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GENERAL PRINCIPLES OF DRAFTING & RELEVANT SUBSTANTIVE RULES

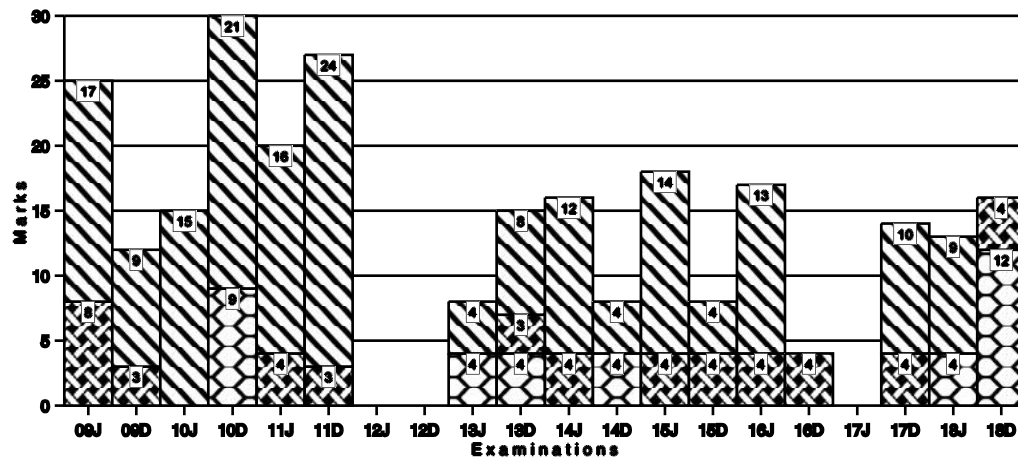
THIS CHAPTER INCLUDES

- Introduction;
- Drafting, its Meaning;
- Conveyancing, its Meaning;
- Drafting and Conveyancing;
- Distinguished;
- Distinction between Conveyance and Contract;
- General Principles of Drafting all sorts of Deeds and Conveyancing & other Writings;
- Some Do's & Don'ts;
- Guidelines for Use of Particular Words and Phrases for Drafting & Conveyancing;
- Use of Appropriate Words and Expressions;
- Aids to Clarity and Accuracy;
- Legal Implications and Requirements;
- Deed and Document;
- Various Kinds of Deeds;
- Components of Deeds;
- Engrossment and Stamping of a Deed.

Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions

Legend

 Objective
  Short Notes
  Distinguish
  Descriptive
  Practical



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CHAPTER AT A GLANCE

Topic		Important Highlight
1.	Drafting - Its Meaning	<ul style="list-style-type: none"> • It's the development and preparation of legal documents such as constitutions, statutes, contracts, wills, deeds, leases etc. Its important element are : <ul style="list-style-type: none"> ▸ Knowledge of LAW ▸ Knowledge of FACTS ▸ To put those facts in a LANGUAGE • It involves THINKING & COMPOSING, so as to give a correct presentation of legal status, rights & duties of the parties, terms & conditions, remedies etc. in a self explanatory manner without any ambiguity.
2.	Conveyancing - Its Meaning	<p>Conveyance means:</p> <ul style="list-style-type: none"> • An act of conveyancing or transferring • Any property, whether movable or immovable • From one person to another • Within the legal structure of the country • But does not include acquisition by inheritance <p>The transfer may be :</p> <ul style="list-style-type: none"> • by sale • by lease • by giving gift • by exchange • by will

3.	Drafting v/s Conveyancing		
	Drafting	Conveyancing	
	Preparation of documents for <ul style="list-style-type: none"> • Transfer of property, and • Others 	Preparation of documents for <ul style="list-style-type: none"> • Transfer of property 	
Both drafting & conveyancing are a type of documentation.			
4.	Conveyance v/s Contract		
S. No.	Basis	Conveyance	Contract
I.	Meaning	It deals with the transfer of property.	It remains to be performed & its specific performance may be sought.
II.	Rights	It just transfers the ownership of existing right without creating any right.	It may / may not create a right of action.
III.	Act	Transfer of Property Act, 1882.	Indian Contract Act, 1872.
5.	General Principles of Drafting & Conveyancing	<ul style="list-style-type: none"> • Ascertain the names, addresses etc. of parties • Express the intention of the parties clearly & concisely • Use legal language wherever possible • No information is to be omitted or admitted at random • The draft must be readily understandable by laymen 	

		<ul style="list-style-type: none"> • Understand the legal provisions on the subject matter • Document should be supported by schedules • The document should be self explanatory • Use of active voice • Document should be properly numbered • Avoid negative language.
6.	Some Important Rules of Drafting	<ol style="list-style-type: none"> 1. Fowlers' five rules of drafting: Every writer should endeavour to be: <ul style="list-style-type: none"> • Direct • Simple • Brief • Vigorous • Lucid <p>i.e. he should use familiar, concrete, single and short words in active voice and prefer the usage of saxon word instead of the Roman words to avoid any complications.</p> 2. Sketch or scheme of the draft document: Every draftsman should prepare a sketch of the contents of a document before taking up its drafting i.e. he should conceive its design and outline to make sure that nothing is left undone which ought to be done. 3. Skeleton draft and its self - appraisal: The draftsman should prepare the structure of the draft which should be filled in as he proceeds with his work. Then, he should do a self - appraisal of the document to identify any irregularities.

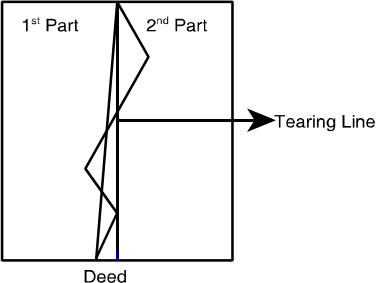
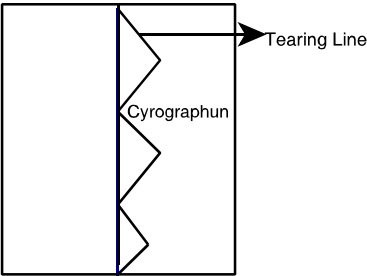
		<p>4. Special attention to be given to certain documents: It must be ensured that the contractual obligations are not contrary to the concerned law. In case of transfer of property, it's necessary to ensure the perfect title of the transferor to such property.</p> <p>5. Expert's opinion: The draftsman should take expert's opinion wherever necessary, to ensure the suitability and legal fitness of the document. In short, the draftsman should put himself in the place of the reader and make sure that it carries sense.</p>
7.	Some Do's and Don'ts of Drafting	<p>Some Do's:</p> <ol style="list-style-type: none"> 1. Reduce the group of words to single word; 2. Use simple verb for a group of words; 3. Avoid round-about construction; 4. Avoid unnecessary repetition; 5. Write shorter sentences; 6. Express the ideas in fewer words; 7. Prefer the active to the passive voice sentences; 8. Choose the right word; <p>Some Don'ts:</p> <ol style="list-style-type: none"> 1. Avoid the use of words of same sound. For example, the words "Employer" and "Employee"; 2. When the clause in the document is numbered it is convenient to refer to any one clause by using single number for it. For example, "in Clause 2 above" and so on.

		<p>3. Negative in successive phrases would be very carefully employed.</p> <p>4. Draftsman should avoid the use of words "less than" or "more than", instead, he must use "not exceeding".</p>
8.	Guidelines for use of words & phrases	<p>The following principles may be prescribed for the guidance of draftsman for using any particular words & phrases :</p> <ul style="list-style-type: none"> • For general words, refer to ordinary dictionary e.g. Oxford dictionary. • For legal terms refer to legal dictionary e.g. Wharton's law lexicon. • Use the current meaning of words as far as possible and quote the relevant case laws. • Technical words should be used only after ascertaining their full meaning.
9.	Interpretation of deeds and documents	<p>Though, there is no law in India on the interpretation of documents, but the following set of principles of interpretation of documents commands wide acceptance by the judiciary all over India.</p> <p>1. Rules under informal agreements: Here, the rule of reasonable expectation applied i.e the agreement is to be interpreted</p> <ul style="list-style-type: none"> • in the sense in which • the party who used the words in question should reasonably have apprehended • that the other party may apprehend them.

		<p>2. Rules under formal agreements:</p> <ul style="list-style-type: none"> • The document itself is the primary evidence. Other evidences will be secondary. • If the words used are clear & unambiguous then such words should be given their normal meanings unless the contract gives a different meaning to those words. • In case of ambiguous words, the intention of the parties as disclosed by the whole document should be considered. • Earlier clause prevails : An obligation created by an earlier clause can't be destroyed by a latter clause. • Interpretation of documents that have been accepted in the past should not be departed from. • An invalid clause in the deed cannot render the whole deed void unless it's impossible to sever that invalid clause from the rest. • Executed contract prevails over the executory contract. • Judicial interpretation of similar documents in the past can just be an aid in the interpretation of documents.
<p>10.</p>	<p>Need for knowledge of drafting & conveyancing for corporate executives</p>	<ul style="list-style-type: none"> • To aid in obtaining legal consultations & legal advice. • For carrying out documentation departmentally. • To study & interpret documents.

11.	Document	<p>As per General Clauses Act, 1894, Document means:</p> <ul style="list-style-type: none"> • any matter expressed or described • upon any substance • by means of letters, figures or marks • for the purpose of recording that matter <p>Features of a Document:</p> <ul style="list-style-type: none"> • Provides information • Acts as a proof or evidence of anything <p>Examples of Document:</p> <ul style="list-style-type: none"> • A writing • Words printed or photographed • An inscription on a metal plane or stone • A caricature (i.e. caricature means a hand – made sketch of a person)
12.	Instrument	<p>As per Indian Stamp Act, 1899, Instrument includes :</p> <ul style="list-style-type: none"> • every document • by which any right or liability is, or purports to be • created, transferred, modified, limited, extended, suspended, extinguished or recorded <p>Examples of Instrument:</p> <ul style="list-style-type: none"> • Awards made by industrial Courts • A will • Instrument includes decree • Instrument does not include acts of parliament unless there is a statutory definition to that effect in the act.

13.	Deed	<p>Deed is :</p> <ul style="list-style-type: none"> • an instrument • by which two or more persons. • agree to effect any right or liability. <p>Examples of Deeds :</p> <ul style="list-style-type: none"> • Gift Deed • Sale Deed • Partnership Deed • Lease Deed <p>A deed is of non - testamentary character. Deeds are in writing, signed, sealed and delivered.</p>
14. Kinds of deeds:		
S. No.	Type of Deed	Particular
1	Good deed	Conveys a good title
2	Good & sufficient deed	Passes a good title
3	Inclusive deed	Purports to convey
4	Latent deed	Kept for 20 years or more in a strong box
5	Pretended deed	Is apparently or <i>prima facie</i> valid
6	Warranty deed	Contains a covenant of warranty
7	Lawful deed	Conveys a good or lawful title
15. Some Other Terms Connected With Deeds:		
	(a) Deed Pool	<p>It's</p> <ul style="list-style-type: none"> • a deed between 2 or more parties • where as many copies are made as there are parties • so that each party may possess a copy <p>No. of copies = No. of parties</p>

	(b) Deed poll	<p>A deed made and executed by a single party e.g. power of Attorney.</p> <ul style="list-style-type: none"> It's drawn in first person usually.
	(c) Indenture	<ul style="list-style-type: none"> Such type of deeds involve two or more parties. It was written in duplicate upon one piece of a material and two parts were severed so as to leave a vary (uneven edge) edge. As a result, forging such documents was difficult. 
	(d) Cyrographun	<ul style="list-style-type: none"> It's similar to indenture. The only difference is that here, the word 'cyrographun' was written and torn in between so as to make it very difficult for any person to forge another deed that would fit exactly into this cutting with the same zig zag lines. <p>Deed</p> 

	(e) Deed Escrow	A deed signed by one party will be delivered to another as an 'escrow'. • It will operate from the date when it's last signed.
	(f) Components of deeds	A deed is divided into different paragraphs. Under each part, the related information is put in that paragraph in simple language. The usual components of a deed are as follows:
S. No.	Particulars	
(i)	Non - Operative Part	
	<ol style="list-style-type: none"> 1. Description of the Deed title 2. Place and Date of execution of a Deed 3. Description of parties to the Deed 	
(ii)	Operative Part <ol style="list-style-type: none"> 4. Recitals (Short Story) 5. Testatum 6. Consideration 7. Receipt Clause 8. Operative Clause 9. Description of Property 10. Parcels Clause 11. Exceptions and reservation 12. Premise and Habendum 13. Covenants and Undertakings 	
(iii)	Formal Part <ol style="list-style-type: none"> 14. Testimonium Clause 15. Signature and Attestation 16. Endorsements and supplemental deeds 17. Annexures or Schedules 	

16.	Components of Deed	<ul style="list-style-type: none">• Description of the Deed Title• Place and Date of Execution of a Deed• Description of parties• Recitals (Short Story)<ul style="list-style-type: none">(i) Narrative Recitals(ii) Introductory Recitals• Testatum• Consideration• Receipt Clause• Description of Property• Operative Clause• Parcels Clause• Exceptions and Reservations Clause• Premises and Habendum• Covenants and Undertakings• Testimonium Clause• Signature and Attestation Clause• Endorsements and Supplemental Deeds• Annexures or Schedules
17.	Engrossment and Stamping of a Deed	<ul style="list-style-type: none">• The draft of the document is required to be approved by the parties.• After approval, the document is engrossed i.e. copied fair on the non-judicial stamp paper of appropriate value as per Stamp Act.• In case, the document is drafted on plain paper but approved without any changes, it can be lodged with the collector of stamps for adjudication of stamp duty.• An improperly stamped document is rendered inadmissible.

SHORT NOTES

2010 - Dec [5] Write a note on the following :

(i) *Habendum*

(4 marks)

Answer:

Habendum :

Habendum is a part of deed which states the interest yet to be taken by the purchaser. Habendum clause starts with the words "TO HAVE AND TO HOLD".

Formerly in England in case of a gratuitous transfer, the equitable interest wherein remained with the transferor and the transferee was not deemed to be the owner of the beneficial interest.

It was therefore, necessary to indicate in the deed that it was being transferred for the use of the transferee if it was intended to confer an equitable estate in him.

It was for that reason that the *habendum* commenced with the words: "to have and to hold to the use of.....". Now it is not necessary to express it so. In the modern deeds, however, the expression "to have and" are omitted.

The *habendum* limits the estate mentioned in the parcels. The transferee is mentioned again in the habendum for whose use the estate is conveyed.

If the property conveyed is encumbered, reference thereto should be made in the *habendum*. If the parties to transfer enter into covenants, they should be entered after the habendum.

_____ Space to write important points for revision _____

2010 - Dec [7] (b) Write a note on 'covenants and undertakings'.

(5 marks)

Answer:

Covenants and Undertakings : The term "covenant" is defined as an agreement under seal, which stipulates for the truth of certain facts. In Whaston Law Lexicon, a covenant has been explained as an agreement or

convention or promise by the parties, by deed in writing, signed, sealed and delivered, by which either of the parties, pledged himself to the other that something is either done or shall be done for stipulating the truth of certain facts. Covenant clause includes undertakings also. Usually, covenant is stated first.

In some instances the covenants and “undertaking” are mixed, i.e. can not be separated in that case, they are joint together, words put for this as "The Parties aforesaid hereto hereby mutually agree with each other as follows." Such covenants may be expressed or implied.

— Space to write important points for revision —

2013 - June [8] (b) Write a note on ‘covenants and undertakings’.

(4 marks)

Answer:

Please refer 2010 - Dec [7] (b) on page no. 27

— Space to write important points for revision —

2013 - Dec [4] Write a note on the following:

(i) *Habendum and reddendum*

(4 marks)

Answer :

Habendum

- (i) Habendum is a part of deed which states the interest, the purchaser is to take in the property. The habendum clause starts with the words. “TO HAVE AND TO HOLD”
- (ii) Formerly in England, if there was a gratuitous transfer, the transferee was not deemed to be the owner of the beneficial estate in the property.
- (iii) The habendum limits the estate mentioned in the parcels.
- (iv) In India, such Phrases as “to have and to hold” or such an expression as “to the use of the purchaser” can very well be avoided as in cases except those of voluntary transfers, such an expression is superfluous.

Reddendum

This is peculiar to a deed of lease. Here is mentioned this mode and time fixed for payment. It begins with the word “rendering or paying” with reference to the reserved rent is payable during the terms of the lease. Place where payable and instalment where mentioned. If there is apportionment of rent that is also mentioned.

— Space to write important points for revision —

2014 - Dec [3A] (Or) Write notes on the following:

- (i) Covenants and undertakings.

(4 marks)

Answer:

Please refer 2010 - Dec [7] (b) on page no. 27

— Space to write important points for revision —

2018 - June [3A] (Or) Write notes on the following:

- (iv) *Habendum*

(4 marks)

Answer:

Habendum

Habendum is a part of deed which states the interest, the purchaser is to take in the property. The genesis of this clause can be traced to gratuitous transfer of property in ancient England. It usually starts with the words “THE HAVE AND TO HOLD”. The habendum limits the estate mentioned in the parcels. The transferee is again mentioned in the clause for whose use the estate is conveyed. Whatever precedes the habendum is called the premises.

— Space to write important points for revision —

2018 - Dec [2] Write notes on the following :

- (a) Recitals
(d) Expert’s opinion.

(4 marks each)

2018 - Dec [3A] (Or) Write note on the following:

- (i) Components of Deed

(4 marks)

DISTINGUISH BETWEEN

2009 - June [3] (a) Distinguish between the following :

- (i) 'Conveyance' and 'contract'. **(4 marks)**
 (ii) 'Instrument' and 'deed'. **(4 marks)**

Answer:

- (i) 'Conveyance' and 'contract'.

Contract	Conveyance
(a) Under the contract which enables party to the contract to take action in case of non performance or breach of contract to take action against the party who breaches the contract. Hence one party who suffers can demand compensation or special performance. So right of action is created in contract ,whereas in conveyance, right of action is not created.	(a) It alters the ownership of existing right.
(b) Provisions of Indian Contract Act, 1872 governs any contract.	(b) Whereas it is governed by the Transfer of Property Act, 1882.
(c) Contract remains to be performed and its specific performance may be sought.	(c) Conveyance passes on the title of property to another person.
(d) A contract to mortgage or sale would not amount to activate thus per of interest in the property.	(d) The deed of mortgage or sale would operate as conveyance of such interest.

- (ii) **Instrument** : The word "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, modified, limited, extended, suspended, extinguished or recorded.

Deed : The term deed describes all the instruments by which two or more persons agree to effect any right or liability. For example, Gift Deed, Sale Deed, Deed of Partition, Partnership Deed, Deed of Family Settlement, Lease Deed, Mortgage Deed and so on. A bond is also included in the wide field of expression 'Deed'.

Note: A deed may be defined as a formal writing of a non-testamentary character, which purports and operates to create, confirm assign, limit or extinguish some right, title or interest.

Space to write important points for revision

2009 - Dec [4] (b) Distinguish between the following :

(i) 'Document' and 'deed'.

(3 marks)

Answer :

Document	Deed
(i) Document has been defined by General Clauses Act, 1897.	(i) There is no specific definition of deed in any act.
(ii) It means any matter expressed or described upon any substance by means of letters figures or marks, or by more than one of those means which is intended to be used, or which may be used for the purpose of recording that matter.	(ii) Deed usually describes all the instruments by which two or more persons agree to effect any right or liability.
(iii) E.g. a writing, a map or plan, words printed, photo graphed etc.	(iii) E.g. partnership deed, deed of family, lease deed etc.

Space to write important points for revision

2011 - June [7] (b) Distinguish between the following :

(i) 'Endorsements' and 'supplemental deed'.

(4 marks)

Answer :

Endorsement and Supplemental deed

Endorsement means to write on the back or on the face of a document wherein it is necessary in relation to the contents of that document or instruments. The term endorsement is used with reference to negotiable documents like -

- (a) Cheque
- (b) Bill of exchange
- (c) Hundies etc.
- (d) Promissory notes.

For e.g. - On the back of the cheque to sign one name as payee to obtain cash is an endorsement on the cheque.

Supplemental deed - is a document which is entered into between the parties on the same subject on which there is a prior/ex documents existing an operative for adding new fact to the document on which the parties to the document have agreed which otherwise cannot be done by way of endorsement. Thus supplemental deed is executed to give effect to the new fact in the deed.

— Space to write important points for revision —

2011 - Dec [7] (b) Distinguish between the following:

- (i) 'Conveyance' and 'contract'.

(3 marks)

Answer:

Please refer 2009 - June [3] (a) (i) on page no. 30

— Space to write important points for revision —

2013 - Dec [7] (b) Distinguish between the following:

- (i) 'Legal document' and 'instrument'.

(3 marks)

Answer :

Legal Document:

- (i) "Document" as defined in **Section 3(18) of General Clause Act, 1894**, means any matter expressed or described upon any substance by means of letters, figures or marks.

- (ii) Which may be used for the purpose of recording that matter.

Example:

A writing is a document.

Words printed, lithographed or photographed are document.

Instrument:

The word "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, modified, limited, extended, suspended, extinguished or recorded.

— Space to write important points for revision —

2014 - June [2A] (Or) Distinguish between the following :

- (i) 'Indenture' and 'deed escrow'.

(4 marks)

Answer:

Indenture: Indenture are those deeds in which there are two or more parties. It was written in duplicate upon one piece of parchment and two parts were severed so as to leave an indented or vary edge, forging being then, rendered very difficult. Indentures were so called as at one time they are indented or cut with uneven edge at the top.

In olden times, the practice was to make as many copies or parts as they were called, of the instruments as they were parties to it, which parts taken together formed the deed and to engross all of them of the same skin of parchment.

Deed Escrow: A deed signed by one party will be delivered to another as an "escrow" for it is not a perfect deed. It is only a mere writing (Scriptum) unless signed by all the parties and dated when the last party signs it. The deed operates from the date it is last signed.

Escrow means a simple writing not to become the deed of the expressed to be bound thereby, until some condition should have been performed.

— Space to write important points for revision —

2015 - June [2A] (Or) Distinguish between the following:

- (iii) '*Habendum*' and '*reddendum*'.

(4 marks)

Answer:

Please refer 2013 - Dec [4] (i) on page no. 28

— Space to write important points for revision —

2015 - Dec [2A] (Or) Distinguish between the following:

- (i) 'Supplementary deeds' and 'endorsements'.

(4 marks)

Answer:

Endorsement

Endorsement means to write on the back or on the face of a document wherein it is necessary in relation to the contents of that document or instruments. The term endorsement is used with reference to negotiable documents like:

- (a) Cheque
- (b) Bill of exchange
- (c) Hundies etc.
- (d) Promissory notes.

For e.g. On the back of the cheque to sign one name as payee to obtain cash is an endorsement on the cheque.

Supplementary is a document which is entered into between the parties on the same subject on which there is a prior/ex-documents existing an operative for adding new fact to the document on which the parties to the document have agreed which otherwise cannot be done by way of endorsement. Thus, supplemental deed is executed to give effect to the new fact in the deed.

— Space to write important points for revision —

2016 - June [2] Distinguish between the following :

- (a) 'Endorsement' and 'engrossment'.

(4 marks)

Answer:

Endorsement	Engrossment
Endorsement means to write on the back or on the face of a document. The term endorsement is used with reference to negotiable instruments like cheques, bill of exchange etc.	The draft of document is required to be approved by the parties. In case of companies it is approved by Board of Directors in their meeting or by a duly constituted committee of the

For example on the back of the cheque to sign one's name as payee to obtain cash is an endorsement on the cheque. Endorsement is used to give significance to a particular document with reference to new facts to be added in it. Endorsement is also used to express definite approval to a particular document.	board for this purpose by passing requisite resolution approving and authorising of its execution. The document after approval is engrossed i.e. copied fair on the non-judicial stamp-paper of appropriate value as may be chargeable as per Stamp Act.
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— Space to write important points for revision —

2016 - Dec [2] Distinguish between the following:

(d) 'Operative clause' and 'testimonium clause'.

(4 marks)

Answer:

'Operative clause' and 'testimonium clause'

Operative clause 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" (usual mortgage) etc. The exact interest transferred is indicative after parcels by expressing the intent or by adding habendum. (The parcel is technical description of property transferred and it follows the operative words).

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 under:

"In witness whereof, parties hereto have hereunto set their respective hands and seals the date and year first above written". This is the usual English form of testimonium clause. In India, except in the case of companies and corporations seals are not used and in those cases testimonium clause reads as under:

“In witness whereof the parties hereto have signed this day on the date above written”.

Thus testimonium clause can be worded according to the status and delegation of executants.

— Space to write important points for revision —

2017 - Dec [3] Distinguish between the following:

(d) Conveyance and Contract

(4 marks)

Answer:

Please refer 2009 - June [3] (a) (i) on page no. 30

— Space to write important points for revision —

2018 - Dec [3] Distinguish between the following :

(a) Drafting and Documentation

(4 marks)

DESCRIPTIVE QUESTIONS

2009 - June [1] {C} Attempt the following :

(i) Define 'document'. Explain various kinds of deeds.

(5 marks)

Answer :

Document : Document according **Section 3(18) of General Clauses Act, 1897** means any matter written expressed or described upon any substance by means of letter figure or marks or by more than one those means word the has to be omitted, intended to be used, or which may be used, for the purpose of recording that matter. As for instance, a writing is a document, words printed, lithographed or photographed are documents; a map or plan is a place or stone is a document. A caricature is a document. Thus, document is a paper or other material thing affording information, proof or evidence of anything.

Various kinds of Deeds :

1. A good deed is one which conveys a good title, not one which is good merely in form.

2. A good and sufficient deed is marketable deed; one that will pass a good title to the land it purports to convey.
3. An inclusive deed is one which contains within the designated boundaries lands which are expected from the operation of the deed.
4. A latent deed is a deed kept for twenty years or more in man's escritoire or strong box.
5. A lawful deed is a deed conveying a good or lawful title.
6. A pretended deed is a deed apparently or prima facie valid.
7. A voluntary deed is one given without any "valuable considerations".
8. A warranty deed is a deed containing a covenant of warranty.

— Space to write important points for revision —

2009 - June [5] (a) Explain in detail the general principles of drafting and conveyancing and other writings. **(12 marks)**

Answer :

Drafting of legal documents requires skill, At the very first instance, the names, description and the addresses of the parties to the instrument must be ascertained by a draftsman. He must obtain particulars about all necessary matters which are required to form part of the instrument. He must also note down with provision any particular directions or stipulations which are to be kept in view and to be incorporated in the instrument. The duty of a draftsman is to express the intention of the parties clearly and concisely in technical language. With this end in view , he should first form a clear idea of what these intentions are.

A corporate executive, therefore, must note down the most important requirements of law which must be fulfilled while drafting complete instrument on the subject. Knowledge of law of the land in general and knowledge of the special enactments applicable in a particular situation is an essential requirement for a draftsman to ensure that the provisions of the applicable law are not violated or avoided. A limited company can do only that much which it is authorised by its memorandum. Further, a company being a legal entity, must necessarily act through its authorised agents. A deed, therefore, should be executed by a person duly authorised by the directors by their resolution or by their power of attorney.

It is also to be ensured that the format of documents adopted adheres to the customs and conventions in vogue in the business community or in the ordinary course of legal transactions. For any change in the form of such document, use of juridical and technical language should invariably be followed. The statements of negatives should generally be avoided. The order of the draft should be strictly logical. Legal language should be, to the utmost possible extent, precise and accurate. The draft must be readily intelligible to layman.

Document should be supported by the schedules enclosures or annexures in case any reference to such material has been made in that.

— Space to write important points for revision —

2009 - Dec [1] {C} Attempt the following :

(b) Define 'deed'. What are the components of a deed in general ?

(5 marks)

Answer:

A deed is a writing-

- (a) paper, vellum or parchment,
- (b) sealed and
- (c) delivered, whereby an interest, right or property passes, or an obligation binding on some persons is created or which is in affirmance of some act whereby an interest, right or property has been passed.

A deed is a present grant rather than a mere promise to be performed in the future.

Deeds are in writing, signed, sealed and delivered.

Deeds are instruments, but all instruments are not deeds.

A deed is divided into different paragraphs. Under each part relevant and related information is put in paragraph in simple and intelligible language. The usual parts or components or clauses of deeds in general are mentioned as follows:

- (1) Description of the Deed Title
- (2) Place and Date of execution of a Deed
- (3) Description of Parties to the Deed
- (4) Recitals

- (5) Testatum
- (6) Consideration
- (7) Receipt Clause
- (8) Operative Clause
- (9) Description of property
- (10) Parcels Clause
- (11) Exceptions and Reservations
- (12) Premises and Habendum
- (13) Covenants and undertakings
- (14) Testimonium Clause
- (15) Signature and attestation
- (16) Endorsements and supplemental Deeds
- (17) Annexures or Schedules.

_____ Space to write important points for revision _____

2009 - Dec [5] (b) Explain *habendum*. What does a *habendum* clause signify in a document? **(4 marks)**

Answer :

Habendum is a part of deed which states the interest, the purchaser is to take in the property. Habendum clause starts with the words "TO HAVE AND TO HOLD".

Formerly in England if there was a gratuitous transfer, the transferee was not deemed to be the owner of the beneficial estate in the property, the equitable estate wherein remained with the transferor as a resulting trust for him.

It was therefore, necessary to indicate in the deed that it was being transferred for the use of the transferee if it was intended to confer an equitable estate in him.

It was for that reason that the *habendum* commenced with the words: "to have to hold to the use of". Now it is not necessary to express it so. In the modern deeds, however, the expression "to have and" are omitted. The *habendum* limits the estate mentioned in the parcels.

The transferee is mentioned again in the habendum for whose use the estate is conveyed. Whatever precedes the *habendum* is called the premises.

The parcels or the description of the property usually again included in the premises.

If the property conveyed is encumbered, reference thereto should be made in the *habendum*. If the parties to transfer enter into covenants, they should be entered after the *habendum*.

In India such phrases as “to have and to hold” or such an expression as “to the use of the purchaser” can very well be avoided as in cases except those of voluntary transfers such an expression is superfluous.

— Space to write important points for revision —

2010 - June [1] {C} (b) What are the do's and don'ts which should be considered while drafting documents? **(5 marks)**

(c) Explain the following:

- (i) Deed pool
- (ii) Deed poll
- (iii) Indenture
- (iv) Cyrographum
- (v) Deed escrow.

(2 marks each)

Answer :

(b) The essence of the process of drafting is synthesis of law and fact in a languages. A proper understanding of drafting cannot be realised unless the nexus between the law, the facts and the language is fully understood and accepted. This requires serious thinking followed by prompt action to reduce the available information into writing with a legal meaning.

Some Do's :

1. Reduce the group of words to single word;
2. Use simple verb for a group of words;
3. Avoid round-about construction;
4. Avoid unnecessary repetition;
5. Write shorter sentences;
6. Express the ideas in fewer words;
7. Prefer the active to the passive voice sentences;

8. Choose the right word;
9. know exactly the meaning of words and sentences you are writing; and
10. Put yourself in the place of reader, read the document and satisfy yourself about the content, interpretation and the sense it carries.

Some Don'ts : The following things should be avoided while drafting the documents :

- (a) Avoid the use of words of same sound. For example, the words "Employer" and "Employee".
- (b) When the clause in the document is numbered it is convenient to refer to any one clause by using single number for it. For example, "in **clause 2** above" and so on.
- (c) Negative in successive phrases would be very carefully employed.
- (d) Draftsman should avoid the use of words "less than" or "more than", instead they must use "not exceeding".
- (e) If the draftsman has provided for each of the two positions to happen without each other and also happen without, "either" will not be sufficient; he should write for the "either or express the meaning of the two in other clauses.

In writing and typing the following mistakes always occur which should be avoided:

1. "And" and "or";
2. "Any" and "my";
3. "Know" and "now";
4. "Appointed" and "Applied";
5. "Present" and "Past" tense.

- (c) (i) **Deed Pool :** It is an arrangement wherein as many copies are made as there are parties, so that each party may be in possession of a copy.
- (ii) **Deed Poll :** A deed made and at the same time executed by single party e.g. power of attorney, is called a deed poll because in olden times, it was polled or cut level at the top. It had a polled or clean cut edge. It is generally used for the purpose of granting powers of attorney and for exercising powers of appointment or setting out an arbitrator's award. It is drawn in first person usually.

- (iii) **Indenture** : Indenture are those deeds in which there are two or more parties. It was written in duplicate upon one piece of parchment and two parts were severed so as to leave an indented or vary edge, forging being then, rendered very difficult. Indentures were so called as at one time they are indented or cut with uneven edge at the top. In olden times, the practice was to make as many copies or parts as they were called, of the instruments as they were parties to it, which parts taken together formed the deed and to engross all of them of the same skin of parchment.
- (iv) **Cyrographum** : This was another type of indenture in olden times. The word "Cyrographum" was written between two or more copies of the document and the parchment was cut in a jugged line through this word. The idea was that the difficulty of so cutting another piece of parchment that it would fit exactly into this cutting and writing constituted a safeguard against the fraudulent substitution of a different writing for one of the parts of the original. This practice of indenting deeds also has ceased long ago and indentures are really now obsolete but the practice of calling a deed executed by more than one party as an "indenture" still continues in England.
- (v) **Deed Escrow** : A deed signed by one party and delivered to another as an "escrow" for it is not a perfect deed. It is a mere writing (Scriptum) unless signed by all the parties and dated when the last party signs it. The deed operates from the date it is last signed. Escrow means a simple writing not to become the deed of the expressed to be bound thereby, until some condition should have been performed (Halsbury Laws of England, 3rd Edn., Vol. II, p. 348).

— Space to write important points for revision —

2010 - Dec [1] {C} (c) What is meant by 'recitals' as a component in a deed?
What is its evidentiary value? **(5 marks)**

Answer:**Recitals :**

Recitals contain the short story of the property up to its vesting into its transferors. Care should be taken that recitals are short and intelligible. Recitals may be of two types.

One, narrative recitals which relates to the past history of the property transferred and sets out the facts and instrument necessary to show the title and relation to the party to the subject matter of the deed as to how the property was originally acquired and held and in what manner it has developed upon the grantor or transferor.

The extent of interest and the title of the person should be recited.

It should be written in chronological order i.e. in order of occurrence.

This forms part of narrative recitals.

This is followed by introductory recitals, which explain the motive or intention behind execution of deed.

Recitals should be inserted with great caution because they precede the operative part and as a matter of fact contain the explanation to the operative part of the deed.

If the same is ambiguous, recitals operate as estoppel. Recital offers good evidence of facts recited therein. Recitals are not generally taken into evidence but are open to interpretation by the courts. If the operative part of the deed is ambiguous anything contained in the recital will help in its interpretation or meaning.

In the same sense, it is necessary that where recitals contain chronological events that must be narrated in chronological order.

Recital generally begins with the words "Whereas" and when there are several recitals instead of repeating the words "Whereas" before each and every one of them, it is better to divide the recitals into numbered paragraphs for example, "Whereas"-

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

It has been held that "Recitals" carry evidentiary importance in the deed. It is an evidence against the parties to the instrument and those claiming under and it may operate as estoppel [Ram Charan v. Girija Nandini, 3 SCR 841 (1965)].

— Space to write important points for revision —

2010 - Dec [2] (a) Explain the following :

(ii) Testimonium (2 marks)

(iv) Deed escrow (2 marks)

Answer :

(ii) Testimonium Clause : The clause of the deed is marked by this clamps and is an integral part of the deed. 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 under:

"In witness whereof, parties hereto have hereunto set their respective hands and seals the date and year first above written". This is the usual English form of testimonium clause. In India, except in the case of companies and corporations seals are not used and in those cases testimonium clause reads as under:

"In witness whereof the parties hereto have signed this day on the date above written."

Thus testimonium clause can be worded according to the status and delegation of executants.

(iv) Deed Escrow : A deed signed by one party and delivered to another as an "escrow" for it is not a perfect deed. Until and unless the deed is signed by all the parties are dated when the last party signs it. It is merely writing (Scriptum). The deed operates from the date it is last signed. Escrow means a simple writing not to become the deed of the expressed to be bound thereby, until some condition should have been performed. (*Halsbury Laws of England, 3rd Edn., Vol. II, p. 348*).

— Space to write important points for revision —

2010 - Dec [6] (a) Define the term 'deed'. Explain any seven usual clauses in a deed. **(8 marks)**

(b) Whether an unburnt fresh hard disk in a computer is a 'document' within the meaning of Section 3 read with Section 65B of the Indian Evidence Act, 1872 ? Discuss with reference to case law. **(4 marks)**

Answer :

(a) *Please refer 2009 - Dec [1] {C} (b) on page no. 38*

Answer:

(b) The issue whether hard disc of a computer is a document within the meaning of **Sections 3 and 65B of the Evidence Act, 1872 was decided in the case Dharamvir v. CBI [148 (2008) DLT [288].**

In this case, it was held that hard disc is a document. The Court held that as long as nothing at all is written on to a hard disc and it is subjected to no change, it will be a mere electronic storage device like any other hardware of the computer.

Once the hard disc is subject to any change, then even if it restored to the original position by reversing that change, the information concerning the two steps, viz., the change and its reversal will be stored in the subcutaneous memory of the hard disc and can be retrieved by using software designed for that purpose.

Therefore, a hard disc that is once written upon or subjected to any change is itself an electronic record even if it does not at present contain any accessible information.

In addition there could be active information available on the hard disc which is accessible and convertible into other forms of data and transferable to other electronic devices.

The active information would also constitute an electronic record. Given the wide definition of the words 'document' and 'evidence' in the amended **Section 2(o) and 2(t)** of IT Act, there can be no doubt that an electronic record is a document.

— Space to write important points for revision —

2011 - June [1] {C} (a) In India, there is no law on conveyancing or interpretation of documents. Explain how disputed ambiguous formal deeds can be judicially decided then. **(8 marks)**

Answer :

Principles of interpretation of deeds and documents are:

(A) Formal Agreements:- The following rules of interpretation may be applied:

- (i) Under **Section 91** of the Evidence Act provides that a deed constitute the primary evidence of the terms of a Contract, or of a grant or of any other disposition of property.
- (ii) In case of uncertainty, the rule embodied in provisions 2 and 6 of **Section 92** of the Evidence Act can be invoked for construing a deed.
- (iii) The cardinal rule is that clear and unambiguous words prevail over any hypothetical consideration.
- (iv) Sometimes a contract is completed in two parts:-
 - (a) An executory contract is executed
 - (b) An executed contract
- (v) The Court must interpret the words in their popular, natural and ordinary sense, subject to certain exceptions as,
 - (a) Where the contract affords an interpretation different from the ordinary meaning of the words; or
 - (b) Where the conventional meanings are not the same with their legal sense.
- (vi) All mercantile documents should receive a liberal construction.
- (vii) If certain words employed in business, or in a particular locality have been used in particular sense, they must *prima facie* be construed in technical sense.
- (viii) The ordinary grammatical interpretation is not to be followed, if it is repugnant to the general context.

- (ix) If the main clause is clear and the contingency mentioned in the proviso does not arise, the proviso is not attracted at all and its language should not be referred to for construing the main clause in a manner contradictory to its import.
- (x) As a general rule of construction of documents, the recitals are not looked into, if the terms of the deed are otherwise clear. If in a deed the operative part is clear, or the intention of the parties is clearly made out, whether consistent with the recitals or not, the recitals have to be disregarded.
- (xi) Sometimes a standard form is used, particularly in contracts with government departments on big corporations. In these standard printed forms, words not applicable are deleted according to the requirements of individual transactions.

(B) Informal Agreements:

In interpretation of informal agreements the rule to be applied is that of reasonable expectation; that is to say the agreement is to be interpreted in the sense in which the party who used the words in question should reasonably have apprehended that the other party may apprehend them.

— Space to write important points for revision —

2011 - June [2] (b) Discuss how Section 8 of the Transfer of Property Act, 1882 regarding operation of transfer has simplified 'parcels clause' in a deed.

(8 marks)

Answer :

The parcel includes words such as:

- (a) Messuages,
- (b) Tenements,
- (c) Hereditaments,
- (d) Land,
- (e) Water etc.

According to **Section 8**, operation of transfer-unless a different intention is expressed or necessarily implied, a transfer of property passes immediately to the transferee. all the interest which the transferor is Capable of passing in the property and in the legal incidence, thereof.

Such incidence includes-

- (i) Where the property is land, the easements annexed there to the rents and profits thereof occurring after the transfer and all things attached to the earth.
- (ii) Where the property is machinery attached to the earth, the movable parts thereof.
- (iii) Where the property is house, the Easements annexed thereto, the rent thereof accruing after the transfer and the locks, keys, doors windows, etc.
- (iv) Where the property is a debt or other actionable claim, the securities there of but not arrears of interest accrued before the transfer.

— Space to write important points for revision —

2011 - Dec [1] {C} (a) “All instruments are legal documents, but all legal documents are not instruments.” Critically evaluate with reference to leading cases. **(10 marks)**

Answer :

According to **Section 3 of the Indian Evidence Act, 1872**, defines Document as “any matter expressed or described upon any substance by means of letter, figures, or marks, or more than one of these means, intended to be used or which may be used for purposes of recording that matter.

Examples:

- (i) Writings;
- (ii) Prints;
- (iii) Maps;
- (iv) A caricature
- (v) Photo
- (vi) Video etc.

However, an instrument is a specific type of legal document used or intended to be so used or capable of being used as evidence of:

- Financial / monetary / legal right or liability.
- Purports to be so created, transferred, modified, limited, extended, suspended, extinguished or recorded those rights and liabilities.

The word instrument has been interpreted in different judgements by different courts with reference to the different enactment.

Example :

1. As per **Section 2(b) of the Notaries Act, 1952 and Section 2(14) of the Indian Stamp Act, 1899**, the word “instrument” includes every document by which any right or liability is or purports to be created, transferred, modified limited, extended, suspended, extinguished or recorded.
2. “Instrument” include awards made by Industrial Court. (*Purshottam v. Potdar*).
3. “Instrument” does not includes Act of Parliament unless there is a statutory definition to that effect in any Act. (*V.P. Sugar Works v. C.I. of Stamps*).
4. A will is an instrument (*Bishun v. Suraj Mukhi*).
5. The word “instrument” in **Section 1** of the Interest Act is wide enough of cover a decree (*Savitribai v. Radhakishna*).

— Space to write important points for revision —————

2011 - Dec [2] (a) Explain the following:

- (i) Fowler’s five rules of drafting.

(4 marks)

Answer:

Fowler’s Five Rules of Drafting : As per “anyone who wishes to become a good writer should endeavour, before he allows himself to be tempted by more showy qualities, to be direct, simple, brief, vigorous and lucid.”

The principle referred to above may be translated into general in the domain of vocabulary as follows :

- (a) Prefer the familiar word to the far fetched (familiar words are readily understood).
- (b) Prefer the concrete word to the abstract (concrete words make meaning more clear and precise).

8.36

Scanner CS Prof. Prog. M-III Paper 8 (2013 Syllabus)

- (c) Prefer the single word to the circumlocution (single word gives direct meaning avoiding adverb and adjective).
- (d) Prefer the short word to the long (short word is easily grasped).
- (e) Prefer the Saxon word to the Roman (use of Roman words may create complications to convey proper sense to an ordinary person to understand).
- (f) Always prefer active voice to the passive voice in the drafting of documents.

— Space to write important points for revision —

2011 - Dec [8] (b) What do you mean by —

- (i) Inclusive deed
- (ii) Latent deed
- (iii) Pretended deed
- (iv) Voluntary deed
- (v) Warranty deed

(2 marks each)

Answer :

(i)	Inclusive Deed	An inclusive deed is one which contains within the designated boundaries lands which are expected from the operation of the deed.
(ii)	Latent Deed	Is a deed kept for 20 years or more in man's escritoire or strong box.
(iii)	Pretended Deed	A pretended deed is a deed apparently or prima facie valid.
(iv)	Voluntary Deed	A voluntary deed is one given without any valuable consideration.
(v)	Warranty Deed	A warranty deed is a deed containing a covenants of warranty.

— Space to write important points for revision —

2013 - June [2] (a) Explain the following:

- (i) Parcels clause as a component of a deed.

(4 marks)

Answer :

Parcels Clause

This is a technical expression meaning methodical description of the property. It is necessary that in case of non-testamentary document containing a map or plan of the property shall not be accepted unless it is accompanied by the True Copy. Usually the Parcel Clause starts with the words All Those..... And further or description covers as per the type of property subjected to transfer under the deed. This clause includes words such as : Messuages, Tenements, Hereditaments, Land, Water etc. But use of these words has been rendered unnecessary in view of **Section 8 of Transfer of Property Act, 1882**. This Section has cut down the length of the deeds and done away with description of minute details of the incidents of the property intended to be conveyed.

— Space to write important points for revision —

2013 - Dec [5] (a) “Drafting may be defined as the synthesis of law and fact in a language form.” Explain.

(8 marks)

Answer :

Drafting may be defined as the synthesis of law and fact in a language form [Stanley Robinson: Drafting its application to conveyancing and commercial document 1980]

- (i) All three characteristics rank equally in importance.
- (ii) Legal drafting is the crystallization and expression in definitive form of a legal right, privilege function, duty or status.
- (iii) Legal instrument such as constitution, status, regulations, ordinances, contract, wills, conveyances, indentures, trusts and leases.

NOTE: *The process of drafting operates in two planes the conceptual and verbal besides seeking the right words Drafting therefore is first thinking and second composing.*

— Space to write important points for revision —

2014 - June [2] Explain the following :

- (a) Reasons for drafting recitals in a deed with due caution.
 (c) Drafting and conveyancing have the same meaning though these are not interchangeable. **(4 marks each)**

Answer:

- (a) Recitals should be inserted with great caution because they precede the operative part and as a matter of fact contain the explanation to the operative part of the deed. If the same is ambiguous recitals operate as estoppel. Recital offers good evidence of facts recited therein. Recitals are not generally taken into evidence but are open for interpretation for the courts. If the operative part of the deed is ambiguous anything contained in the recital will help in its interpretation or meaning. In the same sense, it is necessary that where recitals contain chronological events that must be narrated in chronological order.

Recitals carry evidentiary importance in the deed. It is an evidence against the parties to the instrument and those claiming under and it may operate as estoppel [Ram Charan v. Girija Nandini, 3 SCR 841 (1965)].

Answer:

(c)

<p>Distinction between drafting and conveyancing:</p>	<p>Both the terms "drafting and conveyancing" provide the same meaning although these terms are not interchangeable. Conveyancing gives more stress on documentation much concerned with the transfer of property from one person to another, whereas "drafting" gives a general meaning synonymous to preparation or drafting of documents, Documents may include document relating to transfer of property as well as other "documents" in a sense as per definition given in Section 3 (18) of the General Clauses Act, 1897 which include any matter written, expressed or described upon any substance by means of letters figures or mark, which is intended to be used for the purpose of</p>
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recording that matter. For example, for a banker the document would mean loan agreement, deed of mortgage, charge pledge, guarantee, etc. For a businessman document would mean something as demanded under **Section 2(4) of the Indian Sale of Goods Act, 1930** so as to include a document of title to goods i.e. "Bill of lading, dock warrant, warehouse-keepers certificate, wharfingers certificate, railway receipt multi modal transport document warrant or order for the delivery of goods and any other document used in ordinary course of business as proof of the possession or control of goods or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented". The **Companies Act, 2013 defines vide Section 2(3b)** the term "document" in still wider concept so as to include "summons, requisitions order, other legal process and registers, whether issued, sent or kept in pursuance of this or any other Act, or otherwise". Thus, drafting may cover all types of documents in business usages.

In India, the commercial houses banks and financial institutions have been using the term "documentation". In substitution of the words "drafting and conveyancing". Documentation refers to the activity which symbolises preparation of documents including finalisation and execution thereof.

2014 - June [3] In the light of judicial pronouncements, discuss the following :

(d) Testamentary disposition is personal; it cannot be delegated to any other person. **(4 marks)**

Answer:

- Testamentary disposition is the disposition or transfer of property that takes effect upon the death of the person making it. The testator retains almost entire control of the property until death.
- In short, it is the gift of property which takes effect at the time of the death of the person making the disposition. The transfer can be made by deed, by an inter vivos transaction, or by will.
- All instruments used to make testamentary dispositions must comply with the requirements of the statute of wills.
- Testamentary disposition also used to refer to the process of dead persons' will being complied with by announcing the division of the assets of the dead person amongst the people whose name has been mentioned in the will.
- **Section 59** of the Indian Succession Act, provides for the persons capable of making wills. Accordingly, every person of sound mind not being a minor may dispose of his property by will.
- The testamentary capacity is recognized only in a sound disposing state of mind. Soundness of mind denotes the mental capacity of the testator as to what he is doing, his capability of understanding his extent of his property, the person who is the object of his bounty and the persons who are thereby excluded.
- Testamentary disposition is personal, it cannot be delegated to any other person. A testator cannot confide to another the right to make a will for him. (***Tienouth v. Mulrone* 227 P.2d 590 (1951)**).

— Space to write important points for revision —

2014 - Dec [2] Explain the following:

(a) Drafting of legal documents is a skilled job requiring observance of many do's and don'ts. **(4 marks)**

Answer:

Please refer 2010 - June [1] {C} (b) on page no. 40

— Space to write important points for revision —

2015 - June [1] (a) "Drafting of documents is very important part of legal documentation. Documents are subject to interpretation when no clear meaning could be inferred by a simple reading of documents."

Explain this statement with reference to the rules relating to interpretation of formal legal documents. **(10 marks)**

Answer:

Where the agreement is formal and written, the following rules of the interpretation may be applied:

- (1) A deed constitutes the primary evidence of the terms of a contract, or of a grant, or of any other disposition of property (**Section 91** of the Evidence Act). The law forbids any contradiction of, or any addition, subtraction or variation in a written document by any extrinsic evidence, though such evidence will be admissible to explain any ambiguity (**Section 92** of the Evidence Act).
- (2) In cases of uncertainty, the rules embodied in provisos 2 and 6 of **Section 92** of the Evidence Act can be invoked for construing a deed.
- (3) The cardinal rule is that clear and unambiguous words prevail over any hypothetical considerations or supposed intention. But if the words used are not clear and unambiguous the intention will have to be ascertained.
- (4) In case the terms are not unambiguous it is legitimate to take into account the surrounding circumstances for ascertaining the intention of the parties. The social milieu, the actual life situations and the prevailing conditions of the country are also relevant circumstances.
- (5) Sometimes a contract is completed in two parts. At first an executory contract is executed and later on an executed contract. In case of any difference between the preliminary contract and final contract, the terms of the latter must prevail.
- (6) If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the latter clause is to be rejected as repugnant and the earlier clause prevails.
- (7) The Court must interpret the words in their popular, natural and ordinary sense, subject to certain exceptions as,

- (i) where the contract affords an interpretation different from the ordinary meaning of the words; or
 - (ii) where the conventional meanings are not the same with their legal sense.
- (8) Hardship to either party is not an element to be considered unless it amounts to a degree of inconvenience or absurdity so great as to afford judicial proof that such could not be the meaning of the parties.
- (9) All mercantile documents should receive a liberal construction.
- (10) No clause should be regarded as superfluous, since merchants are not in the habit of inserting stipulations to which they do not attach some value and importance. The construction adopted, should, as far as possible, give a meaning to every word and every part of the document.
- (11) Construction given to mercantile documents years ago and accepted in the mercantile world should not be departed from, because documents may have been drafted in the faith thereof.
- (12) If certain words employed in business, or in a particular locality, have been used in particular sense, they must *prima facie* be construed in technical sense.
- (13) The ordinary grammatical interpretation is not to be followed, if it is repugnant to the general context.
- (14) Antecedent facts or correspondence, or words deleted before the conclusion of the contract cannot be considered relevant to ascertain the meaning.
- (15) Evidence of acts done under a deed can, in case of doubt as to its true meaning, be a guide to the intention of the parties, particularly when acts are done shortly after the date of the instrument.
- (16) Unless the language of two documents is identical, and interpretation placed by courts on one document is no authority for the proposition that a document differently drafted, though using partially similar language, should be similarly interpreted.
- (17) If the main clause is clear and the contingency mentioned in the proviso does not arise, the proviso is not attracted at all and its language should not be referred to for construing the main clause in a manner contradictory to its import.

- (18) The fact that a clause in the deed is not binding on the ground that it is unauthorised cannot *ipso facto* render the whole deed void unless it forms such an integral part of the transaction as to render it impossible to sever the good from the bad.

— Space to write important points for revision —

2015 - June [2] Explain the following:

- (d) All instruments are legal documents but all legal documents are not instruments. **(4 marks)**

Answer:

According to Black's Law Dictionary an instrument is a written document, a formal or legal document in writing, such as a contract, agreements, deed, will, bond, or lease.

Under **Section 2(b) of the Notaries Act, 1952, and Section 2(14) of the Indian Stamp Act, 1899**, the word "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, modified, limited, extended, suspended, extinguished or recorded. In the context of the General Clauses Act, it has to be understood as including reference to a formal legal writing like an order made under constitutional or statutory authority.

Whereas legal documents includes contract, agreements, deed etc. which need not contain matters presumed or implied by law. It is better in such an agreement to specify even such matters and all other matters so as to make it a complete code, embodying the rights and duties of each party. Thus, all instruments are legal documents but all legal documents are not instruments.

— Space to write important points for revision —

2015 - Dec [3] Examine the following statement:

- (a) Drafting is the synthesis of law and fact in a language form. **(4 marks)**

Answer:

Drafting may be defined as the synthesis of law and fact in a language form: **[Stanley Robinson: Drafting its application to conveyancing and commercial document, 1980]**

8.44

Scanner CS Prof. Prog. M-III Paper 8 (2013 Syllabus)

- (i) All three characteristics rank equally in importance.
- (ii) Legal drafting is the crystallization and expression in definitive form of a legal right, privilege function, duty or status.
- (iii) Legal instruments such as constitution, status, regulations, ordinances, contract, wills, conveyances, indentures, trusts and leases.

NOTE: *The process of drafting operates in two planes the conceptual and verbal besides seeking the right words Drafting therefore is first thinking and second composing.*

— Space to write important points for revision —

2016 - June [1] Comment on the following :

(a) Conveyance is an act of transfer of any property. **(5 marks)**

Answer:

Mitra's legal and commercial dictionary defines "conveyance" as the action of conveyancing, a means or way of conveyancing, an instrument by which title to property is transferred, a means of transport, vehicle.

"Conveyance", as defined in **Clause 10 of Section 2 of the Indian Stamp Act, 1899**, "includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided by **Schedule I**" of the Act.

Section 5 of transfer of property act defines "transfer of property" as an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, and one or more other living persons; and "to transfer property" is to perform such act.

Thus, Conveyance is an act of by which movable or immovable property is transferred by way of sale, lease, gift or exchange.

— Space to write important points for revision —

2016 - June [6] (a) "Recitals carry evidentiary importance in the deed. It is an evidence against the parties to the instrument and those claiming under and it may operate as *estoppel*." Write a detailed note on this statement with reference to the decisions of the courts. **(8 marks)**

Answer:

Recitals contain the brief history of the property up to its vesting into its transferors. Care should be taken that recitals are precise and intelligible.

Recitals precede the operative part and as a matter of fact contain the explanation to the operative part of the deed. Any inaccuracy in the recitals may act as estoppels under **section 115 of the Evidence Act**. Recital offers good evidence of facts recited therein. Recitals are not generally taken into evidence but are open for interpretation for the Courts. If the operative part of the deed is ambiguous anything contained in the recital will help in its interpretation or meaning. In the same sense, it is necessary that where recitals contain chronological events that must be narrated in chronological order. **Supreme Court in Provash Chandra Dalui v. Biswanath Banerjee [1989 Supp (1) SCC 487]** laid down the following proposition:

“Ex praecedentibus et consequentibus optima fit interpretation.” The best interpretation is made from the context. Every contract is to be construed with reference to its object and the whole of its terms. The whole context must be considered to ascertain the intention of the parties.

Thus, recital carry evidentiary importance in the deed. It is an evidence against the parties to the instrument and those claiming under and it may operate as estoppels [**Ram Charan v. Girija Nandini, 3 SCR 841 (1965)**].

— Space to write important points for revision —

2017 - Dec [1] Comment on the following statements:

- (a) Things that should be avoided while drafting a document.
- (b) Drafting and Conveyancing have same meaning and are interchangeable words. **(5 marks each)**

Answer:

- (a) The following things should be avoided while drafting the documents :
 - (a) Avoid the use of words of same sound. For example, the words "Employer" and "Employee".
 - (b) When the clause in the document is numbered it is convenient to refer to any one clause by using single number for it. For example, "in **clause 2** above" and so on.
 - (c) Negative in successive phrases would be very carefully employed.

8.46 ■ **Scanner CS Prof. Prog. M-III Paper 8 (2013 Syllabus)**

- (d) Draftsman should avoid the use of words "less than" or "more than", instead they must use "not exceeding".
- (e) If the draftsman has provided for each of the two positions to happen without each other and also happen without, "either" will not be sufficient; he should write "either or" to express the meaning of the two in other clauses.

In writing and typing the following mistakes always occur which should be avoided:

1. "And" and "or";
2. "Any" and "my";
3. "Know" and "now";
4. "Appointed" and "Applied";
5. "Present" and "Past" tense.

(b)

<p>Distinction between drafting and conveyancing</p>	<p>Both the terms "drafting and conveyancing" provide the same meaning although these terms are not interchangeable. Conveyancing gives more stress on documentation much concerned with the transfer of property from one person to another, whereas "drafting" gives a general meaning synonymous to preparation or drafting of documents, Documents may include document relating to transfer of property as well as other "documents" in a sense as per definition given in Section 3 (18) of the General Clauses Act, 1897 which include any matter written, expressed or described upon any substance by means of letters figures or mark, which is intended to be used for the purpose of recording that matter. For example, for a banker the document would mean loan agreement, deed of mortgage, charge pledge, guarantee, etc. For a businessman document would mean something as defined under Section 2(4) of</p>
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the Indian Sale of Goods Act, 1930 so as to include a document of title to goods i.e. "Bill of lading, dock warrant, warehouse-keepers certificate, wharfingers certificate, railway receipt multi modal transport document warrant or order for the delivery of goods and any other document used in ordinary course of business as proof of the possession or control of goods or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented". As per **Section 2(36) of the Companies Act, 2013** the term "document includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form. Thus, drafting may cover all types of documents in business usages.

In India, the commercial houses banks and financial institutions have been using the term "documentation". In substitution of the words "drafting and conveyancing". Documentation refers to the activity which symbolises preparation of documents including finalisation and execution thereof.

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2018 - June [1] (c) Amino attestendi

(5 marks)

Answer:

Amino Attestendi :

It is one of the usual parts or components of deed in general. After attestation clause, signatures of the executants of the documents and their

witnesses attesting their signatures follow. It is essential that the attesting witness should have put his signature, *amino attestendi*, intending for the purpose of attesting that he has seen the executant sign or has received from him, a personal acknowledgement of his signature.

— Space to write important points for revision —

2018 - June [2A] (Or) Explain the following :

- (i) Legality of a written deed for performing a promise in near future.

(4 marks)

Answer:

A contract is an agreement enforceable by law. [**Section 2(h) of the Indian Contract Act, 1872**]. For every contract, there should be an agreement that is made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object. The agreement should not be declared void hereby to form a contract. This definition of contracts as per **Indian Contract Act, 1872** is based on Sir Pollock's definition which states that every agreement and promise enforceable at law is a contract. Thus for the formation of a contract, there must be an agreement and something in addition to that, i.e., an agreement, and its enforceability at law.

Hence, parties may contract to perform a promise in future and the deed containing such a promise will be legal in the eyes of law .

— Space to write important points for revision —

Repeatedly Asked Questions		
No.	Question	Frequency
1	Distinguish between of 'Conveyance' and 'contract'. 09 - June [3] (a) (i), 11 - Dec [7] (b) (i), 17 - Dec [3] (d)	3 Times
2	Write a note on 'covenants and undertakings'. 10 - Dec [7] (b), 13 - June [8] (b), 14 - Dec [3A] (Or) (i)	3 Times

3	Explain the following: All instruments are legal documents but all legal documents are not instruments. 11 - Dec [1] {C} (a), 15 - June [2] (d)	2 Times
4	Distinguish between the following: <i>Habendum</i> and <i>reddendum</i> . 13 - Dec [4] (i), 15 - June (2A) (Or) (iii)	2 Times
5	Distinguish between the following: 'Supplementary deeds' and 'endorsements'. 11 - June [7] (b) (i), 15 - Dec [2A] (Or) (i)	2 Times
6	Write notes on the following : <i>Habendum</i> . 10 - Dec [5] (i), 18 - June [3A] (Or) (iv)	2 Times