

Case Law: Madam Pillai v Badrakalli 45 Mad 612 (FB)

A transfer of land by a husband to be enjoyed by his wife during her lifetime in discharge of future maintenance is not a gift or sale and may be made without writing

4. Transfer in consideration of marriage.

Case Law: Serandaya Pillai v Sankaralingam Pillai (1959) 2 MLJ 502

A transfer of property in consideration of marriage pursuant to an oral agreement, followed by delivery of possession, need not be in writing.

5. Mortgage by deposit of Title Deed

A mortgage by deposit of title deed or an equitable mortgage need not be in writing.

6. A transfer of immovable property of value less than Rs.100/- can be effected orally.

7. A lease for less than 1 year

Case Law: Gulab Khan v Lal Muhammad AIR 1926 Oudh 609

A lease of immovable Property for a period less than 1 year made by an oral agreement accompanied by delivery of possession need not be in writing.

8. A Hindu Religious Endowment

Case Law: Gangi Reddi v Tammi Reddy ILR 50 Mad 421(PC); 54 IA 136; 1927 PC 80; 50 MLJ 524.

A dedication by a Hindu of property for the purpose of a religious charity according to the Hindu Law can be validly made without any instrument in writing. But the appropriation or alienation must be made by an act inter vivos and not in futuro by a will.

III. Registration of Documents

The Registration of documents is made under the provisions of the Registration Act, 1908. The Registration Act 1908 is used for proper recording and registration of documents / instruments, which give them more authenticity.

Registration refers to the recording of the contents of a document with a Registering Officer appointed by the State Government. The State Government may exclude any district or tracts of country from its operation. The Registering Officer performs the important function of preservation of copies of the original document.

The Act deals with cases where transactions between individuals are reduced to writing and provide for compulsory or optional registration, as the case may be, of such written instruments. It does not deal with transaction not reduced to writing.

This Act is divided into XV PARTS containing 93 sections, and 1 Schedule.

The Registration Act 1908 extends to the whole of India except to the State of Jammu and Kashmir.

Brief History of the Registration Act 1908

Before the year 1864, there existed multiple enactments as to registration of documents in British India. There were regulations applicable to each of the provinces of Bengal, Bombay and Madras, providing for the registration of documents. The first complete enactment as to registration of documents was passed by Act XVI of 1864, consolidating and amending all the previous laws relating to the registration of assurances. It introduced for the first time a system of compulsory registration in British India as to certain clauses of the documents and also abolished the provisions limiting the rights of priority to registered deeds as against unregistered document of the same nature. But even under this Act, the right of priority was given to document optionally registerable and not to documents compulsorily registerable. Thus, if two documents A and B were both optionally registerable, and one of them A was registered, then A would have priority over B. But if A was compulsorily registerable and B was optionally registerable, the fact that A was registered did not entitle it to priority over B.
The law relating to registration of assurances was again consolidated and amended by Act XX of 1866. It was again amended by Act VIII of 1871. The Act of 1871 was subsequently amended by Act III of 1877. The Act of 1877 for the first time introduced a provision to give priority to registered documents irrespective of the fact that whether they were optionally or compulsorily registerable.

In 1908, a new Act namely the Indian Registration Act, 1908 (Act No. XVI of 1908) was enacted for consolidation of enactments relating to the registration of the documents. The Registration Act 1908 was earlier known as the Indian Registration Act 1908. The word 'Indian' was omitted from the name of the Act on 26th December, 1969 by Act no. 45 of 1969.

Objective of Registration

The main purpose of registration of documents or the object of The Registration Act 1908, amongst other things is to provide a method of public registration of documents so as to give information to people regarding legal rights and obligations arising or affecting a particular property and to perpetuate documents which may afterwards be of legal importance, and also to prevent fraud.

Therefore the objectives can be listed as follows:

1. The conservation of evidence,
2. Assurance of title, publicity of documents and prevention of fraud.
3. Registration ensures and safeguards the interest of an intending purchaser.

Registration Establishment for registration of documents:

The main purpose for which the Registration Act 1908 was designed was to ensure that correct land records could be maintained. The Act is also used for proper recording of transactions relating to other immovable property. The Act provides for registration of other documents also, which can give these documents more authenticity. Registering authorities have been provided in all the districts for this purpose.

The authorities dealing with registration under the Registration Act, 1908 are as follows:

- Inspector General of Registration (appointed by State Government)

- Inspectors of Registration Offices (appointed by State Government and is subordinate to the Inspector General)

- The State Govt. shall form Districts and Sub-Districts for purpose of the Registration Act 1908

- Registrars of Districts

- Sub-Registrars of Sub-Districts

Where document should be registered:

Document should be presented for registration at the office of Registrar/Sub-Registrar in whose jurisdiction the property is located, during 9.30 a.m. to 1.00 p.m. on any working day.

Document relating to immovable property should be registered in the office of Sub-Registrar of sub-district within which the whole or some portion of property is situated. Other document can be registered in the office of Sub-Registrar where all persons executing the document desire it to be registered.

A Registrar can accept a document which is registerable with sub-registrar who is subordinate to him. Document should be presented for registration at the office of Registrar/Sub-Registrar. However, in special case, the officer may attend residence of any person to accept a document or will.

All persons executing the document or their representatives, assigns or agents holding power of attorney must appear before registering officer. They have to admit execution and sign the document in presence of Registrar. Appearance may be simultaneous or at different times. If some of the persons are unable to appear within 4 months, further time up to additional 4 months can be given on payment of fine up to 10 times the proper registration fee.

If document relates to transfer of ownership of immovable property, passport size photograph and finger prints of each buyer and seller of such property shall be affixed to

document. The Registrar is required to ensure that these are endorsed on the document.

Papers/document/fees, submitted

For example, where a property is located in Delhi, the following documents will need to be submitted:

1. Document required to be registered (in duplicate)
2. Two Passport size photographs of both parties. (Also fingerprints of buyer and seller to be affixed to document – in case of transfer of ownership of immovable property)
3. Two witnesses.
4. Proof of identification of each party and witnesses i.e. election Identity Card, Passport, identity Card issued by Govt. of India, Semi govt. and Autonomous bodies or identification by a Gazetted officer.
5. In case the property is/was under a lease from D.D.A., L&DO, M.C.D., Industries Department, Labour Department of Delhi Govt. etc., permission of lessor for registration of the document.
6. No objection Certificate under section 8 of Delhi Land (Restriction and Transfer) Act, 1972 from Tehsildar of the Sub Division of the District to the effect that the property is not under acquisition.

The documents that are presented for registration should be accompanied by true copies thereof. Any blanks, erasure or alteration in the document should be attested by the person executing the document with their signatures.

Procedure

1. The document is to be submitted to the Reader for scrutiny. After scrutiny, the Reader would indicate the Registration fee required, on the document itself.
2. The due registration fee is to be deposited with the Cashier against a receipt.
3. After depositing the fees, the documents are required to be presented before the Sub-Registrar by the parties in accordance with Section 32 of the Registration Act, 1908.
4. Endorsements made on the document after completion of formalities before Sub-Registrar
   - Day, hour and place of presentation AND signature of person presenting document – endorsed on the document
   - Receipt for such document - given to person presenting the document

   On every document admitted to registration the following particulars shall be endorsed:
   - Signature and addition of every person admitting the execution of the document
   - Signature and addition of every person examined in reference to such document under the Registration Act
   - Any payment of money or delivery of goods AND any admission of receipt of consideration - made in presence of registering officer in reference to the execution of the document.

5. The delivery of document is made on the production of the receipt issued by the cashier in respect of the document at the time of presentation.

Documents of which registration is compulsory -

Registration of documents relating to immovable property (of value of more than 100 /-) is compulsory. Registration of will is optional.

Documents not requiring registration -

Some documents though related to immovable property are not required to be registered. These are given in section 17(2) of the Registration Act 1908.

Optional Registration-

Documents relating to immovable property (of value of less than 100 /-), lease of immovable property for a term of less than a year, documents relating to movable property, wills are optionally registrable.

Time of presentation for registration -

Document should be submitted for registration within 4 months from date of execution. Decree or order of Court can be submitted within four months from the day it becomes final. If document is executed by several persons at different times, it may be presented for registration within 4 months from date of each execution. If a document is executed abroad by some of the parties, it can be presented for registration within four months after its arrival in India.

In cases where delay of presentation of document is unavoidable, the Registrar may accept the document for registration on payment of fine not exceeding ten times the amount of registration fee.

Wills may be presented for registration at any time and may be deposited in any manner.

Re-registration –

If a person finds that a document has been filed for registration by a person who is not empowered to do so, he can present the document for re-registration within 4 months from the date he became aware of the fact that registration of document is invalid.

Presentation of documents

As per Section 32 of the Registration Act, 1908 every document to be registered under the Act shall be presented at the registration-office:-

a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or

b). by the representative or assign or such a person, or

c.) by the agent of such a person, representative or assign, duly authorized by power-of-attorney and authenticated in manner hereinafter mentioned.

As per Section 33 of the Act, for the purpose of section 32, the following powers-of-attorney shall alone be recognized:-

a) if the principal at the time of executing the power-of-attorney resides in any part of India in which the Act is in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides;

b) if the principal at the time aforesaid (resides in any part of India in which this Act is not in force), a power –of-attorney executed before and authenticated by any magistrate;

c) if the principal at the time aforesaid does not reside in India, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, (Indian) consul or Vice-Consul, or representative of the Central government.

Provided that the following persons shall not be required to attend at any registration-office or Court for the purpose of executing any such power-of-attorney as is mentioned in clauses (a) and (b) of this section, namely:-

(i) persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend;

(ii) Persons who are in jail under civil or criminal process; and

(iii)Persons exempt by law from personal appearance in court.

<u>Registration by Registering Officer –</u>

If the Registering Officer is satisfied about identity of persons and if they admit about execution of documents, and after registration fees are paid, the registering officer will register the document. He will make necessary entries in the Register maintained by him.

Certification of registration -

After all formalities are complete, the Registering Officer will endorse the document with word 'Registered', and sign the same. The endorsement will be copied in Register maintained by the Registering Officer. After registration, the document will be returned to the person who presented the document.

After all provisions which apply to document presented for registration have been complied with:

- The Registering Officer shall endorse on the document, a certificate containing the word "registered' AND number and page of the book in which the document has been copied.
- Such certificate to be Signed, Sealed and Dated by the registering officer
- The Certificate shall be admissible for proving that the document has been duly registered and the facts mentioned on the document as endorsements, have occurred as therein mentioned.

Effective date of document -

A document takes effect from its date of execution and not from date of registration. However, if the document states that it will be effective from a particular date, it will be effective from that date.

Document registered has priority over oral agreement - Any non-testamentary document registered under the Act takes effect against any oral agreement relating to the property. The only exceptions are:

(a) If possession of property (movable or immovable) is delivered on basis of such oral agreement and such delivery of possession is valid transfer under any law

(b) Mortgage by deposit of title deeds takes effect against any mortgage deed subsequently executed and registered which relates to same property

Effect of non-registration -

If a document which is required to be registered under section 17 or under provisions of Transfer of Property Act, 1882 is not registered, the effect is that such un-registered document:

* does not affect any immovable property comprised therein
* cannot be received as evidence of any transaction affecting such property.

Thus, the document becomes redundant and useless for all practical purposes. It can be accepted as evidence in criminal proceedings.

IV. Registrable Documents

Registration of documents relating to immovable property (of value of more than 100 /-) is compulsory. Some documents though related to immovable property are not required to be registered. These are given in section 17(2) of the Registration Act, 1908. Registration of will is optional.

For some documents, registration is optional like - documents relating to immovable property (of value of less than 100 /-), lease of immovable property for a term of less than a year, documents relating to movable property, wills.

According to the law prevailing prior to 1st January,1865, registration was not essential to the admissibility of any such documents executed prior to that date, though they may be required to be compulsorily registrable under the later enactments.

In the same manner, documents executed but not registered at the time when the law did not require them to be registered would be admissible in evidence although not registered subsequently under the later statutes.

Whether a document is compulsorily registrable or not depends on the statutory application of the Registration Act in force at the date of its execution and not of that in force on the date of the hearing.

Section 17 of the Registration Act provides the necessity for registration of certain classes of documents as defined in clauses (a) to (e) of that section. Section 49 of the said Act, provides that any document so required to be registered, shall not affect any immovable property comprised therein or to be received in evidence affecting such transaction unless it has been duly registered.

Documents of which registration is compulsory:

As per Section 17 of the Registration Act, 1908, the registration of the following documents is compulsory:

(1)The following documents shall be registered, if the properties to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877 or this Act came or comes into force, namely:-

(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 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:

PROVIDED that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rent reserved by which do not exceed fifty rupees.

(2) 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, notwithstanding that the assets of such company consist in whole or in part of immovable property; or

(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 insofar as it entitles the holder to the security afforded by a registered instrument whereby the company has mortgaged, conveyed or otherwise transferred the whole or part of its

immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(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 [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding;] or

(vii) Any grant of immovable property by government; or

(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, or the Land Improvement Loans Act, 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) 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

(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.

Explanation: A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered.

Documents of which registration is optional

Any of the following documents may be registered under this Act, namely:-

(a) 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, of a 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;

(c) Leases of immovable property for any term not exceeding one year, and leases exempted under section 17;

(cc) 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 a value less than one hundred rupees, to or in immovable property;]

(d) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in movable property;

(e) Wills; and

(f) All other documents not required by section 17 to be registered.

Documents Exempted from Registration

Certain documents executed by or in favour of the Government are exempted from registration by virtue of section 90 of the Registration Act 1908

Exemption of certain documents executed by or in favour of government
(1) Nothing contained in this Act or in the Indian Registration Act, 1877, or in the Indian Registration Act, 1871, or in any Act thereby repealed, shall be deemed to require, or to have any time required, the registration of any of the following documents or maps, namely:-

(a) documents issued, received or attested by any officer engaged in making a settlement or revision or settlement of land-revenue, and which form part of the records of such settlement; or

(b) documents and maps issued, received or authenticated by any officer engaged on behalf of government in making or revising the survey of any land, and which form part of the record of such survey; or

(c) documents which, under any law for the time being in force, are filed periodically in any revenue-office by patwaris or other officers charged with the preparation of village records; or

(d) sanads, inam, title-deeds and other documents purporting to be or to evidence grants or assignments by government of land or of any interest in land; or

(e) Notice given under section 74 or section 76 of the Bombay Land-Revenue Code, 1879, or relinquishment of occupancy by occupants, or of alienated land by holders of such land.

(2) All such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act.

Tabular Representation of Situations / documents wherein registration is compulsory / optional under Sec.17 and Sec.18 of the Registration Act, 1908:

Sl.No	**Situation / documents**	**Registration requirement**
1.	Gift of immovable property	Compulsory
2.	Transfer of right, title or interest, whether vested or contingent, of an immovable property, wherein the value exceeds Rs.100/-.	Compulsory
3.	Receipt or payment of any consideration on account of creation, declaration assignments, limitation or extinction of any such right, title or interest.	Compulsory

4.	Lease of immovable property for any term exceeding one year or reserving a yearly rent.	Compulsory
5.	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/-.	compulsory
6.	Composition Deed	Not applicable
7.	Any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such company consist in whole or in part of immovable property.	Not applicable
8.	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 whereby the company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders or such debentures.	Not applicable
9.	Any endorsement upon or transfer of any debenture issued by any such company.	Not applicable

10.	Any document that does not create, declare, assign, limit or extinguish any right, title or interest of the value of one hundred rupees and upwards, to or in immovable property, but merely creates right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest.	Not applicable
11.	Any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject matter of the suit or proceeding.	Not applicable
12.	Any grant of immovable property by the Government	Not applicable
13.	Any Instrument of partition made by a Revenue office	Not applicable
14.	Any order made under the Charitable Endowments Act 1890 vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property.	Not applicable
15.	Any endowment 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.	Not applicable
16.	Any certificate of sale granted to the purchaser of any property sold by public	Not applicable

	auction by a Civil or Revenue Officer.	
17.	Authority to adopt a son and not conferred by a Will.	Compulsory
18.	Instruments which create, assign, declare or limit any title or interest, wherein the value of the immovable property is less than Rs.100/-.	Optional
19.	Lease of immovable property not exceeding one year.	Optional
20.	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 does not exceed Rs.100/-.	Optional
21.	Wills	Optional

V. <u>Stamping of Documents</u>

Stamp duty is a form of tax that is levied on documents. Historically, a physical stamp (a tax stamp) had to be attached to or impressed upon the document to denote that stamp duty had been paid before the document became legally effective. More modern versions of the tax no longer require a physical stamp.

Historically, stamp duty was thought up by the Dutch in 1624 and first levied in the UK in 1694 by William and Mary as: `Several duties on Vellum, Parchment and Paper for four years, towards carrying on the war against France'.

As stamp duty proved a revenue earner for the government it was never repealed. It was so successful that it remained even when its imposition led to riots in the American colonies in 1765. Stamp law spread to other countries and many of the legislation in the developing countries are based on the English Act of 1891.

Stamping Duty Provisions - International Scenario

Australia

The federal government of Australia does not levy stamp duty. However, stamp duty is levied by the states on various instruments (i.e., written documents) and transactions. The rates of stamp duty vary from State to State, as do the nature of the instruments or transactions subject to duty. Some jurisdictions no longer require a physical document to attract what is now often referred to as "transaction duty."

In Australia, stamp duties rates on instruments are either very low or have been exempted Major forms of duty include the transfer duty on the sale of land, businesses, shares and other forms of dutiable property; mortgage duty; lease duty and duty on the hire of goods. Rebates or exemptions are available from transfer duty and mortgage duty for those purchasing their first home.

Hong Kong

According to the Schedule 1 of Hong Kong Stamp Duty Ordinance Cap.117 (in short, SDO), Stamp duty is charged on some legal binding documents which are classified into 4 heads:

Head 1: All transactions of sale or lease of interests in Hong Kong immovable property.

Head 2: The transfer of Hong Kong Stock.
Head 3: All Hong Kong bearer instruments.
Head 4: Any duplicates and counterparts of the above documents.
One of examples is shares of companies which are either incorporated in Hong Kong or listed on the Hong Kong Stock Exchange. Other than the said shares, the HK Stock is defined as shares and marketable securities, units in unit trusts, and rights to subscribe for or to be allotted stock.

Singapore

From 1998, stamp duty in Singapore only applies to documents relating to immovable property, stocks and shares. That means that when a person purchases property in Singapore or shares traded on the Singapore Exchange, the transaction is subject to stamp duty.

Applicable rates and more information can be obtained from Inland Revenue Authority of Singapore. Legislation covering Singapore Stamp Duties are found in the Stamp Duties Act

United Kingdom

Unlike in India, stamp duty is hardly considered a burden in the UK, and there is no attempt to evade the duty by under-valuation. An important feature of the British stamp law is the frequent changes in the structure of duties and constant efforts at rationalisation in response to public demand and market forces.

The scope of the United Kingdom's stamp duty has been reduced dramatically in recent years. Apart from transfers of shares and securities, the issue of bearer instruments and certain transactions involving partnerships, stamp duty was largely abolished in the UK from 1 December 2003. "Stamp duty land tax" (SDLT), a new transfer tax derived from stamp duty, was introduced for land and property transactions from 1 December 2003. SDLT is not a stamp duty, but a form of self-assessed transfer tax charged on "land

transactions". "Stamp duty reserve tax" (SDRT) was introduced on agreements to transfer certain shares and other securities in 1986.

USA

Although the federal government formerly imposed various documentary stamp taxes on deeds, notes and other transactional documents, in modern times such taxes are only imposed by states. Typically when real estate is transferred or sold, a real estate transfer tax will be collected at the time of registration of the deed in the public records. In addition, many states impose a tax on mortgages or other instruments securing loans against real property. This tax, known variously as a mortgage tax, intangibles tax, or documentary stamp tax, is also usually collected at the time of registration of the mortgage or deed of trust with the recording authority

Evolution of Stamp Duty in India

To raise revenue the British Government adopted a fiscal measure by enacting the Stamp Act, 1869 (18 of 1869) which was replaced by the Indian Stamp Act, 1879 (1 of 1879). Since the passing of the Act of 1879 the Stamp law was amended by ten different enactments. In spite of that need was felt to enact a more comprehensive law. Accordingly the Indian Stamp Bill was introduced in the Legislature. The Bill was referred to the Select Committee. On the recommendations of the Select Committee changes were made in the Bill.

The Indian Stamp Bill having been passed by the Legislature received its assent on 27th January, 1899. It came into force on the 1st day of July, 1899 as THE INDIAN STAMP ACT, 1899 (2 of 1899).

Since its inception in 1899 in India, stamp duty has been a significant source of revenue for most State governments. With the expansion of business transactions and fast growing technology, new kinds of instruments are being introduced. As the present system is not fully equipped to tackle such instruments, efforts are being made to reform and restructure the stamp law.

In India, some States levy very high rates of stamp duty. Under the JNNURM (Jawaharlal Nehru National Urban Renewal Mission) scheme, one of the mandatory reforms is to gradually reduce the stamp duty to 5 per cent. It is a positive effort to reduce stamp duty and to increase the flow of property transactions in the market.

The NIPFP (National Institute of Public Finance and Policy) is working on the aforementioned issues. A Standing Committee of State Secretaries of Stamp and Registration was set up in 1999 to look into stamp law reform. The Standing Committee meets twice every year to discuss the problems under the stamp regime.

Constitutional Provisions relating to Stamp Duties

I The Constitution of India has a number of provisions relevant to stamp duties.
Of these, Article 246 and the Seventh Schedule are relevant in regard to the legislative power to levy Stamp duties. Articles 265, 268 and 269 (e) are relevant mainly as regards the distribution of the revenues. The former is more important, for the purposes of a consideration of the Stamp Act.

Under PART XI (Relations between the Union and States), CHAPTER I (Legislative Relations), of the Constitution of India, Article 246 say:

246. Subject-matter of laws made by Parliament and by the Legislatures of States.—

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the “Union List”).

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State 1*** also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the “Concurrent List”).

(3) Subject to clauses (1) and (2), the Legislature of any State 1*** has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the “State List”').

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included 2[in a State] notwithstanding that such matter is a matter enumerated in the State List.

II Briefly, the schedule provided for in the constitution is as follows

(a) Under Article 246, such Stamp duties as are mentioned in the Union List are levied by the Union, but, under Article 268, each State in which they are levied, collects and retains the proceeds (except in the case of Union Territories).

(b) Other Stamp duties are levied and collected by the States, by virtue of the legislative entry in the State List.

(c) And the Concurrent List contains the following entry

44. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of Stamp duty."

This entry deals with the general subject of stamps. Provisions other than those relating to rates of duty are, thus within the legislative power both the Union and the States.

(d) Broadly speaking, therefore, except as regards Union territories, parliaments legislative power extends to-

(i) Rates of Stamp duty on the specified documents;

(ii) Machinery provisions, in respect of all documents.

III The position can be stated in the form of a Chart as follows

Union List Entry 91	**State List Entry 63**	**Concurrent List Entry 44**
Rates of Stamp duty in respect of bill of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.	Rates of Stamp duty in respect of document other than those specified in the provisions of List-I with regard to rates of Stamp Duty	Stamp duties other than duties or fees collected by means of judicial stamps but not including rates of Stamp duty.

IV Powers of Union and States

Thus, the power of the Union extend to the whole field of Stamp duties, except that as regards rates of Stamp duty in the States, it is confined to the specified documents. It is plenary as regards machinery provisions.

Summary:

1. Power of Parliament in respect of stamp duty –

Parliament can make law in respect of Stamp Duty. It can prescribe rates of stamp duty. The stamp duty rates prescribed by Parliament in respect of bill of exchange, cheques,

transfer of shares etc. will prevail all over India. However, other stamp duty rates prescribed by Parliament in Indian Stamp Act, 1899 (e.g. stamp duty on agreements, affidavit, articles of association of a company, partnership deed, lease deed, mortgage, power of attorney, security bond etc.) are valid only for Union territories. In case of States, the rates prescribed by individual States will prevail in those States.

2. Powers of State Government of Stamp Duty –
State Government has powers to fix stamp duties on all documents except bill of exchange, cheques etc. Rates prescribed by State Government will prevail in that State. State Government can make law for other aspects of stamp duty also (i.e. matters other than quantum of duty). However, if there is conflict between State law and Union law, the Union law prevails [Article 254 of Constitution].

Stamp Duty

Stamp duty is a type of tax collected by the State Government. Stamp Duty varies from instrument to instrument.

The provisions regarding levying, collection and payment of stamp duty are contained in the Indian Stamp Act 1899. Under the Stamp Act, certain documents need to be legitimised by paying applicable stamp duty on them. The proceeds of stamp duty leviable in any financial year are assigned to the State.

Stamp Duty is paid for the transaction performed by way of document or instrument under the provisions of the Indian Stamp Act, 1899 to the Collector of Stamps. The proceeds of the Duty go to the State in which they are levied. As the revenue from stamp duty is assigned to the State in which they are collected, each State Government has prescribed by rule that stamps purchased in the particular State alone should be used for

instruments executed in it. The basic purpose of the Indian Stamp Act 1899 is to raise revenues for the Government. States such as Maharashtra, Karnataka and Kerala have their State Stamp Act, while many States follow the 1899 legislation.

Stamp Duty is payable on any instrument falling within the definition of clause (14) of section 2 of the Indian Stamp Act, 1899. It is levied on documents or instruments of transactions. However, the subject matter of the transaction must be situated in India.

However, Stamp Duty is not payable on the following:

- Documents, executed on behalf of the Government;
- Testamentary documents;
- Documents, required to be made for judicial or non-judicial proceedings;
- Documents, filed in judicial or non-judicial proceedings.

All documents chargeable with duty and executed in India shall be stamped. Stamp Duty paid instrument / document is considered a legal instrument / document and admitted as evidence in courts. The instruments/ documents without the requisite Stamp Duty are not admitted as evidence by the court. It is liable to be seized by any Public Officer or Court before whom it is produced or whenever it comes before them in the course of discharge of their duties.

It is important to know that Stamp Duty is payable on instruments and not on transactions. Stamp Duty will be charged on the basis of the contents of the instrument only.
Stamp Duty is computed on market value or consideration amount of the property, whichever is higher. Consideration amount is the total value of funds involved in any purchase/ sale transaction entered between two or more parties.

Instruments chargeable to stamp duty –

Instrument includes every document by which any right or liability, is, or purports to be created, transferred, limited, extended, extinguished or recorded [section 2(17) of Indian Stamp Act].

Section 3 of the Indian Stamp Act, 1899 specifies the instruments which are chargeable to duty, It says:

Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty thereof, respectively, that is to say—

(a) Every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899;

(b) every bill of exchange payable otherwise than on demand, or promissory note drawn or made out of India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in India; and

(c) every instrument (other than a bill of exchange or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in India and is received in India :

Provided that no duty shall be chargeable in respect of—

(1) Any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;

(2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act, 1894, or under Act 19 of 1838, or the Indian Registration of Ships Act, 1841 (10 of 1841), as amended by subsequent Acts;

(3) Any instrument executed, by, or, on behalf of, or, in favour of, the Developer, or Unit or in connection with the carrying out of purposes of the Special Economic Zone.

Explanation.—For the purposes of this clause, the expressions "Developer", "Special Economic Zone" and "Unit" shall have mean-ings respectively assigned to them in clauses (g), (za) and (zc) of section 2 of the Special Economic Zones Act, 2005.]

Duty payable when several instruments –

In case of sale, mortgage or settlement, if there are several instruments for one transaction, stamp duty is payable only on one instrument. On other instruments, nominal stamp duty of Re. 1 is payable.

Duty payable when Instrument relates to several distinct matters or when instruments come within several descriptions in Schedule I of Indian Stamp Act 1899-

If one instrument relates to several distinct matters, stamp duty payable is aggregate amount of stamp duties payable on separate instruments.
This applies only when the instrument comprises more than one transaction,
and it is immaterial for this purpose whether those transactions are of the same category or of different categories. When a person possess both a personal capacity and a representative capacity such as trustee, and there is a delegation of power by him in both those capacities, the position in law is exactly the same as if different persons join in executing a power in respect of matters which are unrelated. There being no community of interest between the personal estate belonging to the executant and the trust estate vested in him, they must be held to be distinct matters; Member, Board of Revenue v. Arthur Paul Benthall, AIR 1956 SC 35.

However, it may happen that one instrument covering only one matter can come under more than one description given in Schedule to Stamp Act. In such case, highest rate specified among the different heads will prevail.

If an instrument is so framed as to come within two or more of the descriptions in Schedule I and if the duties chargeable thereunder are different the instrument will be

chargeable only with the highest of such duties; Saiyed Shaban Ali v. Sheikh Mohd. Ishaq, AIR 1939 All 724.

Powers to reduce stamp duty -

Government can reduce or remit whole or part of duties payable. Such reduction or remission can be in respect of whole or part of territories and also can be for particular class of persons. Government can also compound or consolidate duties in case of incorporated company or other body corporate in the case of issue or transfer (where there is a single transfer-ee, whether incorporated or not) of shares or debentures, bonds or other marketable securities. 'Government' means Central Government in respect of stamp duties on bills of exchange, cheque, receipts etc. and 'State Government' in case of stamp duties on other documents.

Time of Stamping Instruments

Stamp Duty is to be paid either before execution of the document or on the day of execution of the document. Stamp Duty is either paid by a purchaser or transferee or as mutually agreed in the agreement between the parties.

Instrument executed in India must be stamped before or at the time of execution (section 17). Instrument (not being a bill of exchange or promissory note) executed out of India can be stamped within three months after it is first received in India [section 18(1)]. However, in case of bill of exchange or promissory note made out of India, it should be stamped by first holder in India before he presents for payment or endorses or negotiates in India [section 19].

No expiry date for use of a stamp paper

The Indian Stamp Act, 1899 nowhere prescribes any expiry date for use of a stamp paper. Section 54 merely provides that a person possessing a stamp paper for which he has no

immediate use (which is not spoiled or rendered unfit or useless), can seek refund of the value thereof by surrendering such stamp paper to the Collector *provided it was purchased within the period of six months* next preceding the date on which it was so surrendered. The stipulation of the period of six months prescribed in Section 54 is only for the purpose of seeking refund of the value of the unused stamp paper, and not for use of the stamp paper. Section 54 does not require the person who has purchased a stamp paper, to use it within six months. Therefore, there is no impediment for a stamp paper purchased more than six months prior to the proposed date of execution, being used for a document.

Case Law: **Thiruvengada Pillai Vs. Navaneethammal and Anr.**

Types of Stamps and the Mode of Using them

How Stamp Duty has to be paid:

As per section 10 of the Indian Stamp Act 1899 -

(1) Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments by means of stamps—

(a) according to the provisions herein contained ; or

(b) when no such provision is applicable thereto—as the State Government may by rule direct.

(2) The rules made under sub-section (1) may, among other mat-ters, regulate,—

(a)in the case of each kind of instrument - the descrip-tion of stamps which may be used ;

(b) in the case of instruments stamped with impressed stamps - the number of stamps which may be used ;
(c)in the case of bills of exchange or promissory notes - the size of the paper on which they are written.

Payment system for stamp duty:
Stamp Duty amount can be paid either by Cash/ Bank Draft/ Pay Order/ Cheque/ Electronic Fund Transfer.

Stamp Duty collected by the States can be broadly divided into two categories, viz., Stamp Duty paid under the Indian Stamp Act, 1899 and Stamps used in payment of fees under the Court-fees Act 1870.

Types of Stamps:
Stamps used under the Indian Stamp Act, 1899 & The Bombay Stamp Supply and Sale Rules, 1934, can be broadly divided into

1. Impressed stamps, including
   a) Labels affixed and impressed by the proper officer;
   b) Stamps embossed or engraved on stamped paper
   c) Impression by franking machine
   d) Impression by any such machine as the State Government may, by notification in the Official Gazette, specify
2. Adhesive stamps

Adhesive Stamps
Adhesive stamp usually refers to a stamp with gum on the back which has to be moistened to enable it to be pasted on a document etc.

Use of adhesive stamps.

As per section 11 of the Indian Stamp Act 1899, The following instrument may be stamped with adhesive stamps, namely :—

(a) instruments chargeable with a duty not exceeding ten naye paise, except parts of bills of exchange payable otherwise than on demand and drawn in sets ;

(b) Bills of exchange and promissory notes drawn or made out of India;

(c) Entry as an advocate, vakil or attorney on the roll of a High Court;

(d) notarial acts ; and

(e) Transfers by endorsement of shares in any incorporated company or other body corporate.

Cancellation of adhesive stamps

As per section 12 of the Indian Stamp Act, 1899:
(1) (a) Whoever affixes any adhesive stamp to any instrument chargeable with duty which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again ; and

(b) Whoever executes any instrument on any paper bearing an adhesive stamp shall at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

(2) Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again, shall, so far as such stamp is concerned, be deemed to be unstamped.

(3) The person required by sub-section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials or the name or initials of his firm with the true date of his so writing, or in any other effectual manner.

Impresses Stamps
Impress means to make a mark or design on (an object) using a stamp or seal. It means to apply a mark to something with pressure.
The phrase `impressed stamp' includes labels affixed and impressed by the proper officer, and stamps embossed or engraved on stamped paper.

States such as Maharashtra, Karnataka and Kerala have their State Stamp Act, while many States follow the 1899 legislation.

Instruments stamped with impressed stamps how to be written.

Every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.

Stamp Papers

Broadly they are of two categories viz: Judicial stamps and Non-Judicial stamps. The Judicial stamps are used for payment of court fees on suits filed in courts. The Non-judicial stamps are used for the payment of duty on various kinds of documents

From 01/05/1994, Stamp Paper are to be purchased in the name of one of the parties to the instrument/ document, otherwise it will be as if no stamp paper was used.

What is meant by 'duly stamped' –

'Duly stamped' as applied to an instrument 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 [section 2(11)].

In case of adhesive stamps, the stamps have to be effectively cancelled so that they cannot be used again. Similarly, impressed stamps have to be written in such a way that it cannot be used for other instrument and stamp appears on face of instrument. If stamp is not so used, the instrument is treated as 'un-stamped'. Similarly, when stamp duty paid is not adequate, the document is treated as 'not duly stamped'.

Instrument cannot be accepted as evidence if not duly stamped -

An instrument not 'duly stamped' cannot be accepted as evidence by civil court, an

arbitrator or any other authority authorised to receive evidence. However, the document can be accepted as evidence in criminal court.

VI. E-Stamping

E-stamping is a computer based application and a secured electronic way of stamping documents. The prevailing system of physical stamp paper/franking is being replaced by E-stamping system. It's an electronic way of paying stamp duty to the Government. E-stamping is a web-based application for paying stamp duty to the government. In simple terms, it means electronic purchase of stamp paper and electronic mode of stamp duty payment.

Government of India, Ministry of Finance, Department of Economic Affairs appointed Stock Holding Corporation of India Limited (SHCIL) to act as Central Record Keeping Agency (CRA). SHCIL is the only CRA appointed by the Government of India. Central Record Keeping Agency is responsible for User Registration, Imprest Balance Administration and overall E-Stamping Application Operations and Maintenance.

SHCIL has already launched e-stamping in the states of Gujarat, Karnataka, NCT of Delhi and in Maharashtra. The state of NCT of Delhi government had made e-Stamping compulsory.

Features of e-Stamping:

1 On-line Stamp Duty Certificate can be generated within minutes
2 Stamp Certificate generated is tamper proof
3 Its a secured electronic payment gateway to the Government
4 Authenticity of the Certificate can be checked through its inquiry module.

5 Stamp Certificate generated has a Unique Identification Number (UIN).

6 Specific denominations are not required.

Benefits of e-Stamping:

1 Easy accessibility and faster processing

2 Security

3 Cost savings

4 User friendly

5 Hassle free maintenance

Some Important Terms

1. UIN

Unique Identification Number (UIN) is a Stamp Certificate number mentioned on the Stamp Certificate. Anybody, having the Unique Identification Number, can check the authenticity of the Certificate through www.shcilestamp.com.

2. CRA

Central Record Keeping Agency is responsible for User Registration, Imprest Balance Administration and overall E-Stamping Application Operations and Maintenance. CRA will appoint ACC's and Travelling Vendors who will issue Certificates to the clients at their counters.

Stock Holding Corporation Of India Limited (SHCIL) is the only CRA appointed by the Government of India.

3. ACC

ACC means Authorised Collection Centre (ACC). Its an agent appointed by SHCIL. ACC is the intermediary between the CRA and Stamp Duty payer.

The following are eligible to be appointed as ACCs.

1. Bank & Financial Institutions
2. Law firms,
3. Chartered Accountant firms
4. Professionals

To register as an ACC, the above eligible applicants should submit the application form along with the necessary proofs as mentioned in the application form to the SHCIL. ACCs need to pay a nominal registeration fee and interest free security deposit. ACCs need to maintain a running imprest balance.

You may download the application form for being ACC from the link: http://shcilestamp.com/E-Download.html

4. Stamp Certificate

The client has to approach an ACC appointed by SHCIL and fill up the application form as prescribed in the e-Stamping system. Stamp Certificate is generated only after realisation of funds.

After submitting a duly filled application form, the ACC will enter the details into the system and a Stamp Certificate would be generated immediately in case of cash and in case of Cheque/ Demand Draft/ Payorder only after realisation of funds.

For cancellation of stamp certificate you need to get in touch with the Competent Authority at the Stamp Office appointed by the State Government.

VII <u>Drafting and Conveyancing</u>

General Overview of Drafting and Conveyancing

Drafting

'Drafting' refers to making a 'draft' of something. Drafting a document would imply making a rough copy of a document. Drafting as a skill in terms of preparing documents and agreements is the most intellectually demanding of all skills for a professional.
It requires knowledge of the law, the ability to deal with abstract concepts, investigative instincts, an extraordinary degree of prescience, and organizational skills.

Conveyancing

To 'Convey' means to transfer, or to makeover. Conveyancing is the science of validly creating, transferring and extinguishing rights in property by written deeds of various kinds. It is based on the knowledge of what rights can exist in or over particular kinds of property, of what ends can be secured within the existing rules of law, and of what machinery can appropriately be employed to achieve particular ends.

History of Document Drafting

It is practically inevitable that documents of the same nature, issued from the same office, or even from distinct offices, will bear a close resemblance to one another.

Those charged with the execution and expedition of such documents come naturally to employ the same formulæ in similar cases; moreover, the use of such formulæ permits the drafting of important documents to be entrusted to minor officials, since all they have to do is to insert in the allotted space the particular information previously supplied them. Finally, in this way every document is clothed with all possible efficiency, since each of

its clauses, and almost every word, has a meaning clearly and definitely intended. Uncertainties and difficulties of interpretation are thus avoided, and not unfrequently lawsuits.

This legal formalism is usually known as the "style" or habitual diction of chanceries and the documents that issue therefrom. It represents long efforts to bring into the document all necessary and useful elements in their most appropriate order, and to use technical expressions suited to the case, some of them more or less essential, others merely as a matter of tradition.

In this way arose a true art of drafting public documents or private acta, which became the monopoly of chanceries and notaries, which the mere layman could only imperfectly imitate, and which in time developed, to such a point that the mere "style" of a supposititious deed has often been sufficient to enable a skilful critic to detect the forgery.

Early History

Formularies are medieval collections of models for the execution of documents (acta), public or private; a space being left for the insertion of names, dates, and circumstances peculiar to each case. Their modern equivalent is forms.
The earlier Roman notaries (tabelliones) had their own traditional formulæ, and the drafting of their acta was subject to infinity of detail. Nevertheless it is usuaully not directly from the Romans that the formularies drawn up in the middle Ages have come down to us, but rather from the monastic and ecclesiastical schools. Therein was taught, as pertaining to the study of law, the art of drafting public and private documents. It was called dictare as opposed to scribere, i. e. the mere material execution of such documents.

To train the dictatores, as they were known, specimens of public and private acta were placed before them, and they had to listen to commentaries thereon. Thus arose the yet

extant formularies, between the fifth and the ninth centuries. These models were sometimes of a purely academic nature, but their number is small; in almost every case they are taken from real documents, in the transcription of which the individualizing references were suppressed so as to make them take on the appearance of general formulæ; in many instances nothing was suppressed.

The formulæ deal with public documents: royal decrees on civil matters, ordinances etc.; with documents relative to legal processes and the administration of justice; or with private deeds drawn up by a notary: sales, exchanges, gifts to churches and monasteries, transference of ecclesiastical property, the manumission of slaves, the settlement of matrimonial dowries, the execution of wills etc. Finally, there are deeds which refer solely to ecclesiastical concerns: consecrations of churches, blessings of various kinds, excommunications, etc.

Later History

In the tenth century these formularies cease to be in universal use; in the eleventh, recourse is had to them still more rarely; other methods of training notaries are introduced. Copies of letters are no longer placed before them. In their stead, special treatises of instruction are prepared for these officials, and manuals of epistolary rhetoric appear, with examples scattered here and there throughout the text, or collected in separate books.

Principles of Good Drafting

1. Prepare an outline.
2. Establish a single principle of division and use that principle to divide the subject matter into major topics.
3. Arrange the items within a topic in a logical sequence.
4. Headings
5. Clear Writing

6. Use concrete words. Government writing often concerns abstract subjects. But abstract words can be vague and open to different interpretations. Put instructions in simple, concrete words.

DON'T SAY	**IF YOU MEAN**
Vehicles	automobiles
Firearms	rifles
Aircraft	helicopters

7. Don't use gender-specific terminology. Avoid the gender-specific job title:

DON'T SAY	**SAY**
Crewman	Crew member
Draftsman	Drafter
Enlisted men	Enlisted personnel
Fireman	Firefighter
Foreman	Supervisor
Manhours	Hours worked
Manpower	Personnel, workforce

Avoid the gender-specific pronoun when the antecedent could be male or female.

8. Write short sentences.

Readable sentences are simple, active, affirmative, and declarative. The more a sentence deviates from this structure, the harder the sentence is to understand. Long, run-on sentences are a basic weakness in legal documents.

Legal documents often contain conditions which result in complex sentences with many clauses. The more complex the sentence, the greater is the possibility that the intended meaning of the sentence will not be understood

9. Use short paragraphs.

A writer may improve the clarity of a document by using short, compact paragraphs. Each paragraph should deal with a single, unified topic. Lengthy, complex, or technical discussions should be presented in a series of related paragraphs.

Drafting – Clarity is key

Aim to communicate unambiguously and clearly. Good modern drafting must, achieve both precision and clarity. The points laid out below need to be borne in mind when drafting:

1. Purpose of Document
2. Accuracy
3. Syntax (arrangement of words in sentence)
4. Style
5. Active / Passive Voice
6. More use of Short Words
7. Use proper Punctuation
8. Layout and Order

Some examples of poor drafting:

a) Pomposity

The borrower must give more than one and less than three days' notice to prepay interest. [What is wrong with two days? Or, if timing is that critical, between 24 and 48 hours?]

b) Tautology

The client shall use the suite only for office purposes and for no other purpose.

c) Ambiguity

This agreement may be terminated by two months' notice after 31 March 2006.
[Does that mean notice has to be given after that date, or that it only need expire after that date?]

d). Mistake
… replacement carpets to be approved by the landlord which approval shall not be unreasonably withheld unless of a like quality and of a similar colour and design to those existing.
[Almost certainly a negotiating mistake (the clause originally omitting the words in italics)].

e) Being too specific
This contract is conditional on the grant of planning permission prior to 31 December 2003 by the City of Westminster.
[So would a permission granted on appeal not count?]

VIII. Document Drafting

The following categories of Documents generally require drafting:

I Documents for Formation of an Entity

1. Partnership Deed
2. MOA/ AOA
3. Charitable Trust Deed
4. Cooperative Societies (Rules & Regs)
5. MOA/ AOA of Societies u/ Societies Registration Act,1860
6. LLP Agreement and Incorporation Document
7. Trust Deed / Private Family Trust Deed (Indian Trust Act 1882)

II Wills

III Business Agreements

1. Arbitration Agreement
2. Joint Venture Agreement
3. Foreign Collaboration Agreement
4. Shareholders Agreement
5. Stock Holders Agreements
6. Stock Purchase Agreements
7. Acquisition Agreements
8. Franchisee Agreements
9. Research & Development Agreements
10. Technology Sharing Agreements
11. Advertising Agreements
12. Agency Agreements
13. Service Agreements
14. Consultancy Agreements
15. Hire Purchase Agreements
16. Credit and Conditional Sale Agreements
17. Agreements for Sale, Mortgage, and loan
18. Agreement relating to deposit of title Deeds
19. Tenancy Agreements
20. Franchising Agreements

IV Property Agreements

1. Purchase of a Flat
2. Purchase of an Apartment in a Building (Commercial / Residential)
3. Purchase of a Plot of Land

4. Purchase License of Land /Apartment (Lease / Freehold)
5. Development Agreement
6. Will / Bequest Deed
7. Transfer Deed
8. Power of Attorney
9. Lease Agreement
10. Gift Deed of Property
11. Construction Agreement
12. Rent Agreement
13. Sale/ Purchase Agreement
14. Agreement to Sell
15. Deed of Mortgage of Property
16. Relinquishment Deed
17. Surrender Deed in Cooperative Housing Society
18. Mortgage Deed

V Documents Relating to Intellectual Property

1. Patent and High Technology Agreements
2. Licensing and Franchise
3. Consulting and Know-How Agreements
4. Joint Development Agreements
5. Mass Market Licences like Shrink Wrap and use based licences
6. Licensing of Software and Source Code Escrow Agreements, Motion Pictures for multi media use, photographs etc.
7. Software Development Agreements
8. Agreement for Sale of Technical Know-How
9. license of use of copy right
10. Agreements relating to protection of designs/ trademarks/ patents/ and know how

VI Banking Documents

1. Bank Guarantee
2. Loan agreements / lease deeds
3. Overdraft agreements

VII Documents for Export / Import

1. Letter of Credit
2. Documents for obtaining EXIM Finance
3. Agency Agreement

VIII Documents relating to Labour Laws and Service Laws

IX Documents relating to Insurance

X Documents relating to Public Interest Litigation, Environmental Issues etc.

XI Documents Relating to Private Equity Form of Funding

1. Business Plan
2. Term Sheet
3. Warranties and Indemnities
4. Disclosure Letter
5. Shareholders' / Investors' Rights/ Subscription Agreement

XII Documents relating to cyber law

1. Internet agreements
2. Software agreements

IX. Salient Features of Certain Documents

A] Limited Liability Partnerships

A Limited Liability Partnership (LLP) can be described as a hybrid between a company and a partnership that provides the benefits of limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement.

A LLP is a body corporate, with a distinct legal entity separate from that of its partners. It has perpetual succession and a common seal. A limited liability partnership, which is a separate legal person, will be liable to the third parties independent of the other partners. Any change in its partners, will not effect the existence, rights or liabilities of the limited liability partnership.

Minister of Corporate Affairs, Shri Prem Chand Gupta introduced the Limited Liability Partnership Bill, 2008 in the Rajya Sabha on 21.10.2008. With the introduction of this bill, the earlier LLP bill 2006 was withdrawn. The LLP Bill 2008 was subsequently passed by the Lok Sabha on 12.12.2008 and received the President's Assent on 07.01.2009

In order to bring out the Procedural aspects of the Limited Liability Partnership Bill, 2008, the Concept Rules and forms, 2008 was prepared. Accordingly, the forms are laid down in Annexure A and it has been prescribed that they may be filed electronically. The fees payable for compliance of various provisions are laid down in Annexure B

The Concept LLP (Winding up and Dissolution) Rules propose the regulation of winding up and dissolution of LLPs through the National Company Law Tribunal, proposed to be set up under the Companies Act, 1956. However since such Tribunal (and Appellate Tribunal) are yet to be set up under Companies Act, 1956 due to a legal challenge, which

is pending with the Apex Court, attention is drawn to provisions of Section 81(b) of the LLP Bill, 2008 which provide that until the National Company Law Tribunal and National Company Law Appellate Tribunal are constituted under the provisions of the Companies Act, 1956, the word 'Tribunal' occurring in Sections 60 to 64 of the Act shall be substituted with the words 'High Court'. There are 310 Rules laid down in the Limited Liability Partnership [Winding up and Dissolution] Rules

The two very important documents that emerge in respect of the LLP form of business structure are:

a) Incorporation Document
b) LLP Agreement

a) Incorporation Document

To incorporate a Limited Liability Partnership, two or more persons have to subscribe their names to an incorporation document to carry on a lawful business for profit, and file the same with the Registrar along with the prescribed fees.

The meaning and importance of the Incorporation Document may be explained as follows:

For a limited liability partnership to be incorporated,—

(a)Incorporation Document to have names subscribed:

Two or more persons associated for carrying on a lawful business with a view to profit shall have subscribed their names to an incorporation document;

(b)Incorporation Document to be filed with ROC:

The incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of the State in which the registered office of the limited liability partnership is to be situated; and

(c)Incorporation Document to be accompanied with statement from Advocate/CA/CS:

There shall be filed with the Incorporation Document, a statement in the prescribed form made by either an advocate or a Company Secretary or a Chartered Accountant, who is engaged in the formation of the limited liability partnership and by anyone who subscribed his name to the incorporation document, that all the requirements of this Act and the rules made there under have been complied with, in respect of incorporation and matters precedent and incidental thereto.

Points to be noted in regard to the Statement from Advocate/ CA/ CS:

1. If a person makes a statement above which he—

(a) Knows to be false; or

(b) Does not believe to be true,

He shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees.

2. For the purpose of registration of the Incorporation Document , the Registrar may acept the statement delivered above as sufficient evidence that the requirement imposed relating to " two or more persons associated for carrying on a lawful business with a view to profit shall have subscribed their names to an incorporation document" , has been complied with.

Contents of the Incorporation Document

The Incorporation Document is similar to the Memorandum of Association of a Limited Liability Company and will include the following

(a) The name of the limited liability partnership;

(b) The proposed business of the limited liability partnership;

(c) The address of the registered office of the limited liability partnership;

(e) The name and address of each of the persons who are to be partners of the limited liability partnership on incorporation;

(f) The name and address of the persons who are to be designated partners of the limited liability partnership on incorporation;

(g) Such other information concerning the proposed limited liability partnership as may be prescribed.

Every limited liability partnership shall have either the words "limited liability partnership" or the acronym "LLP" as the last words of its name.

A LLP cannot be registered with a name which, in the opinion of the Central Government is undesirable; or is identical or too nearly resembles to that of any other partnership firm or limited liability partnership or body corporate or a registered trade mark, or a trade mark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999.

b) LLP Agreement

Proper care has to be taken to draft the Limited Liability Partnership Agreement. The following steps are involved in drafting Limited Liability Partnership Agreement. The partners should discuss the matters to be covered by the Agreement and the same should be listed out.

The agreement may be drafted detailing on the following:

1. Business particulars
    - Nature and duration of business
    - Names of partners and admission procedures/ criteria for future partners.
    - Registered office and other places of business and circumstances and procedure of changes to address.
    - Vesting of interest in LLP assets and intellectual property.

2. Banking & Finance
    - Opening and maintenance of LLP bank account.
    - Procedure for depositing and withdrawal of money
    - Procedure for assignment of authority for financial decisions
    - Authority for withdrawal, payments , electronic transfer, signing cheques and other financial decisions
    - System of dealing with client money and securities received in the course of business.
    - Method of acquisition of fresh capital, if required.
    - Process & form of subsequent contribution to capital by existing partners
    - Interest on capital or Loan
    - Withdrawals of loan
3. Partners and the Relationship among partners
    - Performance of work by Partners
    - Designated Partner's attention to business
    - Number of designated partners
    - Sleeping partners
    - Proceeding to be undertaken for admission of partner.
    - Grounds on which partners may be terminated, and procedures to execute such terminations.
    - Stipulations regarding allocation of business shares after the death of a member.
    - Representative of deceased or retired partner
    - Purchase of share of retiring, expelled deceased or insolvent partner
    - Decisions on selecting managers, if any and their responsibilities, salaries, and grounds for dismissal.
    - Procedures to be followed to transfer interests in the firm.
    - Business transactions of Partner with LLP
    - Allocation of profits and losses to partners.
    - Procedure for decision on plough back of profits and distribution of income of the partners.

- Determination of salary if any to be paid actively participating members.
- Partner's drawings
- Determination of partners duties
- General obligations like exercise of rights consistent with the obligation of good faith ,acting diligently ,providing information and explanation to all members regarding the affairs of the LLP.
- Devotion of full time and attention to the business of LLP and not to take any personal benefits or make any secret profits from the conduct of business and reimbursement of any profit made as a result of activities of LLP
- Compliance with rules and regulations which may govern the LLP from time to time and any code of conduct imposed by the LLP

4. Management
    - Assignment of authority to make decisions to certain partners and delegation of certain powers to manager, if any.
    - Other internal governance arrangements.
    - Assignment of responsibility to partners for preparation and maintenance of proper accounts
    - Responsibility of administrative duties to certain partners like filing of returns, approval of accounts, appointment & removal of auditors, statutory disclosures etc.
    - Restrictions on the authority of members of LLP regarding transfer of interest, borrowings, acquisition /transfer of property , discharge of debts
5. Books of Accounts
6. Annual statements of Accounts and Solvency
7. Audit
8. Reserve Fund
9. Term of validity of the Agreement
10. Covenant against breaking away
11. Entire agreement, severability & waiver
12. Miscellaneous

- Indemnity to each member for any claims, losses or expenses arising from the performance of his duties in conducting the business of the LLP.
- Taking an insurance policy for the conduct of business.
- Procedure for winding up subject to the applicable regulations.
- Mode of distribution of surplus after winding up and the ratio for distribution.
- Arbitration proceedings during the continuance of the partnership or at any time thereafter, any dispute or difference relating to the partnership or its business in accordance with the provisions of the Indian Arbitration and Reconciliation Act, 1996 as amended from time to time.
- Addition, alteration etc. to the provisions of the partnership deed from time to time in any manner and procedure for the same.

It is important to note that if the limited liability partnership agreement is silent on any of the matters contained in the First Schedule, then the relevant provisions of the First Schedule shall apply. Hence after comparison with The First Schedule, the Agreement has to be changed wherever necessary.

B] Partnerships

Partnership is defined as a relation between two or more persons who have agreed to share the profits of a business carried on by all of them or any of them acting for all. The owners of a partnership business are individually known as the "partners" and collectively as a "firm".

Partnerships are governed by the Indian Partnership Act, 1932. Apart from the Indian Partnership Act, the general law of contracts, as contained in the Indian Contract Act 1872 also applies to Partnership Firms in India. Also, according to the Constitution of India, the Union and State Legislatures have concurrent power with respect to partnership contracts, and therefore every State may have its own respective partnership law as well.

Its main features are:-

a) Two or more persons can start a partnership.

b) The maximum number of partners which are permissible in a firm is 20 for other than banking business and in the case of banking business it is 10

c) A Partnership agreement must be entered into, clearly specifying the name of the partnership firm, the names of the partners, the capital to be contributed by each partner, the profit or loss sharing ratio between partners, the business of the partnership, the duties, rights, powers and obligations of each partner and other relevant details.

d) The agreement must be signed by all partners and witnessed by independent persons.

e) The partnership agreement must also specify the duties and authorities of all partners.

f) Details of salary and other payments to partners must also be specified in the partnership deed.

g) It is not compulsory for registration of partnership deeds; however, registration ensures certain legal rights to the firm and its partners.

h) The advantages of this form of set-up are that two or more people can come together and start a new business. The disadvantages of this set-up are that the liability of the partners of the firm is unlimited and the partners personal assets are also liable for the debts incurred by the partnership firm.

i) The liability of partners in Indian partnerships is joint and several.

j) There is no minimum capital to be subscribed for in a partnership.

k) A partnership may be dissolved with the consent of all the partners or in accordance with the provisions in the partnership agreement.

Partnership Deed

Under the Partnership Law, a Deed of Partnership is not necessary. Even though an agreement between two or more persons is necessary to form a partnership, it is not compulsory for a partnership deed to be in writing. In other words, Partnership can also be oral.

However, under the Income Tax Act, 1961, the partnership deed should be drawn in writing. A firm of partnership shall be assessed as a firm only if the partnership is duly evidenced by an instrument.

Therefore for anyone who is desirous of forming a Partnership firm, the most important preliminary step will be to draft and execute a proper deed of partnership.

Under the English Law of Partnership, the registration of firms of partnership is compulsory. However, under the Indian Law, registration of firms is not compulsory. Chapter VII of the Indian Partnership Act, 1932 provides for registration of partnership firms in India.

Under Section 57 of the Indian Partnership Act, 1932 the concerned State Government may appoint Registrars of Firms for the purposes of registration of partnership firms for different areas.

<u>While Drafting a Partnership Deed, the draftsman should take care of the following important points:</u>

1. As regards the form and contents of a Partnership Deed, it shall comprise of the following components:
i. Date
ii. Names of Partners
iii. Preamble

iv. Recitals

v. Attestation

vi. Custody

vii. Special Rules

2. The clauses in the Partnership Deed are very important and they contain the intentions of the Partners of the firm.

3. The "Partnership Deed", amongst other things, covers/includes the following aspects:

- Names of the partners of the firm and their addresses
- Names of working partners with their rights and duties
- Nature and scope of the duties, powers and rights of each partner
- Restrictions on the rights and powers of the partners
- Nature of firm's business
- Place of business
- Commencement, Duration and Determination of Partnership Business
- The amount of capital contributed by each partner and aspects relevant to it like introduction of additional capital, drawings that can be made etc.
- Interests to be paid to partners on Capital contributed, loans advanced, or deposits made by the partners
- Salary or commission payable to any partner, if any
- Loans given by partners to the firm
- Profit or loss sharing ratio of the partners
- Mode, manner and ratio of distribution of profits
- Consent of the Guardian if minor is admitted to the benefits of the firm
- Keeping Accounts and manner of maintaining the books of accounts
- Outgoings and expenses of Partnerships
- Valuation of Goodwill
- Retirement, Death, Bankruptcy, Expulsion of Partners

- Dissolution of the Partnership Firm
- Mode of settling disputes among the partners
- Any other terms and conditions to run the business
- Provision that in all other matters, not provided for by the deed, the provisions of the Indian Partnership Act, 1932 shall apply.

C] Arbitration Agreements

Arbitration is a process of dispute resolution in which a neutral third party (called the arbitrator) renders a decision after a hearing at which both parties have an opportunity to be heard. It is the means by which parties to a dispute get the same settled through the intervention of a third person, but without having recourse to court of law. An arbitrator is basically a private judge appointed with consent of both the parties.

According to Sec.2 (a) of The Arbitration and Conciliation Act, 1996, "Arbitration" means any arbitration whether or not administered by permanent arbitral institution.

The foundation of arbitration is the arbitration agreement between the parties to submit to arbitration all disputes which have arisen or which may arise between them. Thus, the provision of arbitration can be made at the time of entering the contract itself. It is also possible to refer a dispute to arbitration after the dispute has arisen.

According to Sec.7(1) of the Arbitration and Conciliation Act, 1996, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. It may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

<u>Ingredients of Arbitration Agreement</u>

- The arbitration agreement should be in writing.
- The agreement should contain the submission of present or future differences to arbitration.
- It must be agreed by the parties to the agreement/contract.

The following factors also need to be considered while drafting an arbitration agreement:

· Applicable law to arbitration
· Location of Arbitration
· Number of Arbitrators
· Language of Arbitration
· Limitation to arbitration powers
· Interim measures/Provisional Remedies
· Appeal & Enforcement

Specimen Form of Arbitration Clause in an Agreement

Every dispute, difference, or question which may at any time arise between the parties hereto or any person claiming under them, touching or arising out of or in respect of this agreement (deed) or the subject matter thereof shall be referred to the arbitration of XY, etc. or if he shall be unable or unwilling to act, to another arbitrator to be agreed upon between the parties or failing agreement to be nominated by……or, failing agreement to two arbitrators one to be appointed by each party to the difference (whether consisting of one or more than one person) and in case of difference of opinion between them to an umpire appointed by the said two arbitrators before entering on the reference and the decision of the arbitrator (or such arbitrators, or umpire as the case may be) shall be final and binding on the parties.

Or

In the event of any dispute, difference or question arising out of or in respect of this agreement or the commission of any breach of any terms thereof or of compensation payable thereof or in any manner whatsoever in connection with it, the same shall be referred to the Association of……..for arbitration as provided in Rules framed by the said Association for the purpose. The decision or award so given shall be binding on the parties hereto.

D] Private Equity Funding Documents

Private equity is medium to long-term finance provided in return for an equity stake in potentially high growth unquoted companies. Private equity is a broad term, which commonly refers to any type of non-public Ownership Equity securities that are not listed on a public exchange.

Today, the Indian venture capital/private equity industry has developed tremendously. From funding small start up ventures with emphasis only on new age companies, the industry has now matured to cover the entire spectrum of private equity products – seed funding, expansion capital, buy out financing, financing restructuring of companies and providing mezzanine capital across a variety of sectors. Deal sizes have also reached new heights, from sub USD 5 mn in the early days to USD 50 mn and more.

Private equity investment is a medium to long-term equity form of funding a company. Private equity investing may broadly be defined as "investing in securities through a negotiated process". Investments typically involve a transformational, value-added, active management strategy.

Private Equity Investing is often divided into various stages or broad categories described below. Each has its own subcategories and dynamics.

- Approaching the private equity firm
- Initial Enquiries and Negotiations
- Business Valuation
- Due Diligence
- Structuring the Deal / Final Negotiation and Deal Completion
- Monitoring and performance evaluation
- Exit Strategy

Various Documents are required at each stage of the Private Equity Investment Process.

Important Documents Required in the Private Equity Process:

a.) Business Plan

A business plan is prepared at the first stage of the private equity process. The Company approaches the private equity firm for investment after preparing a well thought-out, comprehensive and credible business plan.

Business Plan is a document whose main purpose when raising finance is to market the company's business proposal.
It is a crucial first step for an entrepreneur when moving from a business concept to the realization, funding and development of the venture.

The business plan will identify the strengths and risks of the business, provide an overview of the market, set out financial projections, articulate long-term goals and define key targets to be achieved.

A business plan generally covers the following areas:

1. Executive Summary
2. Market and Competition
3. Details of the Product or Service
4. The Management Team
5. Business Operations
6. Financial Projections
7. Funding Requirements
8. Exit Opportunities for the Investor

b) Term Sheet

The private equity firm sends an Offer Letter, setting out general terms of the proposal, subject to the outcome of the due diligence process and initial enquiries and the conclusion of the negotiations.

The Term Sheet is then prepared which starts the process of negotiating the deal terms.

A Term Sheet is a brief preliminary document designed to facilitate and provide a framework for negotiations between investors and entrepreneurs. Provisions in the term sheet are not usually intended to be legally binding and generally focus on a given enterprise's valuation and the conditions under which investors agree to provide financing.
The Term Sheet usually contains certain conditions to be met before the investment is completed and these are known as Conditions Precedent.
Condition precedent is a provision of a contract that suspends the coming into effect of a contract or a term of the contract unless or until a certain event takes place.

Usual contents of a term sheet are:

- Type of share
- Valuation and milestones
- Dividend rights
- Liquidation preference and deemed liquidation
- Redemption
- Conversion rights and Pre-emption rights
- Voting Rights
- Representations and Warranties
- Board of Directors
- Exclusivity and Enforceability
- Exit Routes
- Conditions Precedent

c) Warranties and Indemnities

A Warranty is an undertaking given by the company receiving the investment to the private equity firm or its financiers, that certain facts in relation to the business or the company are true. If there is a breach of warranty, the private equity financier can claim compensation against the company.

In the case of an Indemnity, the private equity financier is entitled to full recompense from the company for any loss on the occurrence of a certain event, without the need to prove the loss. Indemnities are promises by the Company to make good losses of the Private Equity Firm, if specific events occur.

Warranties and Indemnities usually cover the following areas:

- The authority and capacity of the company to sell the shares
- Warranty as to the accuracy of the latest audited accounts, stock values and the level of provision for bad debts

- Warranty that the company is not subject to any unforeseen tax liability in the future, as a consequence of its operations upto the date of the private equity investment process
- Warranty as to the ownership of the property and other assets used by the company
- Warranty as to the future relationship with the private equity financier

d) Disclosure Letter

In response to the warranties, the Private Equity Firm carries out a disclosure exercise, which results in the preparation of a disclosure letter.

The disclosure letter goes hand in hand with warranties. It is a letter from the company setting out aspects of non-compliance with the warranties. These are cross-referenced against, and qualify, the warranties.

The disclosure letter has 2 purposes in a private equity process:-
a). it acts as a collection point for information disclosed to the private equity firm about the business or company being financed; and
b). it records exceptions or qualifications to the warranties contained in the agreement.

The warranties are usually drafted in wide, general terms and disclosure is the mechanism by which exceptions or qualifications to them can be documented and agreed. As each disclosure in the disclosure letter lessens the private equity firm's rights under the warranties (by excluding the matter disclosed from the scope of the general warranty) it effectively increases the the firm's risk and for this reason the firm may not accept all disclosures which the company would like to make to it in the disclosure letter.

e) Shareholders' / Investors' Rights/ Subscription Agreement

The Shareholder's Agreement details the terms of the investment, including continuing obligations of management required by the private equity firm, the warranties and indemnities given by the existing shareholders, penalty clauses and shareholder rights. It is a very important document as it regulates the affairs of the company and gives investors their main contractual protections. The contents of a Shareholder's Agreement include:

1. Board Appointment Rights
2. Veto Rights
3. Adoption and amendment of business plans and budgets
4. Scope of business
5. Intellectual property rights
6. Right to information
7. Warranties from the management team
8. Restrictions on transfers of shares
9. Restrictive covenants
10. Strategic investor rights
11. Exit provisions

f) Company's Memorandum and Articles of Association

The Memorandum and Articles of Association will include among other things information about the objects and capital clauses of the company, the rights attached to the various share classes, the procedures for the issue and transfer of shares and the holding of shareholder and board meetings.

E] Wills

Succession is of two types, testamentary and intestate. If a person executes a valid will as to whom the property should go on his death and his property is passed on accordingly, it is referred to as testamentary succession. If there is no valid will and the property of a deceased person devolves as per the respective religious laws it is called intestate succession.

The Indian Succession Act came into operation on 30th September 1925 and it seeks to consolidate all Indian Laws relating to succession. The Act consists of 11 parts, 391 sections and 7 schedules. This Act is applicable to intestate and testamentary succession.

What is a Will?

Will means a legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death. It can be revoked or altered by the maker of it at any time he is competent to dispose of his property.

A will made by a Hindu, Buddhist, Sikh, Jain, Christian, Parsi and Jew is governed by the provisions of the Indian Succession Act, 1925. However Muslims are not governed by the Indian Succession Act, 1925 and they can dispose their property according to Muslim Law.

Characteristics of a Will

A will must be intended to come into effect after the death of the testator; and It must be revocable by the testator at any time.

Competency to make will

- Every person who is of sound mind and is not a minor can make a will.
- Any married woman can make a will of any property which she could alienate during her life time.

- Persons who are deaf or dumb or blind can make a will provided they are able to know what they do by it.
- A person who is ordinarily insane may make a will during an interval in which he is of sound mind.
- No person can make a wil while he is in such a state of mind, whether arising from intoxication or from illness or from any other cause, that he does not know what he is doing.

Execution of Will

- The testator (person making the will) should sign or fix his mark to the will or it should be signed by some other person in his presence and by his direction.
- The signature or mark of the testator or the signature of the person signing should appear clearly and should be legible. It should appear in the manner that is appropriate and makes the will legal.
- At the time of execution, at least two witnesses should be present.
- IF not, the testator should declare and recognise the said writing as his will before the two attesting witnesses.

Kinds of Wills

i. Conditional Will: This is a Will made so as to take effect only on a contingency. The operation of the document may be postponed till after the death of the testator's wife, for example.
ii. Joint Will: Two or more persons may make a joint Will. It will take effect as if each has properly executed a Will as regards his own property. If a Will is joint and is intended to take effect after the death of both, it will not be admitted to probate during the lifetime of either.
iii. Mutual Will: A Will is mutual when two testators confer on each other reciprocal benefits as by either of them constituting the other his legatee, the is to say, when the executants fill the roles of both the testator and legatee towards each other. Mutual Wills are also called Reciprocal Wills.

iv. Holograph Will: A holograph is a Will entirely in the handwriting of the testator. Naturally there is a greater guarantee of genuineness attached to such a Will. But in order to be valid it must also satisfy all the statutory requirements.

v. Concurrent Wills: The general rule is that a man can leave only one will at the time of his death. But for sake of convenience a testator may dispose off some properties. e.g., those in one country by one Will and those in another country by another Will. They may be treated as wholly independent of each other, unless there is any inter-connection or the incorporation of one in the other. Such Wills are called concurrent wills.

vi. Duplicate Will: A testator, for the sake of safety, may make a will in duplicate, one to be kept by him and the other deposited in some safe custody with a bank, executor or trustee. Each copy must be duly signed and attested in order to be valid. A Valid revocation of the original would affect a valid revocation of the duplicate also.

vii. Onerous Will: This is a Will, which imposes an obligation on the legatee that he gets nothing until he accepts it completely.

Registration of Will

A will need not be registered compulsorily but if so desired it may be registered by the testator during his lifetime. A Will may be deposited with the registering authority under Sec.42 of the Indian Registration Act, 1908. A Will or Codicil is not required to be stamped at all.

Wording of a Will

Sec.74 of the Indian Succession Act, 1925 lays down that the use of technical words or terms of art is not necessary in a will but the wording should be such as to clearly indicate the intention of the testator.

A will must be construed as a whole to give effect to the manifest intention of the testator; Nathu v. Debi Singh, AIR 1966 Punj 226.

Codicil

Codicil is an instrument made in relation to a Will and explaining, altering or adding to its disposition. It shall be deemed to form part of a Will. (Sec.2 (b) of the Indian Succession Act, 1925)

If the Testator wants to change the names of the Executors by adding some other names, in that case this could be done by making a Codicil in addition to the Will, as there may not be other changes required to be made in the main text of the Will.

If the Testator wants to change certain bequests by adding to the names of the legatees or subtracting some of them in case some Beneficiaries are dead and the names are required to be removed, all these can be done by making a Codicil.

The Codicil must be in writing. It must be signed by the Testator and attested by two Witnesses.

Revocation of Will

A Will may be revoked at any time before the death of the testator but a will executed by two persons jointly cannot be revoked after the death of any one of them, if the survivor has given effect to the directions of the deceased testator.
In case of two Wills, the latter one will prevail; Badari Basamma v. Kandrikeri, AIR 1984 NOC 237 (Kant).

In case of revocation, the testator should give it in writing that he has made certain changes or has revoked the will. It must be signed by the testator and attested by two or more witnesses. There should be a clause stating that the present will is the last will of the testator and any will made prior to this would stand revoked. The testator cannot

revoke the will by just striking it off or scratching it. He must sign it and have it attested by at least two witnesses.

Probate of Will

On the death of the testator, an executor of the will or an heir of the deceased testator can apply for probate. The court will ask the other heirs of the deceased if they have any objections to the will. If there are no objections, the court will grant probate.

A probate is a copy of a will certified by the court.

A probate is to be treated as conclusive evidence of the genuineness of a will.
In case any objections are raised by any of the heirs, a citation has to be served, calling upon them to consent. This has to be displayed prominently in the court. Thereafter, if no objection is received, the probate will be granted. It is only after this that the will comes into effect.

Though executors derive their title from the Will and not the probate, the probate is still the only proper evidence of the executor's appointment. The grant of probate to the executor does not confer upon him any title to the property which the testator himself had no right to dispose off, but only perfects the representatives title of the executor to the property, which did belong to the testator and over which he had a disposing power.

F] Power of Attorney

A power of attorney is a formal arrangement by which one person ('the donor') gives another person ('the attorney') authority to act on his behalf and in his name.
A power of attorney is an instrument in writing whereby one person, as principal, appoints another as his agent and confers authority to perform certain specified acts or

kinds of act on behalf of principal. It includes any instrument empowering a specified person to act for and in the name of the person executing it.

Sources of law

The subject of power of attorney is specifically or incidentally referred to in several statutes. A power of attorney is a type of agency, and law relating to the powers of attorney forms part of the general law of agency. The law of agency in India is contained in Chapter X, sections 182 to 238 of the Indian Contract Act, 1872.

The statutory provisions concerning the powers of attorney are found in the Powers of Attorney Act, 1882.

Who can give a power of attorney?

a. Individuals

b. Partnership firms

c. Companies

Who can be appointed as an attorney?

Any person may become an agent (attorney), but no person who is not of the age of majority and of sound mind can become an agent (attorney), so as to be responsible to his principal (donor).

In case several persons are appointed as attorneys, in the absence of an express provision in the power of attorney authorizing any of them to act severally, all of them are supposed to act jointly and any act done by one or more of them short of all, will be beyond the scope of the power.

Types of Power of Attorney

There are two types of Power of Attorney:

(i) General Power of Attorney - This type of Power of Attorney gives general powers to the person in whose favour the document is executed. The person who is given the powers is called a "Constituted Attorney" and he is authorized to perform all kinds of acts and to execute any document on behalf of the person who has so executed that document.

(ii) Special Power of Attorney - Such Power of Attorney gives the person, power/s only for specified act/s or transactions. In this case the power has to be strictly adhered to and the Constituted Attorney cannot do anything for which he is not duly empowered by the

Formalities:

1. Execution

A power of attorney need not be attested or registered, but if it authorizes a person to present a document at the registration office for registration, it must be executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides, if the principal at the time of executing the power of attorney resides in any part of India. If however, the principal at the time aforesaid does not reside in India, it must be executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice Consul, or representative of the Central Government in the country in which the donor is residing at the time of executing a power of attorney.

Additionally, it is possible under Section 4 of the Powers of Attorney Act, 1882 to deposit a power of attorney, its execution being verified by affidavit, statutory declaration or other sufficient evidence, along with the said affidavit or declaration if any, in the High Court or the District Court within the local limits of whose jurisdiction the instrument may be. A separate file is kept of the instruments so deposited and any person is entitled to take search of that file and inspect every instrument so deposited. A certified copy thereof is also delivered on request. A certified copy of an instrument so deposited is, without further proof, sufficient evidence, of the contents of the instrument and of the deposit thereof in the High Court or District Court.

Partnership Firms

In case of a partnership, the power of attorney in favour of any partner or outsider must be executed by all the partners but if one or more partners hold a general power attorney executed by all partners with a power to delegate, then one or more partners can execute a power of attorney in favour of a third person for and on behalf of the firm or other partners. A power of attorney executed by one or more partners in favour of a third person, even in the name of and for and on behalf of the partnership would not be valid as it would not be binding on the other partners. In such a case, at least the written consent of other partners should be obtained to confirm the power of attorney executed by one or more, but not all partners of the firm.

Companies

Section 48 of the Companies Act, 1956 provides that a company may by writing and under its common seal empower any person as its attorney to execute deeds on its behalf.

Power of Attorney executed abroad

As far as the power of attorney executed outside India is concerned it should be ensured that it is authenticated by Indian Consul, Vice-Consul or a representative of the Central Government in that country and not by any Notary Public except in the case of the three Countries i.e. Belgium, New Zealand and Ireland, which have been notified under Section 14 of [The] Notaries Act, 1952.

2. Authentication

Under Section 85 of The Indian Evidence Act, 1872 there is a presumption that every document purporting to be a Power of Attorney, and to have been executed before and authenticated by, a Notary Public or any Court, Judge, Magistrate, Consul, or Vice-Consul or representative of the Central Government was so executed and authenticated. The authentication is not merely attestation, but something more. It means that the person

authenticating has assured himself of the identity of the person who has signed the instrument as well as the fact of execution. It is for this reason that a power of attorney bearing the authentication of a Notary Public or an authority mentioned in Section 85 of The Indian Evidence Act, 1872 is taken as sufficient evidence of the execution of the instrument by the person who appears to be the executant on the face of it.

3. Stamp Duty

(A) The Indian Stamp Act, 1899

A power of attorney is defined under Section 2 (21) of the Act to include "any instrument (not chargeable with a fee under the law relating to Court-fees for the time being in force) empowering a specified person to act for and in the name of the person executing it." The stamp duty payable under the Act is prescribed in Article 48.

Power of Attorney executed outside India

If a power of attorney is executed outside India but relates to any property situate or to any matter or thing to be done in India and is received in India, it must be stamped with the appropriate stamp duty within three months of its arrival in India.

Stamp Duty on Revocation

There is no Article in The Indian Stamp Act, 1899 levying duty on revocation of a power. Such an instrument is chargeable under Article 15 - Cancellation, if attested i.e., signed in the presence of a witness and not otherwise provided for.

4. Registration

A power of attorney is not required to be registered under the Registration Act, 1908. Clause (c) of section 32 of the Registration Act, 1908 requires that where a document is presented for registration by the agent of a person entitled to present it for registration, such agent must be "duly authorised by power-of-attorney executed and authenticated in

manner hereinafter mentioned"; and the manner of execution and authentication of such a power-of-attorney is prescribed in section 33 of that Act.

Duties of the Attorney

Duties of an Attorney are the same as those of an agent as enumerated under the Indian Contract Act, 1872.

Remuneration of the attorney

Like any other agent, an attorney is entitled to be remunerated for his services if the terms of his appointment expressly or impliedly make provision for such payment. Whether or not the power of attorney expressly provides for his remuneration, an attorney is entitled to be indemnified by the donor in respect of advances made or expenses properly incurred by him in carrying out his functions under the instrument.

Construction Of Power Of Attorney

It has been consistently held that a power of attorney must be strictly construed and are interpreted as giving only such authority as they confer expressly or by necessary implication. A power of attorney is subjected to strict interpretation because it delegates powers which are to be interpreted in strict terms and, in such a way, as would be necessary to carry into effect the authority that is expressly given.

The following are the most important rules of construction:

a) The operative part of a deed is controlled by the recitals where there is ambiguity

b) Where authority is given to do particular acts, followed by general words, the general words are restricted to what is necessary for the proper performance of the particular acts.

c) General words do not confer general powers, but are limited to the purpose for which the authority is given, and are construed as enlarging the special powers only when necessary for that purpose.

d) The deed must be construed so as to include all incidental powers necessary for its effective execution.

Where an act purporting to be done under a power of attorney is challenged as being in excess of the authority conferred by the power, it is necessary to show that on a fair construction of the whole instrument the authority in question is to be found within the four corners of the instrument, either in express terms or by necessary implication.

The well known principles of interpretation of a document (power of attorney, in the instant case) are: firstly that, a word used in a document has to be interpreted as a part of or in the context of the whole; secondly, that, the purpose of the powers conferred by the power of attorney have to be ascertained having regard to the need which gave rise to the execution of the document, the practice of the parties, and the manner in, which the parties themselves understood the purpose of the document and thirdly, that, powers which are absolutely necessary and incidental to the execution of the ascertained objects of the general powers given must be necessarily implied. Perhaps the most important factor in interpreting a power of attorney is the purpose for which it is executed. The purpose must appear primarily from the terms of the power of attorney itself and, it is only if there is an unresolved problem left by the language of the document, that one needs to consider the manner in which the words used could be related to the facts and circumstances of the case or the nature or course of dealings. The document has to be construed as it stands. It is only in the case of ambiguity in the document that it is possible to look at the circumstances surrounding the execution of the power of attorney, as well as antecedent correspondence or the conduct of parties.

Duration, Termination / Revocation And Cancellation Of The Power Of Attorney

1. Duration

A general power of attorney unless expressly or impliedly limited for a particular period, continues in force until revoked or determined by the death of either party. A special power of attorney to do an act is determined when the act is done. If it is desired that the

power should continue for a particular period or until a certain event happens, an express provision to that effect should be made.

A power of attorney appointing attorneys without terms limiting the duration of their power but with a recital that the principal was going abroad and, was desirous of appointing attorney during his absence, was held to be an appointment limited to the time during which the principal was abroad.

Where the principal just before leaving India executed a power of attorney authorizing the agent to act in his absence from India and subsequently came to India and again left it but did not execute a new power before so leaving: Held that the power of the agent did not terminate and the agent had power to act for the principal during his absence.

2. Termination / Revocation

The provisions of the Indian Contract Act, 1872 relating to termination of Agency are applicable equally to termination of power of attorney, law relating to power of attorney being specie of the law of agency. Reproduced herein below are the provisions of the Indian Contract Act, 1872 relating to termination of agency.

(i) Termination of agency

A power of attorney may be terminated / revoked:

a). by the donor revoking the attorney's authority; or

b). by the attorney renouncing his authority; or

c). by the business of agency being completed; or

d). by either the donor or attorney dying or becoming of unsound mind; or

e). by the donor being adjudicated an insolvent.

(ii) Irrevocable power of attorney / termination of agency, where agent has an interest in subject matter

Where the agent has himself an interest in the property which forms the subject matter of agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest

Where the authority of an agent is given by deed, or for valuable consideration, for the purpose of effectuating any security, or of protecting or securing any interest of the agent, it is irrevocable during the subsistence of such security or interest.

(iii) When principal may revoke agent's authority

The principal may, except where the agent has himself an interest in the property which forms the subject matter of the agency, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

(iv) Revocation where authority has been partly exercised

The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.

(v) Compensation for revocation by principal, or renunciation by agent

Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

(vi) Notice of revocation or renunciation

Reasonable notice must be given of such revocation or renunciation; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

(vii) Revocation and renunciation may be express or implied

Revocation and renunciation may be express or may be implied in the conduct of the principal or agent respectively.

(viii) When termination of agent's authority takes effect as to agent, and as to third person

The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

(ix) Agent's duty on termination of agency by principal's death or insanity

When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, or behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

(x) Termination of sub-agent's authority

The termination of the authority of an agent causes the termination (subject to the rules regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

(xi) Partnership firm

A firm is an artificial person and upon dissolution it ceases to exist. Therefore, a contract of agency entered into by a firm stands terminated upon dissolution.

(xii) When the principal becomes old, feeble, weak and mentally infirm

A power of attorney cannot go beyond the principal. But the general principle of this rule is that a principal must be in a position to make an authorization and continue to exert his or her authority so that agent binds the principal. Where the principal was found to be old, feeble, weak and mentally infirm and not in a position to think independently, power of attorney executed would become worthless. Such an agent would be committing an immoral and an unethical act by acting on a power of attorney of a principal whom he knows is mentally unsound, weak, suffers from mental infirmity and has no legal capacity to authorize. This is like continuing to act on a power of attorney of a dead man. If the agent continues to act on the power of attorney his action will be writ large with fraud, misappropriation cheating and criminal breach of trust. The power of attorney will be declared as null and void.

(xiii) Payment by attorney under power, without notice of death etc. in good faith

Section 3 of the Powers of Attorney Act, 1882, provides that "any person making or doing any payment or act in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that, before the payment or act, the donor of the power had died or become lunatic, of unsound mind, or bankrupt or insolvent, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, insolvency or revocation was not, the time of payment of act, known to the person making or doing the same. The section leaves unaffected the rights of any person entitled to the money against the person to whom the payment is made.

(xiv) Suit by an attorney on behalf of a dead principal

A suit instituted in the name of the Plaintiff who was dead on the date of the institution of the suit by her power of attorney holder would be nullity though the fact regarding the death of the Plaintiff was discovered later at the time of pendency of an appeal arising out

of decree passed in that suit and therefore the appeal and all proceedings arising out of the suit would also be a nullity.

(xv) Joint Power of attorney

In the case of joint power of attorney, death of one of them will not revoke the power of attorney.

(xvii) Future acts consequential to the previous acts

The power of attorney once utilized would not terminate or cease in relation to future acts which are only consequential to the previous acts, already done.

(xvii) Where principal is of unsound mind

Where a person of unsound mind when released on parole from the mental hospital executed a power of attorney in favour of a person to execute a deed of partition in respect of specific properties, the Court held that the power of attorney would be a nullity in absence of order of discharge of lunatic under S.34 of Lunacy Act and the onus is on defendant to prove that executant was in period of lucidity while executing power of Attorney.

3. Cancellation

Section 31(1) of the Specific Relief Act, 1963 provided that any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

4. An Advocate is not entitled to act in a professional capacity as well as constituted attorney of a party in the same matter or cause. An Advocate cannot combine the two roles. If a firm of Advocates is appointed as Advocates by a Suitor, none of partners of the Advocates' firm can act as recognised agent in pursuance of a power of attorney concerning the same cause.

To conclude,

Drafting is an art, the success of which depends on the mastery skills of a draftsman, the depth of his knowledge and experience of law and life. A good draftsman should be direct, simple, brief, vigorous and lucid