

A Specimen of Outsourcing Agreement for Converting Hard Copies of a Book in a Compact Disc (CD)

This Agreement for the conversion of the book titled Intellectual Property Protection in India is executed in on 2018 by and between the Golden Law Publishing Co. Pvt. Ltd. having their Office at represented by Mr. Manager, Golden Law Publishing Co. Pvt. Ltd. (hereinafter referred to as 'the GLP Pvt. Ltd.)

AND

M/s Bluetec Web Services Pvt. Ltd, a Company registered under the Companies Act having their office atand represented by Mr. Director, M/s Bluetec Web Services Pvt. Ltd, (hereinafter referred to as the M/s Bluetec Pvt. Ltd.)

WHEREAS the GLP Pvt. Ltd. has published the book Intellectual Property Protection in India it has decided to convert the hard copies of above mentioned book into a soft copy version by getting the book digitized and thereafter put the contents of the book in a CD (Compact Disc) along with a Search Engine. The GLP Pvt. Ltd. floated a tender for this book vide tender document with closing date2018 and after evaluating the bids of various parties, the GLP Pvt. Ltd. has decided to award the project to M/s Bluetec Pvt. Ltd. on the following terms and conditions:

- (1) M/s Bluetec Pvt. Ltd. would perform the job of digitisation (of the relevant portions marked for digitization) of the book including Data punching / Scanning, OCR Validation, Proof-reading (at an accuracy level of 99.9%), Tagging according to search parameters, Linking, Indexing etc.
- (2) M/s Bluetec Pvt. Ltd. would be developing a search engine as per the GLP's requirement. The search engine would be licensed to the GLP Pvt.Ltd. for its perpetual use. The GLP Pvt. Ltd. would further be free to use this Search Engine for any purpose and would not be liable to pay to M/s Bluetec Pvt. Ltd. any additional amount for such usage.
- (3) The copyright of the contents of the CD, marketing rights and all other rights pertaining to the said CD would solely vest with the GLP Pvt. Ltd.
- (4) M/s Bluetec Pvt. Ltd. undertakes to complete the assignment within a period of 100 days from the date of execution of this agreement.
- (5) After the completion of the job M/s Bluetec Pvt. Ltd. would give sufficient training including technical aspects (relating to the features of the search engine developed by the M/s Bluetec Pvt. Ltd. to the people deputed by the GLP Pvt. Ltd. to facilitate to use the search engine independently. The training must be up to the satisfaction of the GLP Pvt. Ltd. in all aspects.
- (6) M/s Bluetec Pvt. Ltd. would hand over the digitized contents of the book to the GLP Pvt. Ltd. after the completion of the job.
- (7) The total project cost to be paid to M/s Bluetec Pvt. Ltd. would be as follows.
 - (a) Cost of developing the Search Engine – Rs..... (Rupees..... only)
 - (b) Digitization cost for each page (in hard copy) – Rs..... per page
 - (c) Conversion cost for each page (in soft copy) – Rs..... per page
 - (d) Total cost of each CD including the manual, jewel case, packing, printing and security features – Rs..... per CD

It is to be noted that the original CD lot would be of 750 CDs only.

For the purpose of page count, 50% or more coverage would be treated as one full page and less than 50% would be ignored and would not be taken in counting.

- (8) M/s Bluetec Pvt. Ltd. would not be paid any advance money for undertaking the job. M/s Bluetec Web Services Pvt. Ltd. would however be paid 25% of the total project cost after the stage of completion of the Master CD and subject to the satisfaction of the GLP Pvt. Ltd.
- (9) M/s Bluetec Pvt. Ltd. agrees to keep the hard copies of the book given for digitization in good shape. M/s Bluetec Pvt. Ltd. has however been allowed to mark the relevant portions required for search taggings with special marks.
- (10) For updating the CD, the GLP Pvt. Ltd. reserves the right to either conduct the updation in part on its own or the GLP Pvt. Ltd. may assign this job to M/s Bluetec Pvt. Ltd. or any other agency. If the GLP Pvt. Ltd. decides to assign this job to M/s Bluetec Pvt. Ltd., the cost would be as follows:
 - (a) Content assimilation, Software upgradation and Annual Maintenance charges – Rs. per annum
 - (b) Conversion cost of each page (in soft copy) – Rs..... per page
 - (c) Total cost of each CD including the manual, jewel case, packing, printing and security features – Rs..... per CD (subject to a minimum lot of 1000 CDs)
- (11) Both the parties i.e. The GLP Pvt. Ltd. and M/s Bluetec Pvt. Ltd. agrees to abide by all remaining terms and conditions of the original tender document floated by the GLP Pvt. Ltd. for the said job.
- (12) Any notice or request or communication given or required to be given under this contract shall be given to:
 - A. In case of M/s Bluetec to:
Mr., Director, M/s Bluetec Web Services Pvt. Ltd. (Give Address).....
 - B. In case of GLP Pvt. Ltd. to:
Mr....., Manager, Golden Law Publishing Co. Pvt. Ltd. (Give Address).....
- (13) M/S BLUETEC PRIVATE LIMITED HEREBY FURTHER COVENANTS AND AGREES to indemnify and keep at all times indemnified the GLP Pvt. Ltd. against any loss or damage that the GLP may sustain as a result of the failure or neglect of M/s Bluetec to faithfully carry out its obligations under this agreement and further to pay for all losses, damages, costs, charges and expenses which the GLP Pvt. Ltd. may reasonably incur or suffer and to indemnify and keep indemnified the GLP Pvt. Ltd. in all respects.
- (14) This Agreement can be terminated by the GLP Pvt. Ltd. by giving three month's notice in writing in the event of failure of M/s Bluetec Pvt. Ltd. for adhering to time schedules / unsatisfactory execution of the conversion of the book or quality of output or requisite training not given to the people deputed by the GLP Pvt. Ltd or for any other reasonable cause and under such notice period, the performance of the project shall continue in operation by both the parties.
- (15) FORCE MAJEURE : If at any time during the continuance of this contract, the performance in whole or in part by either party or any obligation under this contract is prevented or delayed by reason of any war, hostility, acts of the public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes, lockouts, power failure or acts of God (herein after referred to as events) provided notice of the happenings of any such event is given by either party to the other within 21 days from the date of occurrence thereof, neither party shall by reason of such events, be entitled to terminate this contract nor shall either party have any claim for damages against the other in respect of such non- performance or delay in performance, and deliveries under the contract shall be resumed as

soon as practicable after such event has come to an end or ceased to exist, provided further that if the performance in whole or part of any obligation under this contract is prevented or delayed by reasons of any such event for a period exceeding 180 days, both parties shall consult each other regarding the termination of the contract on agreed equitable terms or otherwise devise future course of action.

- (16) All disputes, claims and demands arising under or pursuant to or concerning this contract shall be referred to the sole Arbitrator to be appointed by the Chief Manager, GLP Pvt. Ltd. The award of the sole Arbitrator shall be final and binding on both the parties. The arbitration proceedings shall be held under the provisions of the Arbitration and Conciliation Act, 1996 as amended till date. The place of arbitration shall be
- (17) The Courts at (Mention the name of the place) alone shall have jurisdiction to adjudicate any dispute arising between the parties under this agreement.
- (18) Notwithstanding anything contained in this agreement, the parties agree that any terms of this agreement may be varied by way of supplementary deed/agreement. Such supplementary agreement/deed shall be effective only if it is in writing and signed by duly authorised representatives of both the parties.

IN WITNESS WHEREOF the parties hereto have set their respective hands to the agreement on the day, month and the year mentioned herein above.

Signed and Delivered By:

On behalf of M/s Bluetec Web Services Pvt. Ltd. Name:

Designation:

Place:

On behalf of GLP Pvt. Ltd.

Name:

Designation:

Place:

In the presence of witnesses:

- 1.
- 2.

SERVICE AGREEMENTS

Contents of a Service Contract

Service contracts are drafted in the same way as other agreements. The terms of employment should be definitely fixed and clearly expressed and nothing should be left to presumptions. They are required to be both affirmative (describing the acts and duties to be performed) as well as negative (putting restrictions on the acts of the employee during and/or after the term of employment). It is therefore necessary to make provision for (1) the time or period of employment; (2) the remuneration and other perquisites, if any, including pay, allowances, commission, rent-free house, conveyance, etc.; (3) duties of employment; (4) powers of the employee; (5) leave and the terms on which it will be granted; (6) modes and grounds of determining the employment during the term; and (7) restrictive covenants, if any.

As the employer and the employee may not be conversant with law, the terms of a service contract should be as explicit as possible and should be easily intelligible to a lay man, Unlike other agreements and legal documents which need not contain matters presumed or implied by law, it is better in such an agreement to specify even such

matters and all other matters so as to make it a complete code, embodying the rights and duties of each party.

In respect of Government service, normally no formal contract is executed and only an appointment order is issued and the terms of service are thereafter governed by statutory rules and Government order. The same is the position of statutory corporations as employers.

Period of Service : This may be definite or indefinite. If no period is fixed or an indefinite period is stated, e.g., “so long as the parties respectively please”, the contract is terminable by a reasonable notice on either side. What is a reasonable notice varies in different cases, according to the characters of the employment and the general custom, from 15 days to six months. When no term is fixed, it is always proper to provide for determination by notice. In such a case, and also in case option of determination is reserved during the term, the period of notice should be settled and expressed in the agreement.

Remuneration : Remuneration may be fixed monthly salary, or fees or commission, or salary as well as fees or commission. Sometimes in business firms, employees are allowed a share in the profits in addition to a fixed salary. All these should be clearly provided.

Leave : Conditions and grounds on which, and the period for which leave may be granted as well as allowance payable during leave should be stated. In the case of Government servants engaged on contract, the leave rules applicable to permanent Government Servants in general may be applied but as there are different rules for different classes of Government Servants those applicable should be clearly referred to, or if they are not lengthy, they may be embodied in the agreement in the form of a covenant.

Determination of Employment: The grounds for determination of employment should be clearly expressed in the agreement. The grounds on which the employment may be determined during the term are generally misconduct, negligence, or want of medical fitness. Subject to what has been stated earlier, it may also be determined at pleasure by notice, without giving any ground. In the case of misconduct or neglect, no notice is required, but, provision may be made for framing charges and taking defence as in the case of Government Servants. Since an employee is entitled to damages for wrongful dismissal if the termination of the service is not properly made, provision in this respect should be carefully worded.

Restrictive Covenants: It is usual to include restrictive covenants in the agreement such as that the employer will not undertake any other work or service or that he will not divulge the employer’s secrets or make improper use of his trade secrets or information about the employer’s affairs.

While drafting restrictive covenants, it is necessary to see that they are not illegal. Agreements in restraint of trade are void under Section 27 of the Indian Contract Act, and should not be inserted in an agreement.

Effect of Labour Laws: Many Acts have been passed by the Central or State legislatures relating to the conditions of employment of teachers and other employees of aided schools and colleges and of universities, and of workers in factories and commercial establishments, for e.g. the Factories Act, the Industrial Employment (Standing Orders) Act, the Payment of Wages Act, the Workmen’s Compensation Act etc. In drawing up a service contract for such an employee, the provisions of the relevant Acts must be kept in view. Any term of contract contrary to the statutory provisions will be null and void, as it is not open to an employee to contract out of the safeguards provided by the legislature for his protection.

Specimen Agreement of Employment of Manager of a Business Concern

THIS AGREEMENT is made on this..... day of..... BETWEEN AB, etc. (hereinafter called the “employer”) of the one part AND CD, etc, (hereinafter called the “manager”) of the other part. WHEREAS

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

NOW THIS AGREEMENT WITNESSES as follows :

1. The manager shall work as such for a term of..... years from the day of..... at..... or any other place as desired by the employer.
2. The manager shall give his whole time and attention to the said business and shall use his best endeavour to improve and expand the same and shall in all respects diligently and faithfully obey and observe all lawful orders and instructions of the employer in relation to the conduct of the said business and shall not without his consent divulge any secrets or dealing thereto.
3. The manager shall keep at the place of business at..... proper books of account showing all goods and moneys received and delivered and disbursed by him with necessary particulars of all such transactions and shall duly account for all moneys belonging to the employer and coming into the hands or power of the manager and shall forthwith pay the same to the employer or his bankers for the time being except only such moneys as the manager shall be authorised by the employer to retain for immediate requirements of the said business.
4. The employer shall pay to the manager during the continuance of his engagements and provided he shall duly observe and perform the agreement herein on his part contained the salary of Rs..... per mensem on the first day of every calender month commencing from the first day of..... without any deduction except such as he will be bound to make under the Income-tax law for the time being in force, and shall also pay the manager at the end of each year during the aforesaid period a further sum equal to 5 per cent on the gross sale return for the said year (or on the net profits of the said business for the said year (if any) after making such deductions as are properly made according to the usual custom of the said business in the estimation of net profits) provided always that upon the death or termination of the engagement of the manager before the expiration of the said period of years/ the employer shall forthwith pay to him or his heirs, executors, administrators or other legal representatives, as the case may be, in respect of the services of the manager of the whole or any part of the current month a due proportion of the salary of Rs..... per mensem together with such further sum in lieu of such percentage as aforesaid as shall bear the same proportion to the estimated gross return (net profits) for the then current year as the part of the said year during which he has served, shall bear to the whole year, the gross return (net profits) being calculated on average of the past three years.
5. The employer shall during the continuance of the manager's engagement provide him with a suitable furnished house for residence free of rent, rates and taxes (except the charges for electricity consumed by him or of extra water used by him) and the manager shall reside in the said house.
6. The manager shall make such tour as may be necessary in the interest of the said business or as he may be directed by the employer to make and the employer shall pay him all reasonable expense actually incurred in undertaking such tours (or a travelling allowance at per mile for all journey by road and first class fare for journeys performed by rail and a halting allowance of Rs..... per diem when a halt of not less than 8 hours is made at one place).
7. The manager shall be entitled during his engagement to leave on full pay for a period equal to 1/11th of the period of service rendered and to a further leave on half pay in case of illness or in capacity to be proved to the satisfaction of the employer for a period of 15 days in one year.
8. Either party hereto may terminate the engagement of the manager at any time before the expiration of the said term of.....years on giving or sending by registered post to the other party three calendar months, notice in writing, such notice to be given or sent in the case of the employer to his house at and in case of the manager to his place of business or residence provided by the employer and on the expiration of the said three months from the date of giving or posting such notice,

the said engagement shall terminate provided that the employer may terminate the said engagement at any time on payment of three months' pay in advance in lieu of such notice as aforesaid.

- 9. If the manager at any time willfully neglects or refuses or from illness or other cause becomes or is unable to perform any of the duties under this agreement, the employer may suspend his salary (and sum by way of percentage) during such neglect, negligence or inability as aforesaid and may further immediately terminate the engagement of the manager without giving any such notice or making such payment or salary in advance as hereinbefore provided.
- 10. The manager will at his own expense find and provide two respectable sureties to the amount of Rs..... each for his good conduct and for the due performance by him of this engagement and if he fails to do so for a period of three months from this date, the employer may terminate his services forthwith.

IN WITNESS WHEREOF, etc.

Renewal of Term of Service of an Employee (Either on old terms or new terms)

THIS AGREEMENT is made, etc.

WHEREAS the said CD has served the said AB as..... under an agreement between the parties hereto dated the.....;

AND W HEREAS the term of the said CD's engagement under the said agreement having expired on the....., it has been agreed that the said AB shall re-engage, the said CD upon the terms and conditions hereinafter appearing (or, upon the terms and conditions contained in the said agreement dated the.....).

NOW THESE PRESENTS WITNESS and the parties hereto hereby agree as follows:

- (1) The said CD shall serve the said AB as..... for one year from the.....
- (2)
- (3) etc.

(or, 2. The terms and conditions of the said agreement shall be the same as are contained in the aforesaid agreement of the parties dated..... in so far as they may be applicable to the employment under this agreement and all the terms and conditions contained in the said agreement shall be deemed to have been incorporated in this agreement).

IN WITNESS WHEREOF etc.

ELECTRONIC CONTRACTS (E-CONTRACTS)

Due to the immoderate advancement of technology E-Commerce has become a part of human daily life. . E-Commerce is the selling and purchasing of goods and services using technology. E-Contracts are basically the contracts analyzed with E-Commerce and other transactions taking place in the digital environment.

E-contract (contract that is not paper based but rather in electronic form)is any kind of contract formed in the course of e-commerce by the interaction of two or more individuals using electronic means, such as e-mail, the interaction of an individual with an electronic agent, such as a computer program, or the interaction of at least two electronic agents that are programmed to recognize the existence of a contract. Traditional contract principles and remedies also apply to e-contracts. This is also known as electronic contract.

Electronic contracts are born out of the need for speed, convenience and efficiency. Imagine a contract that an Indian exporter and an American importer wish to enter into. One option would be that one party first draws up two copies of the contract, signs them and couriers them to the other, who in turn signs both copies and couriers one copy back. The other option is that the two parties meet somewhere and sign the contract. In the electronic

age, the whole transaction can be completed in seconds, with both parties simply affixing their digital signatures to an electronic copy of the contract. There is no need for delayed couriers and additional travelling costs in such a scenario.

There was initially an apprehension amongst the legislatures to recognize this modern technology, but now many countries have enacted laws to recognize electronic contracts. In India Information Technology Act, 2000 governs the law relating to e-contracts substantially. The Act provides for the Attribution, Acknowledgement, Dispatch of Electronic Records, Secure Electronic Records and Secure Digital Signatures which are related to the E-Contracts [Sections: 4, 11, 12, 13, 15].

The contracts formed through electronic media are treated as the general contracts and their formation and acceptance are governed as per the Indian Contract Act, 1872.

The Indian Contract Act, 1872 governs the manner in which contracts are made and executed in India. It governs the way in which the provisions in a contract are implemented and codifies the effect of a breach of contractual provisions. Within the framework of the Act, parties are free to contract on any terms they choose. Indian Contract Act consists of limiting factors subject to which contract may be entered into, executed and breach enforced.

The conventional law relating to contracts is not sufficient to address all the issues that arise in electronic contracts. The Information Technology Act (IT Act) solves some of the peculiar issues that arise in the formation and authentication of electronic contracts

The Indian Evidence Act, 1872 deals with the presumption as to e-records. Providing the electronic records as evidence in the disputed matter [Sections: 85A, 85B, 88A, 85C]

ESSENTIALS OF E-CONTRACT

As per the Indian Contract Act, the essentials of a contract are:

- (i) An offer or proposal by one party and acceptance of that offer by another party resulting in an agreement consensus-ad- idem.
- (ii) An intention to create legal relations or an intent to have legal consequences.
- (iii) The agreement is supported by lawful consideration.
- (iv) The parties to contract are legally capable of contracting. (v) Genuine consent between the parties.
- (vi) The object and consideration of the contract is legal and is not opposed to public policy.
- (vii) The terms of the contract are certain.
- (viii) The agreement is capable of being performed i.e., it is not impossible of being performed.

Therefore, to form a valid contract there must be (1) an agreement, (2) based on the genuine consent of the parties, (3) supported by consideration, (4) made for a lawful object, and (iv) between the competent parties.

The bargaining process must satisfy two requirements to result in a valid contract: first, mutual assent as an expression of the parties' intent to contract and second, sufficiently definite terms. In arriving at such mutual assent and definite terms the parties employ the mechanics of offer and acceptance.

TYPES OF E-CONTRACTS

Generally the basic forms of e-contracts are:

- The Click-wrap or Web-wrap Agreements.
- The Shrink-wrap Agreements.

- The Electronic Data Interchange or (EDI).

Click-wrap or Web-wrap Agreements

These are the agreements which we generally come across while surfing internet such as “I AGREE” to the terms or “I DISAGREE” to the above conditions. A click-wrap agreement is mostly found as part of the installation process of software packages. It is also called a “click through” agreement or click-wrap license.

Click-wrap agreements can be of the following types:

1. Type and Click where the user must type “I accept” or other specified words in an on-screen box and then click a “Submit” or similar button. This displays acceptance of the terms of the contract. A user cannot proceed to download or view the target information without following these steps.
2. Icon Clicking where the user must click on an “OK” or “I agree” button on a dialog box or pop-up window. A user indicates rejection by clicking “Cancel” or closing the window. Upon rejection, the user can no longer use or purchase the product or service. A click wrap contract is a “take-it-or-leave-it” type of contract that lacks bargaining power.

The Shrink-wrap Agreements

Shrink wrap contracts are license agreements or other terms and conditions which can only be read and accepted by the consumer after opening the product like CD ROM of software. The terms and conditions are printed on the cover of CD ROM. Sometimes additional terms are imposed when in such licenses appear on the screen when the CD is downloaded to the computer. The user has right to return if the new terms and conditions are not to his liking.

Electronic Data Interchange or (EDI)

These contracts used in trade transactions which enables the transfer of data from one computer to another in such a way that each transaction in the trading cycle (for example, commencing from the receipt of an order from an overseas buyer, through the preparation and lodgment of export and other official documents, leading eventually to the shipment of the goods) can be processed with virtually no paperwork. Here unlike the other two there is exchange of information and completion of contracts between two computers and not an individual and a computer.

On-Line Shopping Agreement

Suppose Kerry Ltd. wants to offer online shopping services to its customers. Kerry would tie-up with manufacturers of books, toys, clothes etc and offer their products for sale through its website. Some of the products could be stocked in Noodle’s warehouses while others could be stocked with the manufacturers.

Additionally visitors can post reviews, comments, photos etc on the Kerry website. Kerry would need to enter into a contract with all its potential customers “before” they place an order for a product using Kerry services. This contract must serve the following purposes:

1. Outline the scope of services provided by Kerry Ltd.
2. Restrict Kerry’s liabilities in case there is any defect in the products sold through the Kerry website.
3. Outline the duties and obligations of the customer.
4. Grant suitable licence to the customer to use the Kerry website.
5. Restrict Noodle’s liabilities in case of loss or damage suffered by the customer as a direct or indirect result of the Kerry website.

IMPORTANT POINTS IN REGARD TO E-CONTRACTS

These are as under :

1. *Customer's relationship with Kerry*

The contract must specify that by using the Kerry website, the customer becomes subject to the terms of a legal agreement between the customer and Noodle. Customers must be informed that they must be of legal age to enter into the contract.

2. *Acceptance of the terms of the contract*

The contract must clearly lay down that a customer cannot use the Kerry website unless he agrees with the terms of the contract. The customer can usually indicate his acceptance by clicking on an "I Accept" link or checking an "I Accept" checkbox.

3. *Copyright*

The contract should clearly state that all content included on the Kerry website, such as text, graphics, logos, button icons, images, audio clips, digital downloads, data compilations, and software, is the property of Kerry Ltd.

4. *Customers duties and obligations*

The contract should clearly lay down the duties and obligations of the customer. Amongst others, the customer must:

1. Not overload Noodle's systems.
2. Not download or modify the Kerry website.
3. Collect and use any product listings, descriptions, or prices.
4. Download or copy account information by data gathering and extraction tools.
5. Not frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form).
6. Not use any meta tags or any other "hidden text" utilizing Noodle's name or trademarks.

5. *License from Noodle*

The contract should specify that Kerry is giving the customer a limited, revocable, and nonexclusive right to create a hyperlink to the home page of Kerry so long as the link does not portray Noodle, or its products or services in a false, misleading, derogatory, or otherwise offensive matter. The contract must also specify that Kerry is giving the customer a personal, worldwide, royalty-free, non-assignable and non-exclusive licence to use the software provided as part of the Kerry website. The contract must clarify that this licence is for the sole purpose of enabling the customer to use the Kerry website. The contract must forbid the customer from the following acts in respect of the said software:

1. copying,
2. modifying,
3. creating a derivative work of,
4. reverse engineering,
5. decompiling or otherwise attempting to extract the source code. The contract must mention that the customer cannot assign, sub-licence or transfer his rights to use the Kerry software.

6. *Reviews and comments*

The contract should clearly mention that the reviews, comments, photos etc posted by customers should not be illegal, obscene, threatening, defamatory, invasive of privacy, infringing of intellectual property rights, or otherwise injurious to third parties.

It should also be mentioned that such content should not consist of or contain software viruses, political campaigning, commercial solicitation, chain letters, mass mailings, or any form of “spam.” It should also be stated that a customer who posts content grants to Kerry Ltd non-exclusive, royalty-free, perpetual, irrevocable, and fully sub licensable right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, and display such content throughout the world in any media.

The contract must also state that the customer posting the content indemnifies Kerry against all legal action and claims resulting from the said content

7. Risk of loss

Kerry has a shipping contract with various courier companies to deliver the products to the customers. The contract should clearly state that once the products are handed over to the courier company, Kerry’s liability ends.

8. Pricing

The contract should clarify how the prices listed on the Kerry’s website are computed. The various options could be:

1. The listed price represents the full retail price listed on the product itself,
2. The listed price is suggested by the manufacturer or supplier,
3. The listed price is estimated in accordance with standard industry practice, or
4. The listed price is estimated in accordance with the estimated retail value for a comparably featured item offered elsewhere.

9. Prohibitions

The contract must specifically prohibit the following:

1. Using “deep-link”, “page-scrape”, “robot”, “spider” etc to access, acquire, copy or monitor any portion of the service.
2. Reproducing the navigational structure or presentation of the service.
3. Circumventing the navigational structure or presentation of the service.
4. Attempting to gain unauthorized access to any portion or feature of the service.
5. Harvesting or collecting user names, email addresses or other member identification information.
6. Probing, scanning or testing the vulnerability of the service.
7. Tracing information relating to other users.
8. Agreeing not to use any device, software or routine to interfere or attempt to interfere with the proper working of the service or any transaction being conducted on the service, or with any other person’s use of the service.
9. Using the service for any unlawful purpose.

10. Applicable Law

The contract should mention the city / state and country whose law will prevail in this contract. The courts having exclusive jurisdiction over the disputes should also be mentioned. Conditions relating to

arbitration of disputes may also be mentioned.

11. Limitation of liability

The contract must clearly mention that Kerry Ltd (and its subsidiaries, affiliates, licensors etc) will not be liable to the customer for:

1. Access delays or interruptions to the Kerry web site.
2. The loss of registration or processing of an order.
3. The unauthorized use of the customer's account with Noodle.
4. Deletion of, failure to store, or failure to process or act upon email messages sent by customers to Kerry staff.
5. Errors taking place with regard to the processing of the customer's orders.
6. Any direct, indirect, incidental, special consequential or exemplary damages incurred by the customer pursuant of his use of the Kerry website.
7. Any loss of profit, any loss of goodwill or business reputation, any loss of data suffered, cost of procurement of substitute goods or services, or other intangible loss incurred by the customer pursuant of his use of the Kerry's services.
8. Any loss or damage incurred by the customer as a result of relationship or transactions with advertisers using the Noodle website.
9. Changes in or cessation of the Kerry's services.
10. Customer's failure to keep his account information, passwords etc secure and confidential.

12. Exclusion of warranties

The contract must clearly mention that the customer expressly understands and agrees that his use of the services is at his sole risk and that the services are provided "as is" and "as available". The contract must expressly disclaim all warranties and conditions of any kind (express and implied).

It must also be mentioned clearly that Kerry (its subsidiaries, affiliates, licensors etc) do not represent or warrant to that:

1. the Kerry's services will meet the customer's requirements,
2. the Kerry's services will be uninterrupted, timely, secure or free from error,
3. the information provided by or through the Kerry's services will be accurate or reliable, and
4. that defects in the operation or functionality of the Noodle services will be corrected.

13. Ending the relationship between Kerry and the customer

The contract must lay down that the customer can terminate the contract by closing his accounts with Noodle. Kerry must retain the right to terminate the contract under the following circumstances:

1. The customer breaches any provision of the contract.
2. The customer acts in a manner that clearly shows his intention to breach a provision of the contract.
3. Kerry is required by law to terminate the contract.
4. The provision of the services to the customer is no longer commercially viable.

LEAVE AND LICENSE AGREEMENT

Leave and License Agreements are preferred by the parties to get out of the rigours of landlord-tenant relationship. Many types of agreements are made for the occupation of property like lease deeds, lease or tenancy agreements, rental agreements etc. Despite these agreements, most owners prefer to give their premises on leave and license basis rather than tenancy or lease basis. The process of eviction of tenants is generally difficult. The law is tilted in favour of the tenant for various purposes. Generally it is being witnessed that a person having a vacant apartment will never rent it out fearing what if the tenant decides not to vacate and makes the apartment his own. That is why tenancy has been put on the backburner and Leave and License is now the most popular option.

The word “leave” has many meanings. In Leave and License Agreements, it is used to indicate “permission”. The occupancy is in essence a permission granted by the landlord or owner to use and occupy the property concerned.

Mention should be made that the practice of entering into “Leave and License Agreements” was adopted in Mumbai. In Mumbai, the provisions contained under the then Bombay Rents Hotel and Lodging House Rates Control Act, 1947, popularly known as the “Bombay Rent Act” were considerably in favour of the tenants. Further, Tenancy or Lease Agreement had to be stamped and registered. Even if the Agreements were duly stamped and registered, the eviction of tenants was still a very tough and time consuming procedure.

With the hope of getting over the stamp duty and registration requirements, and also with the view of not creating any tenancy that will be covered by the said Act, a practice of entering into “Leave and License Agreements” was adopted. However, by virtue of an amendment to the said Act in 1973, those who were in occupancy of premises under Leave and License Agreements as on the specified date, became statutory tenants under the provisions of the said Act. Provisions were also introduced to protect the landlords, in as much as a person who was in occupation of premises under Leave and License Agreement on termination of License. Such person was liable to be summarily evicted.

Lease, License and Rental Agreements

The license is not a lease. The lease and the license both are different. The word “License” under Section 52 of the Indian Easement Act, 1882 is a grant by one person to another or to a definite number of persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

A lease of immovable property as per Section 105 of the Transfer of Property Act is a transfer of a right to enjoy such property. It may be for a specified period, express or implied. The price or payment of money is usually referred to as the “rent”.

In a Leave and License Agreement, the juridical possession of the premises is deemed to remain with the licensor and the licensee is said to be in constructive possession of the said premises. Thus, a leave and License does not create any interest in the premises in favour of the licensee but gives the licensee the mere right to use and occupy the premises for a temporary period.

A Rental Agreement between the landlord and tenant sets down the terms which will be followed while the tenant lives in the rental unit. Month-to-Month Agreement is commonly called a “Rental Agreement”. This agreement is for an indefinite period of time, with rent usually payable on a monthly basis. The agreement itself can be in writing or oral, but if any type of fee or refundable deposit is being paid, the agreement must be in writing.

Lease and License: Distinction

The cardinal distinction between a lease and a license is that in a lease there is a transfer of interest in the

premises, whereas in the case of a license there is no transfer of interest, although the licensee acquires a right to occupy the premises. When premises are given out on lease or tenancy basis the legal possession of the premises in these cases is also deemed to be transferred to the lessee and tenant respectively.

Whether an agreement to occupy the premises between the landlord and tenant is allowed to occupy was an agreement to lease or an agreement of leave and license has been a subject of many Supreme Court & High Court rulings.

In a number of judgements various High Courts as well as the Apex Court have distinguished the lease and the license. In *Khalil Ahmed Bashir Ahmed v. Tufelhussein Samasbhai Sarangpurwala*, 1988 SCC 155, the Supreme Court has held:

“In order to determine whether a document created a license or a lease the real test is to ascertain the intention of the parties i.e. whether they intended to create a license or a lease. If the document creates an interest in the property entitling the transferee to enjoyment, then it is a lease; but if it only permits another to make use of the property without exclusive possession, then it is a license.” [See also *Rajbir Kaur & Anr. v. M/s S Chokesiri & Co.*, 1988 (2) SCJ 316]

From the judgments of various Courts, it appears that the main factors to decide whether the agreement is a lease or a license are (i) the intention of the parties and (ii) whether the agreement creates an interest in the property.

A licensee is a licensee whether the license is for occupation of the premises or for casual visits or for any other purpose. The status of a licensee cannot change or vary according to the purpose of the license. The principle “once a licensee always a licensee” would apply to all kinds of licenses.

If the premises are given under the Leave and License Agreement, the same can be terminated as per the terms of the agreement or otherwise and the licensor can demand possession, back from the licensee. The termination is easy in the Leave and License Agreement and therefore Leave and License Agreements are preferred by the parties.

Factors to be Considered While giving out Premises on Leave & License Basis

In deciding whether to give out premises on leave & license basis some of the factors to be considered are as follows:

- Possession: In a leave and license agreement, the owner is deemed to be in legal or judicial possession of the premises and the licensee is in constructive possession of the premises.
- Income Tax: In a leave and license agreement the owner has to pay the applicable rate of tax.
- Municipal Tax: In a leave and license agreement the Municipal Authorities may charge taxes as applicable in the area and if there is a security deposit amount sometimes the Municipal Authorities may calculate a notional interest on the securities deposit amount and charge tax thereon.

A Specimen of Leave and License Agreement

THIS AGREEMENT is made at..... this..... day of, 2018, between Mr. A hereinafter referred to as ‘the Licensor’ of the One Part and Mr. B of hereinafter referred to as the ‘Licensee’ of the Other Part, as follows;

WHEREAS the Licensor is the owner of a piece of land at..... bearing Survey No ... with a building consisting of floor having built up area of about square feet.

AND WHEREAS the Licensee has approached the licensor with a request to allow the Licensee to temporarily occupy and use a portion of the..... floor of the said building, admeasuring about square feet for carrying

on his business, on leave and license basis until the Licensee gets other more suitable accommodation.

AND WHEREAS the Licensor has agreed to grant leave and license to the Licensee to occupy and use the said ground floor portion of the said building and which portion is shown on the plan hereto annexed by red boundary line on the following terms and conditions agreed to between the parties hereto;

NOW IT IS AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS..

1. The Licensor hereby grants leave and license to the Licensee to occupy and use the said portion of the ground floor/..... floor of the said building of the Licensor (hereinafter referred to as the Licensed Premises) for a period of eleven months from The Licensee agrees to vacate the said premises even earlier if the Licensee secures any other accommodation in the locality where the said premises are situated.
2. The Licensee shall pay to the Licensor a sum of Rs..... per month (calculated at the rate of Rs..... per square foot) as License fee or compensation to be paid in advance for each month on or before the..... day of each month.
3. All the Municipal taxes and other taxes and levies in respect of the licensed premises will be paid by the Licensor alone.
4. The electric charges and water charges for electric and water consumption in the said licensed premises will be paid by the Licensee to the authorities concerned and the Licensor will not be responsible for the same. For the sake of convenience a separate electric and water meter if possible will be provided in the said premises.
5. The Licensee will be allowed to use the open space near the entrance to the Licensed premises and shown on the said plan by green wash for parking cars during working hours of the Licensee and not for any other time and no car or other vehicle will be parked on any other part of the said plot.
6. The licensed premises will be used only for carrying on business and for no other purpose.
7. The licensed premises have normal electricity fittings and fixtures. If the Licensee desires to have any additional fittings and fixtures, the Licensee may do so at his cost and in compliance with the rules. The Licensee shall remove such fittings and fixtures on the termination of the license failing which they shall be deemed to be the property of the Licensor.
8. The licensed premises are given to the Licensee on personal basis and the Licensee will not be entitled to transfer the benefit of this agreement to anybody else or will not be entitled to allow anybody else to occupy the premises or any part thereof. Nothing in this agreement shall be deemed to grant a lease and the licensee agrees and undertakes that no such contention shall be taken up by the Licensee at any time.
9. The Licensee shall not be deemed to be in the exclusive occupation of the licensed premises and the Licensor will have the right to enter upon the premises at any time during working hours to inspect the premises.
10. The Licensee shall maintain the licensed premises in good condition and will not cause any damage thereto. If any damage is caused to the premises or any part thereof by the Licensee or his employees, servants or agents the same will be made good by the Licensee at the cost of the Licensee either by rectifying the damage or by paying cash compensation as may be determined by the Licensor's Architect.
11. The Licensee shall not carry out any work of structural repairs or additions or alterations to the said premises. Only such alterations or additions as are not of structural type or of permanent nature may be allowed to be made by the Licensee inside the premises with the previous permission of the Licensor.

12. The Licensee shall not cause any nuisance or annoyance to the people-in the neighbourhood or store any hazardous goods on the premises.
13. If the Licensee commits a breach of any term of this agreement then notwithstanding anything herein contained the Licensor will be entitled to terminate this agreement by fifteen days' prior notice to the Licensee.
14. On the expiration of the said term or period of the License or earlier termination thereof, the Licensee shall hand over vacant and peaceful possession of the Licensed premises to the Licensor in the same condition in which the premises now exist subject to normal wear and tear. The Licensee's occupation of the premises after such termination will be deemed to be that of a trespasser.

IN WITNESS WHEREOF the parties hereto have put their hands the day and year first hereinabove written.
Signed by the within named Licensor Shri

in the presence of

Signed by the within named Licensee Shri

in the presence of

WILL

'Will' means the legal declaration of the intention of a testator with respect to his property, which he desires to be carried into effect after his death [Section 2(h) of Indian Succession Act, 1925].

A Will is, therefore, the legal declaration of a man's intention which he wills to be performed after his death or an instrument by which a person makes a disposition of his property to take effect after his death.

'Will' as per General Clause Act, 1897 shall include a Codicil and every writing making a voluntary posthumous disposition of property – Section 3(64).

'Codicil' means an instrument made in relation to Will and explaining, altering or adding to its dispositions and is deemed to form part of the Will – Section 2(d) of Indian Succession Act, 1925.

Essential characteristics of will are:

- (a) The document must be in accordance with the requirements laid down under section 63 of Indian Succession Act, 1925; i.e., executed by a person competent to make Will and attested as required under the Act.
- (b) The declaration should relate to the properties of the testator, which he wishes to bequeath.
- (c) The declaration must be to the effect that it operates after the death of Testator.
- (d) It is revocable during the life time of the testator. As per section 62 of the Indian Succession Act, 1925 a Will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will. Any clause in a Will that the testator cannot revoke, it will render the Will void.
- (e) It is of an ambulatory nature which can be modified or altered at any time by the testator.
- (f) After the Indian Succession Act, 1925, Wills (except made by Mohammedans) should be made in writing.

Who can make a Will?

Section 59 of the Indian Succession Act, provides for the persons capable of making wills. Accordingly, every person of sound mind not being a minor may dispose of his property by will. A married woman may dispose by will of any property which she could alienate by her own act during her life. (Expln. 1). Even persons who are

deaf or dumb or blind can make Will provided they are able to know what they do by it. (Expln.2). Further, a person who is ordinarily insane, may make his Will during the interval in which he is of sound mind. (Expln.3). However no person can make a Will while he is in a state of mind arising from intoxication or from illness or from any other cause such that he does not know what he is doing (Expln. 4).

The testamentary capacity is recognized only in a sound disposing state of mind. Soundness of mind denotes the mental capacity of the testator as to what he is doing, his capability of understanding his extent of his property, the person who is the object of his bounty and the persons who are thereby excluded. Testamentary disposition is personal, it can not be delegated to any other person. A testator can not confide to another the right to make a will for him.

Types of Wills

Under the Indian Succession Act, Will can be Privileged Will or Unprivileged Will.

Privileged Will

Any soldier being employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a Wills made in the manner provided in Section 66. Such Wills are called privileged Wills. Privileged Wills may be made orally and may not always be in writing. If written in handwriting of testator, it need not be signed or attested. It is governed by sections 65 & 66 of the Indian Succession Act.

Unprivileged Will

Wills made by the persons other than stated above are Unprivileged Will. Such Wills are required to be in writing, signed by testator and attested by the two witnesses (except those made by Mohammedans). It is governed by section 63 of the Indian Succession Act.

Language, Stamp Duty & Registration

Preparation of a Will does not require any specific legal language. Any form of writing printing or type writing may be employed. However, the language should be as simple as possible and free from technical words and easily intelligible to a layman.

A Will does not require any stamp duty.

Registration of Will is not mandatory. It is optional. (Section 18(c) Registration Act, 1908) However a registered Will has certain advantages. Any testator may, either personally or by duly authorized agent deposit with any Registrar his Will in a sealed cover superscribed with the name of the testator and that of his agent (if any) and with a statement of the nature of the document as per Section 42 of Registration Act, 1908. The testator, or after his death any person claiming as executor or otherwise under a Will, may present it to any Registrar or Sub-Registrar for registration under section 40 of the Registration Act, 1908.

Attestation

The Will must be attested by two or more witnesses by complying with the following requirements:

- (i) Each of them must have seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or
- (ii) Each witness has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and
- (iii) Each witness must sign the Will in the presence of the testator.

However it is not necessary that more than one witness must be present at the same time, and no particular form of attestation is necessary.

Construction of Wills

There are two cardinal principles in the construction of Wills, deeds and other documents. The first is that clear and unambiguous dispositive words are not to be controlled or qualified by any general expression or intention. The second is, to use Lord Denham's language, that technical word or words of known legal import must have their legal effect even though the testator uses inconsistent words, unless those inconsistent words are of such a nature as to make it perfectly clear that the testator did not mean to use the technical terms in their proper sense. [*Lalit Mohan Singh Roy v. Chikkun Lai Roy*, ILR 24 Cal 834.

- (i) *Cardinal maxim*: The cardinal maxim to be observed in construing a Will is to endeavour to ascertain the intentions of the testator. This intention has to be primarily gathered from the document which is to be read as a whole without indulging in any conjecture or speculation as to what the testator would have done, if he had been better informed or better advised. [*Gnambal Ammal v. T. Raju Iyer*, AIR 1951 SC 103, 105].
- (ii) *Relevant considerations*: In construing the language of a Will, the courts are entitled and bound to bear in mind other matters than merely the words used. They must consider the surrounding circumstances, the position of the testator, his family relationship, the probability that he would use words in a particular sense and many other things which are often summed up in somewhat picturesque figure. The court is entitled to put itself into the testator's arm chair. [*Venkatanarasimha v. Parthasarthy*, 41 IA 51, 70 (PC) ; *Gnambal Ammal v. T. Raju Iyer*, AIR 1951 SC 103, 106].
- (iii) *Avoidance of intestacy*: If two constructions are reasonably possible and one of them avoids intestacy while the other involves it, the court would certainly be justified in preferring that construction which avoids intestacy. [*Kasturi v. Ponnammal*, AIR 1961 SC 1302]. It is settled law that words in a Will must be construed in their ordinary grammatical sense unless it is shown that a clear intention to use them in a different sense exists and is so proved. [*Guruswami Pillai v. Sivakami Ammal*, AIR 1962 Mad 236].
- (iv) *Effect should be given to every disposition*: It is one of the cardinal principles of construction of Will that to the extent that it is legally possible, effect should be given to every disposition contained in the Will unless the law prevents effect being given to it. The intention of the testator should be gathered by giving a harmonious interpretation to the various terms of the Will as a whole. [*Rampali v. Chando*, AIR 1966 All 584, 586].
- (v) *Later part or last words to prevail in case parts irreconcilable or there is repugnancy*. – If the several parts of the Will are absolutely irreconcilable, the part that is later has to prevail. [*Section 88, Indian Succession Act, 1925; Somasundera Mudaliar v. Ganga Bissen Soni*, 28 Mad 386]. In case of repugnancy, the last word in the Will shall prevail. [*CIT v. Indian Sugar Mills Association*, (1974) 97 ITR 486 SC].

Probate

Probate is a certificate granted under the seal of Competent Court, certifying the Will (a copy whereof is annexure thereto) as the Will of the testator and granting the administration of the estate of the deceased in accordance with that Will to the executor named under the Will.

Letters of Administration

A letter of administration can be obtained from the Court of competent jurisdiction in cases where the testator has failed to appoint an executor under a will or where the executor appointed under a will refuses to act or where he has died before or after proving the Will but before administration of the estate. Letters of Administration are not

always necessary in cases of intestacy of Hindus, Mohammedans, Buddhists, Sikhs, Jains, Indian Christians or Parsis. Letter of Administration is always necessary where a person (governed by the Indian Succession Act) dies intestate.

Broad Outlines

A Will is a most solemn document. It is also a sacred one as by it a dead man entrusts to the living the carrying out of his wishes and desire. The preparation of a will is an intelligent work on the part of the draftsman. He should, therefore, study carefully laws relating to Real Properties and the provisions of Part VI sections 57 to 120 of the Indian Succession Act and also Hindu Succession Act, Hindu Adoptions and Maintenance Act before drafting the Will.

The following broad outlines should be followed while drafting a Will:

- Mention the name and address of the testator;
- Mention of the fact that the testator is making the will voluntarily and in sound disposing state of mind;
- The necessity or urgency, if any, for exclusion of the will;
- Enumeration of testators relatives who would be entitled to his properties on intestacy and to whom the bequests are proposed to be made;
- Details of procedure of making bequests;
- Use of clear and unambiguous language;
- Avoidance of conflict with the rule of law. For eg., rule against perpetuity (in this connection, the provisions of sections 112-118 of the Indian Succession Act must be borne in mind)
- Appointment of executor
- Schedule of properties bequeathed;
- Attestation of will by atleast two witnesses;
- Provisions relating to bequest and trusts created by the will should be complete
- Interest conveyed by will should be clearly defined. A will or bequest not expressive of any definite intention is void for uncertainty.

Specimen Forms

Short Form of a Will

This is the last Will of mine, *AB, etc.*, made this the day of at which cancels my will dated made in favour of now deceased.

WHEREAS I had made a Will on bequeathing all my property in favour of, my (state relationship).

AND WHEREAS the said died on leaving behind NOW I declare that:

2. I hereby revoke my former Will dated, in favour of aforesaid.
3. I bequeath all my properties to my (state relationship) absolutely.
4. I bequeath the following annuities to commence from the date of my death and to be paid in monthly instalments :

- (i) To my daughter CD, etc., an annuity of Rs..... to be paid during her life ;
- (ii) To my nephew EF, etc., an annuity of Rs..... for his life.
- (iii) To my old servant GH, etc., an annuity of Rs..... during his life.

IN WITNESS WHEREOF I the said AB have signed this Will here under the day and year first written above.

(Sd.).....

(AB)

Signed by the above-named AB in our presence at the same time and each of us has in the presence of the testator signed his name hereunder as an attesting witness.

1.....

2.....

Simple Will Giving All Property To Wife

I, AB, etc hereby revoke all former Wills and codicils made by me and declare this to be my last Will whereby I bequeath and devise all my movable and immovable property whatsoever to my wife, CD and appoint her sole executrix of this Will.

IN WITNESS WHEREOF. I have signed this Will hereunder on the.....day of.....

(Sd.).....

(AB)

Signed by the above-named testator in our presence at the same time and each of us has in the presence of the testator signed his name hereunder as an attesting witness.

1.....

2.....

Will by a Hindu in Favour of Family

This is the last Will of mine, AB, etc., a Hindu, made this the..... day of voluntarily and while in sound state of mind.

WHEREAS I am now 70 years old and have been keeping indifferent health for a past few months ;

AND WHEREAS I am possessed of considerable movable and immovable properties more particularly described in the schedule annexed hereto which are my self-acquired properties and which were acquired without any detriment to the ancestral property or to the family funds and I have the absolute powers of disposal over the same ;

AND WHEREAS I am anxious to make necessary arrangements in respect of the enjoyment of my properties after my life-time so that unnecessary misunderstanding and consequential wasteful litigation between the members of my family may be avoided. Therefore, I am executing this last Will and testament of mine of my own free will voluntarily without any compulsion or pressure of any person and with a sound disposing mind and declare as follows :

- 1. I hereby revoke all former Wills and codicils made by me at any time heretofore.
- 2. I have my wife CD, two daughters EF and GH and two sons KL and MN who will be entitled to succeed to my properties under law in the normal course. But my daughters are all married and they are living separately with their husbands. They have been properly and well provided for during their marriage. They are therefore not given any share in my properties under this Will.

3. I bequeath the property bearing No..... described as item No. 1 in the Schedule hereto to my first son *KL* absolutely to be held and enjoyed by him with full and absolute powers of alienation.
4. I bequeath the property bearing No..... described as item No. 2 in the Schedule hereunder to my second son *MN* absolutely to be held and enjoyed by him with full and absolute powers of disposal.
5. I bequeath to my wife *CD* the property bearing No..... and described as item No. 3 in the Schedule hereto absolutely to be held and enjoyed by her with full and absolute power of alienation.
6. Any assets, movable or immovable, which might be omitted from being mentioned in this Will or which may hereafter be acquired by me shall be taken by my wife and the two sons aforesaid in equal shares absolutely.
7. Though I have bequeathed no share in my properties to my daughters aforesaid, as a token of love and affection for them I hereby direct my two sons *KL* and *MN* that each one of them will pay to each one of my daughters a sum of Rs..... and this sum shall be a charge on the properties allotted to my above sons respectively hereto.
8. All the jewellery and ornaments, gold and silver, will belong to my wife absolutely and my sons or daughters aforesaid will have no right to the same.
9. I hereby appoint my two sons *KL and MN* as the joint executors under this Will.

SCHEDULE OF PROPERTY

- 1.....
- 2.....
- 3.....

IN WITNESS WHEREOF I, the above-named testator have signed this Will hereunder the day and year first written above.

(Sd.).....

(AB)

Signed by the above-named *AB* in our presence at the same time and each of us has in the presence of the testator signed his name hereunder as an attesting witness.

- 1.....
- 2.....

Will in Favour Of Minor Son

I, *AB*, etc. execute this last Will of mine this day of in the city of voluntarily out of my own free will without any compulsion or pressure from any person and having a second disposing mind.

WHEREAS I had made a Will dated in favour of my wife *CD* bequeathing all my properties to her ;

AND WHEREAS the said wife died *ON* leaving *EF*, aged 12 years as our only son.

1. I hereby revoke the Will made in favour of my wife *CD* on
- ..
2. I hereby declare and bequeath all my properties, movable and immovable, belonging to me or which may belong to me and remain undisposed of during my life-time unto *EF*, my son aforesaid.

3. In case I should die before the said son EF attains majority, I appoint GH, etc.. as an executor under this Will, who shall realise all my to outstanding and administer the estate left by me for the benefit of EF, of the said legatte after defraying all expenses of such administration. The said executor shall be entitled during such administration to charge Rs..... per month as remuneration for his service till the aforesaid EF attains majority. When the said EF attains majority, the said GH shall handover all the estate then in existence unto the said EF. During the minority of the said EF, the executor shall act as guardian of the said EF and shall look after his education and training in a be fitting and useful manner so as to earn a decent living either as an engineer or as a member of some other noble profession. However, if the said EF attains majority during my life-time and survives me, this provision relating to appointment of the executor shall not be operative and the said EF shall be entitled to receive and appropriate as owner all and every part of the estate left by me.

IN WITNESS WHEREOF I have signed this Will in the presence of witnesses hereunder who have attested the same in my presence.

(Sd.).....

(AB) Testator

Signed by the above-named AB in our presence at the same time and each of us has in the presence of the testator signed his name hereunder as an attesting witness.

1.....

2..... I have examined the testator and found him in sound disposing mind and as having fully understood the contents of this Will.

(Sd.).....

(Doctor)

Relinquishment Deed

A release or relinquishment deed is an instrument whereby a person renounces a claim upon another or against any specified property which he is or may be entitled to enforce. It may be deed poll or as a deed to which both the releaser as well as the person in whose favour the release is made are made parties.

A release is sometimes called relinquishment. When considered from the point of view of the person in whose favour the transaction operates, it is “release” as it releases him or his property from an obligation or liability. When considered from the point of view of the releaser, it may be said to be a “relinquishment” as the releaser relinquishes a certain right which he has, or may be entitled to enforce.

A release must be in writing signed by all the releasers. It can be drafted as a deed poll or as a deed. If it is drafted as a deed then all releasers and all persons having an interest in the claim or property should be made parties. If the release is of a claim under an instrument then it would require attestation, if the instrument required attestation. If the release is required to be registered it should be attested by at least two witnesses. In other cases it may be attested by one witness.

If the subject matter of the release is an immovable property the amount of value of which exceeds Rs.100, it is compulsorily registrable. The release deed should contain the recitals regarding the origin of the claim, acknowledgement of the releaser about the claim and words and expressions sufficiently clear to convey the intention of the releaser to discharge the claim.

Under Article 55, Schedule I of the Indian Stamp Act, 1899 a simple release deed is chargeable to stamp duty. The duty is the same as bond (Article 15) for such amount or value as set forth in the release. A release or discharge of an instrument mentioned in Section 23A(1) of the Stamp Act is chargeable to the same stamp duty

as the instrument. Such an instrument is chargeable to duty as an agreement or memorandum of agreement under article 5(c) of the Stamp Act.

SPECIMAN FORMS

DEED OF RELEASE BETWEEN TWO PARTNERS ON DISSOLUTION OF PARTNERSHIP

THIS RELEASE is made on the.....:..... day of..... BETWEEN AB,etc., (hereinafter called the "one party") of the first part AND CD, etc. (hereinafter called the "other party") of the second part.

WHEREAS the said AB, and CD, were carrying on in partnership the business of.....and the said business was wound up and the partnership dissolved by deed, dated.....executed by the said parties;

AND WHEREAS the winding up of the said business was entrusted to the arbitration of EF of..... and he after realising the debts and calling in the property and assetsof the said business and after paying all creditors and liquidating all the liabilities apportioned the shares of the parties, giving to the said AB a sum of Rs..... and to the said CD the sum of Rs..... ;

AND WHEREAS the parties for mutual safety are desirous of executing this deed of release so that all future disputes in regard to the said partnership or the business may be set at rest.

NOW THEREFORE THIS DEED WITNESSES that in pursuance of the said mutual desire the said AB hereby releases the said CD and also that the said CD hereby releases the said AB from all sums of money, accounts, proceedings, claims and demands whatsoever which either of them at any time had or has up to the date of the said dissolution against the other, in respect of or in relation to the said partnership or the business of the said partnership.

IN WITNESS WHEREOF the said AB, and the said CD have hereto at signed on the day and the year first above-mentioned.

RELEASE BY A WARD ON ATTAINING MAJORITY IN FAVOUR OF HIS GUARDIAN

BE IT KNOWN TO ALL that I, AB, aged about..... years, son of..... resident of..... do hereby in the circumstances and on the assurances herein set forth release and relinquish all claims, demands, right, of action, etc., which I may have on or against CD of..... my ex-guardian.

WHEREAS the said CD was appointed guardian of the person and property of the aforesaid AB, then in his minority, by order of the District Judge of..... in Misc. Case No..... decided on.....

AND WHEREAS I, on attaining majority, have gone into the said accounts upto date and accept them as true, correct and complete ;

AND WHEREAS the said CD has handed over the properties both movable and immovable of the value of Rs..... hitherto held by him as my guardian and I have taken possession of the same ;

AND WHEREAS I am satisfied that my aforesaid guardian did not commit any waste, neglect or malfeasance in respect of the properties or in the management thereof ;

AND W HEREAS by petition moved in this behalf in the said court, the said District Judge has by order, dated..... declared the attainment of majority by me and discharge of my guardian aforesaid.

NOW THESE PRESENTS WITNESS that in pursuance of the order of the District Judge dated..... and in consideration of the attainment of majority by me on the date..... and in consideration of my satisfaction about the accounts properly maintained by the said guardian CD, I hereby release and for ever discharge the said CD from all claims, demands or accounts whatsoever pertaining to the period of management of my property during my minority aforesaid by the said CD.

WHEREFOR I, the said AB, have signed this release at., day of..... on the

Witness:

(SD)

(AB)

RELEASE OF PROPERTY FROM CHARGE OF MAINTENANCE UNDER A WILL

THIS RELEASE is made on the..... day of..... BETWEEN AB, etc., and CD, etc., (hereinafter called the "releasors") of the one part AND EF, etc. of the other part.

WHEREAS IN, the grandfather of the said EF executed a will on the..... day of..... providing thereunder for the payment of Rs..... per month as maintenance to each of his two daughters named OP and RS respectively and by the said will charged the payment of the said amounts of maintenance on the property described in the Schedule hereto ;

AND WHEREAS the said OP having died, the maintenance allowance of Rs..... per month allowed to her has devolved by inheritance on her daughter, the said AB;

AND WHEREAS the said RS having died, Her maintenance allowance of Rs..... per month has devolved by inheritance on her son the aforesaid CD ;

AND WHEREAS the said EF has entered into an agreement to sell the property described in the schedule hereto free from all encumbrances and charges ;

AND WHEREAS at the request of the said EF the releasors have agreed to release the said property from their claim for maintenance aforesaid.

NOW THIS DEED WITNESSES that in pursuance of the aforesaid agreement the releasors hereby release the said property described in the Schedule hereto from the charge of the maintenance allowance aforesaid created by or under the will of the said LN and from any claim which the releasors or any of them may have for the same.

IN WITNESS WHEREOF, etc.

SCHEDULE

RELEASE BY CREDITORS TO A DEBTOR

THIS RELEASE is made this..... day of..... BETWEEN AB, of, etc., CD, of, etc., and EF, of, etc. (hereinafter called "the creditors") of the one part AND GH, of, etc. (hereinafter called "the debtor") of the other part.

WHEREAS the debtor is indebted to the creditors in several sums specified against their respective names in the schedule hereto ;

AND WHEREAS the creditors have agreed to accept a composition of. paisas in the rupee in full discharge of their said debts.

NOW THIS DEED WITNESSES as follows :

1. The debtor agrees on or before the..... day of..... to pay to each of creditors who shall execute this deed before that date the composition of..... paisas in the rupee on his debt specified in the Schedule hereto.
2. Each of the creditors hereby agrees to accept such composition in full satisfaction of his said debt.
3. If such composition be duly paid each of the creditors hereby releases the debtor from his said debt.
4. This release shall be binding and effectual though (not executed by all creditors and though) all or any of the non-executing creditors may be paid in full.

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5. If the said composition shall not be duly paid at the time and in manner aforesaid or if before the..... day of..... the debtor shall have been adjudged insolvent then this deed shall be void.

IN WITNESS HEREOF, etc.

LESSO

GIFT

Some Basic Aspects

Gift has been defined under Section 122 of the Transfer of Property Act, 1882. Section 122 states that 'Gift' is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. Such acceptance must be made during the life time of the donor and while he is still capable of giving. If the donee dies before acceptance, this gift is void.

For the purpose of making gift of immovable property, the transfer must be affected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses.

For the purpose of making gift of movable property, the transfer may be affected either by a registered instrument signed as aforesaid or by delivery. Such delivery may be made in the same way as goods sold may be delivered.

Gift should be made only for the existing property as gift of future property is void under Section 124 of the

Transfer of Property Act, 1882. Because gift of future property is mere promise and cannot be enforced. Section 125 provides that the gift of a thing to two or more donees of whom one does not accept it, is void as to the interest which he would have taken had he accepted. The intention conveyed under this Section is that a gift is personal to the donee and therefore if a gift made to two persons jointly and one of them does not accept it, the other cannot accept the whole.

Section 126 of T.P. Act, 1882 prescribes the circumstances when a gift may be suspended or revoked. As per Section 126, the donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked, but a gift which the parties agree shall be revocable wholly or in part at the mere will of the donor is void, wholly or in part as the case may be. A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract it might be rescinded. Save as aforesaid a gift cannot be revoked. Gift in India are regulated by personal law, usages and customs. Under Hindu Law a gift once completed is binding upon the donor and it cannot be revoked by him unless it was obtained by fraud or undue influence [*Ganga Baksh v. Jagat Bahadure* (1896) 23 Cal - 15]. But the rules of Muslim Law are different. Section 126 of T.P. Act, 1882 for revocation of gift cannot be applied to Muslims. A Muslim can revoke a gift even after delivery of possession except in following cases (1) when the gift is made by a husband to his wife or by a wife to her husband; (2) when the donee is related to the donor within the prohibited degrees; (3) when the gift is *Sadaka* (made to a charity or for a religious cause); (4) when the donee is dead; (5) when the thing given has passed out of the donees' possession by sale, gift or otherwise; (6) when the thing given is lost or destroyed; (7) when the thing given has increased in value; (8) when the thing given is so changed that it cannot be identified; (9) when the donor has received some thing in exchange for the gift.

Transfer of Property Act describes onerous gift also. Section 127 states that where a gift is in the form of a single transfer to the same person of several things of which one is and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully. Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous. Besides, a donee not

competent to contract and accepting the property burdened by any obligation is not bound by his acceptance but if after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound, subject to these provision of Section 127 of the Act. Where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by and liabilities of the donor at the time of the gift to the extent of property comprised therein. A company can make gift of its movable and immovable property provided it had been vested with requisite power of doing so in objects clause in its Memorandum of Association and Articles of Association. It would require sanction of shareholders in general meeting under Section 181 of the Companies Act, 2013.

Deed of Gift - How Made

The gift deed should be drafted as a deed of transfer with recitals if necessary. There is no consideration involved in gift as such no mention is required to be made of the same in the gift deed. However, the words "natural love and affection" is generally expressed in all cases of gift to relations, and "consideration of esteem and regard" is expressed when the gift is in favour of same person for whom the donor has regard e.g. when the donee is his religious preceptor. But for a Company these intra-personal characteristic may be necessary. A Company may make gift to honour a person for his outstanding achievements in social life if so authorised under its memorandum and articles.

Stamp Duty and Registration

The value of the property gifted must be set forth in the deed of gift. Stamp Duty is payable on gift deed as on the conveyance as per amount of value of the property as mentioned in the deed or as per market value of such property whichever is greater as per Article 23 of the Indian Stamp Act, 1899. If the value of the property is intentionally omitted or under-valued with a view to defraud the revenue, prosecution may be invited under Section 64 of Indian Stamp Act (*Muhamad Muzaffar Ali* ILR 44 Allahabad 339 FB). Further, penalty provisions under Gift-tax Act may also be attracted.

Gift deed of immovable property is compulsorily registrable as per Section 123 of the Transfer of Property Act and Section 17(i)(a) of the Registration Act, 1908, whatever may be the values.

Specimen Forms of Gift Deeds

Having been acquainted with the relevant provisions of the law concerning "gift" the following specimen forms of gift deed are given below which can be used in different situations by making suitable modifications as per the needs:

1. Deed of gift for love and affection.
2. Deed of gift of property for particular purpose.
3. Deed of gift of land in trust to charity.
4. Grant of land for building a temple.
5. Memorandum of gift of movables.
6. Gift of business goodwill.
7. Deed of gift of immovable property in favour of one of the sons of the donor.
8. Memorandum of a completed verbal gift in favour of the sons of the donor.

(1) Deed of Gift for Love and Affection

THIS DEED of GIFT is made on the..... day of..... BETWEEN AB, etc. (caled "the donor") AND CD, etc. (called "the donee").

W HEREAS the donor is owner of the property described in the Schedule and out of his paternal affection for his daughter, the donee, is desirous of making a gift of the said property to the donee at the time of her marriage.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. In consideration of the natural love and affection of the donor for the donee, the donor transfers to the donee free from encumbrances ALL the property described in the Schedule TO HOLD the same to the donee absolutely for ever.
2. The donee accepts the transfers.

IN WITNESS WHEREOF, etc.,

The Schedule above referred to

Signed, sealed and delivered

AB
CD

(2) Deed of Gift of Property for Particular Purpose

THIS DEED of GIFT is made the..... day of..... BETWEEN AB of, etc. (hereinafter called "the Donor") of the one part, and CD of, etc. (hereinafter called "the Donee") of the other part.

WHEREAS the donee intends to start a school in his village..... for the education of girls AND whereas the donor is desirous of donating the land fully mentioned and described in the Schedule hereto to be used as a site for the said School.

NOW THIS INDENTURE W ITNESSETH that in pursuance of the said pious wish and desire and as a patron of the proposed school to be started by the donee, the donor do hereby and hereunder freely and voluntarily grant, convey, transfer, give, assign and assure unto and to the use of the donee and his successor ALL THAT, etc., etc., to be used solely and exclusively for the purpose of a site for construction and accommodation of the proposed girls' school TO HAVE AND TO HOLD the same so long as the same shall be used and occupied as a site and/or building of the school AND THAT the donee accepts the gift of the said property hereunder made solely and exclusively for the purpose hereinbefore indicated subject to the condition hereunder provided.

THIS INDENTURE FURTHER W ITNESSETH that it is expressly agreed and understood by and between the parties that this gift of land will stand *ipso facto* revoked in the event the land hereunder given is not used for the purpose of the intended school for which the same is given within a period of one year from the date of these presents or in the alternative the said school is abolished or shifted elsewhere or amalgamated with some other institution when and in all or any such event or events the land with all buildings and structures, if any erected thereon, shall revert to and revest in the donor or his heirs, executors, administrators and representatives and shall form part of his former estate as if this deed of gift was never executed nor intended. And it is further agreed by and between the parties that in case the land is acquired by the Government, the donee or his successors, including any person or persons managing the school, shall invest the compensation money to be awarded in purchase of another land or building to be used solely and exclusively for the school unless otherwise directed by any court of competent jurisdiction. The estimated value of the property is Rs.....

IN WITNESS WHEREOF the donor has executed this deed of a gift and delivered the same to the donee who has also executed the same in token acceptance thereof the day, month and year first above written.

The Schedule above referred to

Signed, sealed and delivered

AB
CD

(3) Deed of Gift of Land in Trust to Charity

THIS DEED OF GIFT made the..... day of..... BETWEEN AB of etc. (hereinafter called “the Donor”), of the one part, and CD of etc., and EF of, etc. (hereinafter called “the Trustees”) of the other part.

WHEREAS it is proposed to erect a *serai* for the use of travellers, and a committee has been constituted to raise subscriptions for construction of the building and creation of the endowment.

AND WHEREAS the trustees are members of such committee: AND W HEREAS the donor has agreed to contribute the piece of land hereinafter described in the schedule below as a site for such *serai* :

NOW THIS DEED WITNESSES that in pursuance of such pious wish and desire and as a patron for the proposed *serai* the said AB does hereby freely, voluntarily and absolutely and subject to the condition hereunder imposed grant; convey transfer and give unto and to the use of the said CD and EF and their successors in office, as trustees as aforesaid. ALL THAT, etc., (*describe the property*) and valued at Rs..... TO HAVE AND TO HOLD the same as trustees upon trust hereinafter mentioned. And it is hereby AGREED AND DECLARED by and between the parties hereto that the trustees and their successors in office shall from time to time and at all times hereafter stand possessed of the land hereby conveyed and building or buildings to be erected thereon IN TRUST to be used solely and exclusively as a *serai* for food and shelter of the travellers all through the year free of any charge or other contribution. AND it is hereby further agreed and declared that in case the object of the gift fails; or in the event *serai* is closed or shifted anywhere or used for any purpose contrary to law or against religion or if the object of the gift is frustrated otherwise for any reason whatsoever - this gift will stand *ipso facto* revoked and the property shall in that event revert to and revest in the donor or his descendants as may remain alive with all improvements thereon free from any claim on that account as if the gift was never made nor intended unless otherwise directed in an appropriate action by a court of competent jurisdiction.

IN WITNESS WHEREOF etc.,

The Schedule above referred to

Signed, sealed and delivered

AB
CD
EF

(4) Grant of Land for Building a Temple

THIS GRANT is made on the..... day of..... BETWEEN AB, etc. (hereinafter called “the grantor”) of the one part AND CD, etc. (hereinafter called “the grantee”) of the other part.

WHEREAS the grantee on the..... day of..... applied to the grantor for the grant of land for the purpose of building a temple thereon;

AND WHEREAS the grantor has agreed with the grantee to grant to him for the said purpose the land hereby transferred belonging to the grantor on the terms and conditions hereinafter contained;

AND WHEREAS the grantee has accepted the said grant for the said purpose and on the terms and conditions hereinafter contained.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. In pursuance of the aforesaid agreement and in consideration of the grantee’s covenants hereinafter contained and for the purpose of promoting religious worship the grantor hereby grants and transfers to the grantee ALL THAT plot of land, etc., TO HOLD the same to the grantee and his successors according to the custom of succession in the management of religious endowments recognized by the

religion professed by the grantee for the purpose of a temple and for no other purpose in accordance with the covenants and the provisions hereinafter contained;

2. The grantee hereby covenants with grantor as follows:

- (1) He will within years from the date hereof erect a temple of the value of Rs..... on the said premises and will not use the said premises for any other purpose whatsoever.
- (2) Such temple when erected shall be open to all persons professing the religion of the grantee for worship and prayer and for no other purpose.
- (3) The grantee and his successors will at all time hereafter keep such temple in good and substantial repair and will at his or their own cost perform all ceremonies of worship therein according to the religion professed by the grantee.
- (4) If the grantee fails to erect a temple within the said period of..... years, the said premises shall revert to the grantor.
- (5) If the said premises shall cease to be used for the purpose of a temple then the said premises and all buildings thereon shall revert to the grantor.

IN WITNESS WHEREOF etc.,

Signed, sealed and delivered

AB

CD

(5) Memorandum of Gift of Movable

BE IT KNOWN TO ALL CONCERNED that the undersigned..... son of..... by caste..... by occupation..... residing at..... (the Donor) do hereby declare and confirm that the donor on the..... day of..... 2018 in consideration of the natural love and affection which the donor had and bear for..... son of..... residing at..... by caste..... by occupation..... (the Donee) intended for and actually gave by words of mouth and also expressed himself to give unto and to the use of the donee freely and voluntarily, absolutely and forever the several properties mentioned in the Schedule below with all beneficial interest therein and delivered possession thereof simultaneously with a view to divest himself of all ownership therein and pass title thereof unto and in favour of and/or otherwise vest them in the donee to all intents and purposes AND THAT the donee doth hereby declare that the donee did at the same time accept the gift as aforesaid and entered into possession and control of the same.

The Schedule above referred to:

Serial No.	Description	Valuation	Remarks, if any.

IN WITNESS WHEREOF the parties to these presents have hereunto set and subscribed their respective hands and seals this..... day of..... 2018.

Signed, sealed and delivered by the within-named Donor at..... in the presence of Executed by the Donee at..... in the presence of:

(6) Gift of Business Goodwill

THIS DEED OF GIFT is made the..... day of..... Between (donor) of etc. (hereinafter called donor) of the one part and (donees) of etc. (hereinafter called the donees) sons of the other part.

WHEREAS:

1. Grantor has for many years past carried on the trade or business of..... at..... (hereinafter called the donor's business) and in connection therewith is the registered proprietor of the trade marks relevant particulars of which are set out in the first schedule hereto.
2. The donor is the inventor and patentee of the invention described in the second schedule hereto (hereinafter called the invention) the patent in respect of which was granted and trade mark registered..... under number..... of.....
3. By articles of partnership bearing even date with and executed immediately before this deed and made between the donees respectively the donees agreed to carry on in co-partnership the trade or business of..... (hereinafter referred to as the partnership business) subject to the stipulations therein contained for a term of..... years from the date thereof.
4. With a view to setting up the donees in the partnership business the donor is desirous of assigning the goodwill of his business and the said trade marks to the donees and granting to them the license hereinafter contained.

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. In consideration of his natural love and affection for the donees the donor hereby assigns unto the donees all that the goodwill of the donor in his business and also all those the trade marks specified in the first schedule hereto and all the rights and privileges incidental thereto to hold the same unto the donees absolutely as joint tenants as the property of the partnership business subject to the provisions and stipulations contained in the said articles of partnership.
2. For the consideration aforesaid the donor hereby grants unto the donees and the survivor of them personally and so that this license shall not be assignable the sole and exclusive licence to make use, exercise and send the invention in all parts of India during the residue of the term of the said letters patent and any renewal or extension of such term if the donees or such survivor shall so long continue to carry on the partnership business subject to the donees or the survivor of them at their or his own cost keeping up the said letters patent and with power to the donees or the survivor of them at the like cost to take in the name of the donor all necessary legal proceedings for effectually protecting or defending the same against infringement.

IN WITNESS WHEREOF I have executed this deed of gift which has been accepted on behalf of the donee.

THE FIRST SCHEDULE ABOVE REFERRED TO:

THE SECOND SCHEDULE ABOVE REFERRED TO:

Signed, sealed and delivered by the donor:

(7) Deed of Gift of Immovable Property in Favour of One of the Sons of the Donor

THIS DEED made this..... day of..... Between A.B. of..... (hereinafter called the donor) of the part and C, D, son of said A, B, (hereinafter called the donee) of the other part; WHEREAS the donor is the absolute owner of the property hereinafter fully mentioned and described; and

WHEREAS the donee is one of the sons of the donor and as such the donor has great love and affection for the said donee and is desirous, out of such love and affection of disposing of the said property in the manner hereinafter appearing.

NOW THE DEED WITNESSETH that in pursuance of the said intention and in consideration of love and affection, the said donor, out of his own free will and pleasure and in full possession of his senses, doth hereby give, convey, grant, transfer and confirm unto the said donee, all and singular the property known as Bungalow

No..... on..... Road..... containing by estimate.....
Bighas with all rights appurtenant thereto;

To have and hold the said bungalow with rights appurtenant thereto to the use of the said donee for ever.

The donor hereby covenants with the said donee that notwithstanding any act or deed, matter or thing by the said donor, donee, executed or knowingly committed or suffered to the contrary, the donor now hath in himself good rightful power and absolute authority to give, grant, convey and dispose of the said property in the manner aforesaid, and that the said donee shall and may from time to time, and at all times hereafter peaceably and quietly enter upon, have hold, occupy, possess and enjoy the said premises hereby conveyed with appurtenances, and receive and take the rents and profits thereof and every part thereof without any trouble, eviction, interruption, claim, whatsoever from or by the donor or by any person claiming from, under or in trust for him.

For the purposes of stamp duty, it is further declared that the value of the gifted property is Rs.....

IN WITNESS WHEREOF the parties aforementioned have hereunto set and subscribed their names on the date first above written.

Signature of witnesses.

Signature of donor and donee.

(8) Memorandum of a Completed Verbal Gift in Favour of the Sons of the Donor

Memorandum that on this..... day of..... The undersigned A of etc., in consideration of love and affection for his son B gave verbally all and singular his property and effects as specified in schedule hereto the said B for his sole use and benefits absolutely and at the same time delivered possession thereof to him, and the said B at the same time accepted the gift of the said property and took possession of the same.

Signed A and B

Witnesses to the signatures of both the donor and the donee.

The schedule above referred to containing description of the property verbally gifted.

Note : This memorandum being a record of a completed transaction does not, it is submitted, require any stamp and is not compulsorily registerable.

LESSON ROUND UP

- There is no particular form prescribed for the drawing up of trade contracts, except that they must fulfil all the essential requirements of a valid contract under the law applicable to the contract.
- Building contracts, being legal documents, have to be drawn in accordance with the provisions of the Indian Contract Act. Such an agreement as stated above under “dealership contracts”, must have all the essential ingredients of a contract.
- A commercial agency contract should inter alia include provisions regarding the date of commencement and of termination of the agency, the goods or products to be covered by the agency, the contractual territory and the nature of the agency.
- When two parties join hands for exchange of technical know-how, technical designs and drawings; training of technical personnel of one of the parties in the manufacturing and/or research and development divisions of the other party; continuous provision of technical, administrative and/or managerial services, they are said to be collaborating in a desired venture.

- In order to ensure quick processing of the proposed collaboration arrangements and on a uniform basis, the Central Government has issued guidelines for prospective collaborators so that they submit their proposals in accordance with those guidelines.
- The important ingredient of the arbitration agreement is the consent in writing to submit dispute to arbitration. Consent in writing implies the application of mind to the reference of dispute to arbitration in accordance with Arbitration and Conciliation law and the binding nature of the award made thereunder.
- The parties to the dispute will enter into an agreement to refer the dispute to arbitration and will agree on the terms of reference, that is, to state clearly and precisely the matter the arbitrator is required to decide. An arbitrator is not bound by the strict rules of evidence of courts of law. However, he does follow the practice of presentation and conduct of a case in a court of law. After hearing the evidence of both the parties, the arbitrator makes his award. The award must be within the terms of reference.
- A contract of guarantee is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The terms of a guarantee must be strictly construed. The surety receives no benefit and no consideration. He is bound, therefore, merely according to the proper meaning and effect of the written engagement that he has entered into.
- In construing a guarantee, the principle is that a guarantee will only extend to a liability precisely answering the description contained in the guarantee.
- Hypothecation is a form of transfer of property in goods. Hypothecation agreement is a document by which legal property in goods passes to the person who lends money on them, but the possession does not pass. This form of transfer is not regulated in India by any statute.
- Outsourcing is the contracting out of a company's non-core, non-revenue producing activities to specialists. Two common types of outsourcing are Information Technology (IT) outsourcing and Business Process Outsourcing (BPO). A good outsourcing agreement is one which provides a comprehensive road map of the duties and obligations of both the parties - outsourcer and service provider and minimizes complications when a dispute arises.
- Service contracts are drafted in the same way as other agreements. The terms of employment should be definitely fixed and clearly expressed and nothing should be left to presumptions. They are required to be both affirmative (describing the acts and duties to be performed) as well as negative (putting restrictions on the acts of the employee during and/or after the term of employment). As the employer and the employee may not be conversant with law, the terms of a service contract should be as explicit as possible and should be easily intelligible to a lay man,
- Leave and License Agreements are preferred by the parties to get out of the rigours of landlord-tenant relationship. In a Leave and License Agreement, the juridical possession of the premises is deemed to remain with the licensor and the licensee is said to be in constructive possession of the said premises. Thus, a leave and license does not create any interest in the premises in favour of the licensee but gives the licensee the mere right to use and occupy the premises for a temporary period.
- Section 59 of the Indian Succession Act, provides for the persons capable of making wills. Accordingly, every person of sound mind not being a minor may dispose of his property by will.
- Gift has been defined under Section 122 of the Transfer of Property Act, 1882. Section 122 states that 'Gift' is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. Such acceptance must be made during the life time of the donor and while he is still capable of giving. If the donee dies before acceptance, this gift is void.

Lesson 5

Drafting and Conveyancing Relating to Various Deeds and Documents (II)

LESSON OUTLINE

- Promissory Note
- Deeds of Power of Attorney
- Hire-Purchase Deeds
- Family Settlement Deeds
- LESSON ROUND UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

It is a common practice for business men to make use of certain documents as means of making payment. Some of these documents are called Negotiable instruments. The law relating to Negotiable Instruments is contained in the Negotiable Instruments Act, 1881. It deals with promissory notes, bills of exchange and cheques, the three kinds of negotiable instruments in most common use.

A power of attorney is one of the documents which plays an important role in conveyancing. Granting a Power of Attorney is a legal process that involves the drafting of a document which assigns to another person the power to act as your legal representative.

Every person with assets needs a will. It ensures that his wishes are honoured after his death and stipulates how his estate should be managed and who should receive his assets. A will needs to be carefully drafted so as to avoid courts having to interpret what the testator actually meant.

A release or relinquishment deed is an instrument whereby a person renounces a claim upon another or against any specified property which he is or may be entitled to enforce.

Hire purchase contract affords facilities to acquire an asset to an intending purchaser who is unable to pay the full price of the asset at one time in lump sum. It is important for the students to carefully bear in mind all the legal aspects to be taken into account while drafting these documents to avoid any adverse situation in the future.

PROMISSORY NOTE

A detailed discussion of the Negotiable Instruments Act, 1881 is not within the scope of this lesson. Students are, therefore, advised to study the Negotiable Instruments Act, 1881 in detail on their own so as to recapitulate their understanding of the provisions of the Act. However, introductory observations on promissory note are made below.

Promissory note is one of the negotiable instruments recognized under the Negotiable Instruments Act, 1881. A “promissory note” is defined by Section 4 of the Negotiable Instruments Act, 1881 as “an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument”.

Illustrations:

A signs instruments in the following terms:

- (a) “I promise to pay B or order Rs.500.”
- (b) I acknowledge myself to be indebted to B in Rs. 1,000 to be paid on demand for values received.”
- (c) “Mr. B, I.O.U. (I owe you) Rs. 500”
- (d) “I have taken from you Rs. 100, whenever you ask for it have to pay”.

The instruments marked (a) and (b) are promissory notes. The instruments respectively marked (c) and (d) are not promissory notes.

Parties to a Promissory Note

A promissory note has the following parties:

- (a) *The maker*: the person who makes or executes the note promising to pay the amount stated therein.
- (b) *The payee*: one to whom the note is payable.
- (c) *The holder*: is either the payee or some other person to whom he may have endorsed the note.
- (d) The endorser.
- (e) The endorsee.

Essentials of a Promissory Note

To be a promissory note, an instrument must possess the following essentials:

- (a) It must be in writing. An oral promise to pay will not do.
- (b) It must contain an express promise or clear undertaking to pay. A promise to pay cannot be inferred. A mere acknowledgement of debt is not sufficient. If A writes to B
“I owe you (I.O.U.) Rs. 500”, there is no promise to pay and the instrument is not a promissory note.
- (c) The promise or undertaking to pay must be unconditional. A promise to pay “when able”, or “as soon as possible”, or “after your marriage to D”, is conditional. But a promise to pay after a specific time or on the happening of an event which must happen, is not conditional, e.g. “I promise to pay Rs. 1,000 ten days after the death of B”, is unconditional.
- (d) The maker must sign the promissory note in token of an undertaking to pay to the payee or his order.
- (e) The maker must be a certain person, i.e., the note must show clearly who is the person engaging himself to pay.

- (f) The payee must be certain. The promissory note must contain a promise to pay to some person or persons ascertained by name or designation or to their order.
- (g) The sum payable must be certain and the amount must not be capable of contingent additions or subtractions. If A promises to pay Rs. 100 and all other sums which shall become due to him, the instrument is not a promissory note.
- (h) Payment must be in legal money of the country. Thus, a promise to pay Rs. 500 and deliver 10 quintals of rice is not a promissory note.
- (i) It must be properly stamped in accordance with the provisions of the Indian Stamp Act. Each stamp must be duly cancelled by maker's signature or initials.
- (j) It must contain the name of place, number and the date on which it is made. However, their omission will not render the instrument invalid, e.g. if it is undated, it is deemed to be dated on the date of delivery.

[Note: A promissory note cannot be made payable or issued to bearer, no matter whether it is payable on demand or after a certain time (Section 31 of the RBI Act).

Specimen Forms

Promissory Note Payable on Demand

On Demand we, A.B., aged about years, son of Shri Resident of AND C.D., aged about Years, son of Shri Resident of jointly and severally promise to pay to E.F., aged about years, son of Shri resident of Or order the sum of Rupees

..... (Rs.) only, with interest at the rate of% per annum until repayment for value received.

DATED AND DELIVERED at this theday of 2018.

Sd. A.B.

Sd. C.D.

Promissory Note in Consideration of Loan

Allahabad,

June 20, 2018

Rs.....

In consideration of the loan of Rs..... advanced by CD etc. to me, I hereby promise to repay the said loan of Rs..... (in words) with interest at per cent per annum to the said CD or order.

(Signed).....

Joint Promissory Note

New Delhi

May 5, 2018

Rs.....

On Demand (or..... months after date) (or.....days after sight) we hereby promise to pay to CD etc., or order the sum of Rs.....(in words).

Name and address of drawers	Signature of Drawers
1.....	1.....
2.....	2.....
	3.....

DEEDS OF POWER OF ATTORNEY

Introduction

Wharton in his *Law Lexicon* (1953), page 784 defines a power of attorney as “a writing given and made by one person authorising another, who, in such case, is called the attorney of the person (or donee of the power), appointing him to do any lawful act in stead of that person, as to receive rents, debts, to make appearance and application in court, before an officer of registration and the like. It may be either general or special, i.e., to do all acts or to do some particular act”.

Stroud in his *Judicial Dictionary* (1953), page 2257 defines a power of attorney as an authority whereby one is “set in turn, stead or place” of another to act for him.

A definition of power of attorney is also contained in Section 2(21) of the Indian Stamp Act, 1899 which reads as follows:

“Power of Attorney” includes any instrument (not chargeable with 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”.

In terms of Section 1A of the Powers-of-Attorney Act, 1882 (7 of 1982) as amended by the Powers-of-Attorney (Amendment) Act, 1982 (55 of 1982), a power of attorney includes an instrument empowering a specified person to act for and in the name of the person executing it. It is always kept by the attorney.

A power of attorney executed for the purpose of a specific act is called a “special power of attorney”. It is also called a “particular power of attorney”. A specific act is meant to imply either a specific act or acts related to each other as to form one judicial transaction, such as all the acts necessary to perfect a mortgage or a sale of a particular property. A power of attorney executed for the purpose of generally representing another person, or for performing more than one act, is called a ‘general power of attorney’.

A power of attorney can be executed in favour of more than one person. If a power of attorney is executed in favour of more than one person it would be desirable to provide whether such donees will act jointly or severally. In the absence of such an express provision authorising them to act severally, they will be entitled to act only jointly.

The law relating to the powers of attorney is governed by “Powers-of-Attorney Act, 1982” as amended by the Powers-of-Attorney (Amendment) Act, 1982 (55 of 1982). A copy of the Act is reproduced at *Annexure I*.

Since the donee of a power of attorney is an agent of the donor, it is essential to know about the law of agency. Several matters concerning agency are dealt with, not in the Powers-of-Attorney Act, but in the Indian Contract Act, 1872 (sections relating to agency). Important amongst these are:

- (a) who may execute a power;
- (b) who may become an attorney;
- (c) when is a power terminated; and
- (d) whether a power coupled with interest is revocable.

The reason, obviously, is that these matters would be governed by the general principles of the law of agency. A power of attorney is an authority in writing to another person to act for and in the name of the person

who executed the power. Therefore, speaking generally, the law relating to authority, that is, agency, would be attracted when a power of attorney is executed.

Note: *The students are, therefore, advised to refer Chapter X of the Indian Contract Act, 1872 with a view to acquainting themselves with the rights and liabilities of an agent. For the authority of a partner in a firm, the provisions of the Indian Partnership Act, 1932, may be looked into.*

Who can Execute Power of Attorney

A power of attorney can be executed by any person, who can enter into a contract i.e. a person of sound mind who has attained majority. A power of attorney can be executed only in favour of a major. While functioning as an attorney the donee is acting as an agent of the donor i.e. the executor of the power of attorney, who is the principal. Thus, in such cases there is relationship of agent and principal and such relationship can be entered into by majors and not by minors.

Section 2 of the Powers-of-Attorney Act, 1882 in its operative part provides that the donee of a power of attorney may execute or do any assurance, instrument or thing in his own name and signature, and an instrument or thing so executed or done shall be as effectual in law as if it had been executed or done “by the donee of the power in the name and with the signature and seal of the donor thereof”. Simply stated, the section provides that the signature of the agent will be deemed to be the signature of the principal.

Section 5 of the Powers-of-Attorney Act, 1882, relating to married women’s power to execute a power of attorney provides that a married woman of full age shall, by virtue of this Act, have power, as if she were unmarried, by a non testamentary instrument, to appoint an attorney on her behalf, for the purpose of executing any non-testamentary instrument or doing any other act which she might herself execute or do; and the provisions of this Act relating to instruments creating powers-of-attorney, shall apply thereto.

Form of Deed of Power of Attorney

Powers of attorney are executed in the form of Deed Poll, usually in the first person. It is unilateral document. It begins either as - “KNOW ALL MEN BY THESE PRESENTS THAT I, ETC.” or “BY THIS POWER OF ATTORNEY, I, ETC.”. Generally, the operative words making the appointment are introduced directly without any recitals. If recitals become necessary, they should be added after the words “KNOW ALL MEN BY THESE PRESENTS” thus “THAT WHEREAS etc.”, and after recitals the operative part is introduced thus “Now I, the said AB, etc., hereby appoint, etc., or the deed may be drafted with the heading “THIS POWER OF ATTORNEY is made on the, etc., then adding the recitals, the operative part is introduced thus “NOW THIS DEED WITNESSES THAT I APPOINT, ETC.”.

The powers conferred on the attorney should be specifically stated after the appointment, preferably, in separate paragraphs. Sometimes after giving specific powers a general clause empowering the attorney to do all such lawful acts as the attorney should think reasonable is added, but this is not ordinarily necessary, as according to authorities such a clause does not extend or widen the authority. For specimen forms of the special powers of attorney, see *Annexure II*. Specimen forms of some of powers of attorney relevant for companies are given at *Annexure IV*.

Authentication of Power of Attorney

A power of attorney need not be attested. However, it would be advisable to execute the power of attorney before and have it authenticated by a Notary Public or any Court Judge/Magistrate, Indian Consul or Vice- Consul or representatives of the Central Government. If a power of attorney is so authenticated courts shall presume the execution of the power of attorney (Section 85 of the Indian Evidence Act, 1872). Under Section 85 of the Indian Evidence Act, 1872, the Court shall presume 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, Indian

Consul or Vice-Consul or representative of the Central Government, was so executed and authenticated.

Under Section 57(6) and (7) of that Act, the seals of Notary Public are taken judicial notice of.

Under Section 32(c) of the Indian Registration Act, 1908, a power of attorney can be granted to an agent to present a document for registration; but, under Section 33(1) of that Act, only certain powers of attorney are recognised. But if a power of attorney gives authority to present documents for registration under Section 32 of the Registration Act, 1908 it *must be executed before and authenticated by* the Registrar or Sub-Registrar within whose District or Sub-District the principal resides or where the Registration Act is not in force, before any Magistrate or if it is executed outside India, before a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul or representative of the Central Government (Section 33 of the Registration Act, 1908). But a power of attorney empowering an agent to execute a deed conveying the property in an immovable property and get the deed registered thereby perfecting the transaction of conveyance, need not be executed before the Officer appointed to authenticate and register documents in as much as when the agent executes the document in the name of the principal, he is the executant thereof and as such can himself present the document for registration.

Duration of Power of Attorney

Unless expressly or impliedly limited for a particular period, a general power of attorney will continue to be in force until expressly revoked or determined by the death of either party. In the case of a company, the power of attorney executed by the directors ceases to be operative as soon as an order for winding up is made as the directors cease to function [*Fowler v. Broode P.N. Light & Co.*, (1893) 1 Ch. 724]. A special power of attorney to do an act is determined when the act is done. In case 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 in the deed itself.

Revocable and Irrevocable Power of Attorney

A power of attorney executed in favour of a person can always, at the discretion of the donor thereof, be revoked. As we have seen earlier, the donee of a power of attorney is an agent of the donor. If a donee himself has an interest in the matters covered by the power of attorney, which forms the subject matter thereof, the power of attorney in the absence of express contract cannot be terminated to the prejudice of such interest. In other words, agency coupled with interest cannot be terminated without the consent of the other party (Section 202 of the Indian Contract Act, 1872). Therefore, a power of attorney executed, in which the donee himself has an interest, is irrevocable. Such irrevocable powers of attorney are executed in favour of the financial institutions by a company who offer financial assistance to the latter. Through such irrevocable powers of attorney, powers are given to the financial institutions for executing a security document for securing the financial assistance in the event of a company failing to execute such a document by a certain date. A draft of the irrevocable power of attorney is given at *Annexure III*. Such a power of attorney will need registration.

Power of Attorney by a Company

A company being an artificial person can act through agents, i.e., its officers. Powers are delegated by companies to the agents through Board resolutions or through powers of attorney. Delegation of powers through a power of attorney is resorted to in view of the fact that it will be very easy to prove the execution thereof. In the case of a resolution it would be necessary to produce the Minutes Books etc. to prove the passing of the resolution of delegation of the powers. Further, under Section 22 of the Companies Act, 2013, a company may, by writing under its Common Seal if any, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place either in India or outside India.

As we have seen that companies act through agents, powers to the agents of a company, i.e., officers of the company, are delegated through powers of attorney. Generally, a detailed power of attorney is executed

in favour of the managing director or chief executive of the company delegating to him all the powers which under the Companies Act, directors of a company can delegate/sub-delegate. In regard to routine matters like execution of excise documents, and execution of various deeds and documents in connection therewith, the powers relating to court cases are delegated to various officers of the company. Form of such powers of attorney are given at *Annexure IV*. A specimen of a special power of attorney filed with the Registrar at the time of incorporation of a company is given at *Annexure V*. A delegate unless expressly authorised by the principal cannot sub-delegate the powers. If the intention is to empower the delegate to sub-delegate his powers then it should be specifically mentioned in the power of attorney.

Stamp Duty on Power of Attorney

Power of attorney is liable to stamp duty under the provisions of the Indian Stamp Act, 1889. Duty varies from State to State. The exact amount of the duty will depend upon the State in which the power of attorney is executed. Further, if a power of attorney executed in one State has to be sent to another State where the stamp duty payable is higher, for use, then the power of attorney should be stamped with the difference in the duty before it is so used. Otherwise, the power of attorney could be impounded.

If a power of attorney is executed in a foreign country, it should be stamped within three months of its being received in India. If it is not so stamped within the period of three months of its being brought to India, then the same will be deemed to be unstamped and cannot be acted upon.

The proxy lodged with the Company under Section 105 of the Companies Act, 2013, is also a power of attorney. In that case a shareholder who is not able to attend the meeting authorises another person on his behalf to attend and vote at the meeting. It is a particular power of attorney.

In connection with the registration/subscription of shares or debentures or transfer of shares/debentures invariably companies receive powers of attorney executed by certain non-resident shareholders or resident shareholders or by companies. These powers of attorney generally provide for making of investment and varying the investments so made and empowering the attorney to sign the transfer deeds for transfer of shares from or to the name of the principal.

Construction of a Power of Attorney

As a rule, a power of attorney, should be construed strictly and general words must be interpreted in the light of the special powers, although they include incidental powers necessary for carrying out the authority. The general words used in the subsequent clauses of a power of attorney must be read with the special or specific powers given in the earlier clauses and cannot be construed so as to enlarge the restricted powers mentioned in the powers of attorney.

The following two well known rules of construction should be borne in mind while interpreting a power of attorney (Mulla: *Contract Act*, Page 539):

1. That regard must be had to the recitals, if any, as showing the scope and object of the power, as such recitals will control any general terms in the operative part of the instrument. Thus, when it was recited that the principal was going abroad, and the operative part gave authority in general terms, it was held that the authority continued only during the principal's absence.
2. Where special powers are afforded by general words, the general words are to be construed as limited to what is necessary for the exercise of the special power and as enlarging those powers only when necessary for the carrying out the purposes for which the authority is given.

Any power which has not been expressly delegated should not be implied. For instance, if a delegate has been authorised to invest in shares in a company, it should not be implied that the power to sell has been delegated unless the authority for varying the investment has also been delegated to the attorney.

Similarly, the power of investment in shares does not automatically confer the power of transfer the shares purchased in exercise of the power. The power delegated for investment in shares or transfer of shares should not be deemed to include the power of investment in debentures of a company. Great care has, therefore, to be taken in interpreting a power of attorney.

Precisely, some of the principles governing the construction of a power of attorney are:

- (1) the operative part of the deed is controlled by the recitals;
- (2) where an authority is given to do particular acts, followed by general words, the general words are restricted to what is necessary for the performance of the particular acts;
- (3) the 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;
- (4) a power of attorney is construed so as to include all incidental powers necessary for its effective execution [A.I.R. 1972 Gauhati 122 (125)].

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 four corners of the instrument, either in express terms or by necessary implication (*Bank of Bengal v. Ramanathan Chetty*, 43 I.A. 48, 55).

Registration of Power of Attorney

Registration of a power of attorney is not compulsory. Section 4 of the Powers-of-Attorney Act, 1882 provides that it may be deposited in the High Court or District Court within the local limits of whose jurisdiction the instrument is with an affidavit verifying its execution, and a copy may be presented at the office and stamped as the certified copy and it will then be sufficient evidence of the contents of the deed.

In certain cases, registration of power of attorney may become compulsory under Section 17 of the Indian Registration Act, 1908. Thus, a power which authorises the donee to recover rents of immovable property belonging to the donor for the donee's *own benefit* is an assignment and requires registration under clause (b) of Sub-section (1) of Section 17 of the Registration Act. Similarly, a power of attorney which *creates a charge* on the immovable property referred to therein in favour of the donee of the power requires registration [*Indra Bibi v. Jain Sirdar*, (1908) I.L.R. 35 Cal. 845, 848].

In other cases, a mere general power of attorney, even though it deals with immovable property, need not be registered (*Kochuvareed v. Mariappa*, A.I.R. 1954 T.C. 10, 17) since it does not come under any of the documents specified in the Indian Registration Act as requiring registration.

Letters of Authority

Letters of authority is nothing but a power of attorney. They are executed on plain paper and not on stamp paper. Letters of authority are usually issued for collecting some documents or papers, dividend interest etc. on behalf of another. By and large, the law relating to the powers of attorney will apply to letters of authority.

ANNEXURES

THE POWERS-OF-ATTORNEY ACT, 1882

(ACT 7 OF 1882)

[24th February, 1982]

An Act to amend the law relating to Powers-of-Attorney.

For the purpose of amending the law relating to Powers of Attorney, it is hereby enacted as follows:

1. Short title: This Act may be called THE POWERS-OF-ATTORNEY ACT, 1982.

Local Extent: It applies to the whole of the India ¹[except the State of Jammu and Kashmir];

Commencement and it shall come into force on the first day of May, 1982.

²**1A. Definition:** In this Act “Power-of-attorney” includes any instrument empowering a specified person to act for and in the name of the person executing it].

2. Execution Under Power-of-Attorney: The donee of a power of attorney may, if he thinks fit, execute or do any ³[.....] instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power; and every instrument and things executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force.

3. Payment by Attorney Under Power, Without Notice of Death, etc., Good - 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 reasons that, before the payment or act, the donor of the power had died or become ⁴[.....] of unsoundness of mind ⁴[.....] or insolvent, or had revoked the power, if the fact of death ⁴[.....] unsoundness of mind ⁴[.....] insolvency or revocation was not at the time of the payment or act, known to the person making or doing the same.

But this section shall not affect any right against the payee of any person interested in any money so paid, and that person shall have the like remedy against the payee as he would have had against the payer, if the payment had not been made by him.

This section applies only to payments and acts made or done after this Act comes into force.

4. Deposit of Original Instruments Creating Powers-of-Attorney: (a) An instrument creating a power of attorney, its execution being verified by affidavit, statutory declaration or other sufficient evidence may, with the affidavit or declaration, if any, be deposited in the High Court ⁵[..... or District Court] within the local limits of whose jurisdiction the instrument may be.

(b) A separate file of instrument so deposited shall be kept, and any person may search that file, and inspect every instrument so deposited, and a certified copy thereof shall be delivered out to him on request.

(c) A copy of an instrument so deposited may be presented at the office and may be stamped or marked, as a certified copy, and, when so stamped or marked, shall become and be a certified copy.

(d) A certified copy of an instrument so deposited shall, without further proof, be sufficient evidence of the contents of the instrument and of the deposit thereof in the High Court ⁵[or District Court].

(e) The High Court may, from time to time, make rules for the purposes of this section, and prescribing, with the concurrence of the State Government, the fees to be taken under clauses (a), (b) and (c).

(f) (* * * * *)⁶

(g) This section applies to instruments creating powers-of-attorney executed either before or after this Act comes into force.

1. Substituted for the words ‘except Part B States’ by the Part B States (laws) Act, 1951 (3 of 1951) Section 3 and Schedule (1.4.1951).

2. Inserted by the Powers-of-Attorney (Amendment) Act, 1982 (55 of 1982) Section 2 (22.10.1982).

3. “Assurance”, omitted by the Powers-of-Attorney (Amendment) Act, 1982 (55 of 1982) Section 3 (22.10.1982).

4. Words “Lunatic”, “or bankrupt”, “Lunacy” and “Bankruptcy” omitted by the Powers-of-Attorney (Amendment) Act, 1982 (55 of 1982) Section 4 (22.10.1982).

5. Inserted by the Powers-of-Attorney (Amendment) Act, 1982 (55 of 1982) Section 5 (22.10.1982).

6. Clause (f) was omitted by the Lower Burma Courts Act, 1900 [(vi) of 1900] (Section 48 and Schedule II).

5. Power-of-Attorney of Married Women: ⁷[A married woman of full age shall, by virtue of this Act, have power, as if she were unmarried] by a non testamentary instrument, to appoint an attorney on her behalf, for the purpose of executing any non testamentary instrument or doing any other act which she might herself execute or do; and the provisions of this Act, relating to instruments creating powers-of-attorney, shall apply thereto.

This section applies only to instruments executed after this Act comes into force.

6. Act XXVIII of 1866 Section 39, Repealed [Repealed by the Amending Act, 1891 (XII of 1891)].

ANNEXURE II

SPECIMEN FORMS OF SPECIAL POWER-OF-ATTORNEY

(a) Power-of-Attorney to Present Document for Registration

BY THIS POWER OF ATTORNEY I, AB of etc., do hereby appoint CD of, etc., my attorney for me and on my behalf to appear for and represent me before the Sub-Registrar of..... of all times as may be necessary and to present before him for registration the..... deed dated the..... day of..... made between, etc., to admit the execution of the said deed by me (*if necessary to admit the receipt of consideration*), to do any act, deed or thing as may be necessary to complete the registration of the said deed in the manner required by law and when it has been returned to him after being duly registered, to give proper receipt and discharge for the same.

And I, the said AB, do hereby agree and declare that all acts, deeds and things done, executed or performed by the said CD shall be valid and binding on me to all intents and purposes as if done by me personally which I undertake to ratify and confirm whenever required.

Signed, sealed and delivered

Witnesses

AB

(b) Power-of-Attorney to Sell a Particular Property

BY THIS POWER OF ATTORNEY I, AB, of etc., hereby appoint CD of, etc., my attorney, in my name and on my behalf to do *inter alia* the following acts, deeds and things, viz.:

1. To negotiate on terms for and to agree to and sell my house No..... (*or, etc.*) situate at, etc., fully mentioned and described in the *Schedule* hereto to any purchaser or purchasers at such price which my said attorney, in his absolute discretion, thinks proper, to agree upon and to enter into any agreement or agreements for such sale or sales and/or to cancel and/or repudiate the same.
2. To receive from the intending purchaser or purchasers any earnest money and/or advance or advances and also the balance of purchase money, and to give good, valid receipt and discharge for the same which will protect the purchaser or purchasers without seeing the application of the money.
3. Upon such receipt as aforesaid in my name and as my act and deed, to sign, execute and deliver any conveyance or conveyances of the said property in favour of the said purchaser or his nominee or assignee.
4. To sign and execute all other deeds, instruments and assurances which he shall consider necessary and to enter into and/or agreement to such covenants and conditions as may be required for fully and effectually conveying the said property as I could do myself, if personally present.
5. To present any such conveyance or conveyances for registration, to admit execution and receipt of

7. Substituted for the words "A married woman, whether a minor or not, shall by virtue of this Act, have power, as if she were unmarried and of full age" by the Powers-of-Attorney (Amendment) Act, 1982 (55 of 1982) Section 6 (22.10.1982).

consideration before the Sub-Registrar or Registrar having authority for and to have the said conveyance registered and to do all acts, deeds and things which my said attorney shall consider necessary for conveying the said property to the said purchaser or purchasers as fully and effectually in all respects as I could do the same myself.

And I hereby agree to ratify and confirm all and whatever other act or acts my said attorney shall lawfully do, execute or perform or cause to be done, executed or performed in connection with the sale of the said property under and by virtue of this deed notwithstanding no express power in that behalf is hereunder provided.

IN W ITNESS WHEREOF I, the said AB, have hereto signed (or, put my signature, or set hand and seal at..... this..... day of.....

Schedule of the property to be sold.

Signed, sealed and delivered

AB

(c) Power-of-Attorney to Advocate for Court Case

In the Court of etc.

Suit (or Case) No..... of 2018

Plaintiff (or Applicant, Complainant) -

AB, son of....., of, etc. versus

Defendant (or Non-applicant, or Accused), -

CD, son of....., of, etc.

Claim for (or, in the matter of), etc.

BY THIS POWER OF ATTORNEY, I, CD, defendant (or, etc.), in the above suit (or case), do hereby nominate, constitute and appoint EF, advocate etc., my attorney, for me, in my name and on my behalf to appear, act and plead in the said case, to make or present written statements, applications or petitions to the court, to withdraw and receive documents and any money from the court or from the opposite party, either in execution of the decree or otherwise, and on receipt thereof, to sign and deliver for me proper receipts and discharges for the same, and to do all other lawful acts, deeds and things in connection with the case as effectually as I could do the same, if I were personally present; to engage and appoint any other advocate or advocates whenever my said advocate thinks proper to do so.

Provided, however, that, if any part of the advocate's fee remains unpaid before the first hearing of the case (or, etc.), or if any hearing of the case be fixed beyond the limits of this town, then and in such an event my said advocate shall not be bound to appear before the court; Provided also that if the case be dismissed by default, or if it be proceeded *ex parte*, the said advocate shall not be held responsible for the same except in case of gross negligence, wilful default. And all whatever my said advocate shall lawfully do, I do hereby agree to and shall in future ratify and confirm.

Signed, sealed and delivered

CD

Accepted, subject to the aforesaid conditions.

EF, Advocate.

IRREVOCABLE POWER-OF-ATTORNEY

(To be stamped as a General Power of Attorney)

THIS POWER OF ATTORNEY granted at this..... day of..... 2018 by 'A Limited' a company within the meaning of the Companies Act and having its registered office at..... (hereinafter referred to as 'the Borrower' which expression shall, unless excluded by or repugnant to the context include its successors and assigns) in favour of..... a corporation constituted by..... and having its Head office at..... (hereinafter referred to as "the LENDER", which expression shall, unless excluded by or repugnant to the context, include its successors and assigns).

1. WHEREAS by an Agreement dated the..... day of..... 2018 (hereinafter referred to as "the said Agreement") made between the 'Borrower' and the 'Lender'. 'Lender' has agreed to grant the 'Borrower' financial assistance by way of a term of Rs..... (Rupees.....) (hereinafter referred to as "the financial assistance") for the purposes and on the terms and conditions set out therein.

2. 'Lender' has stipulated, *inter alia*, that if so required by 'Lender' at any time, the 'Borrower' shall secure Lender's loan of Rs..... (Rupees.....) together with interest, commitment charge, additional interest by way of liquidated damages, costs, charges, expenses and other moneys payable by the Borrower to Lender under the said Agreement by a registered legal mortgage in English form of all the properties of the Borrower immovable and movable, present and future and other assets, including uncalled capital and the charge in favour of the Lender to rank *pari passu* with the charge or charges created and/or to be created by the Borrower in favour of the Lender, AND the charge of Lender on movables to be subject to the charge or charges created and/or to be created by the Borrower in favour of its bankers on stocks of raw-materials, semi-finished and finished goods and consumable stores and book debts and such other movables as may be permitted by Lender in writing to secure borrowings for working capital requirements.

3. Lender has also stipulated that the Borrower shall, for the aforesaid purpose, execute an undertaking in favour of the Lender and shall simultaneously with the execution of such undertaking, grant an irrevocable power of attorney to the Lender, being these presents, authorising the Lender to execute in favour of itself a first legal mortgage in English form for and on behalf of the Borrower in the event of the Borrower failing, when required by the Lender, to duly execute and register a first legal mortgage in English form of all its immovable and movable properties as aforesaid.

4. The Lender has called upon the Borrower to execute these presents which the Borrower has agreed to do in the manner hereinafter expressed.

NOW THIS DEED WITNESSETH THAT in consideration of the Lender having sanctioned the said financial assistance to the Borrower, the Borrower hereby *irrevocably* appoints the Lender to be the true and lawful attorney of the Borrower in the name and for and on behalf of the Borrower to do, execute and perform the following acts, deeds and things, namely:

- (i) To make, execute, sign, seal and deliver in favour of the Lender, at the expense of the Borrower, in all respects, a first legal mortgage in English form of all its immovable and movable properties, present and future, including lands, here-ditaments and premises and fixed plants and machinery and uncalled capital agreed to be mortgaged to the Lender, with all such covenants, conditions, provisions, and stipulations, as may, in the absolute discretion of the Lender, be deemed necessary or expedient and in particular granting in favour of the Lender a right to take over the management of the Borrower, a right to appoint a receiver of the undertaking of the Borrower and a right to sell the Borrower's properties without intervention of the Court, for the purposes of securing to the Lender all the moneys payable by the Borrower's under the said Agreement, as aforesaid, the charge of the Lender to rank *pari passu* with the charge or charges created and/or to be created by the Borrower in favour of the Lenders for

the purposes and in the manner mentioned therein. PROVIDED THAT the charge of the Lender on movables shall be subject to the charge or charges created and/or to be created by the Borrower in favour of its bankers on its stocks of raw materials, semi-finished and finished goods and consumable stores and book debts and such other movables as may be permitted by the Lenders in writing to secure borrowings for working capital requirements.

- (ii) To investigate or cause to be investigated, at the expense of the Borrower in all respects, the Borrowers' title to the immovable properties agreed to be mortgaged by the Borrower to the Lender and to take all steps to make out title to the said properties to the satisfaction of the Lender as and when required by the Lender.
- (iii) To apply for and obtain necessary clearance certificates under Section 230A of the Income Tax Act, 1961.
- (iv) To do or cause to be done all such acts, deeds and things as may be necessary or proper for the effectual completion and registration of the said mortgage.
- (v) AND GENERALLY to do or cause to be done every other act, matter or thing which the LENDER may deem necessary or expedient for the purposes of or in relation to these present.
- (vi) The Borrower hereby agrees to deposit in advance with the Lenders sufficient sums to cover the expenses to be incurred on investigation of title, stamp duty and registration charges and other miscellaneous expenses for the purpose of and in connection with the execution and registration of the said mortgage deed in English form.

In the event of failure on the part of the Borrower to deposit sufficient amounts with the Lenders, the Lenders may, but shall not be obliged to, incur the expenditure for the said purposes and the Borrower shall, on receipt of notice of demand from the Lenders, reimburse the same to the Lenders together with interest at the rate stipulated by the Lender from the date of payment by the Lender.

- (vii) The Borrower hereby agrees that all or any of the powers hereby conferred upon the Lender may be exercised by any officer or officers of the Lender nominated by the Lender in that behalf.
- (viii) AND the Borrower does hereby declare that all and every receipts, documents, deeds, matters and things which shall by the Lender or by any of its officers appointed by the Lender in that behalf, be made, executed or done for the aforesaid purposes by virtue of these presents shall be as good, valid and effectual to all intents and purposes whatsoever as if the same had been made, executed or done by the Borrower in its own name and person. The Borrower hereby agrees to ratify and confirm all that the Lender or any of its officers appointed by the Lender in that behalf shall do or cause to be done in or concerning the premises by virtue of this power of attorney.
- (ix) AND the Borrower does hereby declare that this Power of attorney shall be irrevocable.

IN WITNESS WHEREOF the Borrower company has caused its Common Seal to be hereunto affixed the day and year first hereinafter written.

The Common Seal of the Borrower Company was hereunto affixed pursuant to the resolution of its Board of Directors passed on the..... in the presence of Shri..... Director and Shri..... Director who have signed these presents in token thereof.

SPECIMEN FORMS OF POWER-OF-ATTORNEY

(Relevant for Companies)

(a) General Power-of-Attorney

KNOW ALL MEN BY THIS POWER OF ATTORNEY:

WHEREAS..... a Company registered under the Companies Act, 2013, and having its registered office at..... (hereinafter called the 'Company') has from time to time to institute and defend civil, criminal and revenue suits, appeals, revisions and other legal proceedings in various courts, offices and before other authorities in India and outside;

AND WHEREAS the Company has to enter into various agreements and contracts and execute various sorts of documents, including leases, guarantees and counter guarantees, indemnity bonds etc.;

AND WHEREAS it is considered necessary and expedient to execute a General Power of Attorney in favour of..... and....., Managing Directors of the Company;

AND WHEREAS the Board of Directors of the Company, by resolution No..... passed in their meeting held on..... have resolved to execute and register a General Power of Attorney in terms of the draft placed before the Board in favour of Shri..... and Shri....., Managing Directors of the Company and have authorised Shri....., Director, to execute, sign, seal, register and deliver the said Power of Attorney:

NOW THIS POWER OF ATTORNEY WITNESSES AS FOLLOWS:

The Company hereby appoints Shri..... and Shri....., as its Attorneys (hereinafter collectively called "the Attorneys") so long as they or any of them are/is the Managing Director/..... of the Company to do severally, the following acts, deeds and things in the name and on behalf of the Company:

1. To take decision for instituting and defending legal proceedings and to institute and defend legal proceedings - civil, criminal or revenue, including Income-tax, Sales tax and Excise and confess judgement or withdraw, compromise, compound or refer any matter or dispute to arbitration, as they or either of them may think fit;
2. To sign, verify and file in all or any courts and offices in India and outside, in all or any cases, whether original or appellate revision or review, plaints, complaints, written statements, affidavits, applications, review or revision petitions, statutory returns and memoranda of appeals or cross objections;
3. To engage and appoint advocates, vakils, solicitors, pleaders and mukhtiar, as the case may be;
4. To appoint special agents or attorneys on such terms and conditions as they or either of them may deem fit;
5. To appear in all or any courts and offices to represent the Company in all proceedings and make statement on oath or otherwise for and on behalf of the Company;
6. To file in and receive back from any or all courts or offices documents of all kinds and to give receipts therefor;
7. To deposit or obtain refund of stamp duty or court fee or to repay the same;
8. To deposit in or withdraw from any or all courts or other offices moneys and give receipts therefor;
9. To apply for copies of documents or other records of courts or offices;
10. To apply for inspection of and to inspect records of which inspection is allowed;

11. To execute decrees, receive moneys and obtain possession of properties in execution of decrees, give receipts and discharges therefor and compromise or compound any such decrees;
12. To realise and collect all outstandings and claims of the Company and to give effectual receipts and discharges;
13. To execute, sign, seal and where necessary to register all documents including deeds, leases, agreements, contracts, letters of appointments, powers of attorneys;
14. To sign, seal and execute bonds, indemnity bonds, guarantees and counter-guarantees;
15. To execute, endorse and negotiate Bills of Exchange, Hundies, promissory notes and negotiate or otherwise deal with Government Promissory Notes or any securities of the Central or State Government or any local authority;
16. To acquire, buy, purchase within limits prescribed by the Bonds, or sell, transfer pledge or otherwise negotiate shares and/or debentures held by the Company in other joint stock companies or statutory corporation and for that purpose to sign and execute transfer deeds or other instruments, collect dividends and bonuses falling due thereon and otherwise deal in such shares/debentures;
17. To sign, discharge receipts, transfer forms and any other documents required by the Post Office in connection with the Post Office National Saving Certificates;
18. And generally to do all such acts, deeds or things as may be necessary or proper for the purposes mentioned above.

AND the Company hereby agrees that all acts, deeds or things lawfully done by the said Attorneys or either of them under the authority of this power shall be construed as acts, deeds and things done by the Company and the Company hereby undertakes to confirm and ratify all and whatsoever the said Attorneys or either of them shall lawfully do or cause to be done by virtue of the powers hereby given.

IN WITNESS WHEREOF this deed has been signed and sealed by Shri....., Director, authorised in this behalf vide Board's Resolution No..... dated..... on this..... day of..... 2018, in presence of:

WITNESSES:

1. _____ Director
2. _____ for (Name of the Company)

(b) General Power-of-Attorney in Another Form

KNOW ALL MEN BY THIS POWER OF ATTORNEY:

WHEREAS 'A LIMITED' a Company registered under the Companies Act, 2013, and having its registered office at..... (hereinafter called the "Company) are the proprietors of..... (Name of the unit);

AND WHEREAS the Company has from time to time to institute and defend civil, criminal and revenue suits, appeals, revisions, and other legal proceedings in various courts, tribunals, offices and before any other authority in India;

AND WHEREAS the Company has to submit and file statutory returns, letters, forms, maintain registers and make applications for licences and renewals etc., to the Excise Authorities, from time to time, in connection with Company's business concerning the.....;

AND WHEREAS the Company has from time to time, to execute and register contracts, agreements, lease deeds etc.;

AND WHEREAS it is considered necessary and expedient to execute a General Power of Attorney in favour of

Shri.....;

AND WHEREAS the Board of Directors of the Company by resolution No..... passed in their meeting held on..... have resolved to execute and register a General Power of Attorney in terms of the draft placed before the Board in favour of Shri..... (name of the person) (with designation and name of the unit) (hereinafter called the "Attorney") so long as he is in the service of the Company and notwithstanding any change in his designation and have authorised Shri..... director, to execute, sign, seal register and deliver the said Power of Attorney:

NOW THIS POWER OF ATTORNEY WITNESSETH AS FOLLOWS:

The Company hereby authorises Shri..... to do the following acts, deeds or things in the name and on behalf of the Company:

1. To take decisions for instituting and defending legal proceedings and to institute and defend legal proceedings - civil, criminal or revenue, including Income tax, Sales tax, Agricultural tax, and Excise matters and confess judgements or withdraw, compromise, compound or refer any matter of dispute to arbitration, as he may think fit.
2. To sign, verify and file in all or any courts and offices in India and outside, in all or any cases, whether original or appellate, revision or review, plaints, complaints, written statements, affidavits, applications, review or revision petitions, statutory returns and memorandum of appeals or cross objections etc.
3. To engage and appoint advocates, vakils, solicitors, pleaders and mukhtiar, as the case may be.
4. To appoint special agents or attorneys on such terms and conditions as they or either of them may deem fit.
5. To appear in all or any courts and offices to represent the Company in all proceedings and make statement on oath or otherwise for and on behalf of the Company.
6. To file in and receive back from any or all courts or offices documents of all kinds and to give receipts thereof.
7. To deposit or obtain refund of stamp duty or court fee or to repay the same.
8. To deposit in or withdraw from any or all courts or other offices moneys and give receipts therefor.
9. To apply for copies of documents or other records of courts or offices.
10. To apply for inspection of and to inspect records of which inspection is allowed.
11. To execute decrees, receive moneys and obtain possession of properties in execution of decrees, give receipts and discharges therefor and compromise or compound any such decrees.
12. To sign, execute, register and seal all contracts, agreements and other documents including lease deeds in respect of any buildings, shops, godowns, or premises taken on lease by the Company by any of its branches, depots, offices or for the residence of its officers.
13. To prepare, sign, execute, submit and file all statutory returns, letters, forms, registers and applications, including applications for licences and renewals, bonds for clearance of exciseable goods required, from time to time, to be executed, filed and submitted to any Central Excise authority in connection with the business of the Company.
14. To deposit and obtain refunds, by cheques drawn in the name of the Company, of excise duty or any charges or fees and to file claims with any Central Excise authority or other concerned officers.
15. To effectually discharge the statutory duties imposed upon the Company by the Excise Law and Rules in force, from time to time, in connection with the work of the Company.

16. And generally to do all such acts, deeds or things as may be necessary or proper for the purposes mentioned above.
17. And the Company hereby agrees that all acts, deeds or things lawfully done by the said Attorneys under the authority of this Power of Attorney shall be construed as acts, deeds and things done by the Company and the Company hereby undertakes to confirm and ratify all and whatsoever the said Attorneys shall lawfully do or cause to be done by virtue of the powers hereby given.

IN WITNESS WHEREOF this deed has been signed and sealed by Shri....., Director, authorised in this behalf vide Board Resolution No. dated on this day of 2018, in presence of:

WITNESSES:

1. _____ DIRECTOR
2. _____

(c) Power-of-Attorney for Leasing Contracts

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS 'A LIMITED' a Company registered under the Companies Act, 2013, and having its registered office at..... (hereinafter called the "Company");

AND WHEREAS the Company proposes to instal plant and machinery through Leasing arrangements;

AND WHEREAS it is desirable to authorise Shri..... of the Company to negotiate the lease arrangements, finalise and sign the Lease Deeds and other relevant papers for getting machinery for installation at the works of the Company;

AND WHEREAS the Board of Directors of the Company vide Resolution No..... passed in their meeting held on..... have resolved to execute and register a General Power of Attorney in terms of the draft placed before the Board in favour of Shri....., of the Company and have authorised Shri....., director, to execute, sign, seal and if necessary register and deliver the said Power of Attorney.

NOW THIS POWER OF ATTORNEY WITNESSETH AS FOLLOWS:

That the Company hereby appoints Shri..... of the Company as its 'Attorney' so long as he is in the services of the Company and notwithstanding any change in his designation to do severally the following acts, deeds or things in the name on behalf of, and at the expenses of the Company:

1. To negotiate with any Leasing Company for leasing arrangements for taking plant and machinery on lease basis for installation at the Works of the Company;
2. To finalise, settle, execute and sign, and where necessary seal Lease Arrangements, other deeds and papers in connection therewith;
3. And generally to do all acts, deeds and things, as may be necessary for the above purpose;
4. And the Company hereby agrees that all acts, deeds or things lawfully done by the said Attorney under the authority of this Power of Attorney hereby given shall be construed as acts, deeds and things done by the Company and the Company undertakes to lawfully do or cause to be done by virtue of the powers hereby given.

IN WITNESS WHEREOF this Power of Attorney has been signed and sealed by Shri....., director, authorised in this behalf vide Board Resolution No..... dated..... on this..... day of 2017, in respect of:

WITNESSES:

- 1.
- 2.

DIRECTOR

ANNEXURE V

SPECIAL POWER-OF-ATTORNEY FILED WITH THE REGISTRAR AT THE TIME OF INCORPORATION OF A COMPANY

Shri....., Secretary, to represent us before the Registrar of Companies in connection with the incorporation of our Company under the name of..... He is authorised to make any modification, alteration, correction, additions, in the Memorandum and Articles of Association and other documents filed with the Registrar of Companies for the registration of the Company. He is also authorised to collect the certificate of incorporation.

Station:

Date:

Directors

Aepted.

S/o

Secretary

HIRE-PURCHASE DEEDS

Introduction

A contract of hire is a contract of bailment and is governed by the provisions of Chapter IX of the Indian Contract Act, 1872. Students are advised to study on their own relevant provisions of Chapter IX of the Indian Contract Act, 1872 and relevant provisions of the Sale of Goods Act, 1930 since both these Acts are relevant for and applicable to the transaction of hire-purchase. Students are also advised to refer Study II on to recapitulate their understanding of some of the basic aspects of contract.

The system of acquiring ownership through an agreement of hire purchase helps in promoting sales especially consumer durables. It affords facilities to acquire an asset to an intending purchaser who is unable to pay the full price of the asset at one time in lumpsum. After making the payment of an initial amount in the form of part payment of the cost of the article, the purchaser pays the balance consideration money in monthly/ quarterly instalments as may be settled. This initial payment generally covers 20 to 25 per cent of the value of the article being purchased on hire-purchase basis. On payment of all the instalments, the property in the article automatically passes on to the hirer. He has an option to return the article during the period of hire. The essential terms of hire purchase agreement are (1) a clause by which the owners agree to let and hirer agrees to hire the goods; and (2) a clause giving to the hirer a right to determine the hiring or return the goods; and (3) a clause giving the hirer a right or option to purchase the goods for a nominal sum at the end of the hiring.

Deeds of Hire-Purchase Agreements

The document for causing the transaction of hire is drafted in the form of an agreement. The statutory rights and obligations provided in the Indian Contract Act, 1872 need not be provided in the agreement. All other conditions agreed upon between the seller and hirer should be mentioned in the agreement. In law the transaction of hire purchase is treated as an act of bailment and the provisions of the Contract Act are available to protect the rights and obligations of the hirer and the seller. But it should be drafted in conformity with the provisions of Indian Contract Act.