ECONOMIC AND COMMERCIAL LAWS

PART - B

1. *Law relating to registration of documents*
2. *Law relating to socities registration*
3. *Law relating to trust*

CS EXECUTIVE

RAJNISH PANDEY

CS – EXECUTIVE
ALLAHABAD CONTACT – 9651594376 OR 9169359454 OR MAIL AT – rajnishpandey78616@gmail.com

THE INSTITUTE OF
Company Secretaries of India
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

RAGISTRATION OF DOCUMENTS ACT 1908

INTRODUCTION

Registration act – 1908 provides for registration of certain documents. Following are the purpose or objective of registration of documents.

1. To give notice to the world that such a document has been registered and to serve as a source of information regarding the execution of the document and its existence;
2. To prevent fraud and forgery with the purpose of providing good evidence of the genuineness of the written document ; and
3. To secure the interest of the person dealing with any immovable property where such dealing requires registration.

DOCUMENTS FOR WHICH REGISTRATION IS COMPULSORY AND OPTIONAL [SECTION 17 & 18]

FOR WHICH REGISTRATION IS COMPULSORY (SECTION 17)	*FOR WHICH REGISTRATION IS OPTIONAL* (SECTION 18)
1. Instrument of gift of immovable property which value exceeds rupees 100 = must be registered. **2.** Transfer of any non- testamentary instrument of value exceeding rupees 100 must be registered. **3.** Any consideration for transfer of non-testamentary instrument of value exceeding rupees 100 must be registered. **4.** Any court order, decree ,judgement regarding any immovable property of value exceeding rupees 100 must be registered. **5.** In case of lease if lease period is more than 1 year , then it must be registered.	**1.** If any immovable property is less than rupees 100 then it is optional to be registered. **2.** Transfer of any non-testamentary instrument of value less than rupees 100 then it is optional to be registered. **3.** Any consideration for transfer of non-testamentary instrument is if less than 100 rupees then it is also optional for registration. **4.** Any court order , decree , judgement regarding any immovable property of value less than 100 , then it is also optional for registration . **5.** In case of lease if lease – period is less than 1 year , then it is also optional for registration . **6.** There is no need of registration of will.

PROVISIONS FOR REGISTRATION

PLACE OF REGISTRATION –

Where the immovable property situates i.e. in which area the property situated it must be registered by sub-registrar of that area. [section 28]

Section 29 provides that documents pertaining to any property other than immovable property may be presented for registration in the office of Sub-Registrar in whose sub-district the document was executed.

TIME LIMIT – [SECTION 23,24,25 AND 27]

The non – testamentary instrument of immovable property should be registered within 4 months from the date of execution.
There is no time-limit for registration of will.

DOCUMENTS EXECUTED OUTSIDE INDIA [SECTION 26]

AS per section 26, where the registrar is satisfied that the document was executed outside India and it has been presented for registration within 4 months after its arrival in India, he may accept such document for registration on payment of proper registration fees.

A document executed outside India and which requires compulsory registration , is not valid unless it is registered.

PRESENTATION FOR REGISTRATION –

The non – testamentary instrument should be presented before Sub-Registrar for registration .

WHO CAN PRESENT –[SECTION 32]

Any document to be registered under this Act , whether such registration is optional or compulsory , shall be presented before the Sub – Registrar by any of the following persons-

1. Some person executing or claiming under the document.
2. The representative or assign of such person.
3. The agent of the aforesaid person , duly authorised by special power of attorney.

It is immaterial whether the registration is compulsory or optional; but if it is presented for registration by a person other than a party not mentioned in section 32, such presentation is wholly inoperative and the registration of such a document is void.

RE-REGISTRATION OF CERTAIN DOCUMENTS [SECTION 23A]

Sometimes , a document requiring registration may be accepted for registration by Registration from a person not duly empowered to present the same and may be registered , in such a case , any person claiming under such document may present such document , in accordance with the provisions of the Registration Act , for registration in the office of the Registrar of district in which the document was originally registered . He can ,however ,do so within 4 months from his first becoming aware of such document is invalid.
When such a document is presented for re-registration , the Registrar shall register the same as if it has not been previously registered . The document , if duly re-registered in accordance with the provisions of

Section 23 a , shall be deemed to have been duly registered for all purpose from the date of its original registration.

EFFECT OF REGISTRATION OF DOCUMENTS [SECTION 47 & 48]

A registered document operates from the time from which it was intended to operate and not from the date of registration. [SECTION 47]
As b/w two registered documents, the date of execution determines the priority. Of the two registered documents ,executed by same persons in respect of the same property to two different persons at two different times, the one which is executed first gets priority over the other , although the former deed is registered subsequently to the later one.
A non-testamentary registered document, relating to property, takes effect against any oral agreement relating to such property . However, when the oral agreement is accompanied by delivery of possession, then the oral agreement will prevail the registered document.[section 48]

EFFECT OF NON-REGISTRETION OF DOCUMENT [section 49]

A document which is compulsorily registrable but is not registered , fails to take effect and is void as regards immovable property, it cannot effect any immovable property comprised therein . Further it cannot confer any power to adopt.
An unregistered document cannot be received as evidence of any transaction effecting such property or conferring such power. However such a document may be received as evidence of :

1. A contract in a suit for specific performance ; or
2. Part performance of a contract as per section 53 A of Transfer Of Property Act .

REFUSAL BY REGISTRAR TO REGISTER DOCUMENTS [SECTIONS 71-75]

1.REFUSAL FOR REGISTRATION TO REGISTER THE DOCUMENT TO BE RECORDED [SECTION 71]

Every Sub-Registrar refusing to register the document , except on the ground that the property to which the document relates is not situated within its sub-district, shall make an order of refused and shall record the reasons for such order.
It may be noted that under-valuation of stamp duty is not a valid ground for refusing the registration of a document. In such a case , the Sub-Registrar can guide the person to affix proper stamps before he can register the documents presented. If the sub-registrar is doubtful as to the proper value of stamps affixed, he can refer the case to the Collector of Stamps to be adjudicated.

2.APPEAL TO REGISTRAR FROM ORDERS OF SUB-REGISTRAR REFUSING REGISTRATION ON GROUND OTHER THAN DENIAL OF EXECUTION OF DOCUMENT [SECTION 72]

An appeal shall lie, against order of Sub-Registrar refusing to register a document, to the Registrar to whom such Sub-Registrar is subordinate. However, the appeal shall not lie where the refusal is made on the ground of denial of execution of a document. The appeal can be presented to the Registrar within 30 days from the date of the order of Sub-Registrar.
If the registrar directs the documents to be registered and the document is duly presented for registration within 30 days after the making of such order, the Sub-Registrar shall register the same.
Such registration shall take effect as if the document has been registered when it was first duty presented for registration

APPEAL TO REGISTRAR WHEN SUB-REGISTRAR REFUSED TO REGISTER THE DOCUMENTS ON THE GROUND OF DENIAL EXECUTION [SECTION 73,74&75]

Where the Sub-Registrar has refused to register a document on the ground of denial of execution, then any person claiming under such document may, within 30 days after the making of the order of refusal, apply to the registrar to whom such sub-registrar is subordinate in order to establish his right to have the document registered.

Where such an appeal is made to the Registrar, then he shall enquire to find out whether the document has been really executed or not. If the registrar finds that the document has been executed, he shall order the document to be registered. If the document is duly presented for registration within 30 days after the making of such order, the Sub-Registrar shall register the same.

Such registration shall take effect as if the document has been registered when it was first duly presented for registration.

POWERS AND DUTY OF REGISTRAR –

The main work or duty of registrar is to maintain books in registered office.

Book 1- The register related to non-testamentary instrument.

Book 2- To maintain the reasons for non-registration.

Book 3- To maintain register related to testamentary instrument or will.

Book 4- To maintain miscellaneous registers.

Book 5- To maintain registers related to deposits.

NOTE –

1. If the sub-registrar refuses the registration of documents then-book 2
2. The appellate party must be file suite against the sub-registrar under registrar within 30 days from the date of decision given by sub-registrar.

LAW RELATING TO REGISTRATION OF GIFT DEED -

If the donor dies before registration of the gift deed, the gift deed may be presented for registration after his death and if registered, it will have the same effect as registration in his life time.

Delay in registration of a gift does not postpone its operation, section 123 of the Transfer Of Property Act 1882 merely requires that donor should have sighed the deed of gift. Hence a gift deed can be registered even if the donor does not agree to its registration.

SOCIETIES REGISTRATION ACT - 1860

INTRODUCTION-

The purpose of societies registration act -1860 is to provide for the registration and administration of literary, scientific and charitable trust.

It is a non-profit organization . it get deduction under 80G in income tax act. It is a legal entity having perpetual succession but not a body corporate .It has capacity to sue and be sued. Registration of society is mandatory. It is created for own benefit of society not for any third party. A foreigner is also allowed as a society member. There is an election held in society for the governing body.

There should be minimum 7 persons to create a society. There is not any limit regarding to the maximum members in a society .

PROCEDURE FOR REGISTRATION OF SOCIETY **(section 1 to 3 and section 23)**

Any 7 or more persons associated for any literary , scientific , or charitable purpose or any other purpose as specified in section20 of the act may from themselves into a society under the societies registration Act . They can do so by subscribing their names to the Memorandum of association and filling the same with the registrar of joint stock companies

The memorandum of association shall state the following ;

A) The name of the society.
B) The object of the society.
C) The name ,address ,occupation of the Governors ,council ,Directors and other governing bodies , to whom the management of the affairs of society is entrusted.

Along with the memorandum, the following documents are required to be filed with the registrar:

a) A copy of rules and regulations of the society correct by not less than 3 members of the governing body; and
b) The prescribed fee

When the registrar is satisfied that the society has compiled with the statutory requirements as to registration , he issues an acknowledgement in the form of a certificate of registration .

WORKING OF SOCITIES –

There should be minimum 3 members in governing body . Members elected or nominated as per the rules and regulations of societies . The term is 3 years and member can enjoy his term to 2 times.
However , the term , retirement , expulsion are governed by rules and regulation .

DUTIES OF SOCIETY

These are the duties or liabilities of society

1) To hold A G M.

2) A meeting in the month of January every year.

3) To repast changes and alternation .

4) To register amendments in MOA or bylaws.

5) A list of name , address , occupation , of the government councillor , directors committee is to be filed with the registrar once in a year.

6) To file the notice of situation of the registered office of the society must be informed to registrar.

7) To prepare receipt / income and expenditure account , balance sheet or with prescribed fees for registration.

8) To display the name of society at the registered office.

9) To maintain the minutes of a meeting .

10) To prepare accounts and conduct audit and file income tax returns.

11) To file a certified copy of every special resolution.

12) To held extra ordinary general meeting .

13) To maintain a register of members of society in accordance with rules and regulations.

ALTERATION OF THE OBJECTS OF SOCITIES –

Section 12
Provides for the alteration of the purpose or objects for which the society is formed, with a view to alter , extent or abridge them within the meaning and scope of the act . the procedure for alteration of object is as follows ;

The governing body of the society has to submit the proposition to the members of the society , for which a meeting of the members shall be convened , by issuing a written or printed report . the report shall be delivered or sent by post to every member of society ,at least 10 days before the meeting . the member present at such meeting must agree to the proposition by $3/5^{TH}$ of the votes delivered in person or by proxy out of the members present at the meeting and confirmed by votes of $3/5^{TH}$ of members present at the second meeting convened by the governing body at an interval of one month after the former meeting.

MEMBERS-

A member is a person who is admitted to the society according to the rules and regulations thereof and who has paid the subscription and signed the Roll/ list of members and has not resigned according to the rules and regulations . but a person shall not be counted as a member and shall not be entitled to vote if a subscription money is in arrears for a period exceeding 3 months.

AMALGMATION OR DEVISION OF SOCIETY –

If governing body wants to amalgamate or divide his society then the same procedure will be followed as in alteration of object of societies.

LIABILITIES OF MEMBERS –

According to section 10 of the act , a member is liable to be sued as stranger in the following cases-

a) When he is in arrears of the subscription;

b) When he has detained any property of the society;

c) When he has destroyed any property of the society.

In abovementioned cases , he may be sued for arrears or for the damages , but he can recover the cost if he is successful in any suit or proceeding against him.

Members guilty of offences are punishable as strangers under section 11 of the societies registration act . section 11 provides that a member may be prosecuted and punished in following cases;

1. If he steals , embezzles any money or other property of the society.
2. If he forges any deed, document, etc. Because of which society suffers some loss .
3. If he wilfully and maliciously destroys the property of the society.

DISSOLUTION OF SOCIETY- A society can be dissolved –

1. Whenever the object of society is fulfilled.
2. If the purpose of society becomes invalid , irrelevant ,inoperative .
3. Passing of resolution by 3/5TH consent of all members present at the meeting to dissolve the society.

SUITS =

A society registered under societies registration act is a legal entity. It can sue and can be sued in the name of chairman , president or principal secretary of societies.

If there is no law , then person authorised by the general body may sue on behalf of society. [section 6]

Section 7 provides that the death or retirement from office, of a plaintive pr defendant , shall not affect the civil preceding , brought by or against the society. The proceedings will continue in the name of the successor of such person.

NOTE-

1. Any arrear of subscription amount for a period of exceeding 3 months then shall not be counted as a member of the society and does not having right to vote.

LAW RELATING TO TRUSTS

DEFINITION AND MEANING OF TRUST = A trust is an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner (trustee),or declared and accepted by him, for the benefit of another, oranother and the actual owner.[**SECTION 3]**

ELEMENTS OF TRUST

1.The person who reposes or declares the confidence is called the author of trust or settler.
2.The person who accepts the confidence is called the trustee.
3.The person for whose benefit the confidence is accepted is called the beneficiary.
4.The subject-matter of trust is called the trust-property or the trust-money.
5.The object of trust should be legal.
6.There may be a instrument of trust (i.e. trust deed)
7.There may be terms and condition written in trust deed

NOTE

1.Tax exemption made available to trust 80G deduction of income tax act
2.It is a separate legal entity
3.Not for profit organization
4.Value of property should exceed Rs 100.
5.Author of trust or trustee should be competent to contract**.**

PURPOSE OR OBJECT OF TRUST [SECTION 4]

Section 4 provides that a trust can be created only for lawful purpose. the purpose of trust is lawful unless:

A) It is forbidden by law;
B) It is of such nature that ,if permitted ,it would defect the provision of any law;
C) It is fraudulent ;
D) It involves or implies injury to the person or property of another;
E) The court regards it is immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void. Where a trust has been created for two purposes ,of which one is lawful and another unlawful and the two purpose are such that they can`t be separated, the whole trust is void. [Chogal Bhandari Vs Deputy Commercial Tax Officer]

CLASSIFICATION OF TRUST

SIMPLE TRUST – A trustee to hold estate without having any active duties to perform.
SPECIAL TRUST- The trust has been created for a particular object/purpose is a special trust.
ORAL TRUST- A trust may be declared orally.
WRITTEN TRUST- A trust may be declare on written basis or through an instrument in writing.
EXPRESS TRUST- Either orally or written ,the trust is created.

IMPLIED TRUST- The parties are not give any intention , it means intention shall not be express.

REVOCABLE TRUST- The power goes to settler or author to revoke the trust anytime.

IREVOCABLE TRUST- It is one of that which will not come to end until the terms and conditions of trust have been fulfilled.

CONSTRUCTIVE TRUST- Imposed by law and as on equitable remedy it occurs due to some wrong doing ,where the wrong doers have achieved legal title to some properties and can not in good consent they allow to benefit from it.

CERTAINTIES OF A TRUST [SECTION 6]

SECTION 6 provides that for a trust to be validly created ,following four things are necessary;

1.CERTAINTY AS TO INTENTION= law looks at the internal rather than at the form. Therefore ,no special form of words is necessary for the creation of valid trust. The intention to create a trust must be indicated by words or acts with reasonable certainty.

2.CERTAINTY AS TO PURPOSE= Indefiniteness or uncertainty in relation to the purpose or object of a trust may render the entire trust void. The object of the trust must be expressly defined.

3.CERTAINTY AS TO TRUST PROPERTY- there must be reasonable certainty about the subject matter i.e. ,trust property ,of the trust.

4.CERTAINTY AS TO BENEFICIARY- For constitution of trust ,beneficiaries must be indicated with reasonable certainty ,otherwise the trust would be void for uncertainty.

DUTIES OF TRUSEE

1) Trustee is not bound to accept the trust. However once accepted ,he can't renounce it except with the prior permission of civil court or beneficiary if he is a major or by virtue of special power in the instrument of trust.
2) Once the trustee accepts the trust, he is bound to fulfil the purpose of trust and to obey the directions given at the time of creation of trust.
3) To protect title to trust property.
4) Not to setup title adverse to beneficiary.
5) To take such care of the trust property as a man of ordinary prudence would take of his own property.
6) To convert perishable property to permanent and immediately profitable character.
7) To be impartial
8) To prevent wastage of the trust property.
9) To keep proper accounts and information of the trust property.

RIGHTS AND POWERS OF TRUSTEE

1) Right to title deed.
2) Right to re-imbursement of expenses.
3) Right to apply to court for opinion on management of trust property.

4) Right to settlement of accounts.
5) Right to do all acts which are necessary ,reasonable and proper for trust property or protection of beneficiary.
6) Power to convey a property, when he is authorized to sell.
7) Power to vary investment from one security to another.
8) Power to give receipts.
9) Power to compound or compromise.

Power to apply trust property for the maintenance of beneficiary ,if the beneficiary is a minor.

RIGHTS OF BENEFICIARY

1. Right to rents and profit of the trust property.
2. Right to specific execution of the trust.
3. Right to inspect and take copies of the trust account.
4. Right to transfer the beneficial interest, if he is competent to contract.
5. Right to sue for execution of trust.
6. Right to proper trustees.
7. Right to follow the trust property which has gone into the hands of a third person.

LIABILITIES OF BENEFICIARY

IF A beneficiary commits a breach of trust or obtains any advantage there from or becomes aware of a breach of trust committed or deceived the trustee ,the other beneficiary are entitled to have his beneficial interest impounded against him ,until the loss ,caused by the breach has been compensated.

EXTINCTION OF TRUST [SECTION 77]

A trust is extinguished when;

1) The purpose is completely fulfilled;
2) The trust ,being revocable, is expressly revoked;
3) Its purpose becomes unlawful or the fulfilment of its purpose becomes impossible because of destruction of the trust property.

REVOCATION OF TRUST

A trust created by will can be revoked at the pleasure of trustee.

A trust created otherwise can be revoked only:

a) By the consent of all the beneficiaries ,if they are competent to contract.
b) In exercise of a power of revocation expressly reserved by the author of the trust, if the trust has been created either by a non-testamentary instrument or by words of mouth.
c) At the pleasure of the author of the trust ,if the trust is for the payment of the debts of the author of the trust and has not been communicated to the creditors.

It may be noted that sub clause (c) applies only to a trust solely for the payments of debts and not to a trust –deed created for the payment of debts and other purposes.

DOCTRINE OF CY PRES

Cy pres means near to it. The doctrine of cy pres applies only to charitable trust.
Doctrine of cy pres provides the following-
" where a clear charitable intention is expressed, it will not be permitted to fail because the mode, if specified ,can't be executed but the law will substitute another mode cy pres ,i.e. ,as near as possible to the mode specified by the donor".
''The doctrine of cy pres applies where a charitable trust is initially possible but later becomes impossible. In such cases, the court may apply the property cy pres i.e. ,to some other charities as near as possible ,resembling the original trust.''

TRUSTS NOT ALLOWED TO SET OFF THE PROFIT AND LOSSES

SECTION 24 provides that a trustee who is liable for a loss caused by his negligence in respect of one portion of the trust property ,can`t set off against his liability a gain or profit which has occurred in respect of another portion of trust property. However ,where loss and gain arise out of a same transaction ,the trustee may be allowed to set off.

TRUSTS	*BAILMENT*
1.TRUSTEE is the full owner of property. **2.**Trustee is equitable. **3.**Both movable or immovable property can be created.	**1.**BAILY acquire specific property. **2.**Obligation is legal. **3.**Bailment may be created only for movable property.

TRUSTS	*AGENCY*
1.TRUSTEE is full owner of trust. **2.**A trustee acts on his own rights. **3.**A trustee is personally liable.	**1.**An agent has no title to property. **2.**An agent acts on behalf of principal. **3.**An agent is not personally liable.

PUBLIC TRUSTS	*PRIVATE TRUST*
ANY TRUST CREATED NOT FOR ANY PERTICULAR OR INDIVIDUAL IS KNOWN AS PUBLIC TRUST	IF TRUST IS CREATED FOR ANY PERTICULAR,INDIVIDUAL OR GROUP OF INVESTOR IS KNOWN AS PRIVATE TRUST

TESTAMENTRY INSTUMENT /TRUST	**NON-TESTAMENTORY INSTRUMENT /TRUST**
NO NEED TO BE REGISTERED i.e. WILL	IT MUST BE REGISTERED