

CS PROFESSIONAL

DRAFT 0 LISA

A short book for Drafting, Appearance and Pleading

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 **PCbaba**

The EcoLawgy Expert

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Drafting

Meaning

An Act of Preparing Legal document like agreements, contracts & deeds etc.
 Here most important thing is **Low facts and Language.**

- # It may be defined as synthesis of **Low & facts** in a **Language** form.
- # Collection & placing of all aspects of a matter in a **Logical, simple & Lucid** manner so that the content can be understood without confusion.

Some DO's & DON'T'S

- # Avoid the use of words of same sound.
- # Avoid round about construction.
- # Avoid unnecessary repetition.
- # Write shorter sentence.
- # Choose right words.
- # Avoid the use of words "**less than**" OR "**more than**" instead use "**exceeding**" and "**not exceeding**"

Importance of Drafting Knowledge

- (A) For obtaining Legal Consultations
- (B) For carrying out documentation departmentally.
- (C) For interpretation of the documents.

Better Knowledge of drafting

- # is Important for better interaction.
- # Facilitates better communication.
- # Helps to Extract more information.
- # Helps to arrive on workable solution.

Conveyancing

Defined
 u/s 205 of Law of Properties Act 1925 &
 u/s 2(10) of Indian Stamp Act 1889 &
 u/s 5 of TOPA 1882

Meaning

Drafting a document whereby any interest therein is transferred from one person to another as per the customs, conventions & law within the constitutional power

Difference Between Drafting and Conveyancing

Drafting

- # General meaning, Drafting of any document.
- # It is wider term than Conveyancing.
- # Eg: Arbitration Agreement, Service Agreement, Receipt, Application etc.

Conveyancing

- # Documentation relating to title of Property or Interest therein.
- # The term Conveyancing is narrower than Drafting.
- # Eg: Sale Deed, Mortgage deed, Assignment, Lease Deed etc.

Difference between Conveyance and Contract

Conveyancing

- # Acts of drafting documents relating to transfer of property.
- # No Promise & title in respect of property already passed.
- # It doesn't create any Right of action, however it alters the existing rights.
- # Governed by provisions of TPA 1882

Contract

- # Agreement enforceable by law.
- # It consists of Reciprocal Promise & each party is bound to perform.
- # It creates a Right of action in favour of the parties. In case of breach → Lot of Remedies will be available to parties.
- # Governed by Indian Contract Act 1872

Rules to be followed while Drafting Legal Documents

Sketch OR scheme of draft

Before commencing the draft, the whole design should be prepared else draft will be confused OR incoherent.

Expert's Opinion

For preparing it for the first time to be used again and again with modification it should be drafted by the experts to ensure its suitability and legal fitness.

Note!- For Best Drafting there is a need of -

- # Concept clarity
- # Should know every fact & particulars of parties & subject matters.
- # Divide in paragraphs, each of which should be self-explanatory.
- # Use technical expressions

FOWLERS Five Rules

[Direct, simple, Brief, Vigorous & Lucid]

- # Familiar words rather than far fetched.
- # Concrete words rather than abstract.
- # Single words rather than circumlocution.
- # Short words rather than long one.
- # Saxon words shall be used than Roman words
- # Active voice rather than passive voice.

Skeleton draft & its self Appraisal

Note down briefly the matters or points intended to be incorporated (i.e. prepare skeleton draft) then it should be appraised referring available facts, Law applicable & Logical Presentation of the facts etc.



Some Important Terms

Document

As per sec 3(18) of General Clause Act 1894/1897

- # Any matter
- # written, expressed or described
- # upon any substance
- # by any mean of letter, figure, marks which is intended to be used for Recording the matter.

Instrument

- # Defined U/S 2(14) of Indian stamp Act 1899 & sec 2(b) of Indian Notaries Act 1952.
- # Every document by which any Right or Liability is to be Created, transferred, Limited, extended, extinguished OR Recorded
- # All Instruments are documents but all documents need not be Instruments.
- # Stamp duty is payable on every instrument but not in case of documents.
- # Instrument includes Award made by industrial court, A will, A decree
- # But does not include Act of Parliament unless there is statutory definition of that effect in any Act.

Types of Instruments

Unilateral

To be executed by one party only.
Eq: Promissory Note

Bilateral

To be Executed by two parties.
Reciprocal in nature.

Multilateral

To be executed by more than two parties

Deed

Not defined anywhere **But general meaning** → A document which is an instrument and should be in writing, signed & sealed

Deed is a Solemn document

All the instrument by which 2 or more persons agree to effect any right or liability

A formal writing of non-testamentary character which operates to create, declare, confirm, assign, limit or extinguish some right, title or interest.

It is written contract or agreement which has been properly signed, legally sealed and delivered.

All the deeds are instrument but all instruments need not be deed.

Types of Deed

One Point of view

- Inclusive → which contains written object within the designated boundary of deed.
- Latent Deed → which is kept for 20 yrs or more in man's strong box.
- Lawful Deed → A deed which conveys a good or lawful title or ownership.
- Pretended Deed → Deed which is imaginary or implied and prima facie valid.
- Voluntary Deed → without any valuable consideration, as it is defined by law.
Eg:- Gift Deed
- warranty Deed → the deed which contain agreement on warranty.
- special warranty Deed → Deed which have the term of general warranty deed only. But warranty title only against those claiming by the greater. conveys the described land itself.

Another Point of view

- Deed Pool → A deed between 2 or more persons in which copies are made as there are parties, so that each party may have a copy.
- Deed Poll → A deed in which there is only a single party. Eg: Promissory Note OR power of attorney. Usually drawn in 1st person.
- Deed Escrow → A deed which is signed only by one party until delivered to the other party will be called as deed escrow. It will be called as deed only after signing by the last party till then its only a mere writing (scriptum)
- Indenture → A deed in which there are 2 or more parties and is written in duplicate upon one piece of paper and 2 parts of such paper are severed so as to leave indented edge.
- Cyrogrophm

↓
Another type of Indenture.

The word cyrogrophm was written between 2 or more copies and the paper was cut in a jagged line through the word cyrogrophm. This was done to safeguard against the fraudulent substitution & original document should not match with duplicate one.

Components of Deed

→ Non-operative Part

- ① Name of Deed → The name of deed should be indicative of true content. Eg:- "This deed of lease" OR simply "THIS DEED"
- ② Date & Place → The date on which the document is executed and Territorial & legal jurisdiction of a document for the purpose of Registration, stamping & for claiming legal remedies shall be mentioned in starting after name of deed or at the end before signature. Eg:- 21st day of September 2018
- ③ Parties to Deed → whole details about the description of parties should be provided so that the parties can be easily identified.
- ④ Recitals → 1. Narrative → it relates to past history of the property transferred & sets out the facts & instrument necessary to show the title and relation to the party.
2. Introductory → Explains the motive or intention behind execution of deed and placed after narrative recitals.
If the operative part in deed is ambiguous anything contained in the Recital will help in its interpretation or meaning.
Recital carry evidentiary importance in the deed.

Recitals begin with the word "WHEREAS"

→ Operative Part

- ① Testatum or Premises → It is also called as witnessing clause. It states the intention of & capacity of parties & transaction between them & consideration. Usually begin with words "NOW THIS DEED WITNESSES AS FOLLOWS"
- ② Habendum → Defines interest conveyed (life interest or absolute sale) sets out limitation on property. It also mentions whether property is encumbered (charged) or not.
- ③ Exceptions & Reservations → Certain rights to be enjoyed by TRF or over the property to be agreed by the TRF'ee & should be clearly stated.
Eg:- If in a lease deed lessor desires to retain to extract the mineral therefrom, then it should be specifically provided.

④ Covenants: → Terms & Conditions by which the parties bind themselves especially those which are at variance with the implied covenants, then these must be clearly stated.

→ Formal Part

① Testimonium → Sets forth the facts that parties have signed the deed.

Begins with words

It witnesses whereof, the parties aforesaid, namely _____ have on the day and year just above mentioned put their signs in the presence of witnesses.

② Signature & attestation → Immediately after testimonium put their signature thereafter the witnesses. Attestation means signing by the executants in presence of witnesses and by witnesses in presence of executants.

Some other Important Points

Parcel clause
OR
description of property

Detailed accurate and correct particulars of property, so that the property could be easily identified.

operation of Transfer
Sec 8 of TPA 1882

As per this sec, the use of words such as messuages, Tenements,

Hereditaments, Land & water etc. have rendered unnecessary in parcel.

It says "unless a different intention is expressed or necessarily implied a Transfer of Property passes forth with to the transferee all the interest which the TRFBR is then capable of passing in legal incidents thereof."

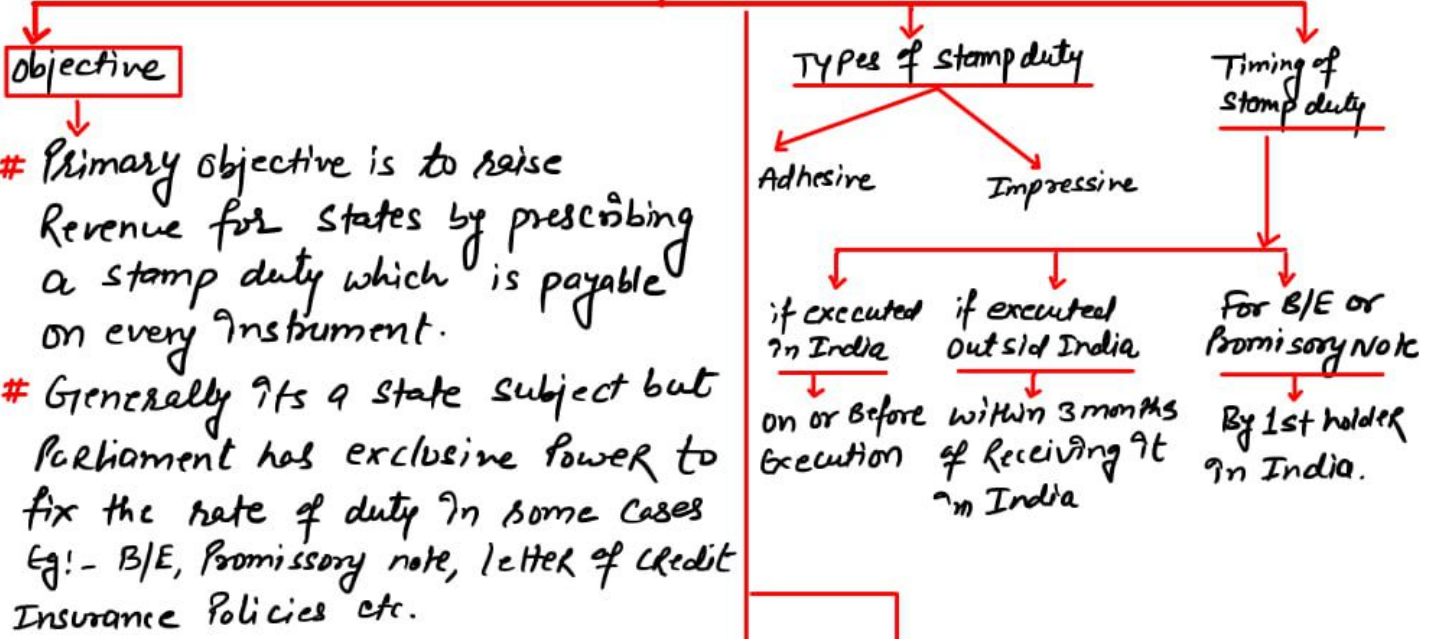
Endorsement

To write on back or on the face of a document wherein it is necessary in relation to the content of that document or instrument.

Supplemental Deed

A document entered between the parties on the same subject on which there is a prior document existing and operative for adding new facts to the document on which the parties have agreed which otherwise cannot be done by way of endorsement.

Stamp duty on various Deed

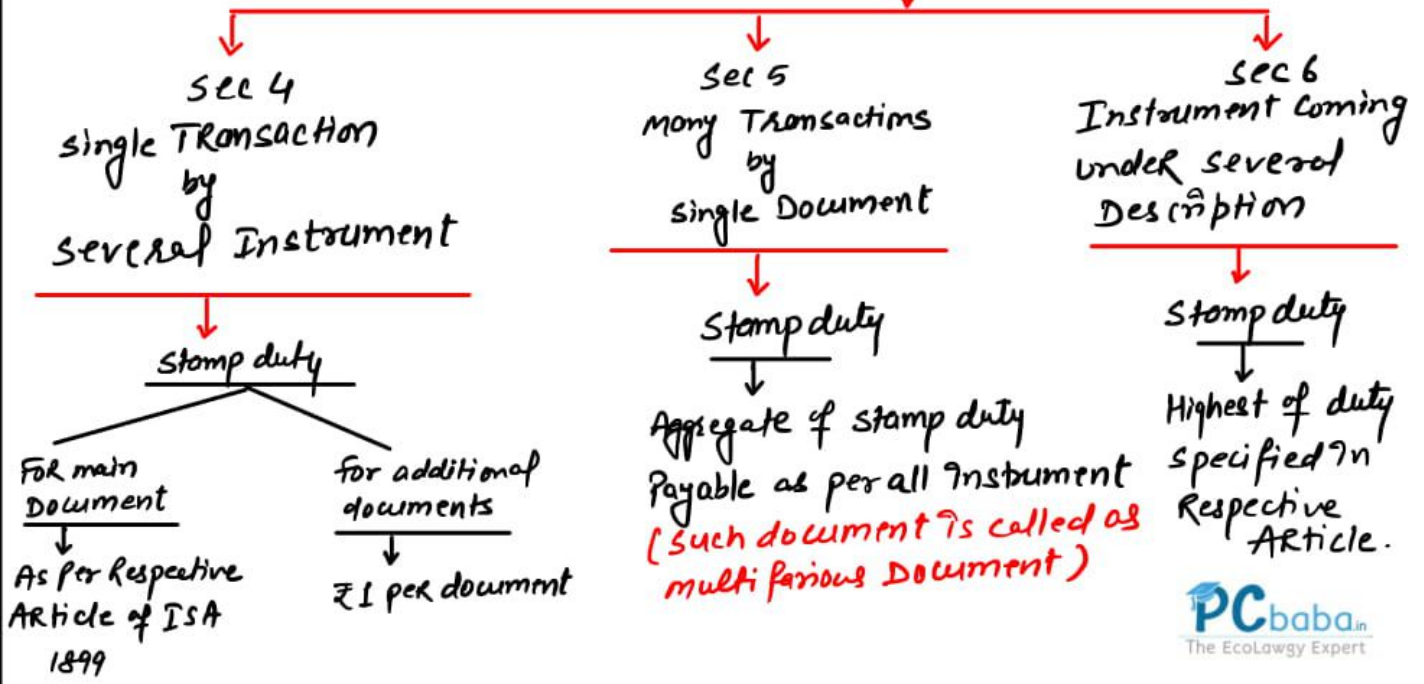


An Instrument shall be **Duly stamped**

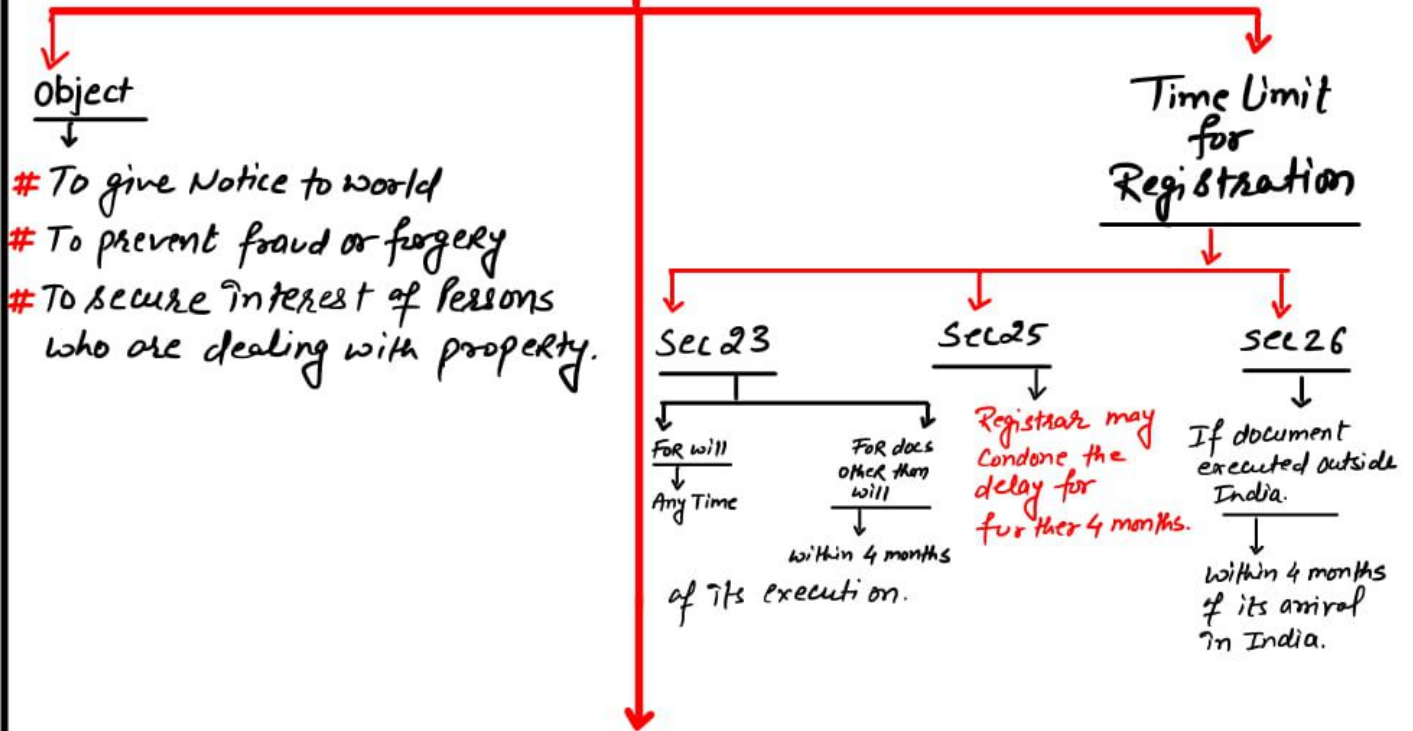
means that

It should be of Proper amount & shall be Properly Cancelled

Amount of stamp duty Payable



Registration of Documents



Requirement of Registration

