

redeems or reconveys unto the said 'B' all the property comprised in the said mortgage deed to hold the same upto and to the use of the said 'B' as absolute owner discharged from all principal money and interest secured by and from all claims and demands under the aforesaid mortgage deed.

LICENSE

Chapter VI of the Indian Easements Act, 1882 (hereinafter referred to as 'The Act') contains the statutory provisions governing licenses. This chapter comprises of Sections 52 to 64. The students are advised to be thorough with the provisions contained in these Sections. In States where the aforesaid Act does not apply, Courts rely upon English Law and the principles of the Act also (*Sohan Lal Naraindas v. Laxmidas Reghunath*, 1971 (1) SCC 276).

License has been defined in Section 52 of the Indian Easements Act, 1882 as under:

"License" defined – where one person grants to another, or to a definite number of other 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 license may be granted by any one in the circumstances and to the extent in and to which he may transfer his interest in the property affected by the license (Section 54). The grant of license may be expressed or implied from the conduct of the grantor, and an agreement which purports to create an easement, but is ineffectual for that purpose, may operate to create a license. (Section 54)

License when Transferable

A license ordinarily carries with it the incident of non-transferability. A license cannot be transferred by the licensee or exercised by his servants or agents. The only exception to this rule is that, unless a different intention is expressed or necessarily implied, a license to attend a place of public entertainment may be transferred by the licensee. (Section 56 of the Act)

Revocation of License

The revocation of license may be expressed or implied.

The general rule is that subject to the agreement between the parties, all licenses are revocable at the will of the licensor. However, following are two exceptions to this rule:

- (a) a license which is coupled with a transfer of property and such transfer is in force, and
- (b) a license acting upon which the licensee has executed a work of permanent character and incurred expenses in the execution cannot be revoked.

Section 62 of the Act provides that a license is deemed to be revoked:

- (a) when, for a cause proceeding the grant of it, the grantor ceases to have an interest in the property affected by the license;
- (b) the licensee releases it, expressly or impliedly, to the grantor or his representative;
- (c) where it has been granted for a limited period or acquired on condition that it shall become void on performance or non-performance of a specified act, and the period expires, or the condition is fulfilled;
- (d) where the property affected by the license is destroyed or by superior force so permanently altered that the licensee can no longer exercise his right;
- (e) where the licensee becomes entitled to the absolute ownership of the property affected by the license;

- (f) where the license is granted for a specified purpose and the purpose is attained or abandoned, or becomes impracticable;
- (g) where the license is granted to the licensee as holding a particular office, employment or character, and such office, employment or character ceases to exist;
- (h) where the license totally ceases to be used as such for an unbroken period of twenty years, and such cessation is not in pursuance of a contract between grantor and the licensee;
- (i) in the case of an accessory license, when the interest or right to which it is accessory ceases to exist (Section 62).

Form of Deed of License

No special form of grant is prescribed. It may be granted orally or by an agreement in writing or by a covenant contained in any other deed, e.g. lease, sale, etc. If it is granted in writing, the writing should be in the form of a deed or agreement or in the simple form of a deed poll. If no fee is to be paid and the licensee has not to enter into any covenants, the form of deed poll would be suitable, but if the licensee is to pay any fee and the license is for a fixed term or revocable only by notice, a deed or agreement is preferable. The deed may be described as "THIS LICENSE" or "THIS DEED OF LICENSE" or simply as "THIS DEED" and the parties as "Licensor" and "Licensee" or "Owner" and "Licensee" or "Grantor" and "Grantee".

The operative words may be "License and authorizes to do" or "grants liberty and license to do etc.", or "grants leave and license to do etc." The exact liberty given, the property on which it is to be exercised, and the conditions imposed on the exercise should be clearly expressed in the deed. If there is a long list of the powers and authority given by the license the same may be incorporated in a schedule to be referred to in the deed. The deed should make it clear that it is a license and not a lease or a grant.

In a simple deed recitals will be rarely necessary. A license may be for consideration though this is not necessary. If so, it should be mentioned.

If the license is granted by an instrument it need not be bilateral unless mutual covenants for observance and breach thereof have to be incorporated.

Registration and Stamp Duty

A mere deed of license need not be registered unless any right, title or interest in immovable property of the value of Rs. 100 or more is created, declared, assigned, limited or extinguished. (Section 17, Registration Act, 1908)

If a license is contained in any deed such as in a deed of sale or lease, no separate stamp duty is required in respect of the covenants relating to the license, but if a separate deed is executed it will be chargeable with the same duty as an agreement under Article 5, Schedule I of the Indian Stamp Act, 1899.

Specimen Forms of Licenses

The specimen forms of some of license documents are given hereinbelow which can be adopted in different situations by making suitable modifications as per the needs of an organisation:

- (1) Deed of License for use of wall of a Building for Publicity and Advertisement for Goods, etc.
- (2) Agreement of License for use of a House Property to a Company for Office Accommodation.

(1) Deed of License for use of wall of a Building for publicity and advertisement for goods, etc.

THIS DEED OF LICENSE is made on the..... day of2018 BETWEEN AB of, etc. (the Licensor) of the one part and CD of, etc. (the Licensee) of the other part.

WHEREAS the said CD has applied to AB for the use of the eastern outside wall of his building being premises No..... for the purposes of utilising the same for publicity and advertisement of his goods, a specimen copy whereof with type and design shall be delivered to the licensor, for a period of two years.

AND WHEREAS the said AB has agreed to grant the license on the following terms and conditions:

1. That the said CD shall be entitled to use the said outer wall of premises No..... for the purpose of advertisement of his goods by coloured signs, marks, letters or other representations for two years from the date, in dimensions measuring..... and not contrary to any regulations of the Municipality or other public body or authority.
2. That the said CD shall pay Rs..... as such advertisement charges per month in advance within the 5th day of every current month.
3. That in the event the said outer wall or the plaster thereof is damaged on account of any act, default or negligence or omission on the part of CD, he shall forthwith execute all the necessary repairs thereto or in the alternative pay adequate compensation to AB on that account.
4. That the said CD shall pay for all taxes and impositions on account of such advertisement.
5. That the said AB shall be entitled to revoke this license within the said period of two years only on failure to pay regularly the fees or taxes or impositions as aforesaid.
6. That the said CD shall not be entitled to affix on the said wall any representation of other goods nor have any interest in the said wall and further shall indemnify the said AB against any damage suffered in case such display or advertisement is found to be in breach of statutory rules or authoritative order.

IN WITNESS WHEREOF the parties have executed this Deed the day and year above written.

Witnesses:

Signature

(1) AB

(2) CD

(2) Specimen Agreement of License for use of a House Property to a Company for Office Accommodation

This AGREEMENT is made on this..... day of..... 2018 BETWEEN AB son of..... by faith..... by occupation..... herein after referred to as the “owner” of the ONE PART AND CD represented by its secretary being signatory to this agreement having its principal office at present at No..... hereinafter referred to as “occupiers” of the OTHER PART.

WHEREAS the occupiers approached the owner for permission for using a portion of his property, viz. premises No. fully mentioned and described in the Schedule hereto for a period not exceeding eleven months only from the date of signing of this agreement which the owner has agreed to grant reserving for himself the care, maintenance and services to property and on the basis of leave and license only (which will stand *ipso facto* revoked on the expiry of the said term). Now, it is hereby expressly agreed and declared by and between the parties as follows:

1. This writing shall never be construed as any tenancy agreement or lease nor otherwise creating any other right or interest in the property in favour of the occupiers which is not at all the intention of the parties but on the contrary merely a temporary agreement or arrangement simply to allow the occupiers to use and occupy portion of the premises for their office accommodation under the control and supervision of the owner for which purpose the owner shall retain rooms, viz., one in the ground floor and another in the first floor. The owner shall have his own staff in the said rooms for the care and supervision and maintenance of and services to the property.

2. The occupiers shall, in consideration of such accommodation as hereunder provided, pay to the owner a fixed sum of Rs. as charges for such temporary occupation for the period of months which sum will be paid at the rate of per month on the of every current month without delay or default and a further sum of Rs. for service charges and also use of fittings and fixtures making thus a sum total of Rs..... per month. The two last mentioned amounts shall also be paid on the..... of every current month.
3. The occupiers shall also pay to the owner on account of Corporation of Calcutta all existing and future occupiers' share of rate and taxes of the property and also the enhancement in the owner's share, if any, during the period of their occupation and shall otherwise keep the owner and his estate indemnified as against any loss, if any, arising out of such non-payment or non-observance of any of the covenants herein contained.
4. The occupiers have as security deposit for such payments and observance of the covenants hereunder contained, kept with the owner a sum of Rs..... to be repaid without interest on revocation of license and surrender and deliver the possession of the said portion of the property subject to such deductions as the owner shall be entitled as against the occupiers. e.g., arrears of charges provided in Clause 2, unpaid taxes, electric bills, etc., as hereunder provided or otherwise permitted in law.
5. The occupiers shall on expiry of the period of..... and license hereunder granted or earlier revocation thereof, surrender the property and deliver the same to the owner when and in such an event he will be entitled to the refund of Rs..... subject to deductions provided in Clause 4 hereof.
6. Provided, however, and notwithstanding anything hereinbefore contained, it is hereby expressly agreed by and between the parties hereto that in default of any payment on the dates hereinbefore referred to above to the owner or the Corporation of Calcutta or other appropriate authorities the owner shall be entitled to and shall have always the power to revoke the license hereunder granted at his absolute discretion and reoccupy the said portion of the property without subjecting himself to any liability on that account and notwithstanding any intermediate negotiations or waiver of breach thereof when and in such an event the occupiers shall surrender the occupied portion of the property as hereunder contemplated.
7. The occupiers shall have no right to make any addition or alteration to the property except temporary removable walls by way of adjustments but shall be entitled to make interior decorations only by temporary wooden partitions which they shall remove at their own costs at the time of surrender of the said portion of the property on expiry of the term of the license hereby granted or earlier revocation thereof and repairs all the damages, if any caused to the property.

IN WITNESS WHEREOF the parties have executed this Agreement this..... day of 2018

Signed, sealed and delivered at Calcutta

In the presence of

- (1)
- (2)
- (3)

LEASE

According to Section 105 of the Transfer of Property Act, 1882, a lease of immovable property is a transfer of a right to enjoy property. It is the method of acquiring the right to use equipment or real property for consideration.

Lease is a contract between lessor and lessee for the fixed term for the use on hire of a specific asset selected

by lessee. Lessor retains ownership of the assets and lessee has possession and use of the asset on payment of specified rental over a period. It is a sort of contractual arrangement between the two parties whereby one acquires the right to use the property called “lessee” and the other who allows the former the right to use his owned property, called the “lessor”. Thus, lease is a contractual arrangement, it originates from a contract between the lessor and lessee and is regulated by the terms, conditions and covenants of such contract. In other words, leasing arrangement provides an enterprise with the use and control over assets without receiving title to them. This arrangement could be oral or written allowing the use of assets for a specified period of time. The written lease agreement is signed by both the owner of the assets i.e. the lessor and the user of the assets i.e. ‘the lessee’. The lessee does not get the final ownership. In other words, leasing involves the use of an asset without assuming, or intending to assume, ownership.

Essential Points to be Observed for Drafting of Lease Documents

Before taking up drafting of the lease documents one is expected to be thorough with all the essential legal aspects involved in a lease transaction.

The essential legal elements of lease are (i) the parties i.e. lessor or lessee; (ii) the subject matter of lease i.e. the property to be leased; (iii) demise or partial transfer of such property; (iv) the term and period of lease; and (v) the consideration or rent. Law requires that the lease of real estate should be expressed and duration of the lease should be pre-settled under the written contract. The circumstances in which the lease shall be determined be also specifically reduced to writing to avoid complications of mis-conceptions. It should also state the mode of service of notice and the period within which the notice could be served for determining the lease both by the lessor and the lessee. However, in the absence of the contract or special law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purpose shall be deemed to be a lease from year to year, terminable on the part of either lessor or lessee by six months notice expiring with the end of a year of the tenancy and the lease of immovable property for any other purpose shall be deemed to be lease from month to month, terminable on the part of either lessor or lessee, by fifteen days’ notice expiring with the end of a month of the tenancy.

The main document to complete the leasing transaction between the lessor and the lessee is the lease agreement or lease deed which contains all the conditions and covenants binding the parties to the lease transaction. In the case of equipment lease, some leasing companies in the text of lease agreement provide for the guarantee provisions by the guarantors to indemnify the lessor of the involved risk of non-payment of lease rents and non-compliance of terms and conditions of the lease agreement by lessee. Thus, the lease agreement is entered into between lessor, lessee and guarantors covering suitable covenants for each of the parties. Such guarantee can be obtained separately from the guarantors even if guarantors are made party in the lease agreement.

The lessor or leasing company, in addition to the lease agreement and the guarantee or in substitution of guarantee, may also accept pledge of the shares or assignment of insurance policies of the promoters of the business.

Before taking up drafting of the lease documents both the leasing company and the lessee should have the information to have a birds-eye view of the existing charges, mortgages, encumbrances or lien on the property proposed to be leased by lessor or where the leased assets are proposed to be kept by the lessee. Generally in cases of plant and machinery etc. which are affixed in the land or kept in factory premises become part of immovable assets which are mortgaged to the banks and or financial institutions for availing of financial facilities from them. In such cases, the leasing company should have full details of these existing charges so as to take other precautionary measures by providing suitable clauses in lease documents to safeguard its own interest, i.e. where the leasing company has charged the leased property to bank as security for the due discharge by the leasing company of its obligations in the form of payment of interest instalments and the repayment of the principal sum borrowed. The mortgagee bank requires all these details from the leasing company about the lessee despite the fact that there is no privity of contract between the lessee and the bank. Such information

provides full exposure to risk, if any, involved in the transaction for which bank finance is being utilized.

With a view to avoid ambiguity and uncertainty with regard to the nature of the lease, due care should be taken to create distinction in the lease agreement i.e. whether the lease is a finance lease or operating lease. In case of “finance lease”, provision of non-cancellability should invariably be set forth in the lease agreement. In “operating lease” the provision of cancellability is provided with responsibility of the lessor for repairs and maintenance, technology transfer and change of know-how and providing knowledge of running the equipment leased out to lessee. All these aspects, *inter alia* should be well provided in the document. In “operating lease” it is the responsibility of the lessor to provide the lessee the benefits of innovations, change in technology of the equipment and the related know-how required for.

Notwithstanding the remedies available to the parties in case of breach of the agreement and defaults in payments of lease rentals, other dues should be clearly expressed in terms of money, time and space. Both the contractual as well as legal remedies be properly spaced in the lease agreement. Arbitration clause provides a better way for settlement of mutual misunderstandings and disputes and suggests a rapid course to seek remedy, the contractual remedy. Both lessor and the lessee have, therefore, to take all due precautions in the drafting of the lease agreement and other auxiliary documents. The legal remedy available in the lease document is by way of specific relief by applying to the Court of law for the same under the Specific Relief Act. But an aggrieved party can choose only one course of action for seeking redressal to its grievances i.e. either by way of arbitration or specific performance at a time. Seeking one course of action stand a bar for the other course of action.

In every State there is a legislation providing for the rights of lessors and lessees of residential and commercial buildings. They override the provisions of the Transfer of Property Act. Legislation in one State differs from that in another, but all such legislations control and restrict the rent payable and the grounds on which a tenant may be evicted. Some enactments regulate the duration of a lease, some forbid the payment of premium and some even control the letting out to the extent that this function is exercised by the authorities. It is, therefore, desirable to study the local rent control and eviction legislations before entering into a transaction of lease and before taking any action on the basis of a lease.

Drafting of a Lease

A deed of lease should be drafted as a deed between the landlord and the tenant. They should be called “the lessor” and “the lessee” as these are the terms used in the Transfer of Property Act, 1882. While drafting a lease, following points may be noted:

1. *Generally recitals* are not necessary and material facts are mentioned in the operative part.
2. *Consideration* Reserved rent is mentioned in the beginning of the *Testatum*. The entire consideration, including premium, etc., should be mentioned.
3. *Operative Part* – It shows clearly the lessor divesting himself of possession and the lessee coming into possession, e.g. by the use of such words as “The lessor hereby lets, or demises or grants a lease of, etc., etc. with effect from the day of”
4. *Habendum* – The nature of the lease, commencement and duration of the term are specified here.
5. *Reddendum* – This is peculiar to a deed of lease. Here is mentioned the mode and time fixed for payment. It begins with the word rendering or paying with reference to the reserved rent. Rent is payable during the term of the lease. Place where payable and instalments are mentioned. If there is apportionment of rent that is also mentioned.
6. *Covenants* – Terms and conditions are mentioned in several paragraphs. The usual covenants are to be found in Section 108 of the Transfer of Property Act; other important covenants generally refer to payment of taxes, repairs, insurance, subletting purpose of the lease, e.g. residential purpose, renewal, forfeiture.

Sub-Lease

A sub-lease is a demise by a lessee for lessor term than he himself has. Every lessee, however short his term may be, make a sub-lease unless he is refrained by the contract of the tenancy from subletting. If the demise is for the whole term or for a period beyond the term, it amounts to assignment. If the lessee divests himself he becomes a stranger to the demised property and he has no right to have possession delivered up to him. It is true that a covenant against subletting will restrain the assignment, but a mere covenant against subletting does not prohibit underletting a part of the premises. As long as the lessee remains in possession he may permit another person to use the demised premises without committing a breach of covenant, namely not to assign, underlet or part with the possession of the demised premises.

The Privy Council pointed out in *Hunsrai v. Bejoylal Seal*, (1930) 57 Cal 1176, that in India a sub-lease is not an absolute assignment and it was further held in *Akshoy Kumar v. Akman Molla*, (1915) 19 CWN 1197, that there is no privity of estate as between the lessor and the sub-lessee, who does not step into the shoes of the lessee. A sub-lease is not prejudiced by the surrender of the head lease (Section 115 of Transfer of Property Act) but the position is different in the case of forfeiture which annuls all sub-leases except in case of fraud as between the lessor and lessee. A sub-lessee is entitled to relief against forfeiture under Section 114 of the Transfer of Property Act, 1882, which is applicable only in the case of non-payment of rent. No relief is open to the sub-lease in case of transfer of breach of covenant in restraint of transfer.

Surrender of Leases

Surrender of lease is not a transfer but mere yielding up by the lessee of his interest under the lease to the lessor by mutual agreement. It is in effect merger of the estate of the lessee into the reversion. It is not a transfer or an assignment of any right or estate within the meaning of Section 5 of the Transfer of Property Act (*Makhanlal v. Nagendranath*, (1933) 60 Cal 379). The person who surrenders is called the surrenderer and the person to whom surrender is made is called the surrenderee. A surrender must be made with clear intention to yield up as mere non-payment of rent for years together or abandonment of the site does not amount to surrender (*Misri Lal v. Durga Narain*, AIR 1940 All. 317). A Requisition Order by the Government does not amount to any surrender (*Torabai v. Padan Chand*, 62 CWN 176). It may be expressed or implied. Except in a case of some special kinds of lease as required by special Act, no writing or registration is necessary. A surrender may be oral, if accompanied by delivery of possession.

Registration and Stamp Duty

Section 107 of the Transfer of Property Act, 1882 and Section 17(1)(d) of the Registration Act, 1908 require that all leases from year to year, or for a term exceeding a year, or reserving a yearly rent must be registered. Other leases, if governed by the Transfer of Property Act, must be registered except that Local Government may direct them to be made by unregistered instruments. (Proviso to Section 107)

For the stamp duty of a lease, including an under-lease or sub-lease and agreement to let or sub-let, Article 35 of the Indian Stamp Act, 1899 is to be followed.

Distinction between License and Lease

A license and a lease is distinguished *inter se* with following characteristics:

Sl. No.	License	Lease
1.	A personal non-heritable right.	An heritable right in rem.
2.	Creates no interest in the guarantee.	Interest created in the lessee.

3. Non assignable	Usually assignable.
4. Always permissive and normally revocable.	Permissive but not normally revocable.
5. Not exclusive user	Exclusive user.
6. A positive right.	A positive right.
7. Denial of grantor’s title does not necessarily result in forfeiture.	Denial of lessor’s title results in forfeiture.
8. Remedy for breach is damages.	Specially enforceable.
9. No notice necessary to terminate relationship.	Notice necessary to terminate relationship.
10. Instrument granting right does not require registration.	Instrument creating right requires registration.
11. Does not entitle licensee to sue strangers in his own name.	Can sue in his own name.
12. A licensee does not qualify for a vote.	May qualify for a vote.
13. Not liable for rents	Liable.
14. User not liable for public nuisance.	Liable.

A lease of immovable property is a transfer of a right to enjoy the property for a certain time in consideration for a price paid or promised. The price paid is called “rent”. In the case of a license one person grants another a right to do or continue to do in or upon immovable property of the grantor, something which would, in the absence of such a right be unlawful, and such right does not amount to an easement or an interest in the property. The underlying assumption in the case of a license remains that the owner continues to be in possession and control of the property, and it is non-transferable, and not exercisable even by servants or agents. A licensor’s transferee of the property is not bound as such by the license, it is revocable except in certain cases.

Specimen Forms of Leases

The specimen forms of some of lease documents are given hereinbelow which can be adopted in different situations by making suitable modifications as per the needs of an organisation:

1. Deed of sub-lease.
2. Deed of lease of land with forfeiture clause and covenants for renewal.
3. Surrender of lease.
4. Deed altering conditions/covenants in a lease.
5. Deed modifying terms of lease.
6. Lease agreement with lessor, lessee and Bank as financing party.
7. Lease Agreement for a house (Premises).
8. Lease Agreement for Plant and Machinery.

(1) Deed of Sub-Lease

THIS LEASE made this day of 2018 between AB of, etc. (hereinafter called “the sub-lessor”), of the one part, and CD of, etc. (hereinafter called “the sub-lessee”), of the other part.

WHEREAS By a lease (hereinafter referred to as “the original lease”) dated..... the day of and made between XY as owner and AB as lessee and registered in Book I, Vol. pages to

being No for the year in the Office of Sub-Registrar of etc., the premises (or, etc.) described in the original lease were demised to the said original lessee for a period of years with effect from the day of..... on a yearly rent and subject to the covenants and conditions to be performed and observed as therein contained.

AND WHEREAS the original lessee has agreed to grant and the sub-lessee has agreed to accept a sub-lease of the premises (or, etc.) hereinafter described upon the conditions hereinafter contained:

NOW THIS DEED WITNESSES that in consideration of the rent hereinafter reserved and the covenants by the sub-lessee hereinafter contained, the original lessee do hereby grant to the sub-lessee a lease of ALL THAT premises (or, etc.) known by the name of, etc., and situate at, etc., together with the appurtenances; TO HOLD the same unto and to use of the sub-lessee for the period of years, commencing with effect from the day of at the monthly rent of Rupees SUBJECT to the following conditions:

1. The sub-lessee hereby agrees with and covenants with its lessor, viz., the lessee as follows:
 - (a) To pay the said rent, clear of all deductions, on the..... day of..... every current month in advance during the term of the lease.
 - (b) To pay all taxes and outgoings now payable or hereafter to become payable in respect of the leased premises (or, etc.).
 - (c) To keep the said premises (or, etc.) in good and tenantable repair, and not to make any alteration therein without the written consent of the landlord.
 - (d) To perform all the covenants, conditions and stipulations contained in the original lease affecting the property hereby leased and to be observed and performed by the original lessee except payment of rent and not to do, execute or perform any act, deed or thing or suffer anything to the contrary whereby or by reason or means whereof the original lease may be avoided or forfeited and to allow the original lessee to enter upon the leased premises (or, etc.) for the purpose of inspection of the premises and performing any of such terms of agreement contained in the original lease, which may be necessary to prevent its forfeiture.
 - (e) To keep the original lessee indemnified against all actions, claims, demands and expenses on account of performance or non-performance by the sub-lessee (of any of the terms, conditions and stipulations of this agreements).
2. The original lessee does agree and covenant with the sub-lessee as follows:
 - (a) That upon the sub-lessee paying the rent hereby reserved and observing and performing the conditions and covenants herein contained, shall quietly and peacefully possess and enjoy the property, hereby leased during the said term without any interruption and disturbance by the original lessee or any person claiming under or in trust for him, provided that in case of any breach of any of the conditions and covenants to be observed and performed by the sub-lessee, the lease shall, at the option of the original lessee, stand determined who shall be entitled to repossess the property as his former estate without prejudice to his right to recover all arrears of rent and/or any damages for breach of such conditions or covenants.
 - (b) The original lessee shall duly and punctually pay the rent reserved, observe and perform all the covenants and conditions contained in the original lease, and keep the same alive and in full force and virtue and will further, times, keep the sub-lessee and his estate indemnified against all actions, claims, proceedings and demands on account of any breach of any of the conditions and covenants contained in the original lease.
 - (c) The original lessee acknowledges the right of the sub-lessee as to production of the original lease and to delivery of copies thereof and undertakes for the safe custody thereof.

3. It is further agreed that the terms "the original lessee" and "sub-lessee" used herein shall, unless inconsistent with the context, include as well their respective successors and assigns.

IN WITNESS, etc.,

Signed, sealed and delivered

AB

CD

(2) Deed of Lease of Land with Forfeiture Clause and Covenant for Renewal

This LEASE is made on the..... day of..... 2018 BETWEEN AB of, etc.: (hereinafter called "the lessor") of the one part and CD of, etc., (hereinafter called "the lessee") of the other part, WITNESSES as follows:

1. In consideration of the rent hereinafter reserved and the covenants and conditions hereinafter contained to be observed and performed on the part of the lessee, the lessor does hereby grant, transfer, demise by way of lease to the lessee ALL THAT piece or parcel or parcels of land described in the schedule below TO HAVE AND TO HOLD the same unto and to the use of lessee for the term of..... years commencing from the..... day of..... 2018 at the annual rent of Rupees.....
2. The lessor hereby covenants with the lessee as follows:
 - (a) The lessor shall put the lessee in possession of the said land on the said..... day of 2018.
 - (b) Upon the lessee paying the rent hereby and hereunder reserved and observing and performing the covenants and conditions herein contained the lessee shall quietly and peacefully hold, possess and enjoy the said land during the said term without any claim, interruption or disturbance by the lessor or any person claiming under or in trust for him.
 - (c) The lessor has good right, full power and absolute authority to grant a lease of the demised premises in the manner hereunder effected.
3. The lessee hereby covenants with the lessor as follows:
 - (a) The lessee shall pay the said rent without abatement or deductions on or before the..... day of..... every year and the first of such payments shall be made on the..... day of..... 2018.
 - (b) The lessee shall bear and pay all rents, taxes and other assessments and outgoings which are now or may hereafter be imposed or assessed on the said land except those which are payable in law by the lessor.
 - (c) The lessee shall not use and occupy the said land for any purpose other than private residence for himself and the member of his family by construction of temporary structures according to the plan approved by the Municipal Authority.
 - (d) The lessee shall not, except with the consent in writing of the lessor first had and obtained, assign, underlet or part with the possession of the said land or any portion thereof or of the structures to be constructed thereon or any portion thereof which consent the lessor may at his absolute discretion withhold.
 - (e) That if the lessee shall pay the rent punctually and regularly and duly observe and perform the conditions and covenants herein contained and apply in writing to the landlord not less than..... months prior to the expiration of the term herein reserved for renewal of the lease, the lessor shall then and in such an event grant to the lessee a new lease of the said land

for a further period of..... years on the same terms and conditions as are herein contained except the covenant for renewal and subject to such variations as may be mutually agreed.

- (f) On the determination of the lease, the lessee shall deliver peaceful vacant possession of the land hereby demised as also the structures to be erected by the lessee without claiming any compensation or value thereof.

IN WITNESS, etc.,

Signed, sealed and delivered

AB

CD

The Schedule above referred to

(3) Deed of Surrender of Lease

THIS DEED OF SURRENDER OF LEASE made the..... day of..... BETWEEN AB of, etc. (the lessee), of the one part and CD of, etc. (the lessor) of the other part.

WHEREAS by an Indenture dated..... made between the parties hereto and registered in..... it was witnessed that the said CD, did in consideration of the rent thereby and thereunder reserved and of the covenants and conditions to be observed and performed on the part of the said AB as therein contained granted and demised by way of lease the property fully mentioned and described in the schedule hereto for a term of..... years.

AND WHEREAS such lease is in full force and virtue and all rents and conditions reserved by and contained thereunder on the part of the lessee to be paid, observed and performed by the said AB upto the date of these presents.

AND WHEREAS the lessee was at all material times and is presently in possession of the property since the execution of the lease.

AND WHEREAS for personal reasons and consideration, the said AB having desired to be relieved from any further payment of such rent and performance of the covenants and conditions approached the said CD for a surrender of the said lease and delivery of the possession of the property.

AND WHEREAS the said CD has agreed to accept from the said AB a surrender of the aforesaid lease of the said premises.

NOW THE DEED WITNESSES that in pursuance of the said agreement and in consideration of a sum of Rs..... being the token consideration paid by the said CD to AB, the said AB as beneficial user of the said property do hereby give up and relinquish all his leasehold estate and interest in and surrender and deliver possession to the said CD of the premises (or, etc.) comprised in and by the said deed of lease TO HOLD the same as before execution of the lease by the said CD TO HOLD THE INTENT and object that the same shall stand determined to all intents and purposes and that the residue of the said term of..... years created by the said deed of lease, and all other rights and interests of the said AB in the said premises (or, etc.) under or by virtue of the said deed shall stand extinguished and merged in the reversion freehold and inheritance of the premises with immediate effect as if the said lease was never granted nor intended.

AND THIS INDENTURE further witnesses that in consideration of the surrender of the lease which is accepted by the lessor he the said CD do hereby release and discharge the lessee AB, his successor and estate from all claims, demands and liabilities on account of future rent and or arising out of performance or non-performance or hereinbefore recited Indenture of lease.

IN WITNESS WHEREOF the parties above named have put their signatures the day and year above.

Signed, sealed and delivered

AB

CD

The Schedule above referred to

(4) Deed Altering Conditions in a Lease

THIS DEED made the..... day of..... BETWEEN AB of, etc. (hereafter called "the landlord") of the one part and CD of, etc. (hereinafter called "the tenant"), of the other part.

WHEREAS by a lease (hereinafter called "the principal deed"), dated the..... day of..... and made between the parties hereto and registered at..... Registration office in Book No..... Volume No..... pages..... to..... Being No..... for the year....., the said AB granted and demised to CD the house (or, etc.) situate at, etc.

AND WHEREAS the parties hereto have agreed to alter and modify the terms and conditions of the principal deed in the following manner.

NOW THIS DEED WITNESSES as follows:

1. Sub-clause (e) of clause 2 (or, etc.) of the principal deed, the following sub-clause shall be omitted and shall cease to have any effect.
2. For sub-clause (b) of clause 2 (or, etc.) of the principal deed, the following sub-clause shall be substituted, namely:

(Set out the new sub-clause)

3. That as altered and modified as aforesaid the principal deed shall remain in full force and effect.

IN WITNESS WHEREOF etc.,

Witnesses:

..... AB

..... CD

(5) Deed Modifying Terms of Lease

THIS DEED made the..... day of..... BETWEEN AB of, etc. (hereinafter called "the lessor"), of the one part and CD of, etc. (hereinafter called "the lessee") other part being supplemental to the deed of lease (hereinafter called "the Principal Deed"), dated the..... day of..... and made between the same parties being a lease of a house (or, etc.) situate at etc.

NOW THIS DEED WITNESSES as follows:

1. The lessor shall forthwith erect and construct and will complete on or before the..... day of..... to the reasonable satisfaction of the lessee, a room (or, etc.) and other additions to the premises leased under the Principal Deed, in accordance with the plans and specifications, copies whereof have for the purpose of identification been signed by the lessor and the lessee.
2. In consideration of the premises, the lessee hereby agrees with the lessor that as from the..... day of..... he, the lessee will pay to the lessor during the residue of the term granted by the lease under the Principal Deed, the additional yearly rent of Rs....., such additional rent to be paid by equal quarterly (or monthly) payments on the same days and in the same manner as are provided by the Principal Deed for the payment of rent thereby reserved, the first of such payment to be made on the rights and remedies of the lessor shall be applicable to the said additional rent.

3. From and after the completion of the said additions and works to be erected and constructed by the lessor as aforesaid, the agreements and conditions contained in the Principal Deed shall apply thereto in the same manner as if the said additions and works had been completed prior to the grant of the lease by the Principal Deed.

IN WITNESS WHEREOF etc.,

Signed, sealed and delivered

..... CD

..... AB

The Plans, etc. above referred to

(6) Lease Agreement with Lessor, Lessee and Bank as Financing Party

THIS TRIPARTITE AGREEMENT is made on this day of..... (month) (year in words) BETWEEN..... an existing Company within the meaning of the Companies Act, 2013 and having its registered office at..... (hereinafter called “the Lessor Company” which expression shall unless excluded by or repugnant to the context be deemed to include its successors and assigns) of the first part,a Company incorporated under the Companies Act, 2013 and having its registered office at..... (hereinafter called “the Lessee Company” which expression shall unless excluded by or repugnant to the context be deemed to include its successors and assigns) of the second Part AND..... a nationalised Bank carrying on business amongst other places in India at..... (hereinafter called “the Bank” which expression shall unless excluded by or repugnant to the context be deemed to include its successors and assigns) of the third part;

WHEREAS under an Agreement for Hypothecation dated..... executed by the Lessor Company in favour of the Bank, the Bank granted to the Lessor Company a sum of Rs..... as and by way of advance in current account to enable the Borrower to purchase..... (hereinafter referred to as “the said equipment”) for the purpose of leasing out the said equipment to the Lessee Company, *inter alia*, secured by hypothecation of the said equipment upon the terms and conditions therein contained;

AND WHEREAS the Lessor Company has entered into an Agreement for Lease with the Lessee Company on the..... day of..... for leasing out the said equipment to the Lessee Company subject to the payment of rent/hire charges thereby reserved and also subject to the other terms and conditions therein contained;

AND WHEREAS in terms of the sanction of the Bank, the Bank will allow the Lessor Company to grant lease of the said equipment to the Lessee Company, *inter alia*, upon the following conditions:

- (a) that the lease of the said equipment is to be granted by the Lessor Company to the Lessee Company with the consent of the Bank and the Lessee Company should confirm that the said equipment is subject to the Bank’s charge under the said Agreement for Hypothecation dated.....;
- (b) the Lessee Company should undertake the Bank that it would not assign the leasehold interest of the said equipment for any reason whatsoever;
- (c) that the Lessee Company shall undertake the Bank that the Lessee Company shall not have any claim on the moneys to be realised under the insurance policies to be taken out in respect of the said equipment;
- (d) that the Lessee Company should directly pay to the Bank the rent/hire charges and interest payable by the Lessee Company to the Lessor Company in terms of the said Agreement for Lease dated.....;
- (e) the Bank through its officers, agent and nominee be entitled to inspect the said equipment at such time as the Bank may think fit;

- (f) that the Lessor Company shall execute a Deed of Assignment in favour of the Bank irrevocably authorising the Bank to collect rent/hire charges to be paid by the Lessee Company to the Lessor Company towards liquidation of the moneys advanced by the Bank to the Lessor Company and all interest accrued thereon.

AND WHEREAS with a view to recording the conditions hereinbefore provided, the parties hereto have agreed to enter into an agreement being these presents in the manner hereinafter appearing.

NOW THIS AGREEMENT WITNESSETH and it is hereby agreed and declared by and between the parties hereto as follows:

1. The lessee Company hereby confirms that the said equipment is subject to the hypothecation/ charges created by the Lessor Company in favour of the Bank under the Agreement for Hypothecation dated.....
2. The Lessee Company hereby undertakes the Bank not to deal with the said equipment which will prejudice the interest of Bank and not to assign or transfer the benefit of the said Agreement of Lease dated.....
3. The Lessee Company hereby undertakes the Bank that the Lessee Company shall not have any claim on the moneys to be realised under the insurance policies to be taken out in respect of the said equipment.
4. That the Lessor Company hereby irrevocably and unconditionally authorises the Lessee Company to pay all the rent/hire charges payable by the Lessee Company to the Lessor Company in terms of which the Lessee Company hereby confirms and acknowledges.
5. The Lessee Company hereby irrevocably and unconditionally agrees, confirms and declares that irrespective of any disputes between the Lessor Company and the Lessee Company as regards terms, conditions and covenants contained in the Agreement for Lease dated....., the Lessee Company shall directly pay to the Bank rent/hire charges and interest thereon payable by the Lessee Company to the Lessor Company in terms of the Agreement for Lease dated.....
6. The Lessor Company and the Lessee Company hereby jointly declare and confirm that the Bank through its officers, agent and nominees will be entitled to inspect the said equipment which will be in the possession of the Lessee Company in terms of the Agreement of Lease dated..... and to take possession thereof if the Bank so thinks fit.
7. That the Lessor Company and the Lessee Company hereby also jointly agree and confirm that it would not amend, alter and/or modify any of the terms, conditions and covenants contained in the said Agreement for Lease dated..... without the prior permission of the Bank in writing.
8. The Lessee Company hereby also confirms and declares that if the Lessee Company fails to pay the rent/ hire charge to the Bank in terms of these presents, the Bank will be at liberty to take possession of the said equipment if the bank so desires to protect the interest of the Bank.
9. The Lessee Company hereby agrees that the said equipment will bear the seal "hypothecated Bank".

NOW THIS AGREEMENT FURTHER WITNESSETH as follows:

- (a) That in pursuance of the said agreement and in consideration of the premises aforesaid, the Lessor Company as beneficial owner hereby transfers and assigns up to the Bank all the rent/ hire charges payable to the Lessor Company by the Lessee Company under the Agreement for the Lease dated..... together with power for the Bank to sue, call up or recover and give effectual discharge for the same in the name of the Lessor Company or otherwise.

- (b) That the Lessee Company hereby agrees to pay duly and punctually all rents/hire charges payable by the Lessee Company to the Bank under the said Agreement for Lease dated..... and upon such payment to the Bank the Lessee Company shall be fully discharged from its obligation for payment of the rents/hire charges to the Lessor Company under the said Agreement for Lease dated.....
 - (c) That the Bank upon receipt of the rents/hire charges mentioned above shall be at liberty to adjust and appropriate the said rents/hire charges in liquidation of the amounts due and payable for principal and interests for the loan granted under the said Agreement for Hypothecation dated.....
 - (d) That the Lessor Company hereby covenants with the Bank that the Lessor Company has not received any rent/hire charges in advance nor any deposit or advance or premium from the Lessee Company adjustable against the said rents/hire charges.
10. It is hereby expressly agreed and declared by and between the parties hereto that all the terms, conditions and covenants herein contained shall override the terms, conditions and covenants contained in the Agreement for Hypothecation dated..... and the Agreement of Lease dated..... to the extent the same are inconsistent.

IN WITNESS WHEREOF the parties hereto have executed these presents on the day, month and year first above written.

THE COMMON SEAL OF..... has hereunto been affixed pursuant to the resolution passed by the Board of Directors of the Company on the day of..... in the presence of Mr..... and Mr..... two of the directors of the Company who have executed these presents in token of their presence in the presence of:

SIGNED AND DELIVERED for and on behalf of..... by Mr..... Constituted Attorney under the Power of Attorney dated..... in the presence of.....

(7) Lease Agreement for a House (Premises)

THIS LEASE made on..... day of..... between AB..... (hereinafter called “the lessor”) (the expression shall include the owner for the time being of the lessors’ interest in demised premises) of the One Part and CD..... (hereinafter called “the lessee”) (the expression shall include his heirs, executors, administrators and permitted assigns) of the other.

THE DEED THEREFORE WITNESSETH AS FOLLOWS:

1. The lessor hereby demises to the lessee all that dwelling house with the land fully described in the Schedule hereto together with all out houses, wells, motor garage, kitchen, pathways, passage, garden and other appurtenances thereof situate at..... to hold the same to the lessee from the..... day of for the term of..... years (or year to year) paying therefor during the said term the monthly rent of Rs..... (Rupees.....) payable on the first day of the month succeeding that for which the rent is due.
2. Lessee’s obligation:
 - (i) The lessee hereby agrees that he will, during the said term (tenancy), pay all rents, taxes and other charges excluding the house tax which now are or may hereafter become payable in respect of the demised property;
 - (ii) Pay Municipal charges including water bills and electric bills, etc.
 - (iii) That he will not without the previous consent in writing of the lessor transfer or sublet or otherwise part with possession of the demised premises.

(iv) That he will, without the consent in writing of the lessor, use the demised premises for residential purposes and for no other purpose.

3. Lessor’s obligations:

(i) That he will during the said term (tenancy) maintain the demised premises in good and habitable condition and shall execute all necessary repairs including annual white-washing and colour washing, plastering, painting, etc. and shall renew all broken panes, fittings, bolts, etc. and on lessee’s giving the lessor notice in writing of any decay, defects, disorders, will, within one calendar month from the receipt of such notice, repair and amend the same.

(ii) That he will, during the said term (tenancy), maintain the electric installation in the said premises and supply at his own expense such electric fans as may be required by the lessee.

(iii) That he will carry out all immediate necessary repairs to the said premises to the entire satisfaction of the lessee.

(iv) That the lessor shall repair, when necessary, the well, the passages, pathways and the road connecting the public road with the bungalow hereby demised.

4. Provided always and it is hereby agreed as follows:

(i) That whenever any part of the rent hereby reserved shall be in arrears for..... months after due date or there shall be a breach of any of the covenants by the lessee hereincontained, the lessor may re-enter on the demised premises and determine this lease.

(ii) That the tenancy hereby created shall be determinable at the option of the lessor/lessee (or either party) by giving to the lessor/lessee (or the other party) calendar months notice in writing.

5. It is hereby agreed between the parties as follows:

That the demand for payment or notice required to be made upon or given to the lessee shall be sufficiently made or given if sent by the lessor or his agent through the post by registered letter addressed to the lessee at the demised premises (or, at.....) and, that notice requiring to be given by the lessor shall be sufficiently given if sent by the lessee through the post by registered letter addressed to the lessor at his usual or last known place of residence or business (or, at.....) and that any demand or notice sent by post in either case shall be assumed to have been delivered in the usual course of post.

IN WITNESS WHEREOF the parties hereto have hereunder signed this deed on the dates mentioned against their respective signatures.

Signed, sealed and delivered

..... AB

..... CD

(8) Lease Agreement for Plant and Machinery

LESSOR; (insert name and address) LESSEE; (insert name and address) DATE:

1. *LEASE*: The lessor hereby agrees to lease to Lessee and the Lessee hereby agrees to take on Lease from Lessor, subject to the terms of this Lease Agreement (herein after referred to as the “AGREEMENT”)..... (write brief title of the asset) (hereinafter referred to as the “EQUIPMENT”) described in the Schedule annexed hereto.

2. *PERIOD*: The Lessee shall take the equipment for its use on lease for the term to commence from the

date of payment by the Lessor to the supplier and to terminate at the end of months from the date of such commencement. The period of lease may be extended for such period and on such terms and conditions as may be agreed upon by and between the parties hereto. (Subject to the concurrence of Lessor's Bankers).

3. **RENTAL:** In consideration of the above, the Lessee shall pay to the lessor, Lease rent at the rate specified in the Schedule hereunder written for the entire period of the Lease. Such rent shall be payable by the Lessee to the Lessor's [designated Bankers..... (insert the name of bankers) for and on behalf of the Lessor] within seven days of the same becoming due and payable. The lease rent shall be due and payable on the first day of each calendar month, commencing from the calendar month in which the period of lease commences, provided that the lease rent for the calendar month in which the period of lease commences shall become payable on the commencement of the lease period. Lessee will pay on demand as late charges, an amount equal to two per cent (2%) per month of each instalment of lease rent or part thereof that remains unpaid for a period of more than seven (7) days. It is expressly understood by the parties hereto that time shall be the essence of this Agreement, in so far as it relates to the obligations or commitments of the lessee.
4. **WARRANTIES:** The Lessee has made the selection of the Equipment based upon its own judgement prior to the purchase thereof by the Lessor and expressly declares that it has not relied upon any statements or representations made by Lessor, makes no express or implied warranties including those of merchantability or fitness for particular use of the Equipment and hereby disclaims the same. The Lessor shall not be responsible for any repairs, service or defects in the Equipment or the operation thereof. However, the Lessor agrees that Lessee shall be entitled to the benefits of the manufacturer's warranties in respect of the Equipment.
5. **TITLE, IDENTIFICATION, OWNERSHIP OF EQUIPMENT:** No right, title or interest in the Equipment shall pass to Lessee by virtue of these presents. Conditioned upon Lessee's compliance with and fulfilment of the term of conditions of this Agreement, the Lessee shall have the right to have and retain possession and use of the Equipment for the full term of lease including the extended term if agreed to. Lessor may require plates or makings to be affixed to or placed on the Equipment, indicating Lessor's interests therein (and the interests of its Bankers). Lessor and Lessee hereby confirm that their intent is that the Equipment shall at all times remain the property of the Lessor. Lessee also agrees and undertakes not to sell, assign, sublet, pledge, hypothecate or otherwise encumber or suffer a lien upon or against any interest in this Agreement or the Equipment, or to remove except for the purposes of repairs with prior intimation to the Lessor the Equipment from the factory or office site where originally put to use or allow any third person to use the equipment without the prior consent of the Lessor in writing.
6. The equipment hereunder leased, will be delivered by the manufacturers/suppliers to the location specified by Lessee. Lessor shall not be responsible for any damage incurred to the Equipment during delivery. Lessor will request the manufacturers/suppliers to effect delivery on or before the date of commencement of the rentable, but if for whatever reasons, delivery is not affected by the manufacturers/suppliers by the date, lessor shall not be liable for any loss suffered by the Lessee thereby. Lease rentals shall be deemed to commence from the date of disbursement for the actual purchase made with the consent of the lessee.
7. **INDEMNITY:** Lessee agrees to comply with all laws, regulations and orders relating to the possession, operation, and use of the Equipment and assumes all risks and liabilities arising from or pertaining to the possession, operation or use of the Equipment. Lessee does hereby agree to indemnify and keep indemnified and hold safe and harmless the Lessor from and covenants and undertakes to defend Lessor against any and all claims, costs, expenses, damages and liabilities whether civil or criminal, of any nature whatsoever, arising from or pertaining to the use, possession, operation or transportation of

the Equipment. Any fees, taxes or other lawful charges paid by Lessor upon failure of Lessee to make such payments, shall become immediately due from Lessee to make such payments, shall become immediately due from Lessee to Lessor. Lessee further covenants and undertakes to indemnify and keep indemnified the Lessor against loss of Equipment by seizure by any person other than the Lessor for any reason whatsoever, or resulting from any form of legal process initiated by any person other than the Lessor, provided that such indemnity shall not cover such loss as arises out of any neglect or default on the part of the Lessor. Lessee further agrees to indemnify and keep indemnified the lessor against all risks and liabilities whether civil or criminal, arising from the possession, use, operation or storage of the Equipment and for injuries or deaths of persons or damage to property arising from the above.

8. *USE, INSPECTION*: Lessee will cause the Equipment to be operated in accordance with manufacturers' manuals or instructions, if any, and in so far as applicable by competent and duly qualified personnel only and in accordance with applicable Government regulations, if any, and for business purposes only. Lessor shall have the right from time to time during the normal business hours on any working day to enter upon Lessee's premises or elsewhere after prior notice for the purpose of confirming the existence, condition and proper maintenance of the Equipment.
9. *REPAIRS, LOSS AND DAMAGE*: During the term of the Lease and any renewal thereof, Lessee, at its own cost and expenses will keep all Equipments in good repair, condition and working order and shall furnish all parts, mechanisms, devices and servicing required thereof. All such parts, mechanisms and devices shall immediately be deemed part of the Equipment for all purposes hereof and shall become the property of the Lessor. In the event, any item of Equipment is lost, stolen or destroyed or damaged beyond repair for any reason, Lessee shall promptly pay the Lessor the instalments of lease rentals then remaining unpaid less insurance claims received by Lessor, in respect of insurance effected in pursuance of this Agreement, whereupon Lessor will transfer to Lessee, without recourse of warranty, all of Lessor's right, title and interest, if any, in such items. If, however, the insurance claim received by the Lessor exceeds the amount of unpaid rentals, the Lessor shall forthwith pay the difference to the Lessee.
10. *INSURANCE*: Lessee shall obtain and maintain for the entire term of this Agreement at its own expense, comprehensive insurance against loss or destruction or damage to the Equipment including without limitations destruction or loss by fire, theft and such other risks or loss as are customarily insured against on the type of Equipment leased hereunder and by businesses in which Lessee is engaged and in such amounts as shall be satisfactory to lessor, provided however that the amount of insurance against loss or destruction or damage to the Equipment shall not be less than the greater of the full replacement value of the Equipment or the instalments of lease rentals then remaining unpaid hereunder plus any renewal options entered into pursuant to this Agreement. Each insurance policy will name Lessee as insured and note Lessor's (and its Bankers') interests as loss payee. Lessee shall furnish to Lessor a certificate of insurance or other satisfactory evidence that such insurance coverage is in effect.
11. *FURTHER ASSURANCE*:
 - (a) During the term of this Agreement, Lessee shall provide if so asked for by Lessor annual audited accounts of the Lessee.
 - (b) Lessor hereby covenants that the Equipment is the absolute property of the Lessor and undertakes not to sell or transfer the same to any party except as to hypothecate, mortgage or create a charge in favour of a Bank or Financial Institution. The Lessor shall inform the Lessee of any such mortgage or hypothecation.
 - (c) Lessee irrevocably agrees that the lease rentals will be increased by any incremental taxes, if any, whether Sales Tax or Excise Duties or any other related and consequential charges, if any, levied on this transaction now or hereafter as also by any increase in purchase price of the asset in the intervening period between placement of the order and its acceptance and the eventual

delivery of the Equipment. The lease rentals have been stipulated in the assumption that the lessor shall be entitled to claim in his income tax assessment investment allowance @25% of the cost of Equipment and depreciation @..... in the first year, and% every year subsequently on reducing balances. The lessee agrees that the lease rentals shall be suitably increased if such investment allowance or depreciation is not allowed at all or at rates given above or due to any changes in the tax laws in respect thereof.

- (d) Lessee further irrevocably stipulates that at no time during the period of this lease agreement will the Lessee attempt to capitalise the leased asset on Lessee's balance sheet and Lessee and Lessor irrevocably agree that ownership of the Equipment during the tenure of the lease as specified herein and inclusive of any renewal options that the parties hereto may concur to indisputably vests with the Lessor.
 - (e) The Lessor does hereby agree to indemnify and keep indemnified and hold safe and harmless the Lessee from and against any loss or damage caused to or suffered by the Lessee on account of any action taken by the Bank or Financial Institution for non-satisfaction or breach of the conditions of the loan granted by the Bankers to the Lessor. In case of Lessor's failure to make payment of principal and/ or interest of the loan and on being called upon by the Bank or Financial Institution to pay to them all or any instalments of rental and the Lessee making such payment the Lessor agrees that such payment to the Bankers or Financial Institution made by the Lessee of the sums due under this Agreement, shall be considered as having been paid to the Lessor, towards the Lessor's dues hereunder. In that event, the Bank shall have no right of recourse to possession of Equipment so long as the Lessee meets with lease rental payments falling due under this Agreement.
 - (f) The Lessor hereby agrees to inform its Bankers about this arrangement and obtain their confirmation to the same.
12. **SURRENDER:** Upon expiration or earlier termination of the lease, Lessee shall deliver to the Lessor the said Equipment at such a place as Lessor may specify in good repairable condition and working order, normal wear and tear resulting from the proper use of the Equipment and damage by fire not caused by the negligence of the Lessee shall be excepted.
13. **EVENTS OF DEFAULT:** An event of default shall occur hereunder if Lessee:
- (a) fails to pay any instalment of lease rentals or part thereof or other payment required hereunder when due and such failure continues for a period of 10 days after written notice is sent from Lessor; or
 - (b) fails to perform or observe any other covenant condition or agreement to be performed or observed by it hereunder or breaches any representation or provision contained herein or in any other document furnished to the Lessor in connection herewith and such failure or breach continues unremedied for a period of ten days (if such breach is capable of being remedied within ten days) after written notice is sent from the Lessor; or
 - (c) without Lessor's consent, attempts to remove (except for repairs), sell, transfer, encumber, part with possession or sublet any item of Equipment; or
 - (d) shall commit an act of bankruptcy or become insolvent or bankrupt or make an assignment for the benefit of creditors, or consent to the appointment of a Trustee or Receiver or either shall be appointed for Lessee or for substantial part of its property without its consent, or bankruptcy, reorganisation or insolvency proceedings shall be instituted by or against Lessee; or
 - (e) shall suffer an adverse material change in the financial condition from the date hereof, and as a result thereof Lessor deems itself or any of its equipment to be insecure; or

(f) shall be in default under any other agreement at any time executed with Lessor.

14. *REMEDIES*: Upon the occurrence of any default and at any time thereafter the Lessor would declare all future rentals due and to become due hereunder for the full term of the lease immediately due and payable and on such declaration being made by Lessor, Lessee shall forthwith provide to the Lessor the present value of the said sums due discounted at the rate of 12% per annum and upon Lessee failing to make the said payment within 30 days thereof Lessor may in its discretion do any one of the following:

- (a) Take action for recovery as liquidated damages for loss of bargain and not as penalty, of any amount equal to all unpaid lease rental payment which in the absence of a default would have been payable by Lessee hereunder for the full term thereof plus interest thereon at the rate of 2% p.m. for the period until receipt of the said amount;
- (b) Upon notice to Lessee terminate this Agreement and all Schedules executed pursuant hereto and forfeit the amounts paid by Lessee by way of rentals and demand the Lessee to return all equipment to Lessor at Lessor's own risk and expenses in the same condition as delivered, ordinary wear and tear and damage by fire not caused by the negligence of Lessor excepted, at such location as the Lessor may designate and upon failure of Lessee to do so within 14 days from the date of demand, enter upon premises where such Equipment is located and take immediate possession of and remove the same, all without liability to Lessor or its Agent for such entry or for damage to property or otherwise. Lessor may detach and dismantle the Equipment from any part of the freehold or process machinery to which it may be affixed without the written permission of Lessee;
- (c) Sell all the Equipments at public or private sale or lease to others with 7 days' Notice on account and at the risk of Lessee and appropriate the net sale proceeds or realisation of rental towards the present value of all the future rentals declared to be immediately due and payable at the rate of 12% per annum as aforesaid and to recover from the Lessee the shortfall or deficit together with interest thereon at the rate of 2% p.m. but the Lessor shall not in any such action or for duty to account to Lessee for such action or for any surplus realised by the Lessor by sale or lease.

The remedy referred to hereinabove is intended to be in addition to any other remedy available to Lessor at law provided however that on the Lessee making payment to the Lessor at any time before action under Clauses (a) or (b) above taken by Lessor of the present value of all future lease rentals as provided herein before, the Lessee shall retain all the equipment leased hereunder for its own use and the Lessor further undertakes to transfer all its title and interest on the said Equipment to the Lessee on receipt of payment as referred to hereinabove.

- 15. *WAIVER*: Any expressed or implied waiver by the Lessor of any default shall not constitute a waiver of any other default by Lessee or a waiver of any of Lessor's right. All original rights and powers of the Lessor under this Agreement will remain in full force, notwithstanding any neglect, forbearance or delay in the enforcement thereof, by the Lessee of this Agreement shall not be deemed as waiver of any continuing or recurring breach by the Lessee of this Agreement.
- 16. *NOTICES*: Any notices or demands required to be given herein shall be given to the parties hereto in writing and by post or by hand delivery at the address herein set forth or to such other addresses as the parties hereto may hereafter substitute by written notice given in the manner prescribed herein above.
- 17. This Agreement and other contracts executed between the parties hereto pursuant to this Agreement cannot be cancelled or terminated except as expressly provided herein. Lessee hereby agrees that Lessee's obligations to pay all lease rentals and any other amounts owing hereunder shall be absolute and unconditional. This Agreement cannot be amended except in writing and shall be binding upon and to the benefit of the parties hereto their permitted successors and assigns.

18. The captions in this Agreement are for convenience only and shall not define or limit any of the terms hereof.
19. *ARBITRATION*: All disputes, differences, claims and questions, whatsoever, which shall arise either during the subsistence of this Agreement or afterwards between the parties and/or their respective representatives touching these presents or any clause or thing herein, contained or otherwise in any way relating to or arising from these presents shall be referred to the arbitration of two Arbitrators, one to be appointed by each party to the dispute and such arbitration shall be in accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force.
20. By execution hereof, the signor hereby certifies that he has read this Agreement, including the Schedule hereto and that he is duly authorised to execute this Agreement on behalf of the Lessee.

IN WITNESS WHEREOF each of the parties hereto has caused this agreement to be executed in duplicate on this..... (date) by its duly authorised officers.

Signed for and on behalf of:

For.....

In the presence of:

Witness No. 1

Witness No. 2

Signed for and on behalf of:

For.....

In the presence of:

Witness No. 1

Witness No. 2

The Schedules above referred to

LESSON ROUND-UP

- Sale of immovable property is governed by the provisions of Transfer of Property Act, 1882. A transaction of a sale of immovable property usually involves two documents, e.g., agreement to sell and the conveyance deed i.e. sale deed. But with only a sale deed the transaction of sale can be completed.
- Before drafting the conveyance or sale deed for the immovable property, it is necessary that the title of the property be investigated and it should be ensured that the title to the property is proved as good and marketable.
- A sale deed must be properly drafted adhering to all the principal conditions prescribed under the Transfer of Property Act to acquire a perfect title to the property being purchased by the company.
- The Transfer of Property Act, 1882 deals with the mortgage of immovable property alone. It does not deal with movable at all. Therefore, it cannot be regarded as forbidding the mortgage of movable property.
- The transferor in the case of a mortgage is called a ‘mortgagor’ and the transferee as ‘mortgagee’, the principal money and interest of which payment is secured for the time being are called the ‘mortgage money’ and the instrument, if any, by which a transfer is effected is called a “mortgage deed”.

- A deed of mortgage may be drafted either as a deed poll on behalf of the mortgagor in favour of the mortgagee or as a deed between the mortgagor and mortgagee as parties.
- The Indian Easements Act, 1882 contains the statutory provisions governing licenses. Under the Act, a license may be granted by any one in the circumstances and to the extent in and to which he may transfer his interest in the property affected by the license.
- A license ordinarily carries with it the incident of non-transferability. A license cannot be transferred by the licensee or exercised by his servants or agents. The only exception to this rule is that, unless a different intention is expressed or necessarily implied, a license to attend a place of public entertainment may be transferred by the licensee.
- The revocation of license may be expressed or implied. The general rule is that subject to the agreement between the parties, all licenses are revocable at the will of the licensor. However, there are certain exceptions to this rule.
- A mere deed of license need not be registered unless any right, title or interest in immovable property of the value of Rs. 100 or more is created, declared, assigned, limited or extinguished.
- Lease is a contract between lessor and lessee for the fixed term for the use on hire of a specific asset selected by lessee. Lessor retains ownership of the assets and lessee has possession and use of the asset on payment of specified rental over a period. It is a sort of contractual arrangement between the two parties whereby one acquires the right to use the property called “lessee” and the other who allows the former the right to use his owned property, called the “lessor”.
- Before taking up drafting of the lease documents one is expected to be thorough with all the essential legal aspects involved in a lease transaction. The essential legal elements of lease are (i) the parties i.e. lessor or lessee; (ii) the subject matter of lease i.e. the property to be leased; (iii) demise or partial transfer of such property; (iv) the term and period of lease; and (v) the consideration or rent.
- The main document to complete the leasing transaction between the lessor and the lessee is the lease agreement or lease deed which contains all the conditions and covenants binding the parties to the lease transaction.

SELF TEST QUESTIONS

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

1. What precautions will you take while drafting a deed of sale of immovable property? Discuss in brief various components of a sale deed of immovable property.
2. Draft a specimen deed of sale by an administrator under orders of the Court.
3. What is the difference between license and lease? How does this difference is reflected in drafting a License Deed and a Lease Deed?
4. Draft a Deed of Surrender of Lease.
5. Draft a specimen Deed modifying terms of Lease.
6. Write short notes on the following:
 - (a) Lease and License
 - (b) Importance of covenants in Lease Deed
 - (c) Surrender of Lease
 - (d) Covenant for alteration in Lease Deed.

Lesson 7

Drafting and Conveyancing Relating to Various Deeds and Agreements-IV

LESSON OUTLINE

- Deeds of Assignment
- Assignment of Business Debt
- Assignment of Shares in a Company
- Assignment of Policies of Insurance
- Assignment of Patents,
- Assignment of Trade Marks
- Assignment of Copyrights
- Assignment of Business and Goodwill
- Partnership Deeds
- Trust Deeds
- LESSON ROUND UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

The deed of assignment stipulates what kind of rights have been assigned. An important aspect of intellectual property laws deals with assignment agreements. An assignment agreement is an intellectual property (IP) transaction that deals with the ownership and disposition of intellectual property rights as well as with the control over the use of or access to intellectual property.

A partnership deed is a document that outlines in detail the rights and responsibilities of all parties to a business. It has the force of law and is designed to guide the partners in conducting the business.

Trusts continue to form an important role in the wealth management strategy of many people in India and abroad. The most important and vital part of a trust is the expression of an intention to create a trust which should be expressed in the deed in unequivocal language and with reasonable certainty.

A gift is a common mode of transfer of property. It is the transfer of certain existing moveable or immoveable property by one person to another.

The transfer should be made voluntarily and without consideration. A detailed discussion on assignment, partnership, trust and gift has been given in the study lesson to disseminate information about the essential requirements that need to be considered while drafting assignment deeds, partnership deeds, trust deeds and gift deeds.

DEEDS OF ASSIGNMENT

An assignment is a form of transfer of property and it is commonly used to refer the transfer of an actionable claim or a debt or any beneficial interest in movable property.

A transfer of an actionable claim is usually called an assignment thereof. Section 3 of the Transfer of Property Act, 1882 defines an actionable claim as:

“Actionable claim means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of moveable property or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.”

The term assignment is, however, of wider import. It is well settled that a transfer of property clearly contemplates that the transferor has an interest in the property which is sought to be conveyed. Section 130 of the Transfer of Property Act, 1882 lays down the mode of transfer of actionable claim. It prescribes:

- (1) The transfer of an actionable claim whether with or without consideration shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent, and shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not;

Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

- (2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings, and without making him a party thereto.”

Every notice of transfer of an actionable claim must be in writing signed by the transferor or his agent duly authorised in this behalf, or in case the transferor refuses to sign, by the transferee or his agent, and must state the name and address of the transferee. (Transfer of Property Act, 1882, Section 131).

ASSIGNMENT OF BUSINESS DEBT

A sum due is the same thing as a debt due. It may be now payable or will become payable in future by reason of a present obligation. There must be an existing obligation to pay a sum of money now or in future. It includes book debts, debts due on a bond, provident fund, arrears of rent, amount due on settlement of account between principal and agent, master and servant, wages which have accrued due, money due under an insurance policy, claim to money deposited for the due performance of a duty, surplus left with the vendee of property, etc. A debt is property. It is an actionable claim and is heritable and assignable and it is treated as property under the Transfer of Property Act, 1882 and is known as “actionable claim”.

Consideration for Assignment

A debtor cannot claim or take advantage of non-payment of consideration for assignment. Section 130 of the Transfer of Property Act, 1882 specifically lays down that an assignment of an actionable claim may be with or without consideration. Passing of the property in the assigned property does not depend on the payment of consideration. The question of payment of consideration is in fact one between the assignor and the assignee.

Liability of Transferee of an actionable claim

Section 132 of Transfer of Property Act provides that the transferee of an actionable claim shall take it subject to all the liabilities and equities to which the transfer was subject in respect thereof at the date of transfer.

Warranty of Solvency of a Debtor

Section 133 of Transfer of Property Act provides that solvency of the debtor at the time of transfer is to be taken into account for purposes of warranty by the transferor. In case the transfer has been made for consideration, the warranty is limited to the amount or value of such consideration.

A Specimen of Deed of Assignment of Business Debts

THIS DEED OF ASSIGNMENT made this..... day of..... between..... son of..... resident of..... (hereinafter called "the Assignor") of the one part, and....., son of....., resident of....., (hereinafter called "the Assignee") of the other part.

WHEREAS the assignor has, for some time been carrying on the business of....., in the course whereof the several persons whose names, addresses and occupations are mentioned in the Schedule appended hereto, have become lawfully debtors to him and so for the several sums of money set opposite to their respective names;

AND WHEREAS the assignor has contracted with the assignee for the absolute sale to him of the said business debts at..... and for the sum of Rs..... (Rupees.....).

NOW THIS DEED WITNESSES that in consideration of the sum of Rs..... (Rupees.....) now paid to the assignor by the assignee (the receipt whereof the assignor hereby acknowledges), the said assignor, as beneficial owner, does hereby transfer, sell and assign unto and to the use of the said assignee, all the several said debts, and sums of money specified in the said Schedule which are now due and owing to the assignor to have and to receive them for his absolute use and benefit with absolute power, authority and liberty to enforce payment thereof by suit or otherwise and that the assignor does hereby covenant with the assignee that all the several debts are lawfully due to him and the parties by whom they are payable are alive, and further that he has not entered into any arrangement with any of them and that the assignor shall at all times hereafter do, execute and perform all such and other acts, deeds, things, or writings as may be reasonably required for realization of the said debts, and further and better and more effectively transferring and/or assuring them or any of them in favour of the assignee.

Schedule above referred to

IN WITNESS WHEREOF the assignor and the assignee do hereto affix their signatures on the day, month and the year above mentioned at..... (place).

Witness: (Assignor)

Witness: (Assignee)

ASSIGNMENT OF SHARES IN A COMPANY

Section 44 of the Companies Act, 2013 defines the nature of property in the shares of a company. It lays down: "The shares or debentures or other interest of any member in a company shall be movable property transferable in the manner provided by the articles of the company."

The definition of "goods" in the Sale of Goods Act, 1930, specifically includes stocks and shares. Hence, it is necessary to provide by the articles the manner in which transfer of shares are to be affected.

A "share" in a company is a right to a specified amount of the share capital of the company, carrying with it

certain rights and liabilities, while the company is a going concern and in the winding up. It represents the interest of the holder measured for purposes of liability and dividend by a sum of a money.

A company cannot refuse to transfer shares except as provided by its articles*. It is well settled that unless the articles otherwise provide, a shareholder has a free right to transfer his shares to whom he chooses. It is not necessary to look to the articles for a power to transfer, since that power is given by the Act. It is only necessary to look to the articles of association to ascertain the mode of transfer and the restrictions upon it.

As between buyer (transferee) and seller (transferor) of shares, the buyer is entitled to all dividends declared after the contract of sale, unless otherwise agreed. Whatever may be the agreement, a transfer of shares after declaration of dividend, does not, as against the company, carry the dividend, even though the transfer may be cum-dividend.

A Specimen of Deed of Assignment of Shares in a Company

THIS ASSIGNMENT is made this day of between AB, son of, resident of..... (hereinafter called “the Assignor”) of the one part, and CD, son of....., resident of (hereinafter called “the Assignee”) of the other part.

THE DEED WITNESSES:

That in consideration of the sum of Rs..... (Rupees.....) paid by the assignee to the assignor, the receipt whereof the assignor hereby acknowledges, the said AB hereby assigns, sells and transfers to the said CD..... Equity Shares of Rs..... each, fully paid up, bearing consecutive Nos..... to..... (inclusive), which stand in the name of the assignor in the Register of Members of..... Co. Ltd. TO HOLD the same to the assignee absolutely, subject nevertheless to the conditions on which the assignor held the same up to date.

AND the assignee hereby agrees to take the said Equity Shares subject to such conditions.

IN WITNESS WHEREOF the assignor and the assignee do hereto affix their respective signatures on the day, month and the year stated above.

Witness: *Assignor*

Witness: *Assignee*

ASSIGNMENT OF POLICIES OF INSURANCE

Policies of insurance are principally of two types (1) insuring risk to life of a person, and (2) covering various risks relating to goods. Under the former, a sum of money is secured to be paid on the death of the person whose life is insured. The latter is a contract whereby an insurer undertakes to indemnify the assured, his nominees, assigns, heirs and legal representatives against the loss of and/or damage to goods. A contract of insurance is complete when the proposal of the assured is accepted by the insurer, whether the policy of insurance is issued or not. For the purpose of showing when the proposal was accepted, a reference has to be made to the insurance cover or other customary memorandum of the contract; although it may be unstamped.

Insurable interest in the subject-matter insured is a pre-requisite of a contract of insurance and for the success of an insurance claim the assured or the claimant, as the case may be, must be interested in the subject-matter insured at the time of the loss.

An insurable interest in the subject-matter insured is a right which is capable of assignment. An insurance policy may be transferred by assignment unless it contains terms expressly prohibiting assignment. It must be assigned before death in the case of a life insurance policy and it may be assigned either before or after loss in the case of a marine or good policy. The assignee can sue on the policy of insurance in his own name and can defend an action on any ground available to the assignor. The policy may be assigned by endorsement

thereon or in other customary manner. An assured who has no insurable interest in the subject-matter insured cannot assign. Where an assured who has lost interest in the subject matter by transfer and has not, before or at the time of transferring the subject matter, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative.

A Specimen of Deed of Assignment of Policy of Life Assurance

THIS ASSIGNMENT made this..... day of..... between AB, son of....., resident of..... (hereinafter known as “the assignor”) of the one part and CD, son of..... resident of..... (hereinafter known as “the assignee”) of the other part.

WHEREAS a policy of assurance being No..... for Rs (Rupees.....) was issued by the Life Insurance Corporation of India on the life of the assignor on the..... day of..... to be paid to the assignor or to his executors, administrators or assigns after his death, subject to the annual premium of Rs.....;

AND WHEREAS the said AB has agreed to transfer and assign to the said CD the said policy of assurance of a sum of Rs..... (Rupees.....); THIS DEED WITNESSES that in consideration of the sum of Rs..... (Rupees.....) the receipt whereof the said AB hereby acknowledges, the said AB as beneficial owner, hereby transfers and assigns unto and to the use and for the benefit of CD the hereinbefore recited policy of assurance, and the sum of Rs..... (Rupees.....) hereby assured and all the other moneys, benefits and advantages to be had, recovered or obtained under or by virtue of the said policy:

TO HOLD the same unto and to the use of the said CD absolutely, subject to the conditions as to payment of future premiums and otherwise to be henceforth observed in receipt of the said policy:

AND the said AB hereby covenants with the said CD that he, the said AB, shall not do, or knowingly suffer anything to be done, whereby the said policy may be rendered void or voidable or the said CD or his heirs, executors, administrators or assigns may be prevented from receiving the said sum of Rs..... (Rupees.....) or any benefit thereunder.

IN WITNESS WHEREOF the assignor and the assignee do hereto affix their respective signatures on the day, month and the year stated above.

Witness: Assignor
 Witness: Assignee

ASSIGNMENT OF PATENTS

Patent is a right, granted by the Government under the Patents Act, 1970 to the grantee, of exclusive privileges of making or selling a new invention or process protected under the patent. The Act confers upon the patentee the right to safeguard his property in the patent and sue the person who infringes upon his patent right.

After a complete specification in pursuance of an application for a patent has been accepted and on the request of the applicant, the Controller shall cause the patent to be sealed with the seal of the Patent Office under Section 43 of the Patents Act, 1970. Section 48 of the Act, confers upon the Patentee where the subject matter of the patent is a product, the exclusive right to prevent third parties who do not have his consent from the act of making, using, offering for sale, selling or importing for those purposes that product in India. Where the subject matter of the patent is a process, the patentee is given exclusive right to prevent third parties who do not have his consent from the act of using that process and from the act of using, offering for sale, selling or importing for those purposes the product obtained directly by that process in India provided that the product obtained is not a product in respect of which no patent shall be granted under this Act.

Section 68 of the Act makes provision with regard to the assignment of patents. The Section lays down:

“An assignment of a patent or of a share in a patent, a mortgage, licence or the creation of any other interest in a patent shall not be valid unless the same were in writing and the agreement between the parties concerned is reduced to the form of a document embodying all the terms and conditions governing their rights and obligations and the application for registration of such document is filed in the prescribed manner with the Controller within six months from the execution of the document or within such further period not exceeding six months in the aggregate as the Controller on application made in the prescribed manner allows:

Provided the document shall, when registered, have effect from the date of its execution.”

Section 69 of the Act dealing with registration of assignments prescribes: “Where any person becomes entitled by assignment, transmission or operation of law to a patent or to a share in a patent or becomes entitled as a mortgagee, licensee or otherwise to any other interest in a patent, he shall apply in writing in the prescribed manner to the Controller for the registration of his title, or, as the case may be, of notice of his interest in the register.”

Section 70 of the Act empowers the person or persons registered as grantee or proprietor of a patent to assign, grant licences under, or otherwise deal with, the patent and to give effectual receipts for any consideration for any such assignment, licence or dealing. The Section further lays down that any equities in respect of the patent may be enforced in like manner as in respect of any other moveable property.

A Specimen of Deed of Assignment of a Patent

THIS DEED OF ASSIGNMENT is made on this day of between AB son....., resident of..... (hereinafter called the “assignor”, which term shall include his heirs, executors and assigns) of the one part and CD, son of..... resident of..... (OR IN THE ALTERNATIVE IF THE PATENTEE ASSIGNEE IS A COMPANY)..... and..... Co. Ltd. (hereinafter called the “assignee”/”company” incorporated under the Companies Act, 2013 having its Registered Office at.....) of the other part under the terms and conditions set hereunder:

WHEREAS the assignor has invented a process for the manufacture of..... which was duly registered and entered in the Register of Patents bearing No..... dated..... and duly sealed in the Patent Office:

AND WHEREAS the company is a company limited by shares incorporated under the Companies Act on..... with an Authorised Share Capital of Rs..... divided into..... Equity Shares of Rs..... each;

AND WHEREAS it had been agreed between the parties to this Deed that in consideration of the assignment to be made by the assignor of his rights under the said Patent to the Company in the terms mentioned hereunder, for the sum of Rs..... (Rupees.....) to be satisfied by allotment of..... Equity Shares to the assignor and/or his nominees as fully paid up:

AND WHEREAS the directors of the Company in part-performance of the said agreement resolved in a Board meeting held on the..... to allot the requisite number of Equity Shares at the direction of the assignor as specified in the Schedule attached hereto:

NOW THIS DEED OF ASSIGNMENT WITNESSES:

That in consideration of the premises and in accordance with the agreement aforementioned and on payment of the sum of Rs..... (Rupees.....) satisfied by the allotment of..... Equity Shares in the Company as specified in the Schedule attached hereto at the direction of the assignor by the Company, each Share being credited as fully paid up (the allotment of which shares credited as aforesaid the assignor hereby acknowledges) the assignor, as beneficial and sole owner, hereby assigns unto the Company his title to the said patent and all benefits and advantages accruing therefrom and all rights and privileges attached thereto to hold unto the Company absolutely.

The assignor covenants with the Company that he has not assigned or otherwise dealt with the said patent and that his title to the said patent subsists and that he has done nothing to prejudice the rights of the Company as transferee thereof to use the said patent exclusively.

The assignor further covenants with the Company that he shall join the Company in applying to the Central Government or other authority at the expenses of the Company, for extension of the said patent and shall do his utmost in obtaining such extension to ensure for the benefit of the Company and shall do nothing to prevent the Company from securing the extension and user of the patent in the manner prescribed by law, without the payment of any further consideration by the Company to the assignor.

The assignor further covenants with the Company that if during the currency of the said patent and the operation of the Company as a going concern, the assignor shall discover, invent or make any improvements in respect of the said invention or shall discover any other process or method for the manufacture of....., he will disclose the same to the Company and explain the new method of discovery to the Company and at the cost of the Company give such full particulars and exhibit and make such experiments as may enable the Company to make practical use of such method and discovery and join the Company in applying for patent for such new invention at the option of the Company and do all other acts and execute all such deeds as may be requisite therefor to vest in the Company all rights, title and interest in such new invention or improvement for the use and benefit of the Company.

IN WITNESS WHEREOF the parties aforesaid have set their respective hands in the presence of the witnesses hereunder.

Witness:

Assignor

Witness:

Assignee/Company

Note : In case the assignee is not a company the word 'assignee' will be substituted for 'company' and other suitable modifications will have to be made.

ASSIGNMENT OF TRADE MARKS

A trade mark is visual symbol in the form of a word, a device or a label applied to articles of commerce with a view to indicate to the purchasing public that the goods manufactured or otherwise dealt in by a particular person are distinguished from similar goods manufactured or dealt in by other persons. By virtue of such an affixture of the trade mark the person who sells his goods under the particular trade mark acquires an exclusive right subject to certain conditions, to the use of the mark in relation to those goods. Such a right acquired by use is recognised as a form of property in the trade mark, and protected under Common Law. A person can also acquire a similar right over a trade mark, not so far used but only proposed to be used, by registering it under the Trade Marks Act, 1999. It may be pointed out here that prior to Trade Marks Act, 1999, the law governing trade marks was stipulated under the Trade and Merchandise Marks Act, 1958. In view of the developments in trading and commercial practices increasing globalisation of trade and industry, the need to encourage investment flows and transfer of technology, need for simplification and harmonization of trade mark management and to give effect to important judicial decisions, the said Act was amended and the new Trade Marks Act, 1999 was passed to provide for registration of trade marks for goods as well as services including prohibition to the registration of imitation of well known trade marks and expansion of grounds for refusal of registration.

A trade mark is property, but its precise nature differs substantially from other forms of property with which most people are familiar. It is not necessary that the trade mark chosen by a trader should be the result of inventive skill or intellectual labour. The word or device adopted for a trade mark may be some common place or thing. Subject to certain minimum conditions, the owner of the mark, whether registered or unregistered, theoretically at least, gets a perpetual right to the exclusive use of it in relation to the particular goods in respect of which it is registered or used.

The object of trade mark law is to deal with the precise nature of the right which a person can acquire in respect of trade marks; the mode of acquisition of such rights, the method of transfer of those rights to others, the precise nature of infringement of such rights, and the remedies available in respect thereof. This branch of commercial law has undergone changes from time to time, with the changing pattern of business methods and practices. Even the very concept of a trade mark and its functions have changed. One can, therefore, expect more changes to take place in course of time.

Section 37 of the Trade Marks Act, 1999 deals with the power of registered proprietor of a trade mark to assign his rights in the trade mark. The Section lays down: "The person for the time being entered in the register as proprietor of a trade mark shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power to assign the trade mark, and to give effectual receipts for any consideration for such assignment."

Section 38 of the Act further lays down:

"Notwithstanding anything in any other law to the contrary, a registered trade mark shall, subject to the provisions of this Chapter, be assignable and transmissible, whether with or without the goodwill of the business concerned and in respect either of all the goods or services in respect of which the trade mark is registered or of some only of those goods or services."

An unregistered trade mark, according to Section 39 of the Act, shall not be assignable or transmissible except along with the goodwill of the business concerned.

A Specimen of Deed of Assignment of a Registered Trade Mark

THIS DEED OF ASSIGNMENT made between AB, son of....., resident of..... (hereinafter called the "assignor") of the one part and CD, son of..... resident of..... (hereinafter called the "assignee") of the other part.

WHEREAS the said AB is the owner of a Trade Mark Number..... duly registered in the Register of Trade Mark maintained by the Trade Marks Registration Office at.....;

AND WHEREAS the said AB has made actual and *bona fide* use of the said Trade Mark in India in relation to the toiletry goods manufactured by him at his factory in.....

NOW THIS DEED OF ASSIGNMENT WITNESSES that in pursuance of the said agreement and in consideration of the said sum of Rs..... (Rupees.....) paid by the said CD to AB, the receipt whereof the said AB hereby admits/acknowledges and confirms, he the assignor AB do hereby grant, transfer and assign upon the terms hereinafter mentioned, the exclusive use and all benefits of the aforesaid Trade Mark in relation to the goods of toiletry manufactured by him at his factory at.....

AND the said assignor hereby covenants with the assignee that he will not infringe nor use a mark identical with the Trade Mark hereby assigned nor use another Trade Mark nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to the goods in respect of which it is registered and in a manner as to render the use of this Trade Mark likely to be taken either as being a use of the said Trade Mark or to import a reference to the assignor.

AND the assignor further covenants that he, the assignor shall, at the cost of CD or any person claiming through him, do or cause to be done any other act, deed or thing as may be required for more perfectly assuring the aforesaid assignment.

IN WITNESS WHEREOF the parties aforesaid have set their respective hands in the presence of the witnesses hereunder.

Witness: Assignor

Witness: Assignee

ASSIGNMENT OF COPYRIGHTS

Section 14 of the Copyright Act, 1957 defines “copyright” as an exclusive right subject to the provisions of the Act to do or authorise the doing of any of the acts stated thereunder in respect of a work or any substantial part thereof with regard to original literary dramatic, musical and artistic works; the cinematograph films and sound recording. The rights granted under Section 14 of the Act relate to reproduction, publication, performance, production, translation, making film or sound recording, selling or giving on hire film or sound recording, communicate film or sound recording to public and to make adaptation of the copyright work.

Section 18 of the Act deals with the assignment of copyrights. The Section lays down:

- “(1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof;

Provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence.

- (2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly.

- (3)

With regard to the mode of assignment, Sub-section (1) of Section 19 of the Act prescribes: “No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by his duly authorised agent.”

A Specimen of Deed of Assignment of Copyright of a Book

THIS DEED OF ASSIGNMENT made this..... day of..... between..... (hereinafter called the “author”) of the first part and Messrs..... carrying on the business of publishers at..... (hereinafter called the “publishers”) of the second part.

WHEREAS the author is entitled to the copyright of the book known as.....;

AND WHEREAS the publishers approached the author for assignment thereof, which the author has agreed to do on the terms and conditions hereunder contained.

NOW THIS DEED OF ASSIGNMENT WITNESSES as follows:

1. In consideration of an subject to the covenants on the part of the publishers as hereinafter contained, the author does hereby grant, convey, transfer, sell, assign and assure unto and to the use of the publishers all that copyright as defined in Section 14 of the Copyright Act, 1957, of the book entitled..... on the subject of..... to have and hold the same as absolute owners thereof for the full term of copyright as prescribed by law.
2. The publishers shall so long as the said work or any adaptation, modification or translation thereof is published and sold, submit to the author twice every year once during the month of January and the other during the month of June, a statement of account showing details of copies printed, published, held in stock and sold or disposed of (Except otherwise by sale of damaged or destroyed copies) and of the profits, if any, earned thereunder.
3. The publishers shall pay or cause to be paid to the author or his nominee or nominees a royalty at the rate of..... per cent on the sale proceeds of the copies of the work or adaptations or translations thereof that may be actually published and as disclosed in the statement of account

referred to in clause (2). No royalty shall be payable on any copies of the work that may be damaged or destroyed or disposed of otherwise than by regular sale.

4. That the publishers shall also pay to the author half the net profits earned by them, if any, from any transfer, sale or assignment of any of the rights comprising the copyright or from grant of any interest or license therein: provided that the publishers shall not be entitled to and shall not do or cause anything to be done in derogation of the author's rights, particularly the right to royalty reserved hereunder.
5. That the author does hereby agree to revise the work and bring it up to date or otherwise modify, alter, adapt or translate it or get it translated whenever reasonably required by the publishers provided also that the publishers will not normally require the author to do so more than once in two years; provided further that in case the author shall fail and/or neglect, and/or refuse, to revise, modify, alter, translate the work or get it translated as and when reasonably required by the publishers, they shall be at liberty to get the same done on his account by any person or persons of their choice after due notice to the author and deduct all costs, charges and expenses out of moneys payable to the author: provided also that in selecting the person proposed to revise, modify, alter, adapt or translate the work and in fixing the remuneration to be paid therefor, the author's wishes, if any, shall so far as possible, be respected by the publishers.
6. That the author has delivered (or shall deliver within a period of.....) the manuscript of the said work to the publishers.
7. That the author does hereby declare that the work of which the copyright is being hereunder assigned is entirely the original work of the author and that the same does not in any manner whatsoever violate or infringe any existing copyright or any other right of any other person or other persons; and further that it does not contain anything which may be considered as obscene, libellous, scandalous or defamatory.
8. The author hereby agrees to indemnify and keep the publishers indemnified against all claims, demands, suits and other actions and proceedings, if any, that may be instituted or taken and also against all damages, costs, charges, expenses which the publishers shall or may suffer, on account of printing, publication or sale of the said work or any part thereof, or by reason of such printing, publication and/or sale being an infringement of some other person's copyright or other rights in the work or by reason of its containing anything which may in any sense be obscene, libellous, scandalous or defamatory.
9. The publishers shall print and publish the work or cause the same to be printed and published as soon as practicable within a period of twelve months from the date of this contract, and in default thereof, the author may, by a notice in writing, call upon the publishers to print and publish the work within two months of the receipt of the said notice; and if the publishers shall still fail and/or neglect to print and/or publish the work within the said period, save and except in so far as they are prevented from doing so by circumstances beyond their control, the author shall be at liberty to rescind the contract on giving a notice to that effect to the publishers when the copyright shall revert fully to the author and all the rights of publishers shall as from that date stand determined.
10. That in case of a dispute or difference arising between the parties touching the meaning, construction, interpretation, breach or fulfilment or non-fulfilment of the terms of these presents or any clause or condition thereof, the same shall be referred to the decision and arbitration of two arbitrators, one to be nominated by each party and in case of difference of opinion between the two arbitrators to an umpire to be nominated by the arbitrators before the commencement of the reference; and the award of such arbitrators, as the case may be, shall be final and binding on both the parties and this clause shall be deemed as of submission within the meaning of the Arbitration & Conciliation Act, 1996 and its statutory modification and re-enactment.
11. That the words "author" and "publishers" or "parties" used hereinabove shall unless there be something

contrary to the context, include their respective heirs, survivors, successors, representatives, executors, administrators and assigns and successors in business.

IN WITNESS WHEREOF the parties hereto have executed these presents on the date, month and the year hereinbefore mentioned in the presence of the witness.

Witness:

Author

Witness:

Publisher

ASSIGNMENT OF BUSINESS AND GOODWILL AND OTHER RIGHTS AND INTERESTS

Goodwill is an intangible asset. It is easy to describe but difficult to define. It represents the value to a business attaching to all the factors, internal and external, which enable it to earn a differential return of profit on the capital employed; that is, a better return than that which arises in other comparable businesses, having regard to the nature, size, location and risk inherent in such a business, and which is capable of being enjoyed by a successor.

Goodwill has been variously defined by different commercial pundits. Some definitions are: “The goodwill of a business is the advantage, whatever it may be, which a person gets by continuing to carry on, and being entitled to represent to the outside world that he is carrying on a business, which has been carried on for some time previously.”

“The attractive force which brings in custom.”

“The benefit of a good name, reputation and connection of a business.”

“The one thing which distinguishes an old-established business from a new business at its first start.” “The monetary measurement of the benefits attaching to the ownership of a successful business.” “The capitalized value attaching to the differential profit-capacity of a business.”

“The whole advantage, whatever it may be, of the reputation and connection of the firm which may have been built up by years of honest work orgained by lavish expenditure of money.”

Goodwill is an intangible, but not necessarily a fictitious asset, representing the value - however difficult its appraisalment may be - to its owner, of benefits arising from the business in question, such as the sole right to enjoy the profits of the business, and, where goodwill has been acquired, the sole right of succession to the advantages of the business which have been built up in the past. Goodwill arises mainly:

- (a) by personal reputation of the owners;
- (b) by reputation of the goods dealt in;
- (c) by site monopoly or advantage;
- (d) by access to sources of supply, e.g., large quotas;
- (e) for patent and trade-mark protection;
- (f) effectiveness of publicity;
- (g) reputation of the first's goods and methods;
- (h) relationship between firm and personnel; and
- (i) growth element.

The purchaser of goodwill acquires the trade marks, patents, copyrights etc. of the business as well as the benefits of contacts and all the benefits accruing from the location, reputation, connections, organisation and other exceptional features of the business. The purchaser will seek to express the sum payable in terms of the

compound or capitalised value of an annuity of future differential or “super” profits that is those profits in excess of the marginal return normally arising.

No formula can be laid down for the accurate measurement of the value of goodwill, and in practice a purchaser will be prepared to pay a sum representing a number of years’ purchase of recent annual average profits, e.g. three years’ purchase, according to the estimated worth to the buyer of the future earning capacity of the business, the risk of the discontinuance or diminution in true profits being duly considered.

A Specimen of Deed of Sale of a Business and Assignment of Goodwill

THIS SALE is made this..... day of....., between V (the vendor), of the one part and P (the purchaser) of the other part.

WHEREAS the said vendor is carrying on the business of.....;

AND WHEREAS the said purchaser has agreed with the said vendor for purchase by him of all the interest and goodwill in the said business, and the debts, stock-in-trade, effects and the premises on which the said business is being carried on, at the price of Rs..... and upon the terms and conditions hereinafter mentioned:

AND WHEREAS the said vendor has delivered to the said purchaser the books of account and other books relating to the said business, and in the said books are set forth the accounts and particulars of the debts, respectively due and owing to and from the said vendor, and also the particulars of the contracts and engagements to which he is liable in respect of the said business.

NOW THIS DEED WITNESSES:

- (1) In pursuance of the said agreement and in consideration of the sum of Rs..... (Rupees.....) paid by the said purchaser to the said vendor (the receipt whereof the said vendor hereby acknowledges), and also in consideration of the agreement hereinafter contained on the part of the said purchaser, the said vendor does hereby convey, assign and make over to the said purchaser, all the beneficial interest and goodwill of the said vendor in the said business..... so carried on by him as aforesaid, and also all the book and other debts now due and owing to him on account of the said business and all securities for the same, and also all contracts and engagements, benefits and advantages which have been entered into with the said vendor and also all the stock-in-trade, goods, fixtures, articles and things which, at the date of this Deed belong to the said vendor on account of the said business and all the rights, title and interest of the said vendor to and in the said premises, to have and to hold the premises hereby conveyed to the said purchaser absolutely;
- (2) The said vendor does hereby agree with the said purchaser that he, the said vendor, will not at any time hereafter either by himself or in collaboration with any other person or persons, carry on the said business of..... within..... kilometers of.....;
- (3) The amounts and particulars of the debts respectively due and owing to and from the said vendor on account of the said business and the particulars of the contracts and engagements to which he is liable with respect to the said business, are correctly stated and set forth in the books of account and other books delivered by the said vendor to the said purchaser;
- (4) The said vendor will pay all the sums (if any) which may now be due and owing from the said business in excess of the amounts which in the said books appear to be so due and owing;
- (5) The said vendor has full right to sell and assign the said premises hereby sold and assigned to the said purchaser and will not at any time hereafter revoke, annul and make void the aforesaid power or authority hereby given to the said purchaser, or do or execute or knowingly or willingly suffer any act, deed or thing, whereby the said purchaser may be prevented from having and receiving the said premises or any part thereof, to and for his own use and benefit, or by means whereof the said purchaser shall be injured in the said business; and

- (6) The said vendor will, from time to time and at all times hereafter, use his best endeavours to promote the said business and to give to the purchaser full advantage of the connections and customs of the said vendor, in the said business.

AND THIS DEED ALSO WITNESSES, that in pursuance of the said agreement in this behalf and in consideration of the premises, the said purchaser does hereby agree with the said vendor that he, the said purchaser, will, from time to time and at all times hereafter, keep harmless and indemnified the said vendor and his estate and effects from and against the several sums of money which by the said books appear to be due and owing from the said vendor in respect of the said business and also from and against the contracts and engagements to which by the said books the said vendor appears to be now liable, and also interests, costs, expenses, losses, claims and demands on account of the said debts, contracts and engagements respectively.

It is further agreed that the names of the parties hereto shall, unless inconsistent with the context, include as well the heirs, administrators or assigns of the respective parties as the parties themselves.

IN WITNESS WHEREOF the said vendor and the said purchaser have hereto respectively signed on the day, month and the year above-written.

Witness:

Vendor

Witness:

Purchaser

PARTNERSHIP DEEDS

Introduction

A detailed discussion of the Partnership Act, 1932 is not within the scope of this Study. Students are, therefore, advised to study the Indian Partnership Act, 1932 in detail on their own so as to acquaint themselves, *inter alia*, with the nature, formation, registration and dissolution of partnership. However, introductory observations on some of the relevant aspects of the partnership are made below.

Partnership - Its Nature and Meaning

Partnership is an association of two or more like minded persons formed with a common objective to establish a lawful business house of their choice with the idea of earning profits. However, in any business enterprise the possibility of its incurring loss cannot be ruled out. Therefore, all partners of a firm mutually agree to share all profits and losses of the business amongst them according to their predetermined shares/proportions fixed by them in the partnership agreement.

Partnership is defined in Section 4 of the Partnership Act, 1932 as a relation between persons who have agreed to share profits of business carried on by all or any one of them acting for all. Partnership requires three elements – (a) an agreement entered into by all persons concerned; (b) distribution of the profits of business; and (c) management of the business by all or any one or more of them acting for all, i.e., mutual agency. Out of these three, the third element, i.e., the element of mutual agency, is most essential and it distinguishes partnership from other type of contractual relationship between the parties. If this element is absent the partnership fails. One partner is not only an agent of the firm but also of the other partners and, if so, can bind another which falls within the scope of partnership subject to limitation under Section 20 of the Act.

A partnership is distinguishable from associations e.g., clubs, societies, co-operative bodies and incorporated companies.

The real intention and conduct of the parties appearing from the (a) written agreement, or (b) verbal agreement together with surrounding circumstances are the tests of partnership [*Cox v. Hickman* (1860) 8 HLC 268].

Persons who have entered into partnership with one another are called individually partners and collectively

a firm, and the name under which their business is carried on is called the firm name (Section 4 of the Indian Partnership Act, 1932).

A partnership agreement usually makes provisions for the duration of the partnership or for its determination. Where no such provision is made the partnership is “partnership at will”.

Who can be Partners

The word “person” in Section 4 of the Indian Partnership Act, 1932 contemplated only natural and legal persons. (*Duli Chand v. C.I.T.*, AIR, 1956 SC 354). Partnership relation is one of contractual nature. Therefore, such persons who are competent to contract can enter into partnership. A firm or a Hindu Undivided Family is not a legal person and cannot enter into partnership with any person. When the Karta of a Joint Hindu Family enters into a partnership with strangers the other members of the family do not *ipso facto* become partners (*Firm Bhagat Ram v. Comm. of Excess Profits Tax*, AIR 1956 SC 374).

A minor cannot be a partner in a firm but, with the consent of all the partners, he can be admitted to the benefits of partnership (Section 30). He is entitled to share in the profits and his share is liable for the acts of the firm, but he is not personally liable. He cannot be made liable for the losses of the firm. Within six months of attaining majority or obtaining knowledge of his admission, whichever is later, the minor may elect to become or not to become a partner in the firm.

A person may be an active partner in the firm or he or she may choose to remain a dormant or a sleeping partner only. It all depends on the contract between the parties.

Two partnership firms cannot enter into partnership as such but its partners can certainly form a new partnership. However, a partnership firm may be a member of an association or company licenced under Section 8 of the Companies Act, 2013. The limited company of which a firm may be a member should be one formed for promoting Commerce, Art, Science, Religion, Charity or any other useful object without any profit making motive. On dissolution of the firm, its membership of the association or company shall cease.

While considering applications for registration of firms with bodies corporate as partners under the Indian Partnership Act, 1932, the State Government should examine the applications before them and find out whether the memorandum and articles of association of the applicant incorporated companies contain any special article which authorise the incorporated companies to enter into partnership.

Registration of Partnership Firm

Registration of partnership firm has been made optional under the provisions of Section 58 of the Indian Partnership Act, 1932. Consequences of non-registration of a partnership firm are set out in Section 69 of the Partnership Act. An unregistered firm cannot enforce a right or claim arising out of a contract against any third party. However, if the firm obtains registration on the date of institution of the claim against third person, the said claim or right would be perfectly maintainable. Since the blow of the consequences of non-registration is very severe, it is advisable to get the partnership registered under the Partnership Act, 1932 immediately on its incorporation.

Registration of Partnership Firm under the Income-tax Law

Registration of partnership under the Income-tax Law is distinct from registration of firm under the Partnership Act. Rule 22 of Income-tax Rules, 1962 provides that an application for registration of partnership firm should be accompanied with an instrument of partnership specifying the apportionment of shares of profit and losses of the business amongst the partners of the firm. This registration is required to be renewed every year under the orders of the concerned Income-tax Officer.

Partnership Deed/How Made

The partnership is based on contract. This contract may be made either orally or in writing or even may be inferred from the course of dealing between the partners. In order to avoid all disputes relating to terms of partnership, it is suggested that a written document containing terms and conditions of partnership be executed between the partners. The deed is executed by all the partners and is drafted as an agreement to carry on certain business in partnership on certain terms and conditions. Some of the terms are indicated above.

While drafting partnership deed we should incorporate all terms and conditions that govern a particular partnership business. Partners of any partnership business are normally interested in settling certain terms amongst them before they join hands to carry on business in partnership. As a draftsman of the partnership deed one should be extra careful to understand and properly incorporate in partnership deed the terms relating to the following:

- (1) Name and place of business.
- (2) Duration of the partnership.
- (3) Shares of each partnership in the profits and losses of the business.
- (4) The management of the business.
- (5) Nature of principal work agreed to be carried on in partnership.
- (6) Number of partners and initial capital employed by each one of them.
- (7) Provision and the manner for raising future capital, if required.
- (8) Work distribution, if any, of each of the partners.
- (9) Obligation of partners who are members of a partnership firm.
- (10) Operation of Bank Accounts.
- (11) Withdrawal by partners.
- (12) Accounting system of the business.
- (13) Whether place of business belongs to partnership or any individual partner.
- (14) Division/Devolution of goodwill of the business in case of dissolution of partnership.
- (15) Distribution of assets and liabilities amongst partners at the time of dissolution.
- (16) Provisions for bringing in or admitting new partners.
- (17) The effect of the death of a partner, whether his heirs will take his place, or the partnership will be continued by the remaining partners or it will stand dissolved.
- (18) Provision for resolving disputes relating to partnership if arises amongst the partners. If all partners agree to settle their partnership disputes through the intervention of some named person who may act as an arbitrator for them or even otherwise by arbitration, it is always advisable to include an arbitration clause in the partnership stating that all disputes that may arise between the partners will be resolved by reference to arbitrator under the provisions of the Arbitration and Conciliation Act, 1996.

Besides the above conditions if there are any other particular conditions which partners want to include in the partnership deed the same may suitably be incorporated therein. Language used in the partnership deed must be such that it may avoid all possible confusion relating to terms of partnership and should be easily understandable.

A draft of model partnership deed executed between two partners is given at *Annexure I*. A specimen form of deed extending period of partnership is given at *Annexure II*.

Introduction of a New Partner

Introduction of a new partner is a matter of agreement between the partners (vide Section 31 of the Partnership Act, 1932. Also see Section 42 of the said Act).

Introduction of a new partner in the existing partnership brings in a change in the constitution of the firm. A new partner cannot be admitted to the existing partnership except with the consent of all the existing partners of the firm but subject to any contract to the contrary between such partners. The person so admitted as a new partner in the existing partnership shall not be liable for any act of the firm done before he became a partner. Where the articles of partnership provide in express terms for the retirement and admission of partners, the right of retiring and introducing new partners under the agreement are fixed thereby except so far as they may be modified by the terms of a subsequent agreement. If a person enters an existing firm without specifying the terms upon which he becomes a partner, it is presumed that he accepts the terms of the original partnership articles, except as they are modified by the introduction of a new member.

A draft of model deed of agreement on admission into firm of a new partner is given at *Annexure III*.

Retirement and Expulsion of Partners

These matters can be regulated by the terms incorporated in a deed of partnership. Sections 32 and 33 of the Partnership Act, 1932 also make provision for these matters.

A partner may retire from a firm with the consent of all other partners. If the terms of the agreement so provide, a partner may retire by notice to the other partners. In a partnership at will also a partner can retire by giving notice in writing to all the other partners of his intention to retire. A partner can be expelled from a firm by a majority of the partners where such a power is conferred by the agreement between the partners and the power is exercised in good faith.

Nomination of Successor

It is not uncommon in partnership agreements to find a clause as to nomination of a successor who has the right to be declared and admitted as partner in the event of death or retirement of a partner. It was, however, held by the Supreme Court in *Commissioner of Income Tax v. Govindram Sugar Mills*, AIR 1966 SC 24, that the nomination is not effective in case of partnership firm consisting of two partners only as it stands dissolved on the death of a partner; nevertheless, in view of the rights and obligations of a person to be nominated as under Section 31 of the Act, the same principle in case of agreement between two persons is applicable in case of partnership between two partners.

Purchase of Business by a Partner

When a partnership ceases to exist and partnership business is closed its assets and liabilities are valued and thereafter every partner or his representative is entitled as against all the other partners or their representatives to have the property of the firm applied in payment of the debts and liabilities of the firm and to have the surplus distributed among the partners or their representatives according to their rights.

Dissolution of Partnership

When jural relation between all the partners *inter se* is snapped, this constitutes dissolution of the firm. Dissolution of a firm may take place:

- (1) Without the intervention of the Court.

(2) With the intervention of the Court.

Dissolution without the intervention of the Court may take place:

- (a) by agreement between the parties,
- (b) by the adjudication as insolvent of all the partners or of all the partners but one.
- (c) by the business of the firm becoming unlawful,
- (d) subject to agreement between the partners:
 - (i) by the expiry of the term fixed,
 - (ii) by the death of a partner,
 - (iii) by the insolvency of a partner,
- (e) by notice in writing in case of partnership at will.

Dissolution with the intervention of the Court may be made on any of the grounds contained in Section 44 of the Partnership Act.

The mere incoming or outgoing of partners does not dissolve the firm.

A draft model each of deed of dissolution of partnership, and deed of dissolution of partnership by which one partner sells his share in partnership property to the other partner are given at *Annexure IV & V* respectively. Different forms of notices to dissolve partnership are given at *Annexure VI*.

Execution and Attestation: Registration

A deed of partnership, or of dissolution of partnership, must be executed and attested as a bond on a non-judicial stamp paper of proper value, and its registration is not compulsory; but where a deed of dissolution of a firm involves transfer of immovable property worth Rs. 100 or upwards, the deed is compulsorily registrable.

No law requires that a deed of partnership should be attested, but it is desirable that it should be attested by at least two partners. Stamp duty on an instrument of partnership and on a deed of dissolution is payable under Article 46. Schedule I to the Indian Stamp Act, 1899.

ANNEXURES

(MODEL FORMS)

ANNEXURE I

Deed of Partnership between two Partners

(To be executed on Rs. 15/- Non Judicial Stamp Paper)

THIS INDENTURE OF PARTNERSHIP IS MADE ON the..... day of..... 2018 Between A.B. S/o..... R/o..... aged..... (hereinafter called the 'First Party') AND C.D..... aged..... years, son of..... resident of..... (hereinafter called the 'Second Party').

WHEREAS the parties hereto have agreed to commence business in partnership and it is expedient to have a written instrument of partnership.

WHEREAS the parties hereto have mutually agreed to carry on the business of..... (here describe the business) at..... (here specify the place or the principal place of business) and to share the profits and losses of the said business in partnership between themselves and they have with that object

constituted themselves into a firm of partners under the name and style of M/s..... (here give the name of the firm).

The terms and conditions agreed to by and between the parties hereto witnesses:

1. The duration of the firm shall be, to begin with, a period of..... years or such further or lesser period as the parties may choose to mutually agree.
2. The capital of the firm for the time being is fixed at Rs..... (Rupees.....) only which has been contributed by the partners as follows namely:
 First Party..... Second Party.....

(In case minor is admitted to the benefits of the partnership the capital contributed by him, if any) Provided that the partners may by mutual agreement increase or decrease the capital and their respective contributions thereto. The partners by mutual consent may raise capital by way of loans if considered expedient.

3. The partners shall distribute the net profits and bear the losses in the following ratios:
 First Party.....
 Second Party.....

4. The partner, shall be entitled to withdraw out of the profits, money not exceeding Rs..... in each month adjustable against the account of the respective partners at the time of annual accounting.
5. The First party shall make available to the firm the shop premises in which the business of the firm shall be carried on, situated at..... and which shop or premises is in his occupation as a tenant from month to month paying a monthly rent of Rs..... to Shri..... and shall hereafter hold the said shop or premises in trust for the partnership for which rent shall be paid out of the partnership from the date mentioned in para 1 above.

6. The said rent, and all taxes, duties, repairs and outgoings in respect of the said shops or premises or other place or places of business of the partnership shall be paid out of the partnership.
7. No apprentice, clerk or servant shall be employed or dismissed without the consent of all the partners.
8. The firm shall regularly maintain in the ordinary course of business a true and correct account of all its incoming and outgoings and also all its assets and liabilities in proper books of accounts which shall ordinarily be kept at the firm's place of business.
9. Immediately after each..... day of..... in every year, the partners shall take an account and valuation of the effect, credits and liabilities of the partnership. Such accounts and valuations shall after mutual examination be drawn up in duplicate and signed by the partners, we shall each retain a copy. The entries in such signed accounts shall be final and binding between the parties. The profits or loss, as the case may be, shall be divided as aforesaid, after the signing of such account.

10. The authority of the partners, individually shall be limited to the following:
 - (a) No partner shall individually purchase goods for the partnership without consulting the other and obtaining his consent for purchases of the value exceeding Rs.....
 - (b) No partner shall singly bind the partnership by taking any loan or raising any money whether with or without security to the extent of more than Rs.....
 - (c) No partner shall commit the partnership without obtaining the written consent of the other, to any undertaking which involves the partnership financially to the extent of more than Rs.....
 - (d) All law suits shall be filed and defended by the partnership by the partners acting jointly in all

cases which involve the partnership financially to the extent of more than Rs.....

11. The partnership shall be deemed to be continuing on the admission of a fresh partner or partners, provided the admission is on the terms herein laid down and is approved by all the partners.
12. Every partner shall be entitled to dissolve the partnership in the event of the other committing breach of the conditions herein covenanted. The partnership may be dissolved by a notice in writing sent by registered post to the address herein given or such address as may be registered from time to time with the Registrar of Firms. On the dissolution of the firm under this clause the expelled partners shall not be liable for any loss incurred as from the date of dissolution. But no profit or loss shall be paid or become payable except at the time of annual accounting.
13. On the bankruptcy of any partner or on notice being given to either partner under clause 12 above or on the death and there being no major legal representative willing or capable to take the place of the deceased partner the partnership shall terminate. The share of such partner may be purchased by the remaining partner(s) at a valuation to be made by arbitrators or their umpire as hereinafter mentioned. The price shall be paid in 3 equal six monthly instalments. The tenancy right of the first party shall be valued at..... years' rental.
14. Upon the determination of the partnership by afflux of time, or upon its determination by any other partner then, as soon as convenient, a full and general account of valuation shall be taken of the property and assets and liabilities of the partnership and the property and the assets put to sale and the debts realised and the creditors paid. The net proceeds in cash shall be equally divided between the then partners or the partners and the legal representative or representatives of the deceased partner; PROVIDED always, that if the proceeds are less than the liabilities the loss shall be made good in equal shares by the then partner, or the legal representative or representatives of any deceased partner.
15. If at any time any dispute, doubt or question shall arise between the partners, or their representatives either on the construction of these presents, or respecting the accounts, transaction, profits or losses of the business or otherwise in the relation to the partnership then every such dispute, doubt or question shall be referred to arbitrators chosen by each of the partners and the representatives of their umpire to be appointed in the manner provided by law and such reference shall in all respect, as to the mode and consequence thereof conform to the provisions in that behalf contained in the Arbitration and Conciliation Act, 1996 or any statutory modification thereof.

IN WITNESS WHEREOF the said A.B. and C.D. have hereto at..... signed the day and the year first above mentioned.

WITNESSES:

Sd/- A.B.
Sd/- C.D.

Note : *There may be more than two partners in a firm. In that case, the number of parties may be accordingly increased in the first para of the partnership deed and the said para may be drafted as given below:*

“THIS DEED OF PARTNERSHIP is made the..... day of..... 2018
Between A.B., aged..... etc. (hereinafter called the “First Party”) AND C.D., aged..... etc. (hereinafter called the “Second Party”) of the second part AND E.F., aged..... etc. (hereinafter called the “Third Party”) of the Third Part.”

Thereafter, the terms and conditions as mentioned in the above Model Form, with suitable modifications, should be given.

Deed extending Period of a Partnership

THIS DEED OF AGREEMENT is made the..... day of..... 2013

BETWEEN A.B., C.D. and E.F. AND WITNESSES as follows:

That each of the said A.B., C.D. and E.F. do hereby agree with the others of them, jointly and severally, in the manner following, that is to say:

That the said A.B., C.D. and E.F. will remain and continue partners together in the said trade or business of..... for the further term of..... years to be counted from the..... day of..... 2018 the day on which the original deed of partnership shall expire, upon such and the same terms and conditions, and with, under and subject to such and the same covenants, provisions and agreements as are expressed and contained in the said original deed of partnership to which this agreement is appended, and to which the said partners hereto, their respective legal representatives would have been subject or liable, if the said deed of partnership and the partnership thereby created, and the several covenants, declarations, provisions and agreements therein mentioned and contained had been made or entered into for the term of ten years instead of the term of five years.

IN W ITNESS whereof the said A.B., C.D. and E.F. have hereto at..... by way of a supplementary deed executed these presents on the day and the year first above mentioned and appended the same to the original deed of partnership, deed.....

WITNESSES:

Sd/- A.B.

Sd/- C.D.

Sd/- E.F.

Deed of Agreement of Admission into Firm of a New Partner

THIS DEED OF AGREEMENT IS made the day of 2018 BETW EEN AB son of aged R/o and CD son of..... aged R/o partners in the firm CD & CO. of the one part, AND EF son of aged years resident of of the other part.

WHEREAS the said AB and CD are partners in the firm CD & Co. situated in..... and are bound as such under a deed partnership executed by them on the..... day of..... 2018 hereinafter referred to as the “partnership deed”.

AND WHEREAS the said EF is desirous of being admitted as a member in the aforesaid firm of CD and Co. and invest a sum of Rs..... AND the said AB and CD are willing to admit him as an additional partner.

NOW THEREFORE THE DEED WITNESSES that in pursuance of the said agreement and in consideration of the said EF bringing in and contributing the sum of Rupees..... (Rs.....) only as additional capital of the above partnership firm, it is mutually agreed as follows:

1. The parties hereto shall, as from the date hereof be and continue partners for the unexpired residue of the terms mentioned in para..... of the partnership deed subject in all respects to the conditions, stipulations, and provisions of the aforesaid partnership deed, so far as applicable, and except as varied by this deed of agreement.

2. The capital mentioned in the partnership deed shall hereafter be changed to the sum of Rupees..... only and the partners shall hereafter have the undernoted shares in the capital.
AB shall have Rs..... in the said capital;
CD shall have Rs..... in the said capital; and
EF shall have Rs..... in the said capital.
3. The profits and losses of the partnership shall continue to be borne by the partners hereto in proportion to their above named respective shares.

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

WITNESSES:

1. Sd/- A.B.
2. Sd/- C.D.
3. Sd/- E.F.

ANNEXURE IV

Deed of Dissolution of Partnership

(To be executed on Rs. 10/- Non Judicial Stamp Paper)

THIS DEED OF DISSOLUTION OF PARTNERSHIP made the..... day of..... 2018

BETWEEN.....

WHEREAS the partners hereto under a deed of partnership dated..... made between them formed themselves into a business firm and carried on business under the name and style of..... pursuant to the covenants, stipulations and provision contained in the said deed;

AND WHEREAS it has been mutually decided between the parties that the said partnership shall be dissolved, and the said trade and business shall be wound up and the stock-in-trade, assets and credits realized and called in, and the net proceeds after payment and satisfaction of all debts and liabilities divided between the partners according to the covenants in this behalf appearing in the deed of partnership.

NOW THIS DEED WITNESSES that in pursuance of the said agreement it is hereby declared and agreed by and between the parties hereto as follows, that is to say:

1. The said partnership between the partners hereto under the deed, dated..... hereunto appended shall be determined and stand dissolved as from the..... day of..... 2017. And the parties hereto singly or jointly shall not carry on the business of the said firm of..... under the said name and style for a period of..... years hence.
2. The parties hereto shall on the aforesaid date of..... sign notices of the dissolution and forthwith advertise in the local Official Gazette the fact of dissolution as required by Section 45 of the Indian Partnership Act AND shall also intimate the fact of dissolution to the Registrar of Firms under the provision of Section 63 of the said Act.
3. Within..... days after the dissolution of the partnership a full and general account and balance sheet shall be taken and made of the property, assets and liabilities of the partnership; and a full and particular inventory and valuation of all the machinery, plants, tools, utensils, stock in hand, office equipment, materials and effects belonging to the firm shall be made by the parties or such other person as the partners may choose to appoint, whose decision shall be final and binding upon

the partners, and all debts owing to the firm shall be collected and got in by the parties or such other persons as the parties may by instrument in his behalf appoint.

4. That as soon as may be, after the property, assets and liabilities have been got in and disbursed the parties or such other person or persons whom the parties may have appointed under the foregoing clause shall divide and apportion the share of the parties, in the proportion of the contribution of the parties towards the capital. In such division any amounts paid earlier or due to the parties according to the books of the partnership shall be taken into account. That the cost of liquidation proceedings shall also be deemed to be a liability of the partnership and paid from the funds of the partnership.
5. That in case the winding up shows a loss or the assets of the partnership are insufficient to meet the liabilities and debts of the partnership then the partners shall forthwith pay such losses in the proportion of their contribution to the capital.
6. Each of the parties shall, so soon as the others or any of them, or their or his representatives, shall have executed and done all the assurances, acts or things hereby agreed to be done by them respectively and at the request and cost of such other or others, or their or his representatives execute to them or him such releases, indemnifies, and assurances as may be reasonable and proper;

IN WITNESS WHEREOF the said AB, CD and EF have hereto signed and executed this agreement of dissolution and appended it to the said deed of partners, dated.....

WITNESSES:

1. Sd/- A.B.
2. Sd/- C.D.
3. Sd/- E.F.

ANNEXURE V

Deed of Dissolution of Partnership by which one Partner Sells his Share in Partnership Property to the other Partner

THIS DEED made the..... day of..... BETWEEN A....., S/o....., aged....., R/o..... (hereinafter called "the retiring partner") of the first part and B of....., S/o..... aged....., R/o..... (hereinafter called "the continuing partner") of the second part.

1. The parties hereto have been carrying on as partners the business of..... under the firm or style of..... and under Deed of Partnership dated.....
2. The parties hereto are beneficially entitled to the property mentioned in the Schedule attached herewith as their partnership property.
3. The parties have agreed to dissolve the said partnership upon the following terms:
 - (a) The continuing partner shall purchase from the retiring partner his share in the partnership property for Rs..... which amount shall be paid as mentioned hereafter;
 - (b) The continuing partner shall discharge the liabilities and debts due from the partnership. AND WHEREAS for the purpose of the stamp duty it has been agreed that the sum of Rs..... part of the said sum of Rs..... shall be the price of the share of the retiring partner in the immovable property and that the sum of Rs..... shall be the price of the share of the said partner in cash in hand and with bankers and moveable property passing by delivery belonging to the partnership and that the sum of Rs..... balance out of said sum of

Rs..... shall be the price of the share of the said retiring partner in the goodwill and the residue of the assets of the partnership property.

AND WHEREAS by a conveyance of even date executed between the parties the share of the retiring partner in the immovable property of the firm has been conveyed to the continuing partner on payment of the price of Rs.....

AND WHEREAS the cash in hand and with Bankers and other moveable property of the partnership passing by delivery has been delivered to the continuing partner who has paid to the retiring partner Rs..... the apportioned price thereof.

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. The said partnership shall stand dissolved as from the day of.....
2. In consideration of the sum of Rs..... now paid by the continuing partner to the retiring partner, the receipt of which sum the latter hereby acknowledges, the retiring partner as beneficial owner hereby assigns and transfers unto the continuing partner all the share and interest of the retiring partner in the said partnership and the business, goodwill, book debts, and property other than the property separately conveyed as mentioned above.
3. That the said retiring partner irrevocably appoints the said continuing partner as his attorney to demand, call in and receive from all persons all and singular the debts, credits, moneys and effects of the said partnership, to give effectual receipts and discharges for the same and to bring and institute suits and proceedings against debtors of the firm and to compromise with them in any manner he deems fit.
4. The continuing partner shall in due course pay all debts and discharge all the liabilities of the said partnership and shall indemnify the retiring partner against all actions, proceedings, costs and expenses in respect thereof.
5. That the retiring partner shall not carry on any competing business in any capacity whatever within the radius of..... kilometres from the place of business of the said partnership for a period of two years.
6. Each of the parties hereto releases and discharges the other from all actions, proceedings, claims and demands on account of the said partnership without prejudice to any rights and remedies herein contained.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands in the presence of witnesses.

WITNESSES:

1. Sd/- A.
2. Sd/- B.

Receipt executed by Retiring Partner acknowledging to have received the amount due to him on account of his share in the Partnership Property

I, A of..... aged....., S/o..... (the retiring partner) hereby acknowledge to have received from B of..... (the continuing partner) the sum of Rs..... being the full amount of all moneys due or owing to me in respect of my share as partner in the business of..... carried on under the name of..... by me in partnership with the said B up to day of..... under the Deed of Partnership Dated.....

As witness my hand this..... day of.....

To

.....
.....

Sd/-

ANNEXURE VI

No. 1

Notice to Dissolve Partnership

Pursuant to the articles of the partnership entered into between yourself and me on..... I hereby give you notice that I intend to terminate the partnership now subsisting between us with effect from.....

Dated:

Place:

No. 2

Notice to Dissolution of Partnership for Insertion in a Newspaper

Notice is hereby given that the partnership lately subsisting between us the undersigned (A, B & C of etc.) carrying business as..... at..... under the style or firm of A, B & C has this day been dissolved by mutual consent (or is dissolved by effluxion of time). All debts due to and owing by the said late firm will be received and paid by the said A, who will continue to carry on the said business under the same style and firm.

Dated:

Sd/- A, B and C.

No. 3

Notice to Determine Partnership at Will

To

Messrs C and D of.....

I hereby give you notice that I intend to dissolve the partnership, subsisting between us under the Articles of Partnership dated..... from the day of.....

Sd/-

TRUST DEEDS

Introduction

A trust is defined in the Indian Trusts Act, 1882 as an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him for the benefit of another or of another and the owner. (Section 3)

The person who reposes or declares the confidence is called the 'author of the trust'. The person who accepts the confidence is called the 'beneficiary'.

The subject matter of the trust is called the 'trust property' or the 'trust money'. The person or persons who manages/manage the trust property or trust money is/are called the 'trustee/trustees' of the trust. The author of the trust himself or any other person can be the trustee of the trust.

The beneficial interest or interest of the beneficiaries is/are his/their right(s) against the trustee as owner of the

trust property; and the instrument by which the trust is declared is called the 'instrument of trust'.

The breach of any duties imposed on the trustee by any law for the time being in force is called 'breach of trust'.

The person creating the trust must be legally competent to contract and a trust may be created on behalf of a minor with the permission of the Civil Court of the original jurisdiction. (Section 7)

Every person capable of holding property may be a trustee. But if the trust involves exercise of discretion then he cannot execute it unless he is competent to contract. (Section 10)

A trust is, in effect, the gift by the author of property or an interest in property to a person or institution (the beneficiary) by or through the intervention of trustee. The trust property vests in the trustee and he holds it for the benefit of the beneficiary and cannot use it for his own benefit. A 'trust' is a confidence and the confidentee is the trustee.

His position is fiduciary *vis-à-vis* the *cestui que trust* (beneficiary). In a trust the author vests the property in the trustee charging him to utilise it or the income or profits arising therefrom for the benefit of the beneficiary.

A corporate body, for example, a bank or a company can both create a trust and be a trustee. In such a case it has to act through its officers/duly constituted nominees. An insolvent can also be a trustee and the trust property is not affected by his insolvency.

Objects of Trust

Section 4 of the Indian Trusts Act, 1882 provides that the object of the trust must be lawful. The purpose of the trust is lawful unless it is:

- (i) forbidden by law, or
- (ii) is of such a nature that, if permitted, it would defeat the provisions of any law, or
- (iii) is fraudulent, or
- (iv) involves or implies injury to the person or property of another, or
- (v) the Court regards it as immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

Any property which is transferable can be a subject of a trust whether it be immovable or movable. But mere beneficial interest not subsisting trust cannot be made a subject of the trust. The beneficiary of the trust may be any person capable of holding property. Such person may be a sentient being or a juristic person or even a deity.

Examples of illegal trust are - trust in restraint of marriage, trust creating a perpetuity by settlement of properties intended for maintenance of persons born or to be born indefinitely. Trust to defraud a creditor.

Every trust of which the purpose is unlawful will be void and if the object is both lawful and unlawful and the two operations cannot be separated the whole trust would be void. Otherwise it will be void as far as the unlawful part of the object which can be separated. Any property which is transferable can be a subject of a trust whether it be immovable or movable. But mere beneficial interest not subsisting trust cannot be made a subject of the trust.

Public and Private Trusts

In a public trust the beneficiary is the general public or a specified section of it. In a private trust the beneficiaries are defined and ascertained individuals. In a public trust the beneficial interest is vested in an uncertain and fluctuating body of persons. The nature of the trust may be proved by the evidence of dedication or by user and

conduct of parties. Where a trust is created for the benefit of the members of the settlor's family, it is a private trust and not a public trust. Every charitable trust is only a public trust as benefit to the community at large or to a section of the community is of the essence of a valid charitable trust. But a religious trust need not necessarily be a public trust as there can be a private religious trust also.

Trusts among the Hindus and the Muslims

Though Hindu religious and charitable endowments sometime partake of the nature of trusts, the Indian Trusts Act does not apply to them. Property can be dedicated to the beneficiary either by giving it to the trustee and executing a trust in the usual way or by directly dedicating it to the beneficiary.

Though *wakfs* are trusts, the Indian Trusts Act does not apply to *wakfs* under the Muslim Law. However, it is open to a Muslim to create a secular trust of a public and religious character. Such a trust would be governed by the Indian Trusts Act, 1882.

Creation of Trust

A trust in respect of immovable property can be declared only by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered or by the will of the author of the trust or of the trustee. A trust in respect of movable property can be made either by a declaration as above or by the transfer of the ownership of the property to the trustee (Section 5 of the Indian Trusts Act, 1882).

In places where the Indian Trusts Act, 1882 does not apply a trust of immovable property may be created orally if the author of trust is himself the trustee and consequently no transfer of the property is involved, and all that is required is only a declaration of trust (*Madanji v. Tribhuvan*, 36 B 366).

If a stranger is appointed as trustee, a transfer of property is necessary and the conveyance must be made according to the law of Transfer of Property.

The deed creating a trust should contain in reasonable certainty, among others, the following:

- (a) an intention to create a trust;
- (b) the purpose of the trust;
- (c) the beneficiaries;
- (d) names of the trustee/s;
- (e) trust property;
- (f) unless the author is himself a trustee transfer of the legal ownership of the property to the trustee; and
- (g) duties, rights and liability of the settler, trustee and the beneficiary.

The deed may also provide for re-imbusement of expenses incurred by the trustee(s) in connection with the discharge of his/their duties as a trustee(s) and also all expenses properly incurred in or about the execution of the trust for the realisation, preservation or benefit of the trust property or the protection or the support of the beneficiary.

Instrument of Trust: How it is Drafted

An instrument of trust is drafted either as a deed poll or as a regular deed between the author of trust and the trustee. Where trustees are strangers and a transfer of property is involved, it is better to draft the deed as a deed between the author of trust and the trustees. Where the author is to be the trustee himself and the deed requires a mere declaration of trust, it is drafted as a deed poll. No specific words are necessary, but, whatever the words used, the deed should contain with reasonable certainty the matters mentioned under the heading 'Creation of Trust'.