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# Solved Scanner

(Solution of December - 2016)  
CS Professional Programme Module - III  
(New Syllabus)

Paper - 8 : Drafting, Appearances and Pleadings

[Chapter - 2] Drafting and Conveyancing Relating to Various Deeds and Agreements

1. (a) (5 marks)

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

**Click-wrap agreements can be of the following types:**

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

**[Chapter - 3] Drafting and Conveyancing Relating to Various Deeds and Agreements - I**

**1. (b), (c) (5 marks each)**

**(b)** The basic principles to be followed in the construction of a will are:

- (i) **Cardinal maxim:** The cardinal maxim to be observed in construing a Will is to endeavour to ascertain the intentions of the testator. This intention has to be primarily gathered from the document which is to be read as a whole without indulging in any conjecture or speculation as to what the testator would have done, if he had been better informed or better advised
- (ii) **Relevant considerations:** In construing the language of a Will, the courts are entitled and bound to bear in mind other matters than merely the words used. They must consider the surrounding circumstances, the position of the testator, his family relationship, the probability that he would use words in a particular sense and many other things which are often summed up in somewhat picturesque figure.
- (iii) **Avoidance of intestacy:** If two constructions are reasonably possible and one of them avoids intestacy while the other involves it, the court would certainly be justified in preferring that construction which avoids intestacy. It is settled law that words in a Will must be construed in their ordinary grammatical sense unless it is shown that a clear intention to use them in a different sense exists and is so proved.
- (iv) **Effect should be given to every disposition:** It is one of the cardinal principles of construction of Will that to the extent that it is legally possible, effect should be given to every disposition contained in the Will unless the law prevents effect being given to it. The intention of the testator should be gathered by giving a harmonious interpretation to the various terms of the Will as a whole.
- (v) Later part or last words to prevail in case parts irreconcilable or there is repugnancy. If the several parts of the Will are absolutely irreconcilable, the part that is later has to prevail.

- (c) A deed of hire-purchase is liable to stamp duty as an agreement under Article 5 of the Indian Stamp Act, 1899. Though, registration is not compulsory.

**[Chapter - 5] Drafting and Conveyancing Relating to Various Deeds and Agreements - III**

**[1] (d) (5 marks)**

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 infact one between the assignor and the assignee.

**[Chapter - 5] Drafting and Conveyancing Relating to Various Deeds and Agreements - III**

**[2] (a) (4 marks)**

**Public Trust and Private Trust:**

- a. 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.
- b. 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.
- c. 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.

**[Chapter - 2] Drafting and Conveyancing Relating to Various Deeds and Agreements**

**[2] (b) (4 marks)**

**Continuing Guarantee and Counter Guarantee:**

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

guarantee. Whereas a guarantee given by the principal debtor to the surety providing him continuing indemnity against any loss or damage that the surety may suffer on account of default on the part of the principal debtor, is called counter guarantee. As per Section 130, a continuing guarantee may be revoked by the surety at any time as to future transactions, by notice to the creditor.

**[Chapter - 3] Drafting and Conveyancing Relating to Various Deeds and Agreements - I**

**[2] (c)**

**(4 marks)**

**Probate and Letter of Administration:**

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

Whereas, A letter of administration can be obtained from the Court of competent jurisdiction in cases where the testator has failed to appoint an executor under a will or where the executor appointed under a will refuses to act or where he has died before or after proving the Will but before administration of the estate.

**[Chapter - 1] General Principles of Drafting & Relevant Substantive Rules**

**[2] (d)**

**(4 marks)**

**Operative Clause and Testimonium Clause:**

This is followed by the real operative words which vary according to the nature of the property and transaction involved therein. The words used in operative parts will differ from transaction to transaction. For example, in the case of mortgage the usual words to be used are "Transfer by way of simple mortgage".

Testimonium is the clause in the last part of the deed. Testimonium signifies that the parties to the document have signed the deed. This clause marks the close of the deed and is an essential part of the deed. The usual form of testimonium clause is as :

"In witness whereof, parties hereto have hereunto set their respective hands and seals the date and year first above written".

**[Chapter - 9] Appearances**

**[2A] (Or) (i) (4 marks)**

Arguments which relate to the facts pleaded by the parties are termed as arguments on merits. While addressing arguments on merits, a lawyer/authorized representative should carefully point out the pleadings of the parties and the relevant evidence in support thereof, lead by the parties, both oral as well as documentary. A lawyer/ authorized representative should ensure that all or any contradiction in the pleadings of the opponent and the evidence in support of such pleadings are duly pointed out while submitting his/her arguments. The relevant facts and/or contradictions extracted from the opponent or his/her witness during the course of cross-examination and relating to the factual issues involved in the matter, should be highlighted so as to draw attention of the Court/Tribunal towards such facts/contradictions.

**[Chapter - 6] Drafting and Conveyancing Relating to Various Deeds and Agreements - IV**

**[2A] (Or) (ii) (4 marks)**

Need for a legal opinion can be stated by following points:

- a. Interpretation of statutes or documents
- b. Advise a transaction structure
- c. Opinion for guidance of decision makers in commerce, industry or government
- d. Opinion to Lenders on enforceability of Finance Documents
- e. Opinion for Investors for compliance by Target Companies
- f. Opinion on Foreign Direct Investment
- g. Determining provision for contingent liabilities or determination of contingent assets
- h. Merits or demerits of legal proceedings
- i. Provision for contingent liabilities or Identification of contingent assets
- j. Initiating civil or criminal proceedings
- k. Ascertain compliance level for issue of securities and identification of risk factors for investors.

**[Chapter - 9] Appearances**

**[2A] (Or) (iii), (iv) (4 marks each)**

**(iii)** Section 246A (1) of the Income-tax Act provides that any assessee

aggrieved by any order of an Income-tax Officer, as prescribed in the section may appeal to the Commissioner (Appeals) against such order.

According to Section 253 of the Act any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -

- (a) an order passed by a Deputy Commissioner (Appeals) before the 1<sup>st</sup> day of October, 1998 or, as the case may be, a Commissioner (Appeals) under section 154, section 250, section 271, section 271A or Section 272A; or
  - (b) an order passed by an Assessing Officer under sub-section (1) of Section 115VZC; or
  - (c) an order passed by a Commissioner under section 12AA or under clause(vi) of sub-section (5) of Section 80G or under section 263 or under section 271 or under section 272A or an order passed by him under section 154 amending his order under section 263 or an order passed by a Chief Commissioner or a Director General or a Director under section 272A;
  - (d) an order passed by an Assessing Officer under sub-section (3) of Section 143 or Section 147 or Section 153A or Section 153C in pursuance of the directions of the Dispute Resolution Panel or an order passed under section 154 in respect of such order.
  - (e) an order passed by an Assessing Officer under sub-section (3) of Section 143 or Section 147 or Section 153A or Section 153C with the approval of the Commissioner as referred to in sub-section (12) of Section 144BA or an order passed under Section 154 or section 155 in respect of such order.
- (iv)** The following must be kept in mind while preparing the affidavit-in-evidence by the parties –
- (i) The best evidence is that of a person who was personally involved in the whole transaction. In case, that person is not available for any reason, then any other person who has joined in his place to make deposition by way of his affidavit.
  - (ii) In case, the petitioner himself was involved in the execution of a contract, he should file affidavit-in-evidence.

- (iii) The allegations or charges or grounds relating to facts should be re-produced duly supported by documentary evidence.
- (iv) In case, the point or issue pertains to engineering, medical, technology, science or other complex or difficult issues, then the evidence of expert is to be filed in the form of his Affidavit.
- (v) Besides the leading evidence on the points raised by the petitioner or by the opposite party in his written statement/reply, if possible, the party who is filing the affidavit-in-evidence should also file documents, papers or books or registers to demolish the defence or case set up by the opposite party.
- (vi) It is also permissible for any party to bring any outside witness (other than the expert witness) in support of his case if the facts and circumstances of the case so warrant and permitted by the Court/ Tribunal.
- (vii) At the time of tendering affidavit-in-evidence, the party must bring alongwith it either the original of papers, documents, books, registers relied upon by it or bring with it the carbon copy of the same.

**[Chapter - 8] Pleadings**

**[3] (a)**

**(4 marks)**

No the statement seems to be incorrect, Section 154 of the Code casts a statutory duty upon police officer to register the case, as disclosed in the complaint, and then to proceed with the investigation. The mandate of Section 154 is manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station, such police officer has no other option except to register the case on the basis of such information.

The provision of Section 154 is mandatory. Hence, the police officer concerned is duty-bound to register the case on receiving information disclosing cognizable offence. Genuineness or credibility of the information is not a condition precedent for registration of a case. That can only be considered after registration of the case as decided in Ramesh Kumari Vs. State (NCT of Delhi) and Ors., 2006 Cri.LJ 1622.

**[Chapter - 9] Appearances**

**[3] (b) (4 marks)**

Yes statement seems to be correct in case, the point or issue pertains to engineering, medical, technology, science or other complex or difficult issues, then the evidence of expert is to be filed in the form of his Affidavit. If necessary, the said witness has to appear before the Forum for the purpose of cross-examination by the counsel for the other party. For example, hand-writing or finger print experts etc.

**[Chapter - 8] Pleadings**

**[3] (c) (4 marks)**

Yes the statement is true. In every pleading, one must state specifically the relief which the party is claiming from the court or tribunal or forum. While framing the prayer clause, one should claim all possible relief as would be permissible under the pleadings and the law. The general principle is that the relief if not prayed for, will not be allowed. [R Tiwary Vs. B Prasad, AIR 2002 SC 136.]

**[Chapter - 3] Drafting and Conveyancing Relating to Various Deeds and Agreements - I**

**[3] (d) (4 marks)**

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

Whereas, 'Codicil' means an instrument made in relation to Will and explaining, altering or adding to its dispositions and is deemed to form part of the Will – Section 2(d) of Indian Succession Act, 1925. 'Will' as per General Clause Act, 1897 shall include a Codicil and every writing making a voluntary posthumous disposition of property – Section 3(64).

**[Chapter - 4] Drafting and Conveyancing Relating to Various Deeds and Agreements - II**

**[3A] (Or) (i) (4 marks)**

The statement is incorrect, the Privy Council pointed out in Hunsrai Vs. 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 Vs. 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.

**[Chapter - 5] Drafting and Conveyancing Relating to Various Deeds and Agreements - III**

**[3A] (Or) (ii) (4 marks)**

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 Vs. Comm. of Excess Profits Tax, AIR 1956 SC 374).

**[Chapter - 7] Drafting of Agreements under the Companies Act**

**[3A] (Or) (iii) (4 marks)**

There is a series of rulings where the courts have upheld that in case of any conflict between the Articles and the SHA, the former will always prevail.

**As Per Some of The Decided Case:**

- Mafatlal Industries Ltd., Vs. Gujarat Gas Co. Ltd. (97 Comp Cas 301 Guj), Pushpa Katoch Vs. Manu Maharani Hotels Limited ([2006] 131 Comp Cas 42 (Delhi)), the Supreme Court in V.B. Rangaraj Vs. V.B. Gopalakrishnan, AIR 1992 SC 453 held that a restriction which is not specified in the articles of association is not binding either on the company or on the shareholders. This decision was reiterated by the Bombay High Court in IL & FS Trust Co. Ltd. Vs. Birla Perucchini Ltd. [2004] 121 Comp Cas 335 (Bom).

The decisions on shareholders' agreements are not uniformly inclined in a direction. The High Court decisions are limited in their applicability as they are susceptible to disagreements by other High Courts, thereby

conferring limited precedential value. It is difficult to come to clear and crisp answers as to enforceability of shareholders' agreements.

**[Chapter - 2] Drafting and Conveyancing Relating to Various Deeds and Agreements**

**[3A] (Or) (iv) (4 marks)**

Every arbitration must have the following three pre-requisites:

- (i) a dispute between parties to an agreement, requiring a settlement;
- (ii) its submission for a settlement to a third person; and
- (iii) a decision by such third person according to his own judgement based on the facts and circumstances of the dispute, which is binding on both the parties.

**[Chapter - 8] Pleadings**

**2016 - Dec [4] (a) (8 marks)**

It is well settled that neither party need in any pleadings allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied. Hence, this defence would sustain until unless proved by the VT Ltd.

**[Chapter - 3] Drafting and Conveyancing Relating to Various Deeds and Agreements - I**

**[4] (b) (8 marks)**

**JF Financial Corporation has to consider the following points while drafting Promissory Note:**

- (a) It must be in writing. An oral promise to pay will not do.
- (b) It must contain an express promise or clear undertaking to pay. A promise to pay cannot be inferred. A mere acknowledgement of debt is not sufficient
- (c) The promise or undertaking to pay must be unconditional
- (d) The maker must sign the promissory note in token of an undertaking to pay to the payee or his order.
- (e) The maker must be a certain person, i.e., the note must show clearly who is the person engaging himself to pay.
- (f) The payee must be certain. The promissory note must contain a promise to pay to some person or persons ascertained by name or designation

- or to their order.
- (g) The sum payable must be certain and the amount must not be capable of contingent additions or Subtractions
- (h) Payment must be in legal money of the country
- (i) It must be properly stamped in accordance with the provisions of the Indian Stamp Act. Each stamp must be duly cancelled by maker's signature or initials.
- (j) It must contain the name of place, number and the date on which it is made.

**[Chapter - 8] Pleadings**

**[5] (a)**

**(8 marks)**

In the High Court of.....  
 Civil Appellate Jurisdiction  
 Civil Revision No..... of 2016  
 IN THE MATTER OF:

ABC S/o.....  
 R/o.....

...Petitioner  
 Versus

XYZ S/o.....  
 R/o.....

...Respondent  
 AND

IN THE MATTER OF:  
 CIVIL REVISION AGAINST THE ORDER DATED.....  
 PASSED BY THE LEARNED SUB-JUDGE,  
 IST CLASS..... IN THE SUIT ENTITLED ABC -VS.- XYZ  
 (CIVIL SUIT NO. .... OF  
 2016)

May it please the Hon'ble Chief Justice, High Court of..... and his companion Justices.

The petitioner MOST RESPECTFULLY SHOWETH:

- A. That the petitioner named above has filed a suit against the respondents for the recovery of possession of a house situated in.....,

fully described in the plaint. The suit is pending in the court of Sub-Judge 1st Class..... and the next date of hearing is.....

- B. That on being summoned the respondent appeared before the court below and filed his written statement wherein he denied the petitioner's title set up in the suit property.
- C. That the trial court framed issues on..... and directed the petitioner (plaintiff) to produce evidence, upon which the petitioner promptly furnished to the court below a list of witnesses and also deposited their diet expenses etc., making a request that the witness be summoned by that Court.
- D. That on a previous date of hearing that is....., 2016, two witness of the petitioner had appeared and their statements were recorded. However, the learned Presiding Officer of the court below passed an order that the remaining witnesses be produced by the petitioner-plaintiff on his own without seeking the assistance of the court. This order was passed despite a request by the petitioner that at least those witness named in the list who are State employees should be summoned by the court, as they are required to produce and prove some official records.
- E. That on the next date of hearing the learned trial court by the order impugned in this revision closed the evidence of the petitioner-plaintiff on the ground that the remaining witnesses were not produced by him.
- F. That the impugned order has caused great prejudice to the petitioner and if the same is allowed to stand the petitioner's suit is bound to fail.
- G. That the trial court has unjustifiably denied assistance of the court to the petitioner-plaintiff to secure the attendance of his witnesses. The interests of justice demand that he is provided with all legal assistance in this regard.

In the facts and circumstances discussed above the petitioner prays that this Hon'ble Court be pleased to quash and set aside the order under revision and direct the court below to provide assistance of the court for summoning the plaintiff-witnesses.

PETITIONER

**[Chapter - 5] Drafting and Conveyancing Relating to Various Deeds and Agreements - III**

**[5] (b) (4 marks)**

It was held by the Supreme Court in Commissioner of Income Tax Vs. 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.

**[Chapter - 8] Pleadings**

**[5] (c) (4 marks)**

“Interlocutory” means not that decides the cause but which only settles some intervening matter relating to the cause. After the suit is instituted by the plaintiff and before it is finally disposed off, the court may make interlocutory orders as may appear to the court to be just and convenient. The power to grant Interlocutory orders can be traced to Section 94 of C.P.C. Section 94 summarises general powers of a civil court in regard to different types of Interlocutory orders.

Interlocutory orders may take various shapes depending upon the requirement of the respective parties during the pendency of the suit. Applications for appointment of Commissioner, Temporary Injunctions, Receivers, payment into court, security for cause etc.

**[Chapter - 9] Appearances**

**[6] (a) (8 marks)**

**Guidelines for Professional dress of Company Secretaries is:**

- (a) The professional dress for male members will be Navy Blue suit and white shirt with a tie (preferably of the ICSI) or navy blue buttoned-up coat over a pant or a navy blue safari suit.
- (b) The professional dress for female members will be saree or any other dress of a sober colour with a navy blue jacket.
- (c) Members in employment may wear the dress/uniform as specified by the employer for all employees or if allowed the aforesaid professional

dress.

- (d) Practising Company Secretaries appearing before any tribunal or quasi-judicial body should adhere to dress code if any prescribed for appearing before such tribunal or quasi-judicial body or if allowed the aforesaid professional dress.

**[Chapter - 4] Drafting and Conveyancing Relating to Various Deeds and Agreements - II**

**[6] (b)**

**(8 marks)**

AN AGREEMENT MADE this..... day of..... 2016 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 ..... 2016

Signed, sealed and delivered at Calcutta In the presence of (1)

**Shuchita Prakashan (P) Ltd.**

25/19, L.I.C. Colony, Tagore Town,  
Allahabad - 211002

*Visit us : [www.shuchita.com](http://www.shuchita.com)*

