

CS Professional – Drafting, Appearances & Pleadings (Objective Compilation)

Prepared by CMA. Sanjay Gupta

Multiple Choice Questions:

- 1) A deed kept for twenty years or more in man's escritoire or strong box is called –
- (a) Pretended deed
 - (b) Warranty Deed
 - (c) Lawful deed
 - (d) Latent deed

Ans.) (d) Latent deed

- 2) A 'guarantee' guaranteeing an employer against the misconduct of an employee to answer for the debt or default of another is called –
- (a) Performance guarantee
 - (b) Bank guarantee
 - (c) Counter guarantee
 - (d) Fidelity guarantee

Ans.) (d) Fidelity guarantee

- 3) In English law, mortgage by deposit of title deed is called as –
- (a) Usufructuary mortgage
 - (b) English mortgage
 - (c) Equitable mortgage
 - (d) Anomalous mortgage

Ans.) (c) Equitable mortgage

- 4) In case of a company, mortgage of the property should be duly authorized –
- (a) By object clause of the memorandum of association and approved by a resolution of the board
 - (b) Only by object clause of the memorandum of association
 - (c) Only by resolution passed in the meeting of the board
 - (d) By articles of association

Ans.) (a) By object clause of the memorandum of association and approved by a resolution of the board

- 5) Power of attorney executed for the purpose of generally representing another person or for performing more than one act is called –
- (a) General power of attorney
 - (b) Special power of attorney
 - (c) Particular power of attorney
 - (d) Revocable power of attorney

Ans.) (a) General power of attorney

Prepared by CMA. Sanjay Gupta

- 6) If a power of attorney is executed in favour of more than one person and is silent on the mode of execution by attorneys, the attorneys will be entitled to act only –
- (a) Jointly
 - (b) Severally
 - (c) Both (a) and (b)
 - (d) None of the above

Ans.) (a) Jointly

- 7) The power of registered proprietor of a trade mark to assign his rights in the trade mark is dealt under Section 37 of –
- (a) The Copyright Act, 1957
 - (b) The Trade Marks Act, 1999
 - (c) The Trade and Merchandise Marks Act, 1958
 - (d) None of the above

Ans.) (b) The Trade Marks Act, 1999

- 8) The notices issued by a company under the Companies Act, 1956 may be –
- (a) Contingent
 - (b) Conditional
 - (c) Both (a) and (b)
 - (d) None of the above

Ans.) (d) None of the above

- 9) The code of Civil Procedures, 1908 prescribed that dates, sums and numbers expressed in pleadings shall be in –
- (a) Figures
 - (b) Words
 - (c) Both (a) and (b)
 - (d) None of the above

Ans.) (c) Both (a) and (b)

- 10) The writ that is available to any person, whenever any body of persons having legal authority to determine questions affecting rights of subjects and having the duty to act judicially acts in excess of its legal jurisdiction, is –
- (a) Mandamus
 - (b) Certiorari
 - (c) Both (a) and (b)
 - (d) None of the above

Ans.) (b) Certiorari

Fill in the Blanks

- 1) **Drafting** in legal sense, means an act of preparing legal documents.
- 2) **Indenture** are those deeds in which there are two or more parties.
- 3) A will is **testamentary bequest**.
- 4) If the apprentice is a minor, i.e., between the age of 14 and 18 years, the apprenticeship agreement will be entered into through the **guardian** of the apprentice.
- 5) The commission paid to an agent in a contract of agency coupled with interest is known as **Del Credere**.
- 6) Outsourcing is the contracting out of a company's non-core, non-revenue producing activities to a **Specialist**.
- 7) **Del Credere** is a special type of agency, which combines agency with guarantee.
- 8) Hypothecation is **an extended** form of pledge.
- 9) Mortgage by deposit of title deed is called in English Law as **equitable mortgage**.
- 10) According to section 105 of the Transfer of Property Act, 1882, a lease of immovable property is a transfer of a right to enjoy **property**.
- 11) Gift of immovable property is **compulsorily registrable** as per Section 123 of the Transfer of Property Act, 1882 and Section 17(i)(a) of the Registration Act, 1908 whatever may be the value.
- 12) The essential ingredients in a mortgage by deposit of title deeds are **Deposit of title deeds and intention to create charge**.
- 13) A mortgage in which possession is the essential ingredient is called **Usufructuary mortgage**.
- 14) **Lease** is a method of acquiring the right to use equipment or real property for consideration.
- 15) Registration and stamp duty is compulsory in case of mortgage value of **Rs. 100/-** and above.
- 16) Mortgage by deposit of title deeds is called **equitable** mortgage in English law.
- 17) A trust is **extinguished** when its purpose is completely fulfilled.
- 18) A power of attorney can be executed only in favour of a **specified person**.
- 19) The present day system of pleadings in our country is based on the provisions of the **Civil Procedure Code, 1908** supplemented from time to time by rules in that behalf by the High Courts of the States.
- 20) Pleadings filed by a defendant/respondent in answer to the claim set-out by the plaintiff/petitioner in the form of affidavit and/or supported by an affidavit are referred to as **Counter affidavit**.
- 21) Article 136 of the Constitution of India empowers **the Supreme Court** with wide discretionary powers to entertain appeals even in cases where an appeal is not otherwise provided for.
- 22) A writ **prohibition** will be issued by the supreme Court if a lower court exceeds jurisdiction or fails to exercise jurisdiction.
- 23) The defendant in an appeal petition is called **Respondent**.
- 24) **An Appeal** is an application by any party to an appellate court asking it to set aside or revise a decision of subordinate court.

- 25) **Writ of Prohibition** compels courts to act within their jurisdiction when a tribunal acts without or in excess of jurisdiction or in violation of the rules or law.
- 26) In compounding of offences, **the accused and the complainant** make a joint application to the court that the parties have come to terms and the case may not be proceeded with.

True and False/Correct and Incorrect

- 1) Drafting is first thinking and second composing.

Ans.) Correct. Correct in the sense that thinking about the subject matter comes first followed by composing.

- 2) 'Drafting' and 'Conveyancing' provide the same meaning although these terms are not inter-changeable.

Ans.) Correct. Drafting is a general term; conveyancing is drafting for the transfer of property.

- 3) If a document is not properly stamped. It is rendered inadmissible in evidence.

Ans.) Correct. Correct in the sense that a document is required to be drafted on non-judicial stamp paper of proper value as per the Indian Stamp Act. An improperly stamped document is not admissible in evidence nor can it be registered.

- 4) Testimonium is the clause in the first part of the deed.

Ans.) Incorrect. Testimonium clause is found in the last part or concluding part of the deed.

- 5) Consideration is very important in a document and must be expressed. But non-mention of consideration does not invalidate the document.

Ans.) Correct. A deed of gift is a document without consideration.

- 6) All deeds are documents and vice-versa.

Ans.) Incorrect. All deeds are documents but all documents are not deeds. A cheque is a negotiable instrument or document but not a deed.

- 7) Registration laws in India require that full description of the property be given in the documents presented for registration.

Ans.) Correct. Generally a SCHEDULE is given at the end of a deed wherein the full description of the property transferred is given.

8) An award is illegal, if one of the arbitrators does not sign the award.

Ans.) Incorrect. If the award is made after joint deliberations, the mere fact that one of the arbitrator does not sign the award, does not made it void.

9) For the validity of an award, it is necessary to set out recitals in the award.

Ans.) Incorrect. The facts of the case, differences and disputes referred to the arbitrator/ arbitrators, are to be mentioned in the award. It is not necessary to set out the recitals. If recitals are not given in the award, it does not become void.

10) Non-putting of a seal on agreement may not invalidate the agreement, if it has otherwise been properly executed.

Ans.) Correct. Non putting of seal of a company on an agreement made on behalf of the company, does not invalidate the agreement.

11) All the agreements relating to properties are not compulsorily registrable.

Ans.) Correct. Agreement relating to transfer of immovable properties creating an interest in such property worth more than Rs. 100/- are required to be registered.

12) Agreements not relating to immovable property and agreements not creating an interest in immovable property are not compulsorily registrable

Ans.) Correct. All the agreements relating to properties are not compulsorily registrable. Only Agreement relating to transfer of immovable properties creating an interest in such property worth more than Rs. 100/- are required to be registered.

13) “I promise to pay Balram Rs. 2,000/- and all other sums which shall be due to him” is a promissory note.

Ans.) Incorrect. The sum is not certain therefore it is not a promissory note.

14) A private trust will fail, if the object is uncertain or incapable of application.

Ans.) Correct. A trust must have a certain object or it will fail.

15) A proxy lodged with a company under section 176 is a power of attorney.

Ans.) Correct. A proxy has the right to vote. He can not exercise his right without proper authority.

16) An assignment is a form of transfer of property.

Ans.) Correct. Assignment is a mode of transfer and it presupposes a voluntary transfer only. It may be by virtue of an act done by a transferor with an intention, as in the case of a conveyance or a gift.

17) Habeas corpus is a remedy available to a person who is detained with legal justification.

Ans.) Incorrect. 'Habeas corpus' is a writ which is available to a person who is detained without legal justification.

Short Notes:

1) Fowler's five rules of drafting.

Ans.) The following are Fowler's five rules of drafting:-

- (i) Prefer the familiar word to unfamiliar one;
- (ii) Abstract words should be avoided and concrete words should be used;
- (iii) Don't beat about the bush; avoid using unnecessary adjectives and adverbs, a single meaningful word should be used;
- (iv) Long words should be avoided and short words should be used;
- (v) 'Active voice' should be used instead of 'passive voice' and Saxon word should be used as it may be difficult to convey proper sense by a Roman word.

2) Testimonium clause in a deed.

Ans.) The last part of a deed is testimonium which indicates that the parties have signed the deed. It is an essential part of a deed which indicates the close of the deed.

The testimonium clause generally runs as follows:-

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

3) Indenture

Ans.) Indentures are those deeds in which there are two or more parties. In older times it was written in duplicate upon one piece of parchment (heavy paper like material made from skin of sheep or goat) and two parts were severed with a view to leave an indented edge i.e. edge cut with marks to make the documents difficult to be forged. The paper is cut with uneven edge at the top. By this process as many copies as parties can be made.

4) Recital clause in a deed.

Ans.) There are two kinds of recitals: (a) Narrative recitals and (b) Introductory recitals. The narrative recitals describe the past history of the property transferred and set out facts to show the title and the relation of the parties to the subject-matter of the deed. The introductory recitals explain the motive for the preparation and execution of the deed.

Recitals should be inserted with great caution because they control the operative part of the deed. The recitals should be clear and unambiguous and unnecessary recitals should be avoided to ensure correctness and accuracy. Recitals carry evidentiary importance in the deed. **[Ram Charan v. Girija Nandini]**

Recitals should begin with the word “WHEREAS”. Recitals are generally divided into numbered paragraph with the word “WHEREAS” appearing at the top. For example,

WHEREAS.....

1

2

3

4.

Etc.

5) ‘Force majeure’ and ‘Deed escrow’.

Ans.) ‘Force majeure’ – This expression ‘Force majeure’ is similar to ‘Vis majeure’ which also means Acts of God which can not be stopped or controlled by human beings. For example, wars, earthquake, cyclone are beyond the reasonable control of human beings.

‘Deed escrow’ is not a perfect deed because a deed signed by one party and delivered to another is an ‘escrow’. It is only a mere writing not signed by all parties. Unless an ‘escrow’ is signed by all the parties and where the last party signs it, it does not become a deed in the legal sense of the term.

6) Habendum

Ans.) Habendum is the part of the deed which follows next to the “Premises” and usually begins with the words “to have and to hold.....” or an expression as “to the use of the purchaser” etc.

Habendum has two parts:- firstly to name against the grantee and secondly to limit the estate to be taken by the granted.

The property named in the parcels passes by the deed and the habendum limits the estate therein.

Normally, the interest of the grantee is an estate intended to pass by a deed is determined in accordance with words used in the ‘habendum’.

7) 'Covenants and undertaking'.

Ans.) A Covenant is a formal agreement between parties that is legally binding. It may be a formal promise to pay more regularly to a charity, trust etc.

The word 'Undertaking' means 'make oneself responsible' for doing something a work or task. It amounts to a promise or guarantee. For example, an undertaking that loan would be repaid or to respect the decision between the parties.

A Covenant clause includes undertakings also. Generally a covenant is stated first, followed by undertakings and sometimes, covenants and undertakings are joined together in the following manner:- "The parties hereto hereby manually agree with each other as follows."

8) Del credere agency.

Ans.) Del-credere agency means an agency with guarantee.

A "del-credere" agent is one who works for an extra remuneration and undertakes the liability to guarantee the due performance of the contract by the other party. As he charges extra remuneration, he agrees to indemnify his employer against loss.

9) Arbitration awards

Ans.) Sec. 2(1)(c) of Arbitration and Conciliation Act, 1996 deals with 'Arbitral awards'. An 'arbitral award' is the judgment pronounced by an arbitral tribunal on the disputes or differences referred to it for arbitration.

It includes an 'interim award' and also additional arbitral awards made under Section 33(4). The awards should be consistent with the submission and certain. It must be final and should state the reasons upon which it is based.

10) Usufructuary mortgage

Ans.) In a usufructuary mortgage, the mortgagor hands over physical possession of the property to the mortgagee or expressly binds himself to deliver possession of the mortgaged property to the mortgagee and does not take any kind of personal responsibility regarding the payment of mortgage money and rents. The mortgagee himself has to utilize rents and profits accruing from the property for the satisfaction of his mortgage money as well as rents. So long as the debt remains unsatisfied, the mortgagee is entitled to remain in possession of the property. No time-limit is fixed in such a mortgage as it is difficult to predict when the debt will be satisfied.

Where the mortgagor fails to deliver possession of the property, the mortgagee can sue for possession or for the recovery of money advanced. If the mortgagee has got possession of the mortgaged property, his only remedy is to retain possession till his debts are satisfied.

Usufructuary mortgage is also known as 'Bhogy-Bandhak'.

11) 'Sub-lease'

Ans.) A lessee may transfer the leased property by way of sub-lease for a shorter term than he himself has under the original lease.

A lessee can make a sub lease unless he is restrained from sub letting by the deed of lease.

So long as the lessee remains in possession he may permit another person to use the leased property with committing a breach of the lease by way of assignment or part with the possession of the demised premises.

A sub-lessee is entitled to relief against forfeiture u/s 114 of Transfer of Property Act.

12) Necessary clause in a Sub-lease deed.

Ans.) A sub-lease would imply parting with the tenant of the right to enjoy such property in favour of the sub-tenant.

Necessary clauses to be mentioned in sub-lease deed are as follows:

- a) Consideration paid by the under lessee.
- b) The under lessee covenants with the lessor that (insert covenants and conditions which would correspond with the head lease).
- c) The under lessee will be entitled to a covenant by the lessor under the terms in the following manner:

The lessor hereby covenants with the underlessee that the lessor of the persons deriving title under him will, with respect to the said property pay all rent becoming due under the recited lease and observe and perform all the covenants and conditions therein contained and henceforth on his part to be observed and performed.

- d) Provisions for re-entry and other provisions as required.

13) Power of attorney and letter of authority.

Ans.) As defined in Section 1A of the Powers of Attorney Act, 1882, "Powers of Attorney" include any instrument empowering a specified person to act for and in the name of the person executing it.

A special authorization is essential for the attorney to use the name of the principal while executing an instrument, over and above the authority to act on his behalf.

Thus a mere authority to act on behalf of another is not sufficient to constitute a power of attorney. (Mohan Lal Jain Vs. H.H. The Maharaja of S.M. Singh AIR 1962 SC 73)

A 'Letter of Authority' is also a sort of power of Attorney but is executed on plain paper and not on stamp paper. However, a 'Letter of Authority' does not have the same force as that of 'Power of Attorney'.

14) Rule of adverse inference

Ans.) If a party is in possession of the best evidence relating to the issue involved, it is his duty to produce such evidence. If he fails to produce such evidence, then an adverse inference may be drawn against such party. If a person is in possession of an original registered deed relating to a plot of land, it is his duty to produce the same or an adverse inference may be drawn against such party.

15) Revision under the Code of Civil Procedure, 1908.

Ans.) The Revisional jurisdiction conferred on the High Courts under sec. 115 of the Civil Procedure Code to keep the subordinate Courts within the bounds of their jurisdiction and once a flaw in jurisdiction is found, the High Court exercising revisional jurisdiction cannot only quash or remit but by itself pass such order as it thinks fit. [(Nalakanth Vs Koori Kadav (2002)6 Sec. 1)]

The following are the conditions for application of Sec. 115:-

- 1) The subordinate court (a) appears to have exercised a jurisdiction not vested in it by law, or (b) to have failed to exercise a jurisdiction so vested, or (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity;
- 2) That against the order impugned, no appeal has been provided either to the High Court or to any court subordinate to High Court.
- 3) That the order impugned should be such that if it had been made in favour of the party applying for revision would have finally disposed off the suit or proceeding.

Once the said conditions are satisfied, it is no more necessary for the party applying for revision to establish that the order impugned, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made. This amending Act of 1999 has dispensed with this requirement.

The revisional jurisdiction under section 115 of Civil Procedure Code can be exercised only by the High Court against the order of a court subordinate to it.

16) Writ as an extra ordinary constitutional remedy.

Ans.) Writ, indeed is an extraordinary Constitutional remedy under Article 226 of the Constitution of India, notwithstanding anything in Article 32 which empowers the Supreme Court to issue writs for violation of fundamental rights. Every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority or any Government within those territories directions, orders or writs including writs in the nature of: -

- a) Habeas Corpus
- b) Mandamus
- c) Prohibition
- d) Certiorari
- e) Quo warranto

or any of them for the enforcement of the fundamental rights conferred by part III of the constitution, and for any other purpose.

The sixth writ is known as Public Interest Litigation (PIL). A writ petition for public purpose or in the interest of general public may be filed in the High Court under Article 226 of the constitution.

Under Article 32 of the constitution of India the Supreme Court shall have powers to issue writ in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of fundamental rights enshrined in the Constitution of India.

It is to be remembered that the jurisdiction vested in the Supreme Court is exercisable only for the enforcement of fundamental rights conferred by part-III of the Constitution whereas, under Article 226, the High Court can issue any of the aforesaid writs for the enforcement of fundamental rights and for any other purpose.

In this sense, High Courts have wider powers under Article 226 than the Supreme Court under Article 32 of the Constitution.

17) Writ of 'Habeas Corpus'.

Ans.) Writ of 'Habeas Corpus' is a remedy available when a person is deprived of personal liberty or detained wrongfully. The writ of habeas corpus is a process by which a person who is confined without any legal justification may secure a release from his confinement.

Under Article 226, this writ is issued by the High Court upon the person by whom a prisoner has been kept in confinement to bring such a person before the Court and provide the grounds of such confinement. If the detention is found to be illegal, the party is ordered to be released.

The writ of habeas corpus can be filed by any person on behalf of the prisoner or by the prisoner himself in the High Court. The application for habeas corpus will have to be accompanied by an affidavit mentioning the circumstances of the detention.

18) Writ of 'Mandamus'.

Ans.) The word 'mandamus' literally means 'a command'. The writ of mandamus is a judicial remedy which is in the form of an order from a superior court to any government, court, corporation or public authority to do or forbear from doing some specific act which that body is obliged under law to do or refrain from doing, as the case may be and which is in the nature of public duty and in certain cases, the statutory duty. This writ can be issued by the High Court (under Article 226) and Supreme Court (under Article 32).

The person praying for this writ must show that he has a legal right to compel the opponent to do or to refrain from doing something.

It is usually issued to restrain an administrative authority from enforcing an unconstitutional act.

19) Writ of 'Prohibition'.

Ans.) The writ of prohibition is issued by a superior court directing an inferior court forbidding it to continue proceeding:

- a) With jurisdiction but in excess of its jurisdiction; or
- b) With exercise of jurisdiction when it does not have; or
- c) With contravention of some law.

Thus, it is a judicial writ. However, it can also be issued to the quasi-judicial bodies. The effect of a writ of prohibition is that it orders the immediate stoppage of the trail of the case in the lower Court.

20) Writ of 'Certiorari'.

Ans.) Certiorari is an order issued by the High Court to an inferior Court or 'body', exercising judicial or quasi judicial functions to have the decision of such court or 'body' removed to the High Court in order that its legality may be investigated.

It is issued on the following grounds:-

- a) Want or excess of jurisdiction.
- b) Violation of Procedure or disregard of the principal of natural justice.
- c) Error of law apparent on the face of the record.

21) Writ of 'Quo Warranto'.

Ans.) The object of this writ is to prevent a person from continuing in an office which has been wrongly usurped by him. The writ is issued by the High Court to the holder of the office to show to the court under what authority he holds the office. If the High Court is satisfied that the holder of the office is holding the office illegally, he will be ousted from the office by the order of the court.

The office in question must be a public office. A public office means an office in which the general public has an interest. The Writ is not available in respect of the office of a private nature.

Matching:

<u>Column A</u>	<u>Column B</u>
Force Majeure	Excess for non-performance
Testatum	Witnessing clause
Habeas Corpus	To have a body
Mandamus	Command
Quo warranto	Usurping Public Office
Del credere Commission	Extra remuneration for an agent.
Company	Promoter
Firm	Partner
Trust	Beneficiary
Deed	Documents
Appeal	Relief sought
Written Statement	Application
Petition	Defence
Writ	Prohibition