

DRAFTING, APPEARANCES AND PLEADINGS

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer SIX questions including Question No. 1 which is **COMPULSORY**.

Question 1

Attempt any four of the following :

- (a) Anand sells a property to Karan. After completion of the conveyance, Karan discovers that under a decree for partition, a portion of the property had been allotted to Chandan and Anand's omission to disclose the decree is fraudulent. Discuss the rights and course of action available to Karan. (5 marks)
- (b) Define 'deed'. What are the components of a deed in general ? (5 marks)
- (c) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :
 - (i) _____, in legal sense, means an act of preparing legal documents.
 - (ii) _____ are those deeds in which there are two or more parties.
 - (iii) _____ is a special type of agency, which combines agency with guarantee.
 - (iv) _____ is a method of acquiring the right to use equipment or real property for consideration.
 - (v) 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 _____. (1 mark each)
- (d) State, with reasons in brief, whether the following statements are true or false :
 - (i) 'Drafting' and 'conveyancing' provide the same meaning although these terms are not inter-changeable.
 - (ii) Consideration is very important in a document and must be expressed. But, non-mention of consideration does not invalidate the document.
 - (iii) Agreements not relating to immovable property and agreements not creating an interest in immovable property are not compulsorily registrable.
 - (iv) "I promise to pay Balram Rs.2,000 and all other sums which shall be due to him" is a promissory note.
 - (v) A private trust will fail, if the object is uncertain or incapable of application. (1 mark each)
- (e) Choose the most appropriate answer from the given options in respect of the following :
 - (i) 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.*
- (ii) *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.*
- (iii) *The Code of Civil Procedure, 1908 prescribes that dates, sums and numbers expressed in pleading shall be in —*
 - (a) *Figures*
 - (b) *Words*
 - (c) *Both (a) and (b)*
 - (d) *None of the above.*
- (iv) *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.*
- (v) *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.*

(1 mark each)

Answer 1(a)

This is a case of non – disclosure of material defect in title. Section 55 of the Transfer of Property Act, 1882 prescribes the rights and liabilities of buyer and seller which can be modified by the parties to a contract by mutual consent and contract to the contrary of these provisions. One of the liabilities of the seller under section 55(1) of the Act is that he is bound to disclose to the buyer any material defect in the property or in his title to such property before the completion of the execution of the sale deed.

In other words, seller is liable to disclose latent defects in the property or in his title known to him before the completion of the execution of the sale deed. Such a latent defect should be material i.e. it should be such as would influence the buyer's decision if he knew about it. A latent defect is one which a purchaser would not be able to discover by ordinary diligence. If it could be, then it is a patent defect and there is no obligation on the part of the seller to disclose it.

Allotment of property to another co-owner under a partition deed not known to the purchaser is one of the examples in defects in the title. If A agreed to sell a property to B and puts B in possession, but B discovers defect in A's title before the sale deed is executed, in such a case B may sue for damages for breach.

In the given problem also there is non –disclosure of material defect in title. Karan i.e, the buyer has accepted the title and he discovers the fraud. He may sue to set aside the sale and claim damages. [*Gajapathi v. Alagia* (1886)ILR9 Mad 89]

Answer 1(b)

A deed is a writing —

- (a) on 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.

In *Halsbury's Laws of England*, a deed has been defined as “an instrument written on parchment or paper expressing the intention or consent of some person or corporation named therein to make (otherwise than by way of testamentary disposition, confirm or concur in some assurance of some interest in property or of some legal or equitable right, title or claim, or to undertake or enter into some obligation, duty or agreement enforceable at law or in equity or to do, or concur in some other act affecting the legal relations or position of a party to the instrument or of some other person or corporation, sealed with the seal of the party, so expressing such intention or consent and delivered as that party's act and deed to the person or corporation intended to be affected thereby.

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.

Answer 1(c)

- (i) **Drafting**, in legal sense, means an act of preparing legal documents.
- (ii) **Indenture** are those deeds in which there are two or more parties.
- (iii) **Del Credere Agency** is a special type of agency, which combines agency with guarantee.
- (iv) **Lease** is a method of acquiring the right to use equipment or real property for consideration.
- (v) 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**.

Answer 1(d)

- (i) True
- (ii) True
- (iii) True
- (iv) False
- (v) True

Answer 1(e)(i)

- (a) Jointly

Answer 1(e)(ii)

- (d) None of the above

Answer 1(e)(iii)

- (c) Both (a) & (b)

Answer 1(e)(iv)

- (b) Certiorari

Answer 1(e)(v)

- (b) The Trade Marks Act, 1999

Question 2

- (a) *Discuss the requirements of section 13 of the Companies Act, 1956 with regard to 'objects clause' of the memorandum of association of a company. What are the precautions which must be taken in drafting the objects clause ?*

(4 marks)

- (b) *Explain mortgage by deposit of title deeds.*

(4 marks)

- (c) *Draft a deed of agreement of admission of a new partner into a partnership firm.*

(8 marks)

Answer 2(a)

The object clause defines the very objects of its formation, existence and operations and powers which a company has towards the attainment of the objectives. There is no restriction on objects except it should be legal and lawful. While drafting the objects, care should be taken to see that:

- (i) the objects are stated in a precise and clear manner so that there is no ambiguity in their inter-presentation;
- (ii) each object is stated independently;
- (iii) there is no inconsistency or contradiction between the objects;
- (iv) the same objects are not repeated in other clauses of objects in different words and phraseology;
- (v) no object is illegal, immoral or against public policy;
- (vi) objects are properly arranged and divided and set in short sentences.

As per section 13 of the Companies Act, 1956 the objects clause is required to state (i) the main objects to be pursued by the company on its incorporation; (ii) subjects incidental and ancillary to the attainment of the main objects; and (iii) other objects not included in (i) and (ii) above. Further, it should state in case of non-trading companies the State(s) of its operation.

Main objects : The objects which are intended to be pursued by the company on its incorporation and in the immediate foreseeable future are its main objects. The objects clause should be of widest possible coverage in precise and clear expression. This will save the company from litigation on the ground that the object pursued by the company fall outside the permitted range of its activity

Objects incidental or ancillary : These are not independent objects and cannot be entered upon by the company independent of its main objects. These objects are pursued only to the extent they are necessary for attainment of the main objects. No borderline could be created between the main objects and objects incidental and ancillary to main objects. The attainment of main objects should be facilitated by the objects incidental

and ancillary. This makes it imperative that reasonable nexus or resemblance should exist or to be shown to exist in objects incidental and ancillary with main objects while drafting these clauses.

Other Objects : These are objects which are covered neither by main objects nor by objects ancillary or incidental thereto, but which are nevertheless necessary to enable the company to undertake all types of business activities which the company may anticipate to pursue. But other objects should not be ambiguous and irrelevant to the main objects of the company.

Answer 2(b)

Mortgage by Deposit of Title Deeds

Mortgage by deposit of title deeds is called in English law as equitable mortgage. It is an oral transaction and no documents like Deed of Mortgage is required to be executed. No written acknowledgement is required for creating this mortgage. It is however, prudent to have a record of transaction to avoid difficulties to establish the creation of the mortgage. In this case, a Memorandum of Mortgage by deposit of title deeds is prepared by the mortgagee to secure the specific mortgage money. The main characteristics of this type of mortgage are as under:

1. Debt even time barred, present and future advances are covered under the equitable mortgage. In other types of mortgage, future advances are not covered.
2. Delivery of title deeds is required to be made in Bombay, Madras and Calcutta and other specified towns to which the facility is extended by State Government from time to time through Gazette notification.

It is not necessary for creation of mortgage that the property be located in the specified town or the company making deposit should have its registered office in that town.

3. This deposit can be made by the company through its nominee or agent duly authorised.
4. Intent to create security by deposit of title deeds should be present at the time of such deposit in the mortgagor.
5. Neither ownership nor possession of the property passes to the mortgagee under the equitable mortgage.

Equitable mortgage is preferred by the lenders/banks/creditors as well as the commercial enterprises because of the inherent advantages viz. (a) to save time and avoid inconvenience of documentation, and registration; (b) to minimise cost of creating mortgage and cost of borrowed funds by saving stamp duty; (c) to maintain secrecy of the debt transaction; (d) it is a cut short method and skips many formalities like compliance of Section 230A of Income-tax Act, 1961, and 293(1)(a) of the Companies Act.

Answer 2(c)

Deed of Agreement of Admission into Firm of a New Partner

THIS DEED OF AGREEMENT IS made the day of 2009 BETWEEN AB son of aged r/o and

CD son of aged r/o
 partners in the firm CD & CO. of the one part, AND EF son of
 aged years resident of of the other part.

WHEREAS the said AB and CD are partners in the firm CD & Co. situated in
 and are bound as such under a deed of partnership executed by them on the
 day of 200.. hereinafter referred to as the “partnership deed”.

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

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

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

AB shall have Rs. in the said capital;

CD shall have Rs. in the said capital; and

EF shall have Rs. in the said capital.

3. The profits and losses of the partnership shall continue to be borne by the
 partners hereto in proportion to their above named respective shares.

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

WITNESSES:

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

Question 3

- (a) Arvind mortgages his houses at Delhi and Gurgaon to Suresh. Arvind then
 mortgages the Delhi house to Navin. On default, Navin brings Delhi house to
 sale in enforcement of his mortgage and he himself purchases Delhi house.
 Suresh then obtains an order for sale on his mortgage. What are the rights and
 remedies available to Navin ? (5 marks)
- (b) What special points must be taken into account while drafting notices in case of
 a company ? (5 marks)
- (c) Draft a power of attorney to execute a deed of sale. (6 marks)

Answer 3(a)

The given problem is governed by section 81 of the Transfer of Property Act. A mortgagee acquires certain rights and incurs certain obligations in the property mortgaged. One of those rights is the right of marshalling. According to section 81 of the Transfer of Property Act "if the owner of two or more properties mortgages them to one person and then mortgages one or more of the properties to another person, the subsequent mortgage is, in the absence of a contract to the contrary, entitled to have the prior mortgage-debt satisfied out of the property or properties not mortgaged to him, so far as the same will extend, but not so as to prejudice the rights of the prior mortgagee or of any other person who has for consideration acquired an interest in any of the properties".

In this case Navin is entitled to have the mortgaged debt satisfied out of the property not mortgaged to him (i.e house at Gurgoan) so long as the same will extend but not so to prejudice the rights of the Suresh.[See *Inderdawan v. Govind* ILR 23 Cal 790]

Answer 3(b)

1. Where the form of notice is prescribed by statutory rules or forms, it has necessarily to adhere to what is prescribed.
2. One has to study, the nature of the notice, the circumstances which warrant their issue or service. The language of the notice depends upon whether it is addressed generally or it is meant to an individual or a class or a Government official.
3. Notice shall be dated, signed by authorised person, mention date, place, time and nature of meeting [Section 172(1)].
4. One of the important contents of the notice is to state the business to be transacted at the meeting. Either it be separately enclosed or incorporated in the notice itself [Section 172(1)].
5. Another important feature of the notice is that, it should relate to the event either taken place or which is likely to take place, the time within which any particular compliance is required to be made either by person receiving the notice, or otherwise, the authority issuing the notice and the person(s) for whom it is meant.
6. Explanatory statement (Section 173) requirement shall be complied with as regards to special business to be transacted at the meeting. It should contain material facts, such as the nature of interest; extent of shareholdings etc. of directors/Manager as required as per Section 173(2).
7. If the meeting is to accord approval to a document, the explanatory statement must also state the time and place where that document can be inspected [Section 173(3)]
8. Where the resolution is to be passed 'as a special resolution', the intention to propose the resolution as such must also be stated in the notice [Section 189(2)(a)].
9. In the case of companies having share capital, the notice should also state with

reasonable prominence that a member entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of himself and the proxy need not be a member [Section 176(2)]. This must appear in the body of the notice before the signature of the authorised person.

10. If the notice is published in a newspaper mainly to satisfy the requirement of giving a deemed notice to those members who have no registered address in India and who have not supplied any address within India for the giving of notices to him, the statement of material facts need not be annexed to the notice, but it should be mentioned in the notice that the statement has been forwarded individually to the members [proviso to sub-section (2) of Section 172].
11. Notice should be clear, concise and to the point which any reader can make out quickly. Use of bold letters for key aspects is ideal.
12. One has to comply with Section 190 about special notice, proper serving of notice, duty to give notice in time, and provision of statutory length of notice etc.
13. Notice if required may warrant, the receiver to act upon, and it should mention the consequences in case of failure to act.

The point is that if any essential feature is left out, serious legal consequences may ensue, which one has to avert. Sending a second notice, in place of an incorrect or illegal one adds to the cost.

Answer 3(c)

Power of attorney to execute a deed of sale

KNOW ALL MEN BY THESE PRESENTS that I, AB, etc, hereby appoint CD, etc., as my attorney in my name and on my behalf to do or execute all or any of the acts or things which I have to do in pursuance of an agreement dated..... between me and XY and which are hereinafter mentioned, that is to say,

1. To receive from the purchaser or his heirs or assigns the sum of Rs. _____ being the price agreed to be paid to me by XY for the purchase of (description of property) under an agreement dated the _____ and to give an effectual receipt and discharge for the same;
2. To execute a proper sale deed of the said property or any other deed or assurance necessary for the completion of the sale of such property;

AND I hereby agree that all acts deeds and things lawfully done by my said attorney shall be construed as acts, deeds, and things done by me and I undertake to ratify and confirm all and whatsoever that my said attorney shall lawfully do or cause to be done for me by virtue of the power hereby given.

IN WITNESS hereof I have signed this deed on this _____ day of ____ 200__ .

Signed, sealed and delivered

AB

In the presence of :

Witness

Question 4

- (a) *What are the requisites of an 'award' under the Arbitration and Conciliation Act, 1996 ?* (4 marks)
- (b) *Distinguish between the following :*
- (i) *'Document' and 'deed'.*
 - (ii) *'Affidavit' and 'petition'.*
 - (iii) *'Counter guarantee' and 'fidelity guarantee'.*
 - (iv) *'English mortgage' and 'simple mortgage'.* (3 marks each)

Answer 4(a)

Award means the decision of the arbitrator to whom the dispute is referred. Under Section 2(1)(c) of the Arbitration and Conciliation Act, 1996 arbitral award includes "an interim award".

Requisites of an Award

The general requisites of an award are:

- (a) the law requires that the award shall be made in writing and signed by all the members of the arbitral tribunal or by the majority of them if the reason for any omitted signature is stated, stating its date and the place of arbitration.
- (b) it must be consistent with the submission;
- (c) it must be certain;
- (d) it must be fair to the parties;
- (e) it must be final;
- (f) its implementation must be possible;
- (g) the award must state the reasons upon which it is based.

Answer 4(b)(i)**Document and Deed**

Document: Document as per General Clauses Act, 1894 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". As for instance, a writing is a document; words printed, lithographed or photographed are documents; a map or plan is a document; an inscription on a metal plate 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.

Deed: Deed is the term normally used to describe 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'.

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

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.

Answer 4(b)(ii)

Affidavit and Petition

Affidavit : An affidavit is a statement or declaration on oath by the deponent. The consequences of a false affidavit are serious. Therefore, great care is required in drafting it.

Affidavits to be produced in a Court must strictly conform to the provisions of Order XIX, Rule 1 of the Code of Civil Procedure, 1908 and in the verification it must be specified as to which portions are being sworn on the basis of personal knowledge and which, on the basis of information received and believed to be true. In the latter case, the source of information must also be disclosed.

Petition : Petitions are complaints against the defendants or respondents in the event of any breach of contract or when a crime is committed or when loss or damages are incurred as the case may be.

Answer 4(b)(iii)

Counter Guarantee and Fidelity Guarantee

A guarantee, guaranteeing an employer against the misconduct of an employee or to answer for the debt or default of another, is called a “fidelity guarantee”.

A guarantee given by the principal debtor to the surety providing him continuing indemnity against any loss or damage that the surety may suffer on account of default on the part of the principal debtor, is called “counter-guarantee”.

Answer 4(b)(iv)

Simple Mortgage and English Mortgage

In a simple mortgage, the mortgagor without delivering possession of the mortgaged property binds himself personally to pay the mortgage money and agrees expressly or impliedly that if he fails to pay the debt and interest in terms of the mortgage deed, the property will be sold and the proceeds applied in payment of the mortgaged money.

In an English mortgage, a mortgagor binds himself to repay the mortgaged money on certain date and transfers the mortgaged property absolutely to the mortgagee subject to the proviso that he will re-transfer it to the mortgagor upon payment of the mortgaged money as agreed.

Question 5

- (a) *The government of a particular State and Sriram Holdings (P) Ltd. went to arbitration and the arbitrator passed an award on 12th October, 2003 against the*

appellant, copy of which was received by appellant on 23rd October, 2003. Review was sought on 2nd April, 2004, after 6 months from the date of award. Objections to the award were filed after 10 months from the date of the award. Will the appellant be entitled to file objections under the Arbitration and Conciliation Act, 1996 ? Support your answer with case law. (4 marks)

(b) Explain habendum. What does a habendum clause signify in a document ? (4 marks)

(c) Define 'affidavit'. What rules and guiding principles should be followed while drawing up an affidavit ? (8 marks)

Answer 5(a)

The facts of the matter are similar to the case of *State of Arunachal Pradesh v. M/s Daman Construction Co.* (JT 2007)(4) SC 118.

Dismissing the appeal, the Supreme Court held that it was absolutely thoughtlessness on the part of the appellant to have written a letter after six months i.e., on 2.4.2004 seeking review of the interim award. The Application moved under Section 33(1) of the Arbitration and Conciliation Act, 1996 is not strictly covered under the said section, i.e., seeking certain correction in computation of errors, or clerical or typographical errors. The application is however designed seeking review of award which the tribunal has no power. Secondly, the prayer directing the respondent to furnish Bank Guarantee, as it is an interim award and not final, is also not covered under Section 33. Therefore, the reply given by the arbitrator does not give rise to any cause of action to the appellant so as to move an application under Section 34(3) of the Act. Hence the appeal is dismissed.

Answer 5(b)

Habendum is a part of deed which states the interest, the purchaser is to take in the property. *Habendum* clause starts with the words "THE 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.

Answer 5(c)

An affidavit being a statement or declaration on oath by the deponent, is an important document. Therefore, great care is required in drafting it. The consequences of a false affidavit are serious. The following rules should be remembered when drawing up an affidavit:

- (1) Not a single allegation more than is absolutely necessary should be inserted;
- (2) The person making the affidavit should be fully described in the affidavit;
- (3) An affidavit should be drawn up in the first person;
- (4) An affidavit should be divided into paragraphs, numbered consecutively, and as far as possible, each paragraph should be confined to a distinct portion of the subject;
- (5) Every person or place referred to in the affidavit should be correctly and fully described, so that he or it can be easily identified;
- (6) When the declarant speaks of any fact within his knowledge he must do so directly and positively using the words "I affirm" or "I make oath and say";
- (7) Affidavit should generally be confined to matters within the personal knowledge of the declarant, and if any fact is within the personal knowledge of any other person and the petitioner can secure his affidavit about it, he should have it filed. But in interlocutory proceedings, he is also permitted to verify facts on information received, using the words "I am informed by so and so" before every allegation which is so verified. If the declarant believes the information to be true, he must add "and I believe it to be true".
- (8) When the application or opposition thereto rests on facts disclosed in documents or copies, the declarant should state what is the source from which they were produced, and his information and belief as to the truth of facts disclosed in such documents;
- (9) The affidavit should have the oath or affirmation written out at the end.

An affidavit has to be drawn on a non-judicial Stamp Paper as applicable in the State where it is drawn and sworn.

An affidavit shall be authenticated by the deponent in the presence of an Oath Commissioner, Notary Public, Magistrate or any other authority appointed by the Government for the purpose.

- (10) Affidavits are chargeable with stamp duty under Article 4, Schedule I, Stamp Act, 1899. But no stamp duty is charged on affidavits filed or used in Courts. Such affidavits are liable to payment of Court fee prescribed for the various Courts.

Question 6

(a) *What are the ingredients that are necessary to prepare —*

(i) *Power of attorney; and*

(ii) *Instrument of trust ?*

(3 marks each)

- (b) Management issues an appointment letter to a probationer and the relevant para of his appointment letter reads as follows :

“Clause (I) — You are hereby appointed as a Salesman.... You will serve a probationary period of six months; this period of probation may be extended by a further period of three months or more in suitable cases in the absolute discretion of the company. The company has the right to terminate your services during the period of probation or extended period of probation or before confirmation in writing without notice and without assigning any reason whatsoever.”

The probationer joined the services of the company on probation. The management terminated his services after 2 months of joining by a letter saying “we regret to terminate your services with immediate effect in terms of clause (I) of your appointment letter.”

Do you think what management did is correct ? What are the remedies available to the probationer ? (5 marks)

- (c) What is ‘compounding of offences’ ? How does compounding of offences take place under the Securities and Exchange Board of India Act, 1992 ? (5 marks)

Answer 6(a)(i)

A power of attorney as per section 1A of the Powers-of-Attorney Act, 1882, includes an instrument empowering a specified person to act for and in the name of the person executing it. It is always kept by the attorney. A power of attorney executed for the purpose of a specific act is called a “special power of attorney”. A 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’.

A power of attorney can be executed by any person, who can enter into a contract i.e. a person of sound mind who has attained the age of majority.

Powers of attorney are executed in the form of Deed Poll, usually in the first person. It is a unilateral document. It begins either as - “KNOW ALL MEN BY THESE PRESENTS THAT I, ETC.” or “BY THIS POWER OF ATTORNEY, I, ETC.”. Generally, the operative words making the appointment are introduced directly without any recitals. If recitals become necessary, they should be added after the words “KNOW ALL MEN BY THESE PRESENTS” thus “THAT WHEREAS etc.”, and after recitals the operative part is introduced thus “Now I, the said AB, etc., hereby appoint, etc., or the deed may be drafted with the heading “THIS POWER OF ATTORNEY is made on the, etc., then adding the recitals, the operative part is introduced thus “NOW THIS DEED WITNESSES THAT I APPOINT, ETC.”.

The powers conferred on the attorney should be specifically stated after the appointment, preferably, in separate paragraphs. Sometimes after giving specific powers a general clause empowering the attorney to do all such lawful acts as the attorney should think reasonable is added, but this is not ordinarily necessary, as according to authorities such a clause does not extend or widen the authority.

Answer 6(a)(ii)

An instrument of trust is drafted either as a deed poll or as a regular deed between the author of trust and the trustee. Where trustees are strangers and a transfer of property is involved, it is better to draft the deed as a deed between the author of trust and the

trustees. Where the author is to be the trustee himself and the deed requires a mere declaration of trust, it is drafted as a deed poll. No specific words are necessary, but, whatever the words used, the deed should contain with reasonable certainty the matters mentioned under the heading 'Creation of Trust'.

While drafting a trust deed, it be seen that every clause in the deed is clear in its meaning. If there is any reference to any article, documents, rules, statutory Acts etc., the same are properly applied out. In case reference to these is to be repeated in the deed it is better to first define them and use the abbreviation in the deed subsequently.

The most important and vital part of a trust is the expression of an intention to create a trust which should be expressed in the deed in unequivocal language and with reasonable certainty. No particular or technical words are necessary but the words used must be definite and unequivocal. The intention is expressed clearly in the recitals of the deed and in the operative part also. If the trustee is a stranger the property is transferable to him "upon trust". If the author is himself the trustee, he declares in the operative part that he "dedicates" or "sets apart" the property in trust for such and such purpose and constitutes himself as the trustee.

Different directions are given to the trustees by the author as to the manner in which the trust is to be worked. These are the conditions and provisions of the trust and vary in different kinds of trusts according to the circumstances. These conditions should be clearly incorporated in the trust deed. If the situation so warrants, provision for the appointment of new trustees should also be made in the deed.

Answer 6(b)

What management did is not correct as the service is terminated without any reason and wrongfully. In a similar case *Management Brooke Bond of India (P) Ltd v. Y. K. Gautam*, AIR 1973 SC 2634, the Industrial Tribunal directed the re-instatement and later the Supreme Court upheld the award of the Tribunal.

In a service contract, the terms of employment should be definitely fixed and clearly expressed. Modes and grounds of determining the employment during the term is one of the important provisions, and the same should be clearly expressed in the service contract. The grounds on which the employment may be determined during the term are generally misconduct, negligence, or want of medical fitness. Subject to what has been stated earlier, it may also be determined at pleasure by notice, without giving any ground. In the case of misconduct or neglect, no notice is required, but, provision may be made for framing charges and taking defence as in the case of Government Servants.

An employee is entitled to damages for wrongful dismissal or reinstatement if the termination of the service is not properly made as directed by the courts depending upon the facts and circumstances of the case.

Answer 6(c)

Compounding of offences

'Compounding' means that the accused and the complainant have come to terms and the dispute between the parties has been settled amicably or adjusted by agreement and the complainant agrees not to prosecute the accused. The accused and the

complainant then make a joint application to the Court that the parties have come to terms and the case may not be proceeded with.

Compounding of offences under SEBI Act, 1992

Section 24A of SEBI Act, 1992 permits compounding of offences by the court where prosecution proceedings are pending. Section 24A of SEBI Act reads as under:

“Notwithstanding anything contained in the Code of Criminal Procedure, 1973 any offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.”

Compounding of offence can cover appropriate prosecution cases filed by SEBI before the criminal courts. Prosecution here means filing of criminal complaints before various criminal courts by SEBI for violation of provisions of securities laws which may lead to imprisonment and/ or fine. Compounding of offence can take place at any stage after filing criminal complaint by SEBI. Where a criminal complaint has not yet been filed but is envisaged, the process for consent orders will be followed rather than the one for compounding.

Settlement of proceedings through compounding can be sought by any person who is notified that a proceeding may or will be instituted against him/her, or any party to a proceeding already instituted, may, at any time, propose in writing for settlement.

Following factors, which are only indicative, may be taken into consideration for the purpose of compounding of offences under the respective statute:

- Whether violation is intentional.
- Party's conduct in the investigation and disclosure of full facts.
- Gravity of charge i.e. charge like fraud, market manipulation or insider trading
- History of non-compliance. Good track record of the violator i.e. it had not been found guilty of similar or serious violations in the past.
- Whether there were circumstances beyond the control of the party
- Violation is technical and/or minor in nature and whether violation warrants penalty.
- Consideration of the amount of investors' harm or party's gain.
- Processes which have been introduced since the violation to minimize future violations/lapses.
- Compliance schedule proposed by the party
- Economic benefits accruing to a party from delayed or avoided compliance.
- Conditions where necessary to deter future non-compliance by the same or another party.
- Satisfaction of claim of investors regarding payment of money due to them or delivery of securities to them.

- Compliance of the civil enforcement action by the accused.
- Party has undergone any other regulatory enforcement action for the same violation.
- Any other factors necessary in the facts and circumstances of the case.

Where compounding is proposed by a party, such application may be made to the court and a copy can be addressed to the “Division of Prosecution, Enforcement Department” at SEBI’s Mumbai address.

So far as process of compounding of offences is concerned, any party who wishes to compound an offence shall file an appropriate application before the court where complaint is pending with a copy addressed to the Prosecution Division, Enforcement Department of SEBI’s Mumbai office which will forward the application/ request to be placed before the high powered Committee. The terms of compounding as recommended by the Committee and approved by the Competent Authority would be placed before the court by the Prosecution Division by way of written submissions or application, as appropriate, for passing orders as the court deems fit.

The final acceptance of any offer of compounding will come in to effect only upon the court passing the compounding order.

Question 7

- (a) *Mention the orders against which no appeal lies to the Securities Appellate Tribunal (SAT).* (4 marks)
- (b) *“In presenting a case before the tribunal/quasi-judicial body, a Company Secretary owes duty to the court, to the client and to the opponent.” Describe these duties of the Company Secretary.* (4 marks)
- (c) *Briefly explain the contents of a service contract. Draft a specimen agreement of employment of manager of a business concern.* (8 marks)

Answer 7(a)

No appeal shall lie to the Securities Appellate Tribunals from an order made

- (a) by the Board on and after the commencement of the Securities Laws (Second Amendment) Act, 1999
- (b) by an Adjudicating Officer,

with the consent of the parties.

Answer 7(b)

Company Secretaries act as an authorized representative before various tribunals/ quasi judicial bodies. It is necessary for them to learn art of advocacy or court craft for effective delivery of results to their clients when they act as an authorized representative before any tribunal or quasi judicial body.

Company Secretaries should be able to formulate and present a coherent submission based upon facts, general principles and legal authority in a structured, concise and

persuasive manner. They should understand the crucial importance of preparation and the best way to undertake it and be able to demonstrate an understanding of the basic skills in the presentation of cases before the tribunals.

Duty to the Court

- (i) A Company Secretary shall, during the presentation of his case and while otherwise acting before a Court/Tribunal, conduct himself with dignity and self-respect. He shall not be servile and whenever there is proper ground for serious complaint against a judicial officer, it shall be his right and duty to submit his grievance to proper authorities.
- (ii) A Company Secretary shall maintain towards the Courts a respectful attitude, bearing in mind that the dignity of the judicial office is essential for the survival of a free community.
- (iii) A Company Secretary shall not influence the decision of a Court by any illegal or improper means. Private communication with the judge relating to a pending case is forbidden.
- (iv) A Company Secretary shall use his best efforts to restrain and prevent his client from resorting to sharp and unfair practices or from doing anything in relation to the Court, opposing counsel or parties which the Company Secretary himself ought not to do. A Company Secretary shall refuse to represent the client who persists in such improper conduct. He shall not consider himself a mere mouthpiece of the client, and shall exercise his own judgment in the use of restrained language in correspondence, avoiding scurrilous attacks in pleadings, and using intemperate language during arguments in Court.
- (v) A Company Secretary shall not enter appearance, act, plead or practice in any way before a Court/Tribunal or any other Authority, if the sole or any member thereof is related to the Company Secretary.
- (vi) A Company Secretary shall not appear in or before any Court or Tribunal or any other Authority for or against an organization or an institution, society or corporation, if he is a member of the Executive Committee of such organization or institution or society or corporation.
- (vii) A Company Secretary should not act or plead in any matter in which he is himself pecuniarily interested.

Duty to Client

- (i) A Company Secretary shall not ordinarily withdraw from engagements once accepted, without sufficient cause and unless reasonable and sufficient notice is given to the client.
- (ii) A Company Secretary shall not accept a brief or appear in a case in which he has reason to believe that he will be a witness and if being engaged in a case, it becomes apparent that he is a witness on a material question of fact, he should not continue to appear if he can retire without jeopardizing his client's interest.

- (iii) A Company Secretary shall at the commencement of his engagement and during the continuance thereof, make all such full and frank disclosures to his client relating to his connection with the parties and any interest in or about the controversy as are likely to affect his client's judgment in either him or continuing the engagement.
- (iv) It shall be the duty of a Company Secretary to fearlessly uphold the interest of his client by all fair and honourable means without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence.
- (v) A Company Secretary shall not at any time, be a party to fomenting of litigation. A Company Secretary shall not act on the instructions of any person other than his client or his authorized agent.
- (vi) A Company Secretary shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client.

Duty to Opponent

- (i) A Company Secretary shall not in any way communicate or negotiate upon the subject-matter of controversy with any party represented by an Advocate except through that Advocate.
- (ii) A Company Secretary shall do his best to carry out the legitimate promise/promises, made to the opposite-party.

Answer 7(c)**Contents of a Service Contract**

Service contracts are drafted in the same way as other agreements. The terms of employment should be definitely fixed and clearly expressed and nothing should be left to presumptions. They are required to be both affirmative (describing the acts and duties to be performed) as well as negative (putting restrictions on the acts of the employee during and/or after the term of employment). It is therefore necessary to make provision for (1) the time or period of employment; (2) the remuneration and other perquisites, if any, including pay, allowances, commission, rent-free house, conveyance, etc.; (3) duties of employment; (4) powers of the employee; (5) leave and the terms on which it will be granted; (6) modes and grounds of determining the employment during the term; and (7) restrictive covenants.

As the employer and the employee may not be conversant with law, the terms of a service contract should be as explicit as possible and should be easily intelligible to a lay man.

In respect of Government service, normally no formal contract is executed and only an appointment order is issued and the terms of service are thereafter governed by statutory rules and Government order. The same is the position of statutory corporations as employers.

Period of Service : This may be definite or indefinite. If no period is fixed or an indefinite period is stated, e.g., "so long as the parties respectively please", the contract is terminable by a reasonable notice on either side. What is a reasonable notice varies in different cases, according to the characters of the employment and the general custom, from 15 days to six months. When no term is fixed it is always proper to provide for determination by notice.

Remuneration : Remuneration may be fixed monthly salary, or fees or commission, or salary as well as fees or commission. Sometimes in business firms, employees are allowed a share in the profits in addition to a fixed salary. All these should be clearly provided.

Leave : Conditions and grounds on which, and the period for which leave may be granted as well as allowance payable during leave should be stated.

Determination of Employment : The grounds for determination of employment should be clearly expressed in the agreement. The grounds on which the employment may be determined during the term are generally misconduct, negligence, or want of medical fitness. Subject to what has been stated earlier, it may also be determined at pleasure by notice, without giving any ground.

Restrictive Covenants : It is usual to include restrictive covenants in the agreement such as that the employer will not undertake any other work or service or that he will not divulge the employer's secrets or make improper use of his trade secrets or information about the employer's affairs. While drafting restrictive covenants, it is necessary to see that they are not illegal.

Effect of Labour Laws : Many Acts have been passed by the Central or State legislatures relating to the conditions of employment of teachers and other employees of aided schools and colleges and of universities, and of workers in factories and commercial establishments, for e.g. the Factories Act, the Industrial Employment (Standing Orders) Act, the Payment of Wages Act, the Workmen's Compensation Act etc. In drawing up a service contract for such an employee, the provisions of the relevant Acts must be kept in view.

Specimen Agreement of Employment of Manager of a Business Concern

AN AGREEMENT made on this..... day of..... BETWEEN AB, etc. (hereinafter called the "employer") of the one part AND CD, etc. (hereinafter called the "manager") of the other part.

WHEREAS

1. The employer wants to appoint a suitable person to work as manager for his business concern; and
2. CD, the party of the other part, has agreed to serve as manager of the employer for his business concern.

NOW THIS AGREEMENT WITNESSES as follows :

1. The manager shall work as such for a term of..... years from the day of..... at..... or any other place as desired by the employer.

2. The manager shall give his whole time and attention to the said business and shall use his best endeavour to improve and expand the same and shall in all respects diligently and faithfully obey and observe all lawful orders and instructions of the employer in relation to the conduct of the said business and shall not without his consent divulge any secrets or dealings thereto.
3. The manager shall keep at the place of business at..... proper books of account showing all goods and moneys received and delivered and disbursed by him with necessary particulars of all such transactions and shall duly account for all moneys belonging to the employer and coming into the hands or power of the manager and shall forthwith pay the same to the employer or his bankers for the time being except only such moneys as the manager shall be authorised by the employer to retain for immediate requirements of the said business.
4. The employer shall pay to the manager during the continuance of his engagements and provided he shall duly observe and perform the agreement herein on his part contained, the salary of Rs..... per mensem on the first day of every calender month commencing from the first day of..... without any deduction except such as he will be bound to make under the Income-tax law for the time being in force, AND shall also pay the manager at the end of each year during the aforesaid period a further sum equal to 5 per cent on the gross sale return for the said year (or on the net profits of the said business for the said year (if any) after making such deductions as are properly made according to the usual custom of the said business in the estimation of net profits) provided always that upon the death or termination of the engagement of the manager before the expiration of the said period of years/ the employer shall forthwith pay to him or his heirs, executors, administrators or other legal representatives, as the case may be, in respect of the services of the manager of the whole or any part of the current month a due proportion of the salary of Rs. per mensem together with such further sum in lieu of such percentage as aforesaid as shall bear the same proportion to the estimated gross return (net profits) for the then current year as the part of the said year during which he has served, shall bear to the whole year, the gross return (net profits) being calculated on average of the past three years.
5. The employer shall during the continuance of the manager's engagement provide him with a suitable furnished house for residence free of rent, rates and taxes (except the charges for electricity consumed by him or of extra water used by him) and the manager shall reside in the said house.
6. The manager shall make such tour as may be necessary in the interest of the said business or as he may be directed by the employer to make and the employer shall pay him all reasonable expense actually incurred in undertaking such tours (or a travelling allowance at per mile for all journey by road and first class fare for journeys performed by rail and a halting allowance of Rs..... per diem when a halt of not less than 8 hours is made at one place).
7. The manager shall be entitled during his engagement to leave on full pay for a period equal to 1/11th of the period of service rendered and to a further leave on half pay in case of illness or incapacity to be proved to the satisfaction of the employer for a period of 15 days in one year.

8. Either party hereto may terminate the engagement of the manager at any time before the expiration of the said term of.....years on giving or sending by registered post to the other party three calendar months, notice in writing, such notice to be given or sent in the case of the employer to his house at and in case of the manager to his place of business or residence provided by the employer and on the expiration of the said three months from the date of giving or posting such notice, the said engagement shall terminate provided that the employer may terminate the said engagement at any time on payment of three months' pay in advance in lieu of such notice as aforesaid.
9. If the manager at any time willfully neglects or refuses or from illness or other cause becomes or is unable to perform any of the duties under this agreement, the employer may suspend his salary (and sum by way of percentage) during such neglect, negligence or inability as aforesaid and may further immediately terminate the engagement of the manager without giving any such notice or making such payment or salary in advance as hereinbefore provided.
10. The manager will at his own expense find and provide two respectable sureties to the amount of Rs..... each for his good conduct and for the due performance by him of this engagement and if he fails to do so for a period of three months from this date, the employer may terminate his services forthwith.

IN WITNESS WHEREOF, the parties hereto have signed this deed on the day and the year first above written.

Witness

Employer

Witness

Manager

Question 8

(a) Write notes on the following :

(i) Communication etiquettes

(ii) Advocacy tips to professionals.

(4 marks each)

(b) What is 'deed of assignment' ? Draft a specimen deed of assignment of copyright of a novel.

(8 marks)

Answer 8(a)(i)

In today's world of business, professionals need to know how to conduct themselves within the business world. One of the best ways to do so is to practice good professional etiquette. Practicing good professional etiquette is necessary for professional success in the emerging business scenario which is constantly changing and making the market place more competitive and contestable. Corporates look for those candidates who possess manners, a professional look and demeanour, and the ability to converse appropriately with business colleagues and clients. Though your academic knowledge and skills may be spectacular, but not knowing proper etiquette required to be successful in the professional career could be a roadblock preventing you to achieve success in the professional life and business relationships. Good professional etiquette indicates to potential employers that you are a mature, responsible adult who can aptly represent their company.

Being corporate professionals, you must practice some basic etiquette tips that would help you to go up the ladder of success in the workplace.

Communication Etiquettes

- Always speak politely. Listen to others attentively. A good listener is always dear to every client.
- While speaking over telephones, always greet the other person while starting and ending the call.
- Speak only when the other person has finished talking instead of interrupting in between.
- Show interest in what other people are doing and make others feel good.
- Stand about an arm's length away while talking to others.
- Question another person in a friendly, not prying, manner.
- Make eye contact when talking to others.
- Be polite. Avoid foul language, unkind statements, and gossip.
- Keep your conversations short and to the point.
- Maintain your sobriety and politeness even if the client speaks something offensive or rude and avoid replying back in harsh tone/words.

Answer 8(a)(ii)

Advocacy tips to professionals

Company Secretaries should be able to formulate and present a coherent submission based upon facts, general principles and legal authority in a structured, concise and persuasive manner. They should understand the crucial importance of preparation and the best way to undertake it and be able to demonstrate an understanding of the basic skills in the presentation of cases before the tribunals.

Some of the tips given by legal experts which professionals like Company Secretaries should bear in mind while appearing before Tribunals or other quasi-judicial bodies are given herein below. They say while pleading, a judge in your pleadings looks for:

- (i) *Clarity* : The judge's time is limited, so make the most of it.
- (ii) *Credibility* : The judge needs to believe that what you are saying is true and that you are on the right side.
- (iii) *Demeanour* : We don't have a phrase "hearing is believing". The human animal which includes the human judge, is far more video than audio. The way we collect most of our information is through our eyesight.
- (iv) *Eye contact* : While pleading, maintain eye contact with your judge.
- (v) *Voice modulation* : Voice modulation is equally important. Modulating your voice allows you to emphasize the points you want to emphasize. Be very careful about raising your voice. Use your anger strategically. But use is rarely. Always be in control of it.

- (vi) *Psychology* : Understand judge’s psychology as your job is to make the judge prefer your version of the truth.
- (vii) *Be likeable*. At least be more likeable than your opponent. If you can convert an unfamiliar Bench into a group of people who are sympathetic to you personally, you perform a wonderful service to your client.
- (viii) Learn to listen.
- (ix) *Entertain your judge*. Humour will often bail you out of a tough spot.

Answer 8(b)

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

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

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

The term assignment is, however, of wider import. It is well settled that a transfer of property clearly contemplates that the transferor has an interest in the property which is sought to be conveyed.

Specimen of Deed of Assignment of Copyright of a novel

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

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

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

NOW THIS DEED OF ASSIGNMENT WITNESSES as follows:

1. In consideration of and subject to the covenants on the part of the publishers as hereinafter contained, the author does hereby grant, convey, transfer, sell, assign and assure unto and to the use of the publishers all that copyright as defined in Section 14 of the Copyright Act, 1957, of the book entitled..... on the subject of..... to have and hold the same as absolute owners thereof for the full term of copyright as prescribed by law.
2. The publishers shall so long as the said work or any adaptation, modification or translation thereof is published and sold, submit to the author twice every year

once during the month of January and the other during the month of June, a statement of account showing details of copies printed, published, held in stock and sold or disposed of (Except otherwise by sale of damaged or destroyed copies) and of the profits, if any, earned thereunder.

3. The publishers shall pay or cause to be paid to the author or his nominee or nominees a royalty at the rate of..... per cent on the sale proceeds of the copies of the work or adaptations or translations thereof that may be actually published and as disclosed in the statement of account referred to in clause (2). No royalty shall be payable on any copies of the work that may be damaged or destroyed or disposed of otherwise than by regular sale.
4. That the publishers shall also pay to the author half the net profits earned by them, if any, from any transfer, sale or assignment of any of the rights comprising the copyright or from grant of any interest or license therein: provided that the publishers shall not be entitled to and shall not do or cause anything to be done in derogation of the author's rights, particularly the right to royalty reserved hereunder.
5. That the author does hereby agree to revise the work and bring it up to date or otherwise modify, alter, adapt or translate it or get it translated whenever reasonably required by the publishers provided also that the publishers will not normally require the author to do so more than once in two years; provided further that in case the author shall fail and/or neglect, and/or refuse, to revise, modify, alter, translate the work or get it translated as and when reasonably required by the publishers, they shall be at liberty to get the same done on his account by any person or persons of their choice after due notice to the author and deduct all costs, charges and expenses out of moneys payable to the author: provided also that in selecting the person proposed to revise, modify, alter, adapt or translate the work and in fixing the remuneration to be paid therefor, the author's wishes, if any, shall so far as possible, be respected by the publishers.
6. That the author has delivered (or shall deliver within a period of.....) the manuscript of the said work to the publishers.
7. That the author does hereby declare that the work of which the copyright is being hereunder assigned is entirely the original work of the author and that the same does not in any manner whatsoever violate or infringe any existing copyright or any other right of any other person or other persons; and further that it does not contain anything which may be considered as obscene, libellous, scandalous or defamatory.
8. The author hereby agrees to indemnify and keep the publishers indemnified against all claims, demands, suits and other actions and proceedings, if any, that may be instituted or taken and also against all damages, costs, charges, expenses which the publishers shall or may suffer, on account of printing, publication or sale of the said work or any part thereof, or by reason of such printing, publication and/or sale being an infringement of some other person's copyright or other rights in the work or by reason of its containing anything which may in any sense be obscene, libellous, scandalous or defamatory.

9. The publishers shall print and publish the work or cause the same to be printed and published as soon as practicable within a period of twelve months from the date of this contract, and in default thereof, the author may, by a notice in writing, call upon the publishers to print and publish the work within two months of the receipt of the said notice; and if the publishers shall still fail and/or neglect to print and/or publish the work within the said period, save and except in so far as they are prevented from doing so by circumstances beyond their control, the author shall be at liberty to rescind the contract on giving a notice to that effect to the publishers when the copyright shall revert fully to the author and all the rights of publishers shall as from that date stand determined.
10. That in case of a dispute or difference arising between the parties touching the meaning, construction, interpretation, breach or fulfilment or non-fulfilment of the terms of these presents or any clause or condition thereof, the same shall be referred to arbitration. The award of such arbitrator, shall be final and binding on both the parties and this clause shall be deemed as of submission within the meaning of the Arbitration and Conciliation Act, 1996 and its statutory modification and re-enactment.
11. That the words "author" and "publishers" or "parties" used hereinabove shall unless there be something contrary to the context, include their respective heirs, survivors, successors, representatives, executors, administrators and assigns and successors in business.

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

Witness :

Author

Witness :

Publisher
