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## Introduction

So early as in the Seventeenth Century the Common Law of England with its Statutory modifications and the doctrines of the English Courts of Equity and the System of Judicial Administration of England were applied mainly to the British subjects in certain parts of India which were then popularly known as the Company's Territories. The Privy Council as the highest Court of Appeal from India applied the principles of English jurisprudence as the rules of decision all over the country. Although the law and jurisprudence of this vast country and her model of judicial administration were in many respects different from those of England, nevertheless the massive structure of Indian law and jurisprudence as we now have resembles the common law and statute of England.<sup>1</sup>

The expression "Common Law of England" covered those unwritten legal doctrines embodying English habits, practices, customs and traditions which developed over centuries and were recognised by the English courts. The English people introduced into India not only the mass of legal rules strictly known as the common law of their own but also their traditions, outlook and techniques in establishing, maintaining and developing the judicial system of this country.

The Charters of Queen Elizabeth and James I granted to the Company in the years 1600 and 1609 gave them power to make, ordain and constitute such and so many reasonable laws, constitutions, orders, ordinances, etc. as to them shall seem fit and necessary bearing in mind always that the said laws, orders, constitutions, ordinances, etc. be reasonable and not contrary or repugnant to the laws, statutes and customs of this realm.<sup>2</sup> The

1 *Advocate General of Bengal v Rani Surnamooye Dassi* (1863) 9 Moor Ind App 424.

2 *Cowell's Tagore Law Lectures* 1872, pp. 12-13.

Statutes of Elizabeth relating to fraudulent conveyances<sup>3</sup> were in force in Calcutta, Bombay and Madras and they applied to British subjects other than Hindus and Mahamedans.<sup>4</sup>

The Presidency Towns and the City of Rangoon played the leading role in the introduction of the common law into India. The courts were modelled entirely on the English pattern with jurisdiction extended to all British subjects all over Bengal, Bihar and Orissa (Rules of the High Court).<sup>5</sup>

After the attainment of independence and the adoption of the Constitution of India, judicial administration and the Constitution of the law courts remained fundamentally unchanged, except in matters such as the abolition of appeals to the Privy Council, the Constitution of the Supreme Court of India as the Apex Court, the conferment of writ jurisdiction on all the High Courts, etc. The concept, structure and organisation of courts, the substantive and procedural laws, the adversial system of trial and other proceedings and the function of judges and lawyers remained basically unaltered and rooted in the common law traditions in contradistinction to those prevailing in the civil law or other system of law.<sup>6</sup>

In England an equitable right or estate as recognised was somewhat different from a legal right or estate. The interest of a beneficiary in the trust property in England is an equitable interest while the legal interest in the estate remains vested in the trustee. This doctrine of the Court of Equity once not recognised in India after the advent of the British Rule was incorporated in the Indian Trusts Act of 1882 (s. 3) as trustee and beneficiary. Again in England when a person agrees to sell land, he creates an equitable interest in the land in favour of the buyer, an equitable interest recognised by the Court of Chancery. The law in India never recognised any distinction between legal and equitable interests. As early as 1872 the Judicial Committee in *Tagore v Tagore*,<sup>7</sup> observed "The Law of India, speaking broadly knows nothing of the distinction between legal and equitable property in the sense in which it was understood when equity was administered by the Court of Chancery in England." The same view was expressed in 1931<sup>8</sup> when it said that by the law of India "there can be but one owner and where the property is vested in a trustee, the owner must be the trustee." Another doctrine

3 13 Eliz C 5 and 27 Eliz C 4 is now replaced by s. 53 of the Transfer of Property Act.

4 6 Mad HC Rep 474, The Wills Act 1861; 24 and 25 Vict C 114 and the Naturalisation Act 1872; 35 and 36 Vict C 17.

5 OS, 4th Ed. 1941, p. 87.

6 *Byram Pestonji v Union Bank* AIR 1991 SC 2234; 1991 AIR SCW 2567; JT 1991(4) SC 15.

7 1872 Ind App Supp 47, 71.

8 *Rani Chitro Kumari v Mohan Bikram* (1931)589 App 279.

which is now a rule of estoppel and based on the equitable doctrine *He who seeks equity must do equity*, was recognised in India and the same has been incorporated in s. 51 of the Transfer of Property Act 1882, e.g. when improvements are made on third party's land by a stranger or *bona fide* holder of defective title.<sup>9</sup>

Some of the significant equitable doctrines however were not found acceptable by the Indian courts, e.g. purchase of property in favour of children or other persons for their advancement. The Indian Succession Act, did not enact the rule of English law by which a child who have had received a benefit out of the estate of his father must account for it on distribution of the same in the event of the father dying intestate. The rule has, however, been held to apply to persons subject to English law in India.<sup>10</sup> The equity of part performance which in England mitigated the rigours of the statute of fraud by taking a parole contract out of it when it had been partly performed seemed at one time to apply to India to the extent of taking away the application of the laws requiring registration and other formalities in such cases.<sup>11</sup> The doctrine has now been incorporated in a partial form into the statute governing transfer of property (s. 53A of the Transfer of Property Act 1882).

However, the statute law of India has incorporated in itself to a substantial extent equitable rules and doctrines. The Indian Trusts Act of 1882 embodies in a concise form the whole structure of trusts built up by the equity courts in England. The Act also deals with "certain obligations in the nature of trusts". There are attempts to enumerate broadly, circumstances under which a person may be placed in the position of a trustee with reference to another. These "obligations in the nature of trusts" are no different from the implied and constructive trusts found in the decisions of the English equity courts.

Another instance of an almost transplantation of the doctrines of English equity courts is to be found in the Specific Relief Act of 1877 since repealed and re-enacted by the Specific Relief Act 1963. It deals with cases in which courts will order restitution of specific property and order contracts to be specifically performed. It also enumerates the circumstances in which the courts will grant the relief of rectification and cancellation of instruments. The Act is in a sense a blend of common law and equity. The doctrine of the equity of redemption was held by the Privy Council in 1870 as not originally recognised in India.<sup>12</sup> It has received statutory recognition under s. 60 of the Transfer of Property Act 1882. The rights and liabilities of the lessor and

9 *Lake v Gibson* 1 Eq Ca Ab 290.

10 *Kerwick v Kerwick* 1920 Ind App 273.

11 *Mahamed Musa's case* (1914)421 App 75.

12 *Pattabhirameer v Vincatarow* (1870)13 Moor Ind App 560 (571-72).

lessee as incorporated in s. 108 of the Transfer of Property Act 1882, are based on well settled principles of the law in England.<sup>13</sup> The common law rule against transfer or bequest to unborn person is enacted in s. 13 of the Transfer of Property Act and in s. 113 of the Indian Succession Act. So the English Rule against perpetuity is incorporated in s. 114 of the Indian Succession Act in a modified form and as also in s. 14 of the Transfer of Property Act 1882.

The property clauses in the Constitution of India, contained in Art. 19(1)(f) and Art. 31, have been repealed by s. 2 and s. 6 of the Constitution (Forty-fourth Amendment) Act 1978, with effect from the 20th June 1979.

In other words, the right to property ceased to be a fundamental right and became only a legal right. Thus, Art. 19 had been amended and Art. 31 deleted. However, the new provision does not affect the right of minorities to establish and administer educational institutions of their choice. Similarly, the right of persons holding land for personal cultivation and within the ceiling to receive compensation at the market price has been ensured. Property has, accordingly, been given express recognition by Art. 300A in the Constitution as a legal right in that no person will be deprived of his or her property save in accordance with the law. Remedy against any violation of this legal right may be obtained under Art. 226 of the Constitution or by a civil suit but not under Art. 32 of the Constitution.

**A short history of conveyancing in England.** Conveyance means the action of conveying. John Austin in his lectures on jurisprudence said that it is by no means easy to define "ownership of property". Ownership of property which can be acquired by contract, inheritance and prescription is a right *in rem* against the whole world (*jus-ad-rem*) over a determinate thing but indefinite in point of user, unrestricted in point of disposition and unlimited in point of duration (Austin's *Jurisprudence*, p. 835). The word "property" owes its origin to the French word *propre* which means "one's own" and in its fullest significance signifies four distinct groups of rights, viz., of—

- (i) enjoyment;
- (ii) destruction;
- (iii) alienation; and
- (iv) possession.

The expression "conveyancing" is of English origin. It means land transfer *inter vivos*. Section 205 of the Law of Property Act 1925, defines "conveyance also as including mortgage, charge, lease, assent and release, also any other document of transfer relating to property except will". Section 2(10) of the

13 *Indu Bhusan v Moazam Ali* AIR 1929 Cal 272.

Indian Stamp Act (Act 11 of 1899) defines it as including a sale and every instrument by which property whether movable or immovable, is transferred. Conveyance is a transfer within the meaning of s. 5 of the Transfer of Property Act 1882. But a transfer does not import always any species of contract by which all real rights in a property are passed from one living person to another.<sup>14</sup> English law, recognised property but not the absolute ownership of land.<sup>15</sup> In most ancient times in England, a corporeal hereditament, which means land in actual possession, was transferred by the method popularly known as "*feoffment*" and "*livery of seisin*". "*Feoffment*" could be made orally or in writing. All that was necessary, were appropriate words to denote the quality of the estate intended to be transferred which was followed by the ceremony, i.e. physical delivery of possession. This was known as Common Law Conveyance, whereas an incorporeal hereditament, which was a bundle of rights in land short of possession, e.g. right of way, right of pasture of cattle on another's land and other easement rights as then understood, meant the gift of a "*fee*" by use of appropriate expression and "*livery of seisin*"—the delivery of freehold to a tenant to be held by him according to feudal system. Although the transfer of an incorporeal hereditament was made by grant, such a grant in early days could be effected orally or in writing, which was done only in matters of importance to add solemnity to the transaction because of the seal to be affixed: Conveyances were required to be public and formal.<sup>16</sup>

Although originally a *feoffment* was always understood to mean not only seisin to feoffee (transferee) but nevertheless, with the development of Chancellor's jurisdiction and invention of equitable estate by the origin of the word "*use*" and in particular after the "*Statute of Uses*"<sup>17</sup> came in force, the expression "*unto and to the use of*" was considered necessary to indicate transfer of equitable estates as well: The *feoffment* mode of conveyance was followed by a new method known as "*Lease and Release*" which became popular by reason of the secrecy of the transfer it involved and this continued up to the year 1841, which was the year of origin of Modern Conveyance. Thus, when the transferor released his remaining interest in the property, the transferee became a tenant in fee simple. Thus, down to the time of King Henry VIII, nothing more was required to effect a valid *feoffment*. The Parliament then passed an Act in 1535 known as the "*Statute of Uses*"<sup>17</sup>

14 *Narandas v Parshoram* 4 BLR 500; *Ramkinkor v Satya Charan* (1939)43 CWN 281.

15 William's *Real Property*, 20th Ed., p. 7—Grantees regarded as holding the property of the king on obligation of fidelity and service to him (p. 13). See also Topham's *Real Property*, 11th Ed., p. 2.

16 Cheshire's *Modern Law of Real Property*, 12th Ed., p. 42.

17 State 27 Hen VIII C 10.

which required a consideration for the gift or gifts to be made unto and to the use of the feoffee and enacted further that where the land is held by one person for the use of another, the legal title was in that other.

Even then the use of writing remained optional until the time of King Charles II particularly in cases which did not require any deed under seal.<sup>18</sup> Writing was only employed in matters of very great importance, more so because the presence of a Charter, which required the seal of the executant, added solemnity to the transaction.

**Deed poll.** Thus, two types of deeds, viz. "Deed Poll" and "Indenture", mainly came gradually into use in England. Deed Polls are those made by and expressing the active intention of one party, they are drawn in first person and in which there is usually one party only and are so called because at times they were polled or cut levelled. It is a muniment of title of an executed contract conveying a property, Power of Attorney, declaration, disclaimer of title, declaration of trust, deed of adoption, will etc., are examples of deed polls.

**Indentures.** Indentures are documents having more than one and at least two parties. They were so called in ancient times because they, though engrossed on the same parchment, were indented or cut at the top with uneven edges so as, to fit or join with its counterpart. The idea was to safeguard against fraudulent substitution of different writings, but the practice has ceased long ago. Mortgages, conveyances, leases, etc., are all still called indentures. They all come under the definition of "conveyance" which, as defined in s. 205(1)(ii) of the Law of Property Act 1925, includes mortgage, charge, lease, assent, vesting declaration, disclaimer, release and every kind of assurance. An indenture is a conveyance of title.

**Grant.** A third type of deed was "Grant" which, though originally signified transfer of incorporeal rights, became gradually a synonym of conveyance. It was during the reign of King Charles II that the Parliament enacted, in 1677, a legislation to prevent fraud and perjuries commonly called the "Statute of Frauds",<sup>19</sup> which required writing for creation and transfer of landed interests and also for contracts for sale of land, the only exception being in case of lease for less than three years where the landlord kept reserved for himself a rent of at least two-third of the full improved value.<sup>20</sup> Thus common law conveyance was replaced by statutory conveyance and a single release was considered a sufficient conveyance of land, thus dispensing with the former lease.

**Delivery—meaning of.** A deed is very different from contract. On a contract for sale of land the contract is not binding on the parties until they have

18 William's *Real Property*, 20th Ed., p. 153.

19 29 Char 11 C 3.

20 William's *Real Property*, 20th Ed., p. 153.

exchanged their parts. But with a deed it is different. A deed is binding on the maker of it, even though the parts have not been exchanged as long as it has been signed, sealed and delivered. "Delivery" in this connection does not mean "handed over" to the otherside. It means delivered in the old legal sense, namely an act done so as to evince an intention to be bound. Even though the deed remains in the possession of the maker, or his solicitor, he is bound by it if he has done some act evincing an intention to be bound as by saying, I deliver this by act and deed. He may, however, make the "delivery" conditional: in which case the deed is called an "escrow" which becomes binding when the condition is fulfilled.<sup>1</sup>

This type of document called "escrow" was a simple writing not effective until certain conditions shall have been performed and not immediately.<sup>2</sup>

The Real Property Act 1845,<sup>3</sup> required all grants of landed interests to be effected by writing which thus became known as "conveyance".<sup>4</sup> Then followed the Law of Property Act 1922,<sup>5</sup> which, as amended in 1925, repealed the Statute of Frauds<sup>6</sup> and made it compulsory for all deeds to be signed and sealed. Under s. 52(1) of the Law of Property Act 1925, all transfers of land or of any interest are void unless made by deed.

The Conveyance of Land Act 1854 of England<sup>6</sup> is regarded as the authority on the form and the several clauses which are incorporated in the present form of conveyance, *i.e.* covenant as to good title, non-encumbrances, peaceful possession, further assurance and indemnity clause (vide s. 55 of T.P. Act 1882, in India). The Law of Property Act 1925, is the authority on the present form of conveyance. Under s. 44(1) of the Law of Property Act 1925, the statutory period for a good root of title, which was 40 years under s. 1 of the Vendor and Purchaser Act 1874, was reduced to 30 years and now it reduced to 15 years.<sup>7</sup> In India there is no such law. Although Art. 65 of the Limitation Act 1963, prescribes a period of 12 years as the period of limitation for suit for possession of immovable property nevertheless such a title cannot be certified as marketable title in the absence of other evidence.

1 *Vincent v Premo Enterprises* (1969)2 QB 609; (1969)2 All ER 941 per LORD DENNING MR.

2 *Halsbury's Laws of England*, 3rd Ed., vol. 2, p. 318.

3 Stat 8 & 9 Vic. C 106 S. 2.

4 A.C. Dutt on *Real Property*, 4th Ed., p. 165.

5 12 & 13 Geo V C 16.

6 Stat 44 & 45 Vic. C 41.

7 A.C. Dutt on *Real Property*, 4th Ed., p. 332; *Cheshire's Modern Law of Real Property*, 12th Ed., p. 732.

**Land systems in ancient England.** In conveyancing, the lawyers are most familiar with the word "fee simple". It had its origin in England and it means "absolute ownership" and being granted to a man and his heirs. So it never passed to the Crown for want of heirs. The word "fee" denotes "inheritability" and the word "simple" connotes that it passes to the general body of heirs no matter whether they are ascendants, descendants or collaterals. It is equivalent to free-hold tenure. It was originally the only type of real property known to English law until the decline of the feudal system. Though the largest interest in land yet having been created by the use of the words "and his heirs" it was considered not alienable without their consent. This restraint began to fall off gradually with the growth and development of constitutional Government and a time soon came when the words were construed as words of limitation, i.e. words which mark the estate to be taken by the grantee and not words of gift conferring any interest upon the heirs. This is the Rule in *Shelly's case*.<sup>8</sup> This is a Rule of Law and not of interpretation. Although the largest estate, viz. "the fee simple" was nevertheless subject to certain limitations and restrictions both under the common law as also under the statute on the rights of the owner, e.g. that he had no right to misuse the land to the prejudice of others, and had to obtain permission from appropriate authorities for its development. Moreover, his rights were subject to the right of support as against the neighbouring property and, lastly, the easement rights of the adjacent owners.<sup>9</sup> The other types of tenures, which lawyers often come across, are "copy hold" or as it was sometimes called in the past the "villein tenure" traced back up to Anglo-Saxon days and "leasehold". The former was an estate at the will and pleasure of the feudal lords who used to retain a portion of their military tenures granted by the king and made over the surplus to villagers in return for services who cultivated these lands on joint field system of husbandry subject to conditions fixed by customs, having no title deeds; the only muniment of the title being a copy of the roll or book in which account was kept by the court held by the lords. All 'copy hold' lands have been converted into freehold lands with effect from 1st February 1926 (ss. 128, 136 and s. 189 of the Law of Property Act 1925). A leasehold estate, although considered as heritable for the purpose of descent, was nevertheless regarded as a "Chattel real" and was never recognised as a real property as a tenant for years was 'possessed' and not seized and if dispossessed he could originally bring a personal action for recovery of damages.<sup>10</sup> The English Common Law thus recognised three types of estates, viz. estate in fee simple, estate in fee tail and estate for life. The first type of estate represented complete ownership. The second was

8 *Shelly's case* 1 Rep 24; William's *Real Property*, 20th Ed., pp. 336-338.

9 Glasgow: *Modern View of Conveyancing*, pp. 12-13.

10 Pollock & Maitland's *History of English Law*, vol. 11, p. 113.



more or less of a limited character. So it was an estate limited to the heirs of the grantor. It descended in the chain of the lineal descendants of the grantee failing which it used to revert to the original grantor or his heirs. A life estate is a mere right of enjoyment, so it is not heritable. A tenant by courtesy as cited in *Eager v Furnivall*,<sup>11</sup> whereby the husband of a lady seized in fee simple of an estate and having children by her was allowed to hold the same after her death was abolished by the Administration of Estate Act 1925.

**Ownership of land and soil—Indian scenario.** The English theory of Crown ownership of land was not applicable to India. A field, says Manu,<sup>12</sup> is his who clears the jungle. This is not, however, corroborated by epigraphic evidences. A subject could acquire proprietorship in the soil and the King had the right only to a share of the produce by way of tax by reason of protection afforded to the subjects. The Hindu theory of ownership of soil was upheld in *Secretary of State v Vira Rayan*.<sup>13</sup> It was observed that under the Hindu common law the first person making beneficial use of the soil acquires the right of ownership subject however to the right of the Crown as to a share of the crops. Yajnavalka says of three stages in the land economy of ancient India, viz. Mahapati (King), Kshetra Swami (landowner) and Krishak (cultivator). Partial feudalism was not completely unknown particularly during the Gupta Period as the Gupta Kings, in particular Samudra Gupta, was famous for having settled large areas of land with temples and Brahmins in return for religious and spiritual services. A major portion, however, remained with the free peasants who paid revenue to the King.<sup>14</sup> This was the Hindu idea of the ownership in land.<sup>15</sup> Another theory was that the ownership of land was collective, royal, individual and based upon early land settlements. The Mahomedans also recognised the right of the subject in the soil and what the rulers imposed was called *Mal*. According to Abu Hanifa the right of a sovereign even in conquered countries was limited to a tribute from the land. So the Mahomedan Rulers had to purchase lands from the cultivators when they required for their own purposes. Akbar purchased lands for construction of his forts.<sup>16</sup> The village communities of ancient India were organised patriarchal societies and an assemblage of co-proprietors. Though their property was blended, nevertheless, their rights were distinct, separate and continuous indefinitely.<sup>17</sup> They did not do away with the fiscal system

11 (1881) 17 Ch D 115 at p. 120.

12 Chapter IX, v. 44.

13 9 Mad 175 at p. 179.

14 Ram Sharan Sharma: *Light on Early India Society and Economy*, pp. 78-115.

15 *Secretary of State v Vira Rayan* 9 Mad 175 (179).

16 Field: *Landholdings*, p. 741.

17 Maine: *Ancient Law*, p. 216.

based on old Brahminical ideas. It will not be out of place to say here a few lines about ownership of waste land and forests.<sup>18</sup> In the Privy Council the State was recognised as the owner of waste lands. This conception is correct so far as lands in ryotwari villages are concerned but in zamindari villages waste lands were conveyed to zamindars under the permanent settlement. The case of forests is the same. The British Administration introduced Permanent Settlement in India based on feudal doctrine of English land laws, that the soil was the property of the sovereign and they could confer upon and vest their interest upon the landlords of their creation. When the Permanent Settlement was gone, the State became the owner of all lands. The Estate Acquisition Acts have completely wiped away the feudal pattern of land tenure by abolishing all intermediaries in all the States. A raiyat, however, became the owner of his holding with heritable and transferable right under s. 4 of the West Bengal Land Reforms Act 1955. The intermediary system of landowning people has been abolished also in other States. Under s. 5 of the Bihar Land Reforms Act 1948, all homestead land of proprietors and tenure holders are held by the proprietors as rent-free under the State, other lands in *khas* possession as raiyats with rights of occupation. The Madras Estate (Abolition and Conversion in Ryotwari) Act 1948 (Madras Act XXVI of 1948), confers the status of a raiyat on every ryot and declares them each as entitled to a *pattah*. Although the feudal doctrine about the ownership of land was not applied in India, nevertheless the idea was not foreign to this country. The ghatwali tenures were created by the Muslim rulers which prevailed in Santhal Parganas, Birbhum and other places to ensure police and military services against invasion of mountain passes by lawless tribes, at low rent or no rent and also by the zamindars.<sup>19</sup> Chowkidari Chakran lands of the united Bengal were lands assigned to people to provide for police and military service. The jaigir grants to military officers and their subordinates in U.P. and Rajasthan were originally life grants but became gradually estates of inheritance in the latter part of the Mahomedan Rule. These lands were generally inalienable.<sup>20</sup> But with the progress of time, they lost their character for the reasons *inter alia* abolition of military service and/or computation in money. The State, however, was regarded as the owner of all waste lands except in zamindari villages which prevailed chiefly in Bengal, Bihar and Orissa.

Through the provisions of the Land Acquisition Act 1894 which is of an exceptional character Government has the power to take any land in any area for a public purpose and this exercise of the State's power of eminent

18 *Collector of Muslepatam v Covoly* 8 MIA 500 at p. 525.

19 *Thakur Rudheshwari Prasad v Rani Probhati* 1952 SCR 64; AIR 1952 SC 1.

20 Sir Jadunath Sarkar's *Ain-i-Akbari*, vol. 11, p. 63.

domain does not offend the right to livelihood etc. guaranteed by Art. 21 or Art. 300A of the Constitution.<sup>21</sup>

According to ryotwari village system which, though not exclusively but chiefly prevailed in the Madras presidency, the revenue settlement was made with the actual cultivators of the soil who were thus regarded as its owners.

**Concept of absolute ownership.** It was observed by the Calcutta High Court<sup>1</sup> that the concept of absolute ownership is out of date. The concept has changed from pre-feudal and feudal societies to industrial and post-industrial societies. An extended meaning of ownership appears from s. 2(62) of the Calcutta Municipal Corporation Act 1980 where it has been defined as to include the person for the time being receiving the rent of any land or building or of any part of any land or building, whether on his own account or as agent or trustee for any person or society or for any religious or charitable purpose or as a receiver who would receive such rent if the land or any part of the land or building were let to a tenant. Exactly similar is the definition of 'owner' appearing in s. 2(45) of the West Bengal Municipal Act 1993. A property may be subject to conditions and/or limitations, but it does not detract from the ownership on that ground. A lessee for 30 years or more is deemed to be the owner as defined in s. 3(a) of the W.B. Apartment Ownership Act 1972. Section 3A of the said Act further contemplates double ownership in cases where any cooperative society is the owner of the building and members of such society are also owners of the apartments.

**Conveyancing in India.** In India conveyancing cannot be claimed to have reached that standard of efficiency and compactness needed to meet the challenges of the time, as legal education is still confined mostly to the study of substantive law and personal law governing Hindus, Muslims and others. There is a class of people known as DEED WRITERS in the *muffasil* who hold themselves out as conveyancing experts. There was no statutory law on the subject before the T.P. Act of 1882 came into force. The Act itself is not even now exhaustive and so is not a complete Code, as the preamble says "To amend certain parts of law relating to transfer of property by the act of parties". The Contract Act, Registration Act, West Bengal Apartments (Regulation of Construction and Transfer) Act 1972, Indian Trusts Act, Land Reforms Act, etc., contain provisions as to transfer of the property. Further s. 9 of the Act reads as follows: "A transfer of property may be made without writing in every case in which a writing is not expressly required by law". So in cases not covered by the Act, the courts in India are guided by the Contract

21 *New Riviera v Special LAO* (1996)1 SCC 731.

1 *Saha Institute of Nuclear Physics Co-operative Housing Society Ltd. v Corporation of Calcutta* AIR 1977 NOC 362 (Cal).

Act, Registration Act, etc., and also by the rules of justice, equity and good conscience in so far as they are not inconsistent with the Acts.<sup>2</sup> The said Act does not extend to whole of India. The Exemption Rule of Mahomedan law is still outside the purview of its operation [vide s. 2(d) of the Transfer of Property Act] but it refers to such rules as differ from the general rules contemplated in Chapter II of the Act. There is no statutory period up to which the intending purchaser shall make necessary searches and particularly in the mufasil, searches are very seldom carried on beyond 12 years. This is the usual search unless there are reasons for searches for longer period.<sup>3</sup> Title deeds are more often lost or misplaced not having been kept with the solicitor or the banker. The practice of *benami* transaction, the joint and divided Hindu family system and the tenancy-in-common among the Mahomedan heirs, the right of pre-emption followed among the people in different areas are among other several causes which make investigation of title all the more a difficult job. The Transfer of Property Act, as it stood before the amending Act 20 of 1929, also saved Hindu law and Buddhist law. The word "Hindu" has been omitted by the amendment of 1929 as the difference between the Law and the Act has been abolished. So was the word "Buddhist". In the result Chapter II of the Act now applies to Hindu as also to Buddhists since 1929. Nevertheless the solicitors who do the conveyancing work in Presidency towns follow English precedents.

In India the Sanskrit literature recognised several types of documents, e.g. partition, gift, purchase, agreement, bond, etc.<sup>4</sup> Ancient documents like "Patni Taluq Grant" of Bengal were of the nature of a permanent managing lease for a fixed rental value and the sub-infeudations created, e.g. "*dar patindar*", "*shidarpatnidar*", "*pattahs*" granted by the Emperors, Nawabs, Collectors, "Charpatra" (redemption of rent), jaigir grants, Kabuliyats, etc., were all of the nature of deed polls on parchment expressing active intention of the grantor and the seal of the grantor. So it can be inferred that interest in land was created and also transferred in writing. Nevertheless, it was held so far back as 1876 that no writing was necessary under the Hindu law as to the validity of any transfer, as it was transfer of possession which was essential.<sup>5</sup> The land system in India was really a complex one; it consisted of several other types of tenures, viz. Jagir, Ayma, Altamga, Chatwali, Brahmattar Lakhraj, Pirattar, Mahatran etc.

Although at present, the sale, exchange and mortgage of value above Rs. 100, except mortgage by deposit of title deeds, in Presidency towns

2 *Maharaja of Joypore v Rukmini* (1919)42 Mad 589 (598); 46 IA 109; 50 IC 631.

3 *Mazahar v Mukhtar* AIR 1938 All 64.

4 *Ebrahim v Fulbai* 26 Bom 577.

5 *Hurprashad v Sheo Dyal* (1876)26 WR 55; 3 IA 259 (278).

lease exceeding one year or reserving an annual rent and gifts and transfer of actionable claims and also transfers under special enactment (*vide* s. 5 of the West Bengal Land Reforms Act 1955), partition of agricultural holding under s. 14 of the said Act are all made by writings, nevertheless a partition of the joint family properties can by conduct of the parties and mutual agreement be effected orally.<sup>6</sup> A partition is not a transfer.<sup>7</sup> It is called partition by conduct of the parties. Parties enter into separate possession of their respective allotments, enjoy the same in severalty and have their respective names recorded in the books of the Municipality and Collectorate. If however any partition is effected with some fraudulent design or *mala fide* motive, e.g. with intent to delay or defeat creditors it is in that event a transfer under s. 53 of the Transfer of Property Act and may be impeached.<sup>8</sup> An endowment in favour of any deity or temple can be created by clear and unambiguous declaration of the settlor by his intention to dedicate followed by renunciation of ownership; such dedication whether to any idol or temple is not treated as a transfer to any living person but a gift to God and can be made even without any writing or registration.<sup>9</sup> The provisions of Transfer of Property Act are not strictly applicable in the case of Hindu endowment. A wakf *inter vivos* is also completed by dedication and delivery of possession unless it is a family settlement.<sup>10</sup> No writing is, therefore, necessary to create any Hindu endowment, in case of clear intention, (1927)54 IA 136. These are some transfers where no writing is necessary. A surrender is quite distinct from merger or abandonment.<sup>11</sup> Indian Trusts Act 1882 does not apply to endowments (*vide* s. 1).

The amending Act (20 of 1929) deleted the words "Hindu" and "Buddhist" from s. 2 of the T.P. Act 1882, and thus made writing compulsory in case of transfer of land of the value of Rs. 100 and upwards.

In Mahomedan law, a sale could be completely effected by mutual delivery of the property and payment of consideration but the principles of the Mahomedan law applicable to sales have been practically abrogated by the Contract Act and the Transfer of Property Act.<sup>12</sup> A gift may be made orally or in writing. This portion of the Mahomedan law is untouched by s. 123 of

6 *Satya Kumar v Satya Kripal* (1909)10 CLJP 503.

7 AIR 1965 SC 866; AIR 1966 SC 432.

8 *Waman Ramkrishna v Ganapat* AIR 1936 Bom 10; see also ILR (1944) Nag 342; AIR 1934 Nag 44 (FB).

9 *Ramlingha v Sivachidamera* 42 Mad 440 (443).

10 Mulla's *Mahomedan Law*, 19th Ed., p. 153.

11 *Daip Sing v Kishno* ILR (1968)1 Punj 755.

12 Syed Ameer Ali's *Mahomedan Law*, 2nd Ed., p. 115.

the Transfer of Property Act. So is the case of wakf. According to Abu Yusuf, a wakf *inter vivos* is completed by declaration of endowment by the owner and this view was accepted by the High Courts at Calcutta,<sup>13</sup> Patna,<sup>14</sup> and Madras,<sup>15</sup> nevertheless the Privy Council<sup>16</sup> held that inasmuch as it operates as extinction of the rights of the owner, any wakfnama involving property of the value of Rs. 100 or upwards requires registration under s. 17(1) of the Registration Act. A Hiba-bil-iwaz of a property of the value of Rs. 100 and upwards can be effected by a registered deed.

**Suggestion.** All endowments and wakfs be made in writing and registered like other transfer of property.

**Capacity to convey.** Section 7 of the Transfer of Property Act is to be read with s. 11 of the Indian Contract Act 1872. This is dependent on the capacity of the person(s) to enter into contracts to convey any property. Infants and lunatics are therefore, as a rule, incapable of selling their property. So are disqualified proprietors.

A person, who left India for Pakistan after partition in 1946 and has not returned since then becomes a Pakistani National whose property in India vests in the Custodian of Enemy Property under the Enemy Property Act read with the Defence of India Rules, has no right to convey the same.<sup>17</sup>

Aliens under the common law could not hold freehold lands in England nor fill any public office nor possess civil rights. Now they are not subject to any of those disabilities.<sup>18</sup> In India, they are competent to buy or sell property so long as they are not enemies. It was held by the Privy Council as early as 1836<sup>19</sup> that the English common law incapacitating aliens from holding any real property never applied in India. It is however significant to mention here the effect of s. 31(1) of Foreign Exchange Regulation Act (Act 46 of 1973). No person who is not a citizen of India and no company other than a banking company which is not incorporated under any law in force in India shall, except with the previous general or special permission of the Reserve Bank, acquire or hold or transfer or dispose of by sale, mortgage, lease, gift, settlement or otherwise an immovable property situate in India.

The Foreign Exchange Regulation Act 1973 has since been replaced by the Foreign Exchange Management Act 1999 (Act 42 of 1999). It received

13 *Jinjira v Mohammed* (1922)49 Cal 477.

14 *Mohd. Ibrahim v Bibi Mariam* (1929)8 Pat 148.

15 *Pathu Kutti Umma v Nedungadi Bank Ltd.* (1938) Mad 148.

16 *Muhammed Rustam Ali v Mushtaq Hussain* (1920)47 IA 224; 57 IC 329.

17 *Abdul Rauf v Janab Ali* 82 CWN 5.

18 *R. v Arnad* (1946)19 QB 806.

19 *Mayer of Lyons v East India Co.* 1 Moor Ind App 175.

the assent of the President on 29th December 1999 and came into effect on and from 1st June 2000. The changes made therein may be carefully noted.

In England, a person attains the age of majority when he completes the age of 21 years. In India, under s. 3 of the Indian Majority Act, the age of majority is 18 years except in the case where the minor was under the protection of the Court of Wards or Encumbered Estate Act (both of which have been now dead letters) or where he has a statutory guardian appointed by the court in which event his minority continues until he completes the age of 21 years. It was held by the Privy Council in *Mohori Bibi v Dharmadas*<sup>20</sup> that a contract by a minor is void and incapable of being validated by ratification and further there is no estoppel as against the minor. On this principle a lease to a minor was held<sup>21</sup> void. A lease by a minor is also void as under s. 107 of the Transfer of Property Act as it stands after the amendment of 1929. It must be executed by both the parties. Nevertheless, a minor may be a purchaser<sup>22</sup> or mortgagee.<sup>1</sup> No guardian can, however, bind a minor by a contract for purchase of any immovable property.<sup>2</sup> The powers and authorities of the natural guardian of a minor are now clearly defined under s. 8 of the Hindu Minority and Guardianship Act 1956. So a natural guardian can no longer create any mortgage charge nor transfer by sale, gift, exchange or otherwise nor create any lease beyond one year after the date of attainment of majority or for term exceeding five years without the order of the court to that effect first had and obtained. The rule does not apply to the undivided share of the minor in the Mitakshara coparcenary property (s. 12 of the said Act). *De facto* guardians have no power under any circumstances (s. 11). In England, the property of a lunatic can be dealt with by his statutory agent, a committee of his estate or receiver of the income appointed under the Lunacy Act 1890, but an infant cannot be transferee of a legal estate in land (s. 16 of the Law of Property Act 1925). In India, the law on lunacy was almost identical under the Indian Lunacy Act (IV of 1912). The Act of 1912 has since been repealed by the Mental Health Act 1987. Sections 50 to 74 of the 1987 Act make elaborate provisions for appointment of guardian or manager of the mentally ill person and of his properties and the management thereof. The manager has been given the power to execute conveyances on behalf of the mentally ill person only under orders of the District Court. The Official Assignee in the Presidency towns and the Receiver in the Muffasil have, by virtue of s. 68 and s. 19 of the Presidency Insolvency Act and s. 59 of the Provincial Insolvency Act

20 (1903)30 Cal 539 (PC); 30 IA 114.

21 *Pramila Bala Das v Jogeswar* (1918)3 Pat LJ 518.

22 *Ulfat Rai v Gourisankar* (1911)33 All 657.

1 *Raghava v Srinivasa* (1917)40 Mad 308.

2 *Mir Sarwarjan v Fakhruddin* (1911)39 IA 1; 30 Cal 232.

have power to deal in the property of an insolvent. Among the Mahomedans the following persons only are entitled to be guardians of the property of the minor: (i) father; (ii) executor appointed by the father's will; (iii) father's father; (iv) executor appointed by the will of father's father.<sup>3</sup> A *de facto* guardian has no power to sell any property belonging to the minor. The authority of the legal guardian is also most restricted. He can sell if such sale fetches its double value or in the event such sale is necessary for payment of the debts and/or legacies there being no other resources in cases where the costs charges and expenses of management exceed the income or where the property is falling into decay or has been usurped. A *mutawalli* has no power to sell, mortgage or otherwise deal in wakf property unless expressly authorized by the deed or by an order of the court or competent authority.<sup>4</sup> In England, the property of a lunatic can be dealt by his statutory guardian as any property is vested him and he is recognized as persons juristic capable of transferring and accepting transfer of property<sup>5</sup> but not to involve into any covenant. The transfers of a debutter property can be effected by the *shebait*s who are actually managing and administering the property of the deity and for good reasons and in the interest and for the benefit of the deity. This question was raised before the Judicial Committee in *Hanuman Persaud v Massamat Babooee*.<sup>6</sup> It was held that a *shebait* or a *mohunt* has no power to alienate the debutter property except in cases of legal necessity but he cannot convert any immovable property into cash investment even for better return by way of interest or dividend. The original concept of shebaitship as a mere right to manage the property has now been changed. It was held by a Full Bench of Calcutta High Court in *Monohar v Bhupendra*<sup>7</sup> that shebaitship is not merely office but also property and therefore can be a subject-matter of bequest, *shebaiti* rights can be transferred by custom, or renouncement but not by sale.

An executor, though the statutory owner of the property, has no beneficial interest in the estate. He can, however, sell any property in due course of administration (s. 307 of the Indian Succession Act 1925) in the absence of any restriction in the will. A Receiver does not acquire any proprietary right or title in the property over which he has been appointed as such. The Official Assignee as in the case of insolvency is similarly placed. The title remains vested in the person lawfully entitled to the estate.<sup>8</sup> He cannot sell any property unless authorized by the court (vide Or. 41, r. 1 of CPC) and execute the conveyance on behalf of the defaulting party or parties and he

3 Mulla's *Mahomedan Law*, 19th Ed., pp. 292-293.

4 Section 51 of the Wakf Act 1995.

5 *Pramathanath v Pradhyamma* 67 IC 309.

6 (1856)6 MIA 393.

7 60 Cal 432.

8 *Ram Lachun v Hogg* 10 WR 930.



is devoid of any estate or interest in the property himself. Although the Receiver sells the property under order of the court, nevertheless it is not a sale by the court but it binds and operates upon the estate of the persons who are parties to the order. No sale certificate is granted and no confirmation by the court is necessary.<sup>9</sup> The Receiver executes a conveyance along with the parties.

A firm cannot transfer any property unless the act is done by all the partners [s. 19(2)(g) of the Partnership Act] and further the same must be in the firm's name and with intent to bind the firm (s. 22).

Before the Constitution of India came into force all executive authority was exercised by the Governor-General in Council (s. 7 of the Government of India Act), while that of the province by the Governor (s. 49 of the said Act). All transfers were made and contracts were signed by persons so authorized and for and on their behalf. After the enforcement of the Constitution, all transfers and contracts in respect of properties vested in the Union of India are executed in the name of the President, while those vested in the State in the name of the Governor [Art. 299(1) of the Constitution of India]. The Board of Directors of a public company or a private company which is subsidiary to a public company cannot, under s. 293 of the Companies Act 1956, sell, mortgage, lease or otherwise dispose of the whole or a substantial portion of the undertaking of the company without a resolution of the share-holders passed in a general meeting. When any partnership assets stands in the name of a partner, he is a mere trustee and has no beneficial interest until dissolution of the firm and the account is taken. He cannot make any beneficial use thereof by its sale.<sup>10</sup>

The Hindu Succession Act 1956 which came into force on 17th June 1956 has improved the status of the Hindu female and her capacity to deal with the property. It was held by the Supreme Court<sup>11</sup> that unless the property is given for the first time without recognition of any pre-existing right she will have an absolute estate. It was held by the Bombay High Court<sup>12</sup> that "where the female Hindu was in possession of the joint family property after her husband's death in exercise of the powers of lien as to provisions to be made for her maintenance she was in possession of the property within the meaning of s. 14. It is not necessary that the possession by the female must be as that of an owner or as a limited owner. She would be the absolute owner under s. 14 of the said Act". A female Hindu possessed of

9 *Golam v Fatima* 16 CWN 394.

10 *In re, Adharji Mancharji* 55 Bom 795; 133 IC 845.

11 *Vaddeboyina v Vaddboyina* AIR 1977 SC 1944.

12 *Limba v Manikrao* AIR 1978 Bom 83.

the property on the date the Act came into force could become absolute owner only if she was a limited owner.<sup>13</sup>

**Transfer by limited owners (vide s. 38 of the Transfer of Property Act).** This section embodies the principle laid down in *Hanuman Persaud v Mst. Babooee*.<sup>14</sup> Such a transfer is valid if for adequate consideration and the purchaser after proper enquiry is satisfied as to *bona fide* existence of the legal necessities and/or justifying circumstances behind the sale.<sup>15</sup> This section is applicable in judging transfers by natural guardians of minors, widows, managers of a Hindu joint family, father or karta of a Mitakshara joint family.

The karta of Mitakshara joint family has power to sell the joint family property for legal necessities and justifying circumstances.<sup>16</sup> As regards other coparceners they can sell their share in Bombay, Madras and Madhya Pradesh but in other places with the consent of the other coparceners.

In case of alienation by a Hindu, prior to the 1956 Act, without legal necessity the reversioners were not bound to institute a declaratory suit during the lifetime of the widow. They could wait till her death and then sue the alienee for possession of the alienated property treating the alienation as a nullity. The alienee could not acquire any right by adverse possession against the reversioner during the lifetime of the widow.<sup>17</sup>

**Transfer of family dwelling-house and its effect on right of residence.**<sup>18</sup> The position on and rights of a widow, daughter, predeceased son's wife and certain other female heirs of a Hindu have been materially changed by the Hindu Succession Act 1956, and the question of the right of residence of such persons must now be considered in the context of the provisions of that Act. Section 23 of that Act lays down a special provision respecting the family dwelling-house.

**Widow of undivided coparcener.** (a) Where an undivided family consists of two or more males related as father and son or otherwise, and one of them dies leaving a widow, she is entitled to reside in the family dwelling-house in which she lived with her husband. (b) If the house is sold by the surviving coparcener or coparceners without necessity, the sale does not affect her right, and the purchaser cannot evict her, in any event until another suitable residence is found for her. (c) If the purchaser buys the house with full

13 *Kalawatibai v Soiryabai* AIR 1991 SC 1581.

14 6 MIA 393.

15 *Bhagwat v Debi Dayal* 35 Cal 420 (PC).

16 Mulla's *Hindu Law*, 17th Ed., p. 379.

17 *Radha Rani v Hanuman* AIR 1966 SC 216; *Kalawatibai v Soiryabai* AIR 1991 SC 1581.

18 Mulla's *Hindu Law*, 17th Ed., p. 787.

knowledge that the widow is residing and is being maintained in it, the purchaser is not entitled to oust her even though there may be other property belonging to the family out of which her maintenance can be derived. (d) But if the sale is for a family necessity, she is liable to be evicted even though the purchaser had notice at the time of purchase that she was in occupation of the house. (e) Similarly the right of residence cannot prevail against the husband's debts.

**Government Grants Act 1895.** The effect is to exclude operation of not merely the Transfer of Property Act. Such grant can be resumed without interference by the court under Art. 226 of the Constitution of India.<sup>19</sup> But no condition can validly be annexed to a grant which will have the effect of creating an estate unknown to law.<sup>20</sup> Where no restrictions are imposed in the grant itself, the transfer made in favour of a third person by the lessee cannot be ineffective and invalid in law.<sup>1</sup>

**Cantonment tenure—nature.** The Secretary of States (now the Union of India) is the absolute owner of all Cantonment lands (*vide* the Cantonment Act 1924). Unless he has parted with the ownership, there cannot be any adverse possession.<sup>2</sup> A person occupying land in Cantonments not specifically transferred to him can only hold it as a licensee from him, who could eject him at will by revoking his licence.<sup>3</sup> The mere fact that certain lands are declared by the Government to be within a Cantonment area does not vest their ownership in the Government unless it is shown that the lands were acquired by the Government for that purpose.<sup>4</sup> All lands within the Cantonment area do not necessarily belong to the Government. It is not the necessary implication of the second paragraph of cl. (6) of Bengal Cantonment Regulations though the rules suggest that the greater part of the land was at that time the Government property.<sup>5</sup>

Where subsequent to the establishment of a Cantonment the ownership of the land within it becomes vested in the Secretary of State (now the Union of India) and the prior owners of the land were compensated for the loss of such rights as they may have actually suffered, it is a fair presumption that the amount of compensation would vary according to whether the prior owners were deprived wholly of ownership and possession or whether they

19 *State of West Bengal v Birendranath Basunia* AIR 1955 Cal 601.

20 AIR 1945 PC 156; AIR 1948 PC 33.

1 (1994)1 Cal HN 15; AIR 1984 Del 224; (1992)2 CLJ 260; AIR 1988 Del 184.

2 *Ghatwala v Secretary of State* 12 IC 117; 15 CWN 909; 38 IA 204 (PC).

3 66 IC 582.

4 31 CWN 1033.

5 57 IA 339; 58 IC 854; 60 MLJ 142 (PC).

were deprived only of the ownership and allowed to remain in possession as licensee without payment of any rent.<sup>6</sup>

**Disqualified transferee.** A Judge, legal practitioner or others connected with the court are disqualified from purchasing any actionable claim (s. 136, Transfer of Property Act).

**Unborn person.** A transfer in favour of an unborn person is completely void in Mahomedan law.<sup>7</sup> The rule has been modified by statute, e.g. ss. 13 and 14 of the Transfer of Property Act which require that the transfer shall extend to the entirety of the entire remaining interest of the transferor in the subject-matter of transfer and further the same shall be operative not beyond the life or lives in existence on the date thereof and the minority of an unborn person who must be born in their life time. This is known as the rule against perpetuity and is also applicable to Mahomedans.<sup>8</sup>

**Fiduciary relationship between the parties.** Such relationship arises when one party is in a position of active confidence so as to dominate the will of another, e.g. guardian and ward, trustee and beneficiary, doctor and patient, preceptor and disciple and others. The court watches zealously all transactions between them and calls upon the party in position of active confidence to discharge the onus of good faith. Draftsmen entrusted with preparation of conveyances will take special care to avoid the facing such comments. In view of s. 88 of the Trust Act when a trustee, executor, partner, director, legal adviser or any other person standing in fiduciary capacity enters into any dealings and thereby gains any pecuniary benefit the transaction is highly suspected. The case of wife is the solitary exception.<sup>9</sup> Undue influence is presumed in the case of a sale by the client to his solicitor.<sup>10</sup>

The law in India as to undue influence is also contained in s. 16 of the Indian Contract Act. It is based upon English Common Law as observed by the Supreme Court in the case of *Ladli Prosad Joiway v Kernal Distillery Co. Ltd.*<sup>11</sup> It was held that the presumption of undue influence arises generally speaking in transactions between solicitor and client, trustee and beneficiary, spiritual adviser and devotee medical attendant and patients and parents and child (s. 111 of the Evidence Act 1872).

**Operation and restraint on transfer.** Under s. 8 of the Transfer of Property Act, a transfer passes the whole of the interest of the transferor in the absence

6 128 IC 441.

7 *Mahomed Shah v Official Trustee of West Bengal* 36 Cal 431.

8 *Abdul Fata v Russomoy* (1894)22 Cal 619.

9 *Mackenin v Royal Bank* 151 IC 981 (PC).

10 *Demera Bauxite Co. v Hubbard* 1923 AC 673.

11 AIR 1963 SC 1279 (1290).

of contrary intention. The English Common Law Rule—a woman's property becomes her husband's property on her marriage—was made inapplicable to India by s. 4 of the Indian Succession Act 1865, re-enacted as s. 20 of the Indian Succession Act 1925. The Married Women's Property Act 1874 was passed to establish separate property of women married before 1st January 1866 with reference to their wages and earnings. Under s. 10 of the Transfer of Property Act 1882, a property may be transferred to or for the benefit of a woman (not being a Hindu, Mahomedan, Buddhist) so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein. A restraint in a lease is valid where the condition is for the benefit of the lessor or person or persons claiming under him. A restraint in a deed of partition as against the sale of any lot to a third party without offering same first among the co-sharers is valid. Conditions subsequent and precedent e.g. in a deed of gift for the residence of the donee in the property is valid (ss. 28, 31 and 126 of the Transfer of Property Act).<sup>12</sup> So also in the case of a gift of any property under whose terms the donee is to pay for the maintenance of the donor out of the income of the property. These documents are however of the nature of settlement or trust. So also is the case of the trust. The rule against perpetuity and the rule against accumulation as embodied in ss. 14 and 17 of the Transfer of Property Act do not apply to gifts for the benefit of any public charity so a restraint is valid in transfers of this type (see also s. 118 of the Indian Succession Act).

**Ownership of superstructure and ownership of soil may be different.** It is a part of the customary law, i.e. law of the land.<sup>13</sup> Buildings and structures constructed by any person on land to which he had no legal title does not by reason of their attachment to the land become the property of the owner of the land.<sup>14</sup> But in cases where such a person is in possession of the land under a *bona fide* title or claim of title he is protected in this sense, viz. he can remove the structure or claim compensation against the owner of the land. But a trespasser has no such right under any circumstances. The case of a husband constructing structure on land belonging to the wife is quite different in as much as the structures all become the property of the wife. The above proposition was first laid down<sup>15</sup> in 1886 and upheld by the Judicial Committee in *Vallabdas Naranji v Development Officer, Bandra*.<sup>16</sup>

12 *Ambica Charan v Sasitara* (1915)22 CLJ 613; 80 IC 868. See also *Sirish v Kadambini* 44 CLJ 18; 97 IC 685.

13 *Mretunjai v Hinja* AIR 1933 Oudh 468.

14 *K.K. Das v Anima Khatoon* 44 CWN 247.

15 *Thakoor Chandra Pormanick's case* 6 WR 229 (FB).

16 LR 56 IA 259.

The principle received statutory recognition under s. 51 of the Transfer of Property Act 1882. The English law on the subject was discussed in *Ramsden v Dyson*.<sup>17</sup>

There is however no absolute Rule of Law in India and so the maxim of jurisprudence that whatever is affixed to or built upon the soil becomes part of the soil has, if at all, a limited application in India. It was held by the Privy Council<sup>18</sup> that on a sale of a holding under the Bengal Land Revenue Sales Act 1859 for arrears of Government revenue by the Collector the auction purchaser acquired the interest of the Crown limited to the land and not the building. The owner was entitled to remove the materials unless the purchaser agreed to pay for the costs of the building.<sup>19</sup> The sale of a building only did not pass the land on which it stands.<sup>1</sup> Revenue sales under the Bengal Land Revenue Sales Act stood on a different footing. But under s. 8 of the Transfer of Property Act, where the land is transferred, the building also passes by implication<sup>2</sup> as property of the transferor with the legal incidents thereof—things attached to the earth if the owner is the same person. A sale of land includes sale of mineral rights as observed by the Supreme Court in *Raja Ananda v State of U.P.*<sup>3</sup> But a permanent lease does not pass any mineral rights.<sup>4</sup> Under s. 108(h) of the Transfer of Property Act, a lessee may even after determination of the lease remove, so long as he is in possession of the property, whatever he has attached to the earth but he must leave the property in the condition in which he received it. This is, however, subject to the terms of the lease which may provide that all such things shall be the property of the lessor. It was held in *Secretary of State for Foreign Affairs v Charlsworth Pudding & Co.*<sup>5</sup> The owner of a land is not the owner of a building constructed by a third party. The English law as to fixtures does not *in toto* apply to India. So a tenant can remove the fixtures brought by him in the property for his convenient use without at all intending to improve the property. As regards trade fixtures, the rule in the English law is also much more relaxed, so much so, that machinery and buildings in the colliery are regarded as accessories to the business and not annexations

17 (1865)1 HL 129.

18 *Maharaja Surja Kanta v Sarat Chandra Roy* 18 CWN 1281; 25 IC 309 (PC). See also *Narayan Deo v State of Orissa* AIR 1953 SC 383.

19 *Jwan Chand v Jugal Kishore* AIR 1960 Cal 331.

1 *Katkar Jute Mills v Calcutta Match Works* AIR 1958 Pat 133.

2 *Asgar v Mahomed Mehdi Hossein* (1903)30 Cal 566.

3 (1967)1 SCR 873.

4 *Giridhari Singh v Megh Lal Pandey* (1918)45 Cal 87; 44 IA 246; 42 IC 651.

5 26 Bom 1 (PC).

to the property<sup>6</sup> made to improve it. Section 51 of the Transfer of Property Act is the statutory recognition of the law as regards improvements done by *bona fide* holders.

**Requirements of deeds of transfer in general.** A conveyance begins with the names of the parties and ends with the execution and attestation clauses. There are some general requirements of all kinds of deeds of transfer. The special requirements of different kinds of transfer, like sale, mortgage, lease, exchange, gift etc., will be dealt in detail while dealing with each specific kind of transfer. The following are the necessary parts of a deed of transfer:

(i) *Description of the Deed.* "This Deed of Sale", "This Deed of Mortgage", "This Deed of Lease", etc., may be written in capital letters.

(ii) *Date on which it is executed.* "This Deed of Mortgage made on the 1st day of January 1976". It is the date of execution which is most material for the purpose of limitation, mutation, registration and passing of title. When several persons execute a deed, the date of execution by each person may be noted under his signature.

(iii) *Parties to the deed.* All proper parties to a deed; inter-parties must be impleaded more so because in common law only parties to the contract can take the benefits under the same. The transferor should be mentioned first and then the transferee. When there is a confirming party he may be joined and placed next after the transferor.

The name comes first, then the surname and thereafter the address followed by other descriptions such as "son of", "wife of", "daughter of" etc. Where a woman is divorced, she is described as "feme sole". Caste and religion are to be mentioned.

Their profession or occupation comes next, e.g. "Medical practitioner", "grocer" carrying on business etc. Change in a name whether a forename or surname or merely the spelling only is nevertheless a blot on the title.<sup>7</sup> Such changes shall be accounted for after the name of the conveying party.

In the case of juridical persons, e.g. companies and registered societies, after their names—registered under the Indian Companies Act, Societies Registration Act or incorporated under special statute with address of the head office are to be stated.

In the case of an idol—name of the idol—after that—acting and represented by its "shebait" so and so is to be mentioned and case of persons under disability, e.g., minor, lunatics and others—represented by "so and so".

6 *Wake v Hall* (1886) 8 App Cas 195.

7 Stanley Robinson's *Drafting*, p. 92.

In the case of trustees—their names and as trustees to the estate of “so and so” appointed under the Deed of Trust etc., etc., should be mentioned. If trustees are appointed by any court, the date of the order and number of proceedings in which they are appointed, have to be stated accordingly.

In the case of firm, all the partners should join as under s. 19 of the Indian Partnership Act (IX of 1932) one or more partners cannot transfer any immovable property belonging to the firm in the absence of express authority or by virtue of customs or usage to the contrary except in the case of the trading assets of a firm whose business is to buy and sell lands, the managing partner may sell as the partner of and acting on behalf of the firm carrying on business under the name and style of ..... any such land or lands.

In the case of the Government—names of persons authorized under Art. 229(1) of the Constitution of India are to be stated and transfer shall be expressly made on behalf of or in the name of the President or the Governor as the case may be.

(iv) *Recitals*. Recitals shall contain a short history of the property up to its vesting in the transferor. Recitals should be short and intelligible. Recitals are of two kinds, e.g., narrative recitals, i.e., facts and circumstances which show the nature of interest to be dealt with and introductory recitals which show the motive or intention behind the execution of the deed and are immediately followed by the operative part. The doctrine of estoppel has an important bearing on recitals (s. 115, Evidence Act). A recital of seisin is a cornerstone of a conveyance. It acts as warranty of title.

Introductory recitals may contain facts culminating in the execution of the deed beginning from the agreement up to the motive for transfer, if any.

(v) *Habendum*. It is that part of the deed which states the interest that the purchaser is to take in the property such phrases as “To Have and To Hold” are used but not essential to make the transfer effective.

(vi) *Covenants*. A covenant is an agreement under seal, whereby one or more of the parties to the deed stipulate for the truth of certain facts, or is bound to do or not to do a specified thing. A covenant may be in express terms, or is inferred on the construction of the entire instrument. An implied covenant, or covenant in law, is one which the law implies either from the nature of the transaction or from the use of certain technical words.<sup>8</sup>

COVENANTS RUNNING WITH THE LAND. A covenant runs with the land where it touches and concerns and is annexed to and creates an interest in the land and which is an exception to the general rule that all covenants are personal. A covenant runs with the land when the benefit or burden of it, whether at

8 Halsbury's *Laws of England*, 3rd Ed., vol. 23, p. 598.



law or in equity, passes to the successors in title of the covenantee or the covenantor; as the case may be (Law of Property Act, 1925, s. 80). Such a covenant at times affects the nature and value of the land. A covenant may very well have reference to the land, but unless it is reasonably incidental to the relation of landlord and tenant, it cannot be said to touch and concern the land so as to be capable of running therewith or with the reversion. Tested by this principle, covenants e.g. to pay rents and taxes, to repair or keep in repair, not to assign or under-let are covenants which run with the land.<sup>9</sup>

Covenants as to title implied in sales under s. 55(2) of the Transfer of Property Act and implied covenants in mortgages under s. 65 and implied covenants for quiet enjoyment under s. 108(c) and restrictive covenants referred to in the first paragraph of s. 40 of the Transfer of Property Act 1882, are all instances of statutory covenants running with the land, while s. 40 contemplates negative covenants, s. 11 contemplates both positive and negative covenants. In England the development of the restrictive covenants was the work of the court of equity. The common law courts stood against the burden of covenants other than those made upon a demise of the property but nevertheless they made an exception in *Spencer's case*<sup>10</sup> as to covenants between the landlord and the tenants in regard to which the burden of the covenants was allowed to run with the land.

Before the passing of the Conveyancing Act 1881 (SC 44 and 45 Vic), a purchaser in England was entitled to following covenants from the vendor: (i) covenant as to good title; (ii) peaceful possession; (iii) free from encumbrance; and (iv) further assurance. These covenants are not now required to be expressly entered into as they are implied under s. 76 and Schedule II, Part I of the Law of Property Act 1925. In India, s. 55 of the Transfer of Property Act provides for the relevant covenants and under s. 55(2) of the Act the benefits of the covenants, which run with the land can be enforced by the transferees from time to time except however the covenant as to indemnity. Section 76(6) of the Law of Property Act 1925 of England contains provisions similar to s. 55 of the Transfer of Property Act in India. These covenants should therefore be expressly inserted in gift, exchange, marriage settlement, etc., more so because they are not implied by the statute. Section 108(c) of the Transfer of Property Act provides for the covenants on the part of the lessor as to peaceful possession of the demised premises upon the lessee paying the rent and performing the contract on his part. This section gives an absolute and unqualified right for quiet enjoyment. Section 65(a) of the Transfer of Property Act, which provides for statutory covenants on the part of the mortgagor, is similar to s. 55(2) of the said Act.

9 Cheshire's *Modern Law of Real Property*, 12th Ed., p. 451.

10 77 ER 72.

Persons in fiduciary character, e.g., trustee, executor, official assignee, guardian of an infant, manager of a lunatic shall enter into covenant only to the extent that they themselves have not done any act or thing nor suffered anything to the contrary whereby or by reason or means whereof they are in any way prevented from executing the deed or deeds in question. The implied statutory covenants are limited to his own act encumbering the property or hindering its transfer (Proviso to s. 55 of the Transfer of Property Act).

If a covenant has both positive and negative elements in it, the negative element may bind the land even though the positive cannot. Even a positive obligation may be binding if it is no more than a condition of a negative one; thus a covenant to submit plans before building may be enforceable against a purchaser as a covenant not to build without first submitting plans. The restrictive covenants most frequently met with in practice are covenants against building on land, and against carrying on any trade or business (or certain specified trades or businesses) on the premises. It is common to find such covenants inserted in conveyances or leases of urban property.<sup>11</sup>

**RESIDENTS IN FLATS.** In modern days peculiar questions arise when a resident in a flat in a multi-storied building uses his flat or the terrace of the building in a manner which would cause annoyance or nuisance affecting the other occupants. Covenants of various types besides those for the maintenance of the property or making contributions to the maintenance of common facilities and services are usually put in. In a case from Bombay the facts disclosed that one such occupier of a flat as a tenant erected a textile printing mill on its terrace and ran it during night, unauthorisedly utilised the water stored in the common overhead tanks on the terrace meant for domestic use of the other occupiers, removed the radio aerials and TV antennas of other occupiers and prevented these persons and their workers from reaching the common terrace for repairs of the radio aerials and TV antennas and telephone lines of the other tenements by blocking the staircase. The Supreme Court held that all these amounted to 'nuisance' and 'annoyance' though there were no statutory definitions of these expressions in the Bombay Rents, Hotel and Lodging House Rates Control Act of 1947 and the occupier was liable to be evicted.<sup>12</sup> Such a situation as disclosed by the facts of this case certainly invites incorporation of both positive and negative covenants, in a specific manner, in the relevant documents though all the contingencies cannot be anticipated.

(vii) *Testimonium*. This is that part of a deed which states that the parties have signed the deed. This clause is superfluous as what is necessary is the fact of proper execution of the deed.

11 Megarry & Wade: *Law of Real Property*, 5th Ed.

12 *Narpatchand v Shantilal* AIR 1993 SC 1712.

In the case of companies or corporations sealing and attestation would be necessary. The provisions of the Articles of Association should also be followed. Attestation as defined in s. 3 of the Transfer of Property Act and s. 63 of the Indian Succession Act is necessary in the case of gift, mortgage, lease and will. Before a deed is executed, the executant should read the deed. If he cannot, then it should be read over and explained to him by a competent person. In case of a *purdanashin* lady, care should be taken that she fully understands the terms, implications and effect of the deed. The fact of so explaining should be endorsed on the deed itself.

(viii) *Testatum*. This is the witnessing clause saying "the deed witnesseth". The word "witnesses" may be adequate. Address of each witness must be written under each signature.

In the case of conveyance it contains two essentials—consideration and receipt of the purchase money.

At the conclusion of the testatum, a statement of the character in which the vendor is conveying the property, e.g., as trustee, executor or receiver or mortgagee is necessary.

(ix) *Operative words*. They differ in cases of different kinds of transfer. In the case of sale, such operative words are used as are necessary to pass the estate of the vendor unto the purchaser.

(x) *Parcels*. It means the description of the property following the operative words. Sometimes minute details of easements and incidents are mentioned but s. 8 of the Transfer of Property Act makes a transfer necessarily implying transfer of certain legal incidents. Anything intended to be transferred, which is not impliedly transferred under s. 8, should be specifically mentioned, e.g., in the case of a transfer of a house, a garden is to be specifically mentioned. Boundaries on all sides must be given. It is safe always to say "now or lately butted and bounded" and to add at the end of the schedule "or howsoever otherwise the same may be butted, bounded, called, known, numbered, described or distinguished." Those involved in the negotiations need to satisfy themselves that the description in the document, including any plan that may be annexed, is such that there could never be a dispute as to the extent of the premises demised. Any ambiguity must be resolved before the final wording is agreed. All too often this is not done, and the parties become the victims of sloppy conveyancing. Commercial men talk in areas, while lawyers all too often do not, and thus dimensions and areas ought to be referred to whenever possible.<sup>13</sup>

(xi) *Exceptions and reservations*. These are possible only in cases not prohibited either by the letter or policy of law. In any event they must not be

13 Murray Ross: *Drafting and Negotiating Commercial Leases*, 4th Ed., 1994, p. 32.

uncertain, repugnant or contrary to the grant, e.g. sale of a house without land.<sup>14</sup> Section 8 of the Transfer of Property Act provides for transfer of the entire interest of the transferor and s. 10 of the said Act prohibits any condition restraining alienation except in the case of lease and transfer to a woman other than a Hindu, Mahomedan or Buddhist. A transferor of a land may retain absolute ownership of all mines and minerals and so on.<sup>15</sup> The rights of an absolute owner may be curtailed by easement rights vested in others irrespective of the fact of notice or no notice. A covenant running with the land may enure to the benefit of the owner of the property for the time being. A vendor may reserve full and free right of way and passage for all times to come over the land sold for purposes connected with the property. Similarly the right to take water from a well which falls within the property sold may be reserved and excluded from the conveyance. These are reservations and exceptions by way of necessity and are exceptions to the rule in *Wheeldor v Burrowes*<sup>16</sup> as observed in *London Corporation v Riggs*.<sup>17</sup> The other exceptions are (i) reciprocal easements, e.g. right of support as between two adjacent buildings mutually subservient and dependant on each other, the reciprocal right of support is presumed to have been reserved<sup>18</sup>; (ii) simultaneous conveyances of dwelling house and land adjacent by the same owner to different purchasers. In *Allen v Taylor*,<sup>19</sup> it was held the purchaser is not entitled to build so as to obstruct the light of the house. In India such reservations and exceptions are permissible as and by way of easements of necessity under the Indian Easements Act 1882, both with regard to transfer and bequest and also in a deed of partition. The vendor of a flat in a multistoreyed building though sells the same with all transferable and irrevocable right of use, can nevertheless exclude from such sale and/or reserve for him and for other co-owners easements and quasi-easements, e.g., right of way and passage in common, right to use the open roof, right of access into the flat sold, with or without workman for repairing essential services such as drains, wires, pipes etc. The right of demolition or committing waste is also excluded in conveyances of such a type. The transfer of an apartment under the West Bengal Apartment Ownership Act 1972, read with the West Bengal Apartment (Regulation of Construction and Transfer) Act (West Bengal Act XVII of 1972) is subject to exceptions and reservations as regards the common areas and facilities which shall remain undivided and against partition thereof unless the property is

14 *Glasgow v Glasgow* 221 SC 322.

15 *Purnendu v Narendra* AIR 1943 Pat 3.

16 (1879)12 Ch D 89.

17 (1880)13 Ch D 798.

18 *Richard v Rose* (1858)9 Exch 218; 158 ER 98.

19 (1880)16 Ch D 355.

withdrawn from the provisions of the Act. An exception must relate to some property or definite right in existence on the date of the conveyance which would pass with the transfer if not expressly excluded, e.g., underground minerals in case of absolute transfer of the land, but in the case of a lease on permanent tenure basis, the right to subsoil minerals depends much upon the terms of the grant.<sup>20</sup> A zamindar having the largest interest in the land is entitled to mineral right.<sup>1</sup> A reservation is something not in existence but created at the time of transfer, e.g. right of way over transferred land. A reservation operates as a new grant by the transferee to the transferor and the relevant deed shall be executed also by the transferee.<sup>2</sup>

(xii) *Completion of transaction.* The deed should be properly stamped under the Indian Stamp Act and registered where registration is necessary under the Indian Registration Act or other enactments.

It should be noted as to by whom the stamp is payable. In the absence of an agreement to the contrary, the expense for providing the proper stamp shall be borne, in the cases of the following instruments, *by the person drawing, making or executing such instruments*—administration bond; agreement relating to deposit of title-deeds, pawn or pledge; bill of exchange; bond; bottomry bond, customs bond, debenture; further charge, indemnity bond; mortgage deed; promissory note; release; respondentia bond; security bond; settlement; transfer of shares in an incorporated company or other body corporate; transfer of debentures, being marketable securities; transfer of any interest secured by a bond, mortgage deed or policy of insurance.

The stamp duty is payable in the case of a policy of insurance other than fire insurance by the person effecting the insurance; in the case of a policy of fire insurance by the person issuing the policy; in the case of a conveyance (including reconveyance of mortgaged property) by the grantee; in the case of a lease or agreement to lease, by the lessee or intended lessee; in the case of a counterpart of a lease, by the lessor; in the case of exchange, by the parties in equal shares; in the case of a certificate of a sale, by the purchaser of the property; and in the case of an instrument of partition, by the parties thereto in proportion to their respective shares in the whole of the property partitioned; or where the partition is made by the order of Revenue authority or civil court or arbitrator in such proportion as directed by the authority concerned.

**Execution.** It means signing of the document by the parties. Special care should be taken when any deed is signed by any illiterate or blind person or

20 *Rowbotham v Wilson* (1860)8 HLC 348 (360).

1 *Rageshwari v Kumar Kamakya* 58 IA 9.

2 *May v Beloona* (1905)2 Ch 605.

*pardanashin* lady. The solicitor or advocate entrusted with the work must see that the contents and effects thereof are truly and correctly read over, explained to and understood by the executant. In case any document is signed by some person by putting a mark or thumb impression, the document is also to be signed by the person taking the same. Execution is proved by calling attesting witnesses (s. 68 of Evidence Act). In cases where any map or plan is annexed to the document, the same shall also be signed by the parties.

**Attestation.** Attestation of a document after its execution. Though a formality is imperative in such cases, as—(i) mortgage (s. 59 of the Transfer of Property Act); (ii) gift (s. 124 of the said Act); and (iii) will (s. 63 of the Indian Succession Act). Section 69 of the Indian Evidence Act is the law as to proof of execution of documents required to be attested. Section 3 of the Transfer of Property Act defines what is meant by attestation. There is no set form for it but a party to a deed cannot be an attesting witness nor the holder of a power of attorney when he executes the document on behalf of the person who had given him the power of attorney. The essential conditions of a valid attestation are that two or more witnesses have seen the executant sign the instrument, or have received from him a personal acknowledgment of his signature, and each of them has signed the instrument in the presence of the executant to bear witness to this fact. It is essential that the attesting witness put his signature *animus attestandi* i.e. for the purpose of attesting the signature. A scribe may be an attesting witness as well as the signatures of the registering officer and the identifying witnesses endorsed on a deed (here a mortgage deed) can be treated as these of attesting witnesses if they had so signed in conformity with the essential conditions of attestation. A non-testamentary instrument creating a charge of the value of Rs. 100 or upwards, must be registered under s. 17(1)(b) of the Indian Registration Act but there is no provision of law that an instrument creating the charge must be attested by witnesses.<sup>3</sup>

The Madras High Court held in *N. Ramswamy v C. Ramswamy*<sup>4</sup> that a deed of gift cannot be proved unless each of the attesting witnesses saw the other sign in his presence. A mortgage not validly attested operates neither as a mortgage nor as a charge.<sup>5</sup>

**Possession of the property.** It does not always mean actual physical possession but such possession as the nature of the property permits.<sup>6</sup>

3 *Abdul Jabbar v Venkata Sastri* (1969)1 SCC 573; (1969)2 SCJ 784; (1969)2 SCA 129; (1969)3 SCR 513.

4 AIR 1975 Mad 88.

5 *Prannath v Jadhunath* 32 Cal 729.

6 See *State of West Bengal v Subodh Gopal* AIR 1954 SC 92; 1954 SCR 587.

Acquisition of any property with notice that a person other than the vendor is in actual possession is based upon the principle of constructive trust (vide Expl. II to s. 3 of the Transfer of Property Act). If any purchaser fails to enquire he shall have to take subject to all equities.<sup>7</sup>

**Registration of deeds.** The Indian Registration Act lays down a detailed procedure for registration of documents and the various statutory duties that the registering officer has to perform. If an instrument is not compulsorily registrable, it is complete without registration; but if it is compulsorily registrable, it must be presented for registration before an officer competent to register documents (s. 17 of the Indian Registration Act). The real purpose is to secure every person dealing with property against fraud and to maintain a public register.

Under the Indian Registration Act (XVI of 1908), the registration of the following classes of documents is compulsory:

- (a) Instruments of gift of immovable property;
- (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit, or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;
- (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right, title or interest;
- (d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;
- (e) non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property and agreements between promoters and flat owners (s. 4 of the Maharashtra Act XLV of 1963);
- (f) authority (not conferred by a will) to adopt a son.

*But nothing in cls. (b) and (c) applies to—*

- (i) any composition deed; or

<sup>7</sup> Mulla's *Transfer of Property Act*, 6th Ed., p. 15.

- (ii) any instrument relating to shares in a joint stock company even if the assets of such company consist in whole or in part of immovable property; or
- (iii) any debenture issued by any company and not creating, declaring, assigning, or extinguishing any right, title, or interest to or in immovable property, except in so far as it entitles the holder to the security afforded by a registered instrument whereby the company has mortgaged, conveyed, or otherwise transferred the whole or part of its immovable property, or any interest therein, to trustees upon trust for the benefit of the holders of such debentures; or
- (iv) any endorsement upon or transfer of any debenture issued by any such company; or
- (v) any document not itself creating, declaring, assigning, limiting, or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document, which will, when executed, create, declare, assign, limit, or extinguish any such right, title, or interest; or
- (vi) any decree or order of a court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding; or
- (vii) grant of immovable property by the Government; or
- (viii) instrument of partition made by the Revenue Officer; or
- (ix) order granting loans and instruments of collateral security granted under the Land Improvement Loans Act; or
- (x) orders granting loans and instruments for securing repayment, under the Agriculturists' Loans Act; or
- (xi) any endorsement on a mortgage deed acknowledging payment of the whole or any part of the mortgage money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or
- (xii) a certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer;

*Registration of the following documents are now considered compulsory—*

- (i) all instruments relating to declaration, amendment, withdrawal or acquisition of apartments or transfers thereof under the W.B. Apartment Ownership Act 1972; or
- (ii) any transfer of a holding of a raiyat under s. 5 of the W.B. Land Reforms Act 1955; or



- (iii) partition of a holding among co-sharers under s. 14 of the said Act;
- (iv) compromise decree or order creating any tenancy or lease<sup>8</sup> of any immovable property or agreement to lease [s. 17(1)(d) of the Registration Act];
- (v) authority to adopt;
- (vi) will, if operates as a family settlement;<sup>9</sup>
- (vii) deed of dissolution of partnership where any immovable property of the value above Rs. 100 is given to the retiring partner;
- (viii) agreement for sale between a promoter and prospective buyer of a flat.

A document purporting or operating to effect a contract for the sale of immovable property will not require registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money unless of course a charge is created on the property on that account.

**Registering Officer.** It is important to see that the officer is duly qualified to register documents, and that the document is not presented in a wrong registration circle, as otherwise the registration would be of no validity.

In order that a document may be presented for registration, it is necessary that any interlineation, blank, erasure, or alteration should be signed or initialled by the executant, for otherwise the registering officer has the option of refusing its registration. No non-testamentary document relating to immovable property will be accepted for registration, unless it contains a description of such property sufficient to identify the same (ss. 20 and 21 of the Indian Registration Act). Houses in the town are described by their municipal numbers. Holding, blocks, division, sub-division, etc., and properties in the mufasil are described by reference to the *dags*, *mouzas*, *Khatians*, J.L. Numbers, R.S. Numbers, districts, etc. The description must in any event be sufficient to identify the property. The Indian Registration Act is not a complete Code. Although under the Transfer of Property Act a partition can be effected without writing, nevertheless under s. 14 of the West Bengal Land Reforms Act 1955, a partition of a raiyati holding can be done only by a registered instrument so also a transfer (s. 5 of the said Act).

Under the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act 1993 any agreement for sale of a flat between the promoter and the prospective purchaser of the flat must be registered

8 AIR 1977 SC 2425.

9 Murty's *Law of Wills*, 3rd Ed., p. 198.

in accordance with s. 7 of the Statute, failing which the agreement will be void.

**Arbitration.** Tripartite agreement between the principal and two contractors that bills shall be paid to one contractor and subsequently changing the procedure by requiring consultations with another contractor before settling the bills the principal is estopped from claiming that he is not bound by it.<sup>10</sup>

**Mortgage by deposit of title deeds.** A trust relating to immovable property can be created by a registered document (s. 5 of the Indian Trusts Act). It will not be out of place to say a few words regarding mortgage by deposit of title deeds under s. 58(f) and s. 59 of the Transfer of Property Act; such a mortgage can be created in the Presidency towns and other places mentioned therein by simply depositing the title deeds with intent to create a security thereon. This is based upon the equitable maxim—"equity looks at the intention rather than the form". If, however, such a mortgage is accompanied by a memorandum which constitutes the bargain, i.e., the contract between the parties, it will have to be registered otherwise not. The leading authorities on the subject are *Pranjivandas Mehta v Chan Ma Phea*.<sup>11</sup>

**Time limit for presentation of documents.** Ordinarily, a document other than a will must, under s. 23 of the Indian Registration Act, be presented for registration within four months from the date of its execution, provided that, where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution. In case a document is not presented within this time, owing to urgent necessity or unavoidable accident, another four months are allowed by way of grace, but then the document can be registered only on payment of a fine up to the limit of ten times the amount of the proper registration fee (s. 25 of the Indian Registration Act). Documents executed outside India are allowed four months' time from the date of their arrival in India (s. 26 of the said Act).

**Enforcement to register.** Parties refusing to register any document can be sued to enforce registration (s. 77 of the said Act).

A document must be presented for registration by some person executing or claiming under the same or by the representative or assignee of such person, or by the agent of such person, representative or assignee, duly authorized by power-of-attorney executed before and authenticated by a Registrar or Sub-Registrar or any Magistrate or a Notary Public, etc., as the case may be (s. 33 of the Indian Registration Act).

10 *Rolls Royce v Urmila & Co.* AIR 1998 Del 411.

11 1916 IA 122; 43 Cal 895; *Rao v Andhra Bank* AIR 1971 SC 1613.

**Delivery of deeds.** It is the duty of the vendor in all cases to hand over the deed and the title deeds to the purchaser. In cases where the original title deeds may be retained, e.g., sale of a large estate by lots, the deed should mention the special condition as to the detention of the title deeds. A purchaser is entitled to copies of the title deeds at his expenses and to a covenant for production of the original deeds [s. 55(3) of the Transfer of Property Act]. There are similar provisions in s. 45(9) of the Law of Property Act 1925, in England.

**Essence of drafting.** Essence of drafting include (i) law, (ii) effect, and (iii) language. Drafting calls upon all the skill of lawyers; good draftsmen are they who have a comparatively wide experience of law and life, not acquired overnight and also of drafting techniques, who readily understand their clients' thoughts, intention and desire, quickly appreciate the manner in which proposed document will be operative, responsive to changes particularly those in relation to business and social condition; they seldom use any word without fully considering the purpose for which the same is meant; they possess wide experience of life and law adequate understanding principles governing the construction of provisions.<sup>12</sup> Drafting is the process of synthesis of law and facts in the language form. A document is a communication of the thoughts of both the parties. Nevertheless it is not open to the parties to divert or deflect the course of succession in case of intestacy as required by law.<sup>13</sup>

**Information Technology Act 2000.** It is important to note that this statute, which received the assent of the President on 9th June 2000, while providing legal recognition to electronic commerce involving use of alternatives to paper based methods of communication lays down in s. 1(4) that nothing in this Act shall apply to,—a negotiable instrument as defined in s. 13 of the Negotiable Instruments Act 1881, a power-of-attorney as defined in s. 1A of the Powers-of-Attorney Act 1882, a trust as defined in s. 3 of the Indian Trusts Act 1882, a will as defined in cl. (h) of s. 2 of the Indian Succession Act 1925 including any other testamentary disposition by whatever name called, any contract for the sale or conveyance of immovable property or any interest in such property, any such class of documents or transactions as may be notified by the Central Government in the Official Gazette,

12 Stanley Robinson's *Drafting*, p. 9.

13 In re, *Willcock's Settlement* (1875)1 Ch D 225.

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# Adoption

On failure of any male issue a Hindu may take a child from another family and adopt the child as his own. This is done with the object of securing the performance of funeral rites and to preserve the continuity of the lineage of the adoptive person. A person adopts a child mainly for securing the spiritual benefit and incidentally to secure an heir or perpetuate the adoptor's name. The person to be adopted may be a male or female. The person who is adopting may be a male or female. The person who is adopting may be a bachelor or a spinster or a widower or a widow or a divorcee.

The Hindu Adoptions and Maintenance Act 1956 has codified the law on adoption and it applies to all Hindus, Buddhist, Jaina and Sikh by religion. The requirements of a valid adoption are that: (a) the person adopting must have the capacity and right to take in adoption; (b) the person giving in adoption must have the capacity to do so; (c) the person adopted must be lawfully capable of being taken in adoption; and (d) conditions relating to adoption are fulfilled.

For a valid adoption certain conditions must be fulfilled. If the adoption is of a son then the adoptive father or mother must not have a Hindu son, son's son, or son's son's son living at the time of adoption. If the adoption is of a daughter, the adoptive father or mother must not have a Hindu daughter or son's daughter or son's son's daughter living at the time of adoption. To adopt a female, the adoptive father must be 21 years older than the female child to be adopted. If the adoption is by a female and the child to be adopted is a male, the adoptive mother must be at least 21 years older than the child. The same child may not be adopted simultaneously by two or more persons of different families though the husband and wife together can jointly adopt the same child. The child to be adopted must not be a married one and has not completed the age of 15 years and must be given over by the natural parents or lawful guardian and taken in adoption

by the adoptive father or mother with the intention to transfer the child from the family of its birth to the family of its adoption. In case of orphans or abandoned child or whose parentage is not known, the consent of the person or persons caring for the child will be adequate for giving out the child in adoption. In case of a foreigner the intention of taking in adoption of such a child the consent of the person or association of persons caring for the child by first being appointed as guardian of the child concerned and thereafter by taking the child to the foreign country and then adopting it according to the laws of that country. These rules have been settled by the Supreme Court.

After adoption the child loses all its claims against its natural parents and their properties and acquires all the rights and privileges of a child in the adoptive family. The adoptive father or mother by virtue of adoption is not deprived of their usual rights relating to their properties or disposal thereof *inter vivos* or by Will. In other words, the adopted child does not divest any person of any property which vested in him or her prior to adoption.

Adoption validly made cannot be cancelled by the adoptive father or mother or any other person. The adopted child cannot renounce his adoption and cannot return to his or her family of birth.

No consideration should pass in relation to the adoption of a child. Adoptive father or mother shall not pay any money and the person who is giving in adoption shall not receive any payment or reward or consideration. Any party to such consideration will be punishable with imprisonment upto six months or fine or both.<sup>1</sup>

## FORMS

### Adoption of Male Child

THIS DEED OF ADOPTION is made on this 25th day of May 2000 BETWEEN AF son of B by caste Kayastha, by religion Hindu, aged 30 years residing at 38 McLeod Street, Calcutta 700 017 (hereinafter called the FIRST PARTY) and GS son of D by caste Kayastha, by religion Hindu residing at 2/1 Ariff Road, Calcutta 700 067 (hereinafter called the SECOND PARTY).

WHEREAS the FIRST PARTY has no son or son's son or son's son's son living and the SECOND PARTY has five sons.

AND WHEREAS the FIRST PARTY approached the SECOND PARTY for taking one of his sons, JK, in adoption to which the SECOND PARTY agreed.

1 Section 17 of the Hindu Adoptions and Maintenance Act 1956.

NOW THESE PRESENTS WITNESSETH as follows:

1. That the FIRST PARTY on this day, the 25th May 1999 in the forenoon has taken in adoption JK who is an unmarried son of the SECOND PARTY and is aged about 6 years as his son with the consent of his wife WF.
2. That the SECOND PARTY has with the consent of his wife SF on the date and time aforesaid given the said JK in adoption to the FIRST PARTY.
3. That the ceremony of giving and taking in adoption has been duly performed in respect of the said JK along with other customary religious ceremonies in the presence of relatives and friends of the parties, besides the attesting witnesses.
4. That the said JK has and shall have all the legal rights of an adopted son of the FIRST PARTY from the date aforementioned and the execution of these presents.

IN WITNESS WHEREOF we the said AF and GS have signed this deed and WF and SF as consenting parties on the day month and year written above in the presence of friends and relatives and the following two attesting witnesses.

Signed and delivered by AF  
and GS as executant and WF  
and SF as consenting parties  
in the presence of:

Sd/-  
Sd/-  
Sd/-  
Sd/-

1.

2.

3. Friends and Relations

Sd/-

### Adoption of Male Child

THIS DEED OF ADOPTION is made on this 20th day of May 1999 BETWEEN AF son of B by caste Kayastha, by religion Hindu residing at 3 S.N. Banerjee Road, Calcutta 700 012 (hereinafter called the FIRST PARTY) and GS son of D by caste Kayastha, by religion Hindu residing at BC 64 Salt Lake, Calcutta 700 064 (hereinafter called the SECOND PARTY).

WHEREAS AF the FIRST PARTY has no issue, male or female, and on account of his advanced age has no expectation of having any issue.

AND WHEREAS AF and his wife WF have been anxious to adopt a suitable boy as their son.

AND WHEREAS the SECOND PARTY has seven sons and AF approached the SECOND PARTY for giving in adoption his son JK to which the SECOND PARTY agreed.

AND WHEREAS WF the wife of AF has consented to the taking in adoption of JK, aged 7 years, by AF.

AND WHEREAS the mother of JK and wife of GS, SF has also consented to her son being given in adoption to AF.

AND WHEREAS AF has on this day 20th day of May 1999 in the forenoon taken in adoption JK son of the SECOND PARTY as his son.

AND WHEREAS on this day the physical act of giving and taking of JK in adoption and other customary ceremonies including the DATTAKA HOMAM were performed in the presence of gathering of friends and relations of the parties, besides the attesting witnesses.

AND WHEREAS the parties considered it expedient and necessary that a proper DEED OF ADOPTION be executed as an authentic record of adoption.

NOW THIS DEED WITNESSES as follows:

1. Both the parties do hereby declare and confirm that the said AF has duly adopted the said JK as his son.
2. The said JK has and shall have from the date of adoption all the legal rights of an adopted son.
3. AF the FIRST PARTY shall be responsible for the maintenance and education of the said JK and he agrees to bring up his adopted son according to his status in life.
4. GS the SECOND PARTY shall have no claim and responsibility hereinafter as to the custody of or any other right against JK.

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

Signed and delivered by AF and GS  
in the presence of:

1

2

Signed by WF as a token of her  
giving consent to adoption of JK

Signed by SF as a token of her  
consent to give JK in adoption to  
AF

All in presence of friends and  
relations of the parties herein  
including.

### Adoption by a Hindu Widow

THIS DEED OF ADOPTION is made on the 1st day of June 1999 by WF, widow of AF, a Hindu by caste Kayastha, aged 55 years residing at 1559 Chittaranjan Park, New Delhi 110 019.

WHEREAS my husband, the said AF died on 15th May 1996 without any issue.

AND WHEREAS the said AF has given before his death an authority to me by a deed dated 10th January 1996 to adopt a suitable boy belonging to the caste of Kayastha.

AND WHEREAS I have adopted JK son of GS by caste Kayastha, aged 8 years and residing at 30 Netaji Subhash Marg, Daryaganj, New Delhi 110 002 on the day 25th of May 1999 acting under the aforesaid authority.

AND WHEREAS the said JK aged 8 years and more than 21 years younger than myself has been given to me in adoption by his father GS with the consent of his wife GF on the aforesaid date in the forenoon at 30, Netaji Subhash Marg, Daryaganj, New Delhi 110 002.

AND WHEREAS the ceremony of giving and taking in adoption and the other necessary religious ceremonies have been duly and simultaneously performed on the aforesaid date and time and place in presence of .....

Now I, the said WF hereby declare and confirm that I have duly adopted the said JK as a son to my deceased husband AF and the said JK shall from the date of adoption have all the legal rights of an adopted son.

IN WITNESS WHEREOF I have executed these presents on the date, month and year first above-written.

Signed by WF in presence of:

### Adoption by Unmarried Hindu Woman

THIS DEED OF ADOPTION is made on the 26th day of May 1999 by AB daughter of CD by caste Kayastha aged 40 years residing at 10 Park Street, Calcutta 700 016.

WHEREAS I, AB am the only living daughter of CD.

AND WHEREAS I have remained unmarried and have attained the age of 40 years.

AND WHEREAS I approached GS who has four sons to adopt one of them named JK of 8 years age and GS and his wife SF agreed to such adoption.

Now, I, the said AB state and declare that

1. On my free will and consent I have adopted JK aged 8 years, son of GS, a Hindu by caste Kayastha and residing at 14 Golf Green, Calcutta 700 095, on this 26th day of May 1999 in the forenoon as



my son on the said child being given over to me by the said GF and SF together.

2. That the aforesaid ceremony of giving to and taking in adoption and other necessary religious ceremonies have been duly performed on the aforesaid date and time in presence of friends and relatives of both parties.
3. That the said JK shall have all the legal rights as my adopted son from the day of adoption.

IN WITNESS WHEREOF I, AB, GS and SF, both being parents of the said JK have executed these presents on the day, month and year first above-written.

Signed and delivered by AB, GS and SF in presence of:

### **Adoption of Son by Hindu Male without Wife's Consent**

KNOW ALL MEN BY THESE PRESENTS that I, AH aged 45 years by caste Kayastha, by religion Hindu, residing at 33/5/5 Block B, New Alipore, Calcutta 700 053 have no son, son's son or son's son's son living and I have in the forenoon of 26th May 2000 in presence of relatives of both the families concerned adopted JK aged 8 years, son of GS of 8 Royd Street, Calcutta 700 016. The said Shri GS with intent to transfer his said son from the family of his birth to my family has, with the consent of his wife, Smt. SF willingly handed over his said son, JK, to me and I have taken the said JK into my lap as my adopted son. As my wife Smt. WF has completely and finally renounced the world her consent is neither available nor required by law. The said JK shall be treated as my son for all purposes with effect from the date of adoption *i.e.* the forenoon of 26th May 2000.

IN WITNESS WHEREOF I, AH, and GS execute these presents and SF signs these presents as a token of her consent to the said adoption on this 16th day of June 2000.

Signed and delivered by AH and GS in presence of:

Signed by SF as a token of her consent to giving her son in adoption to AH in presence of:

### **Declaration by Guardian**

KNOW ALL MEN BY THESE PRESENTS that I, GD, by religion Hindu son of MN residing at 15/1/B, G.T. Road, Howrah 711 002 hereby declare that I being Court appointed Guardian of JK a Hindu, aged 10 years, being son of CD

of ....., Howrah and having obtained the permission of the District Judge, Howrah on 5th June 1999 have given my ward JK in adoption to AH after performance of the ceremony of giving and taking this day 15th June 1999 in presence of witnesses. Henceforth JK shall be the adopted son of AH.

Sd/ GD

as Guardian of JK appointed by order dated 5th April 1999 of District Judge at Howrah.

WITNESSES:

### Consent given by Wife to Adopt

KNOW ALL MEN BY THESE PRESENTS that I, WF, wife of AF residing at 6 Janpath Road, New Delhi 110 010, hereby consent to the adoption of JK aged 8 years, son of GS of B-10-D, Hauz Khas, New Delhi 110 016 by my husband AF the said JK as our son.

IN WITNESS WHEREOF we the said WF and GS have execute these presents on 10th May 1999 at New Delhi.

WITNESSES:

WF

GS

### Authority given to Wife to Adopt

I, AF, son of D, residing at 6 Ballygunge Circular Road, Calcutta 700 019 do hereby authorise my wife, Smt. WF, to adopt to me and to herself in DATTAKA son of GS of 10 N.S.C. Bose Road, Calcutta 700 040, after my death and in case the said boy JK dies she is fully authorised to adopt any other boy from my caste.

Signature of 'AF'

10th April 1999

Calcutta

WITNESSES:

### Deed by Adoptive Father and Natural Guardian

KNOW ALL MEN BY THESE PRESENTS that I AF, (being childless) son of B, residing at 33 Sham Sheth Street, Mumbai 400 002 and WF, wife of late GS, residing at 10 Kalvadevi Road, Mumbai 400 002, hereby DECLARE that I, the said AF have this day the 6th of June 1999 in a meeting of relatives, caste fellows

and friends held at 33 Sham Sheth Street, in Mumbai duly with the consent of my wife CD, adopted JK aged 12 years son of late MN as my son and I, the said WF, being the natural guardian and mother of the said JK, his father GS having already died on ..... have given the said JK in adoption to the said AF AND WE ALSO declare that the ceremony of giving and taking in adoption and other customary religious ceremonies necessary under the Hindu Law to which we are subject have been duly performed at the date and time of the said adoption AND WE FURTHER DECLARE that henceforth the said JK has ceased to be the member of the family of his birth, and that he shall have all the rights of an adopted son of the said AF and CD.

IN WITNESS WHEREOF the said AF and WF have executed these presents on this 6th day of June 1999 at Mumbai.

Signed and delivered by AF and WF in presence of:

### Adoption from Guardian

THIS DEED OF ADOPTION made on this 10th day of July 1999 BETWEEN AH, son of BH, residing at 5 Rayapethah High Road, Chennai 600 014 (hereinafter called the FIRST PARTY) of the FIRST PART and GD, son of MN, residing at 10 Thyagaraya Road, T. Nagar, Chennai 600 017 (hereinafter called the SECOND PARTY) of the SECOND PART.

WHEREAS the FIRST PARTY has no son, son's son or son's son's son living and was desirous of adopting a son a male child and approached the SECOND PARTY who has been appointed a Guardian of JK son of KL aged about 8 years (hereinafter called the ADOPTEE) by the Court of District Judge at ..... in order to give JK in adoption to the FIRST PARTY.

AND WHEREAS the SECOND PARTY competent to give the adoptee in adoption because of the death of the child's parents in an accident on ..... has agreed to give him in adoption to the FIRST PARTY.

AND WHEREAS the SECOND PARTY has been permitted by Order No. .... dated ..... in Act VIII case No. .... of ..... Judge, Howrah to give the adoptee in adoption to the FIRST PARTY.

AND WHEREAS the physical act of giving and taking JK in adoption and other customary ceremonies including the DATTAKA HOMAM were performed on 15th June, 1999 in the presence of relatives and friends of both the parties at .....

AND WHEREAS the parties considered it expedient and necessary that a proper Deed of Adoption be executed as an authentic record of such adoption.

NOW THIS DEED WITNESSETH as follows:

1. The parties do hereby declare that the adoptee, JK, has been duly adopted by the FIRST PARTY as his son on the 15th June 1999 at the time and place mentioned above.
2. That the said adoptee JK has and shall have from the date of the said adoption all the legal rights of an adopted son as conferred by the Hindu Law.
3. That the FIRST PARTY shall be responsible for the maintenance and education of the said JK and the FIRST PARTY hereby agrees to bring up his adopted son as his natural born son and according to his status in life.
4. That the SECOND PARTY shall have no claim hereinafter to the custody of the said JK or in relation to him.
5. That the FIRST PARTY has neither paid nor shall make any payment or give other reward in consideration of giving the adoptee JK in adoption, to the SECOND PARTY.

IN WITNESS WHEREOF AH and GD have executed these presents on the day, month and year first abovewritten.

Signed and delivered by AH and  
GD in presence of:

#### Adoption without Consent of Step-mother

THIS DEED OF ADOPTION is made this 6th day of September 1999 BETWEEN AB, son of MN aged 30 years by religion Hindu, residing at BO 22 Salt Lake, Calcutta 700 064 (hereinafter referred to as the ADOPTIVE FATHER) of the one part and CD, son of LK aged 28 years, by religion Hindu, residing at 18 C.R. Avenue, Calcutta 700 069 (hereinafter referred to as the NATURAL FATHER), of the OTHER PART.

WHEREAS the ADOPTIVE FATHER has no son, grandson or great-grandson living and he is desirous of adopting a male child to be his son and the son of his wife, WF.

AND WHEREAS the ADOPTIVE FATHER approached CD the NATURAL FATHER for adopting one of his sons, now aged about 3 years.

AND WHEREAS the NATURAL FATHER has agreed to give his son EF in adoption to the ADOPTIVE FATHER.

AND WHEREAS the ADOPTIVE FATHER has obtained the consent of his wife WF to the said adoption.

AND WHEREAS the NATURAL MOTHER of the said child EF is dead and the NATURAL FATHER being married to MN who is the step-mother of the child EF and the consent of the step-mother MN not being necessary for the said adoption.

AND WHEREAS there is no impediment either in law or in fact for taking in adoption by the ADOPTIVE FATHER or giving in adoption by the NATURAL FATHER of the said EF.

NOW THESE PRESENTS WITNESSETH and the parties hereby record and agree as follows:

The said NATURAL FATHER after performing the necessary religious ceremony before a gathering of friends and relatives of both the parties held at the residence of NATURAL FATHER on 5th September 1999 at 7 p.m. has given the said EF his son to the ADOPTIVE FATHER who has taken the said EF in adoption as his son.

The said EF the adopted child shall have all the legal rights of a natural son of the ADOPTIVE FATHER from this day.

IN WITNESS WHEREOF the said AB the ADOPTIVE FATHER, his wife WF and the said CD the NATURAL FATHER have executed these presents after the said ceremony was over and in presence of their friends and relatives on the day, month and year first above-written.

WITNESSES:

- 1.
- 2.

Signature of AB

WF

CD

### Adoption of Female Child where getting Consent of Wife Impossible

THIS DEED OF ADOPTION is made this 10th day of October 1999 BETWEEN AB, son of LK aged 45 years by religion Hindu, residing at 10/B, Civil Line, Delhi 110 006 (hereinafter referred to as the ADOPTIVE FATHER) of the one part and CD, son of DK aged about 43 years, by religion Hindu, residing at 15 Metcalf Road, Delhi 110 007 (hereinafter referred to as the NATURAL FATHER) of the OTHER PART.

WHEREAS the ADOPTIVE FATHER has neither any son or daughter and whereas the ADOPTIVE FATHER is desirous of adopting a daughter to look after the ADOPTIVE FATHER inasmuch as the ADOPTIVE FATHER'S wife is dead and there is no other relative to look after the household.

AND WHEREAS the NATURAL FATHER has 5 daughters all unmarried aged between 5 and 20 years of age.

AND WHEREAS the ADOPTIVE FATHER approached the NATURAL FATHER for taking in adoption one of the daughters of the NATURAL FATHER.

AND WHEREAS the NATURAL FATHER cannot maintain properly all his daughters and his wife is invalid and of unsound mind and in consideration thereof has agreed to give in adoption his second daughter MN aged 13 years to the ADOPTIVE FATHER.

AND WHEREAS the said daughter, MN is not married and consent of the wife of ADOPTIVE FATHER cannot be obtained as she is dead and the consent of

the wife of the NATURAL FATHER is impossible to obtain inasmuch as she is of unsound mind.

AND WHEREAS the difference in age between the adoptive father and the daughter to be taken in adoption is more than twenty one years, and there is no impediment in giving the said daughter MN in adoption to the ADOPTIVE FATHER.

NOW THIS DEED WITNESSETH and the parties hereby record and agree as follows:

The NATURAL FATHER in the circumstances, has this day before a gathering of friends and relatives of both the parties held at the NATURAL FATHER'S residence at 1 p.m. given the said MN his second daughter in adoption to the ADOPTIVE FATHER.

The ADOPTIVE FATHER has taken the said MN in adoption as his daughter.

The said daughter MN shall have all the legal rights of a Hindu daughter of the ADOPTIVE FATHER as if MN were the ADOPTIVE FATHER'S Natural Daughter.

IN WITNESS WHEREOF the ADOPTIVE FATHER and the NATURAL FATHER have executed these presents in the presence of the friends and relatives after the ceremony was over and two of the friends and relatives have hereunto signed as attesting witnesses on the day, month and year first abovewritten.

WITNESSES:

1.

2.

Signature of

AB (ADOPTIVE FATHER)

CD (NATURAL FATHER)

### Adoption of Male Child from Orphanage

THIS DEED OF ADOPTION made this 18th day of November 1999 BETWEEN AB son of JK aged about 45 years, by religion Hindu, residing at 3 Park Street, Calcutta 700 016 (hereinafter referred to as the ADOPTIVE FATHER) of the one part and CD, son of DK aged about 50 years by religion Hindu, residing at 4 J.L.Road, Calcutta working as Superintendent of Jyoti Orphanage having its registered office at 3 Sainik Place, West Bengal and Guardian of MN aged 10 years, one of the orphans, duly appointed by the Dist. Judge of Nadia by an Order dated 5th May 1999 (hereinafter referred to as the GUARDIAN) of the other part.

WHEREAS the ADOPTIVE FATHER has no son, grandson or great grandson.

AND WHEREAS the ADOPTIVE FATHER intends to adopt a son who would look after him in his old age and offer oblations to the ADOPTIVE FATHER and his ancestors.

AND WHEREAS the ADOPTIVE FATHER approached the said GUARDIAN who is in-charge of the Jyoti Orphanage, a voluntary Social and Welfare Organisation, situate at Nadia giving shelter and maintaining orphan children abandoned by their parents to give the ADOPTIVE FATHER in adoption a suitable male child to be his adopted son.

AND WHEREAS the said GUARDIAN being satisfied about the *bona fide* intention of the ADOPTIVE FATHER and also being satisfied that such adoption will be for the welfare and benefit of the child proposed aged 10 years named MN.

AND WHEREAS the ADOPTIVE FATHER approved the selection of MN the GUARDIAN agreed to give MN in adoption and MN expressed his willingness to be the adopted son of the said ADOPTIVE FATHER.

AND WHEREAS the said MN met the ADOPTIVE FATHER and had discussions and expressed his willingness and gave his consent to be adopted by the ADOPTIVE FATHER as his son.

AND WHEREAS the GUARDIAN applied to the Dist. Judge at Nadia for the necessary permission to give the said MN in adoption to the ADOPTIVE FATHER and the said Dist. Judge gave permission to give MN in adoption to the ADOPTIVE FATHER by an Order dated 10th June 1999 in Act VIII Case No. .... of .....

AND WHEREAS WF the wife of the ADOPTIVE FATHER has also given her consent to the said adoption of MN by the ADOPTIVE FATHER.

NOW THESE PRESENTS WITNESSETH and the parties hereby record and agree as follows:

The said CD, the GUARDIAN as the Superintendent of Jyoti Orphanage being fully satisfied after enquiries being made and reports obtained from reliable sources about the *bona fide* intentions of the ADOPTIVE FATHER and that such adoption would be for the benefit and welfare of MN has this day before the respectable persons and officials of the Jyoti Orphanage put the said child in the possession of ADOPTIVE FATHER who has physically received the said MN in adoption as his son and that the said MN shall have from this day full and complete right, title and interest in the property of the said ADOPTIVE FATHER and his Joint Family and shall have all obligations of a son including the offering of oblations to the said ADOPTIVE FATHER and his ancestors as required by Hindu Law and custom.

IN WITNESS WHEREOF the said AB, the ADOPTIVE FATHER and the said CD the GUARDIAN have hereunto executed these presents in the presence of several respectable persons and officials of the Jyoti Orphanage on 18th day of November 1999 at 11 A.M. in the office of the Jyoti Orphanage at Nadia, West Bengal.

WITNESSES:

- |    |   |
|----|---|
| 1. | Signature of ADOPTIVE FATHER, AB.             |
| 2. | Signature of Superintendent and GUARDIAN, CD. |
|    | Signature of ADOPTIVE MOTHER                  |

# 3

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## Agreement

**Introductory observations.** By the Statutes of 1781 and 1797, it was enacted that the courts in Calcutta, Bombay and Madras would be guided by the personal law or customs of the parties in matters such as inheritance and succession to lands, rents and goods, as also in matters of contract and dealings between the parties. In other words, in cases where both parties were Hindus, the Hindu Law of Contract and so in cases where both parties were Mahomedans the Mahomedan Law of Contract was applied. But if the parties were subject to different personal laws, then the law of the defendant was applied.

This unsatisfactory state of affairs was set at rest by the enactment of the Indian Contract Act 1872, which came into force on 1st September 1872. A contract is an agreement enforceable by law. Even then the same is not exhaustive. There are statutes like the Transfer of Property Act 1882, as amended in 1929. Specific Relief Act 1963, Sales of Goods Act 1930 etc., which deal with other branches of the law of contract.

An agreement is defined in s. 2(e) of the Indian Contract Act 1872. Every promise and every set of promises, forming the consideration for each other is an agreement.

In other words, an agreement is an act in the eye of law whereby two persons being *ad idem* declare their common intention to do or not to do any act, deed or thing. An agreement is the combined product of offer and acceptance for some consideration passed between them.<sup>1</sup> It creates an outstanding obligation or legal liability.<sup>2</sup>

1 Halsbury's *Laws of England*, 4th Ed., vol. 9, para 206.

2 Section 10 and s. 73 of the Indian Contract Act.



**State actions.** In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Art. 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law. This imposes a duty to act fairly and to adopt a procedure which is fairplay action. To satisfy this it is necessary for the State to consider and give due weight to the reasonable or legitimate expectation of the persons likely to be affected by such decision.<sup>3</sup>

**Formation.** (a) *Proposal.* When a person signifies to another his willingness to do or not to do anything, he is called the *proposer*.<sup>4</sup>

(b) *Communication of the proposal and its acceptance* (s. 3 of the Indian Contract Act).<sup>5</sup> When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a *promise*. Otherwise it has no legal effect.

The person making the proposal is called the *promisor*, and the person accepting the proposal is called the *promisee*.

Promises which form the consideration of each other are called *reciprocal promises*.<sup>6</sup>

(c) *Consideration.* When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing something, such act or abstinence or promise is called a *consideration* for the promise.<sup>7</sup> An informal promise made without consideration, however strong may be the motive, is not enforced in a court of law. A promise to contribute money to a charitable institution is not a contract.<sup>8</sup>

(d) *Past consideration.* According to English law, the doctrine laid down by Lord Mansfield in *Earl v Oliver*,<sup>9</sup> that a past consideration is not a good consideration is still unsettled among the authorities whereas in India an executed consideration is good consideration.<sup>10</sup>

The question whether the contract is concluded or not, depends upon the circumstances of each case, having regard to the nature of the documents

3 *Food Corporation v Kamdhenu* AIR 1993 SC 1601.

4 Section 2(c) of the Indian Contract Act.

5 *Harvey v Facey* (1893) AC 552. H sent a wire to F enquiring of lowest price. Answer by F. Lowest price is £ 900. Reply by H. Agreed to buy at £ 900. Send title deeds. No answer. Court held that there was no contract.

6 Section 2(f) of the Indian Contract Act.

7 Section 2(d) of the Indian Contract Act.

8 Mulla: *Contract*, 11th Ed., p. 8.

9 (1848) 2 Ex 71 at p. 90.

10 *Taluk Board v Senthia* AIR 1936 Mad 709.

produced and also the evidence on record. Where a purchase order was not accepted by the plaintiff nor any contract agreement was executed it was not a concluded contract and the question of forfeiting the security deposit would not arise.<sup>11</sup>

(e) *Consent*. Two or more persons are said to *consent* when they agree upon the same thing, and in the sense, this is known as *consensus ad idem* in English law. Consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake.<sup>12</sup>

(f) *Contract—voidable contract—contingent contract*. An agreement enforceable by law is a contract. All agreements are contracts if they are made by the free consent of parties both being *ad idem* competent to contract, for a lawful consideration, and with a lawful object, and are not by law expressly declared to be void.<sup>13</sup>

An agreement which is enforceable by law at the option of one or more of the parties thereto but not at the option of the other or others is a *voidable contract*.<sup>14</sup>

A *contingent contract* is a contract to do or not to do something if some event collateral to such contract does or does not happen.

(g) *Competency to contract*.<sup>15</sup> Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject. The Privy Council held in *Mohari Bibi v Dharmadas Ghosh*,<sup>16</sup> that a contract by a minor is void.<sup>17</sup> The following rules were laid down by decided cases as regards valid contracts for service rendered to a minor, *viz* (i) service must be personal to the minor; (ii) suitable to the minor's station of life; and (iii) actually needed by the minor.<sup>18</sup>

It will not be out of place to say something about the effect of contract entered into on behalf of the minor for sale and purchase of property as observed by the Privy Council in *Subbarao's* case.<sup>19</sup> Whatever be the law on the subject earlier since the passing of the Hindu Minority and Guardianship Act,<sup>1</sup> a natural guardian cannot enter into a contract for sale of any property

11 *Rajasthan v Dayal Woods* AIR 1998 AP 381.

12 Section 14 of the Indian Contract Act.

13 Section 2(j) and s. 10 of the Indian Contract Act.

14 Section 2(i) of the Indian Contract Act.

15 Section 11 of the Indian Contract Act.

16 (1903)30 Cal 539 (PC); 7 CWN 441.

17 Section 11 of the Indian Contract Act.

18 *Cowern v Nield* (1912)2 KB 419.

19 AIR 1948 PC 95.

1 Section 8 of the Act 32 of 1956.

belonging to the minor. So the law laid down in *Subramanyam's* case<sup>2</sup> that a contract for purchase even could not be specifically enforced is no longer good law inasmuch as a minor is not debarred from acquiring any valuable estate, so a conveyance of a property in favour of a minor is not void, so also a gift.<sup>3</sup> A lease to a minor is void.<sup>4</sup> So is a sale by the father to his minor son. An agreement for sale which passes no property, in favour of the minor is not binding on the minor more so because it cannot be enforced by the vendor.<sup>5</sup> The principles applicable to a minor as regards service contracts and necessities supplied are applicable to lunatics.<sup>6</sup>

In England, persons are incapable of entering into or enforcing contract by reason of (i) political status, e.g. aliens; (ii) infancy; (iii) corporate personality; (iv) lunacy or drunkenness. Minors are designated as infants and they attain majority on completion of 21 years. In common law, minors' contracts are divided into three classes—(a) those for necessities, (b) those for his benefit, and (c) other contracts. The Infant Relief Act 1874,<sup>7</sup> rendered all contracts other than those for necessities void. An alien in England has contractual capacity like a natural born British subject except that he cannot acquire any property in a British ship.<sup>8</sup>

In India, aliens are competent to buy and sell property, both movable and immovable, but their capacity to contract exists so long as they are 'friends'. So there can be no partnership between subjects of different hostile powers and the outbreak of a war between them determines the partnership.<sup>9</sup>

(h) *Communication—when complete.* The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. The communication of an acceptance is complete, as against the proposer, when it is put in a course of transmission to him so as to be out of the power of the acceptor; or against the acceptor, when it comes to the knowledge of the proposer. The communication of a revocation is complete, as against the person who makes it when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it, as against the person to whom it is made, when it comes to

2 *Subramanyam v Subba Rao* AIR 1948 PC 95. See also *Mohari Bibi v Dharmadas Ghosh* (1903)30 Cal 539—Privy Council held that all contracting parties must be competent to contract.

3 Section 127 of the Transfer of Property Act.

4 *Satyadeva v Trebeni* 161 IC 579.

5 *Moang Aunj v Gyi* 32 IC 638.

6 *Re, Rhodes* 44 Ch D 94.

7 37 and 38 Vict. C. 62.

8 Merchant and Shipping Act 1894 (57 & 58 Cict, c. 60) S.I. See also Anson's *Contract*, 27th Ed., p. 212.

9 *Rodriguez v Speyer Brothers* (1919) AC 59.

his knowledge.<sup>10</sup> Payment made under a mistake can be claimed by way of refund provided it is not barred by limitation. Section 72 of the Contract Act applies.<sup>11</sup> Illegalities are incurable. Where the plea is of illegality or invalidity the conduct of the parties become irrelevant and earlier consent should not come in the way.<sup>12</sup>

(i) *Revocation of proposal and acceptance.* A proposal can be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.<sup>13</sup> An acceptance can be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

(j) *Revocation how made.* A proposal is revoked—

- (1) by the communication of notice of revocation by the proposer to the other party;
- (2) by the lapse of the time prescribed in such proposal for its acceptance or, if no time is prescribed, by the lapse of a reasonable time without communication of the acceptance;
- (3) by the failure of the acceptor to fulfil a condition precedent to acceptance; or
- (4) by the death or insanity of the proposer if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

It is interesting to note here that the dictum in *Dickinson v Dodds*<sup>14</sup> is not applicable to India as the communication of the revocation of the proposal has to proceed from the proposer. It will be also interesting to note that the revocation of the authority of an agent does not affect third parties before they have knowledge of the same<sup>15</sup> and the revocation of a continuing guarantee is only as to future transaction.<sup>16</sup>

(k) *Compensation for breach of contract.* When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty,

10 Section 3 of the Indian Contract Act.

11 *Nagar Mahapalika v Sai Ram* AIR 1990 SC 274.

12 *Union Carbide v Union of India* AIR 1992 SC 248.

13 Sections 5 and 6 of the Indian Contract Act 1872.

14 (1876)2 Ch D 463. Dodds made an offer to sell a house to Dickinson for £ 800. The offer was kept open till 9 a.m. on Friday 12th June; on 11th June, Dodds entered into a contract with A for sale of the house. One B presumably not acting under authority from Dodds reported the matter to Dickinson who then handed over his acceptance in writing to Dodds which he refused. It was held by the Court of Appeal that there was no contract.

15 Section 208 of the Indian Contract Act.

16 Section 130 of the Indian Contract Act.

the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract, reasonable compensation not exceeding the amount so named, or, as the case may be, the penalty stipulated for.<sup>17</sup>

A stipulation for increased interest from the date of default may be a stipulation by way of penalty.<sup>18</sup>

**STIFLING OF PROSECUTION.** The essence of the doctrine of stifling of prosecution is that no private person should be allowed to take the administration of criminal justice out of the hands of the Judges and place it in his own hands. The distinction between the 'motive' for entering into agreement and the 'consideration' for the agreement must be clearly maintained. Where the dropping of the criminal proceedings is a motive for entering into the agreement—and not in consideration—the doctrine of stifling of prosecution is not attracted. Where there is also a pre-existing civil liability, the dropping of criminal proceedings need not necessarily be a consideration for the agreement to satisfy that liability.<sup>19</sup>

**EXCEPTIONS.** When any person enters into any bail bond, recognizance or other instrument of the same nature, or, under the provisions of any law or under the orders of the Government of India, or of any State Government, and gives any bond for the performance of any public duty or act in which the public are interested, he will be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein. Nevertheless, the court has discretion to consider the nature of the bond and the breach.<sup>20</sup>

**LIQUIDATED DAMAGES AND PENALTY.** The rule of English law as to distinction between liquidated damages and penalty does not apply to India. A liquidated damage is a genuine covenanted pre-estimate of damage. A penalty is a lump sum payable as compensation on the happening of some event or events. The courts in India have always the power to ascertain the actual loss and award damages which they consider reasonable.<sup>21</sup>

If a party to the contract is required to suffer the consequences for his failure to abide by the terms by a stipulated date such a consequence would be penal but on the other hand if that party gets some benefit by complying with the requirement by the stipulated date such a clause granting benefit can never be treated as penal in character.<sup>1</sup>

17 Section 74 of the Indian Contract Act.

18 *Bhimji v Bombay Trust Corporation* (1930)54 Bom 381, 404, 405.

19 *Union Carbide v Union of India* AIR 1992 SC 248; see also *Deb Kumar v Anata Bandhu* AIR 1931 Cal 421.

20 *Secretary of State v Dilsizian Freres* (1921)45 Bom 1212.

21 *Fateh Chand v Balkishan Dass* AIR 1963 SC 1405.

1 *Prithvichand v S.Y. Sindhe* AIR 1993 SC 1929.

FORFEITURE OF DEPOSIT. Earnest money or deposit signifies *bona fide* conclusion of the contract. It is liable to be forfeited on breach of contract. So if the sales go off by reason of the sellers' default he must return the deposit, but if the buyer is in fault he shall suffer on that account.<sup>2</sup>

The rule as to forfeiture of deposit is not applicable where the contract is not carried out.<sup>3</sup>

In a suit upon an agreement for sale it is not always necessary to deposit the money unless the court so directs. Not depositing the money along with the plaint cannot be taken as a factor to deprive the plaintiff of his relief nor is indicative of the fact that the plaintiff had not been ready and willing to perform his part of the contract.<sup>4</sup> A subsequent transferee with notice stands in a fiduciary capacity and holds the property in trust to the prior agreement-holder, but the prior agreement-holder cannot automatically become the owner by seeking declaratory relief and has necessarily to file a suit for specific performance impleading both the vendor and the subsequent transferee.<sup>5</sup> Once a decree for specific performance is granted it includes the term for delivery of possession as the court was directing the enforcement of the entire agreement including the agreement to deliver possession.<sup>6</sup>

(l) *Execution and attestation—registration.* Agreements are executed and attested as a bond. It is not, however, essential that the signature of a party to an agreement should be attested by a witness.

Registration of agreements is not compulsory; but if an agreement by itself creates an interest in immovable property of the value of Rs. 100 and upwards, its registration will be compulsory. The vendor of any immovable property is not a trustee for the purchaser as in English law even under a registered agreement for sale.<sup>7</sup> Writing is necessary in several cases. A contract to sell the products of any particular land is to be registered inasmuch as it creates an interest in the land.<sup>8</sup>

(m) *Acknowledgement of liability under s. 18 of the Limitation Act, sec. 5 of the Indian Trusts Act.* Trust of Immovable Property—Lease, Gift, Sale, Mortgage under ss. 107, 123, 54 and 59 of the Transfer of Property Act.

**Voidable and void agreements.** Section 2(i) of the Indian Contract Act 1872, defines what is voidable agreement. An agreement is enforceable at the

2 Section 74 of the Indian Contract Act.

3 *Sudarshan v Chuba Singh* AIR 1956 HP 28.

4 *N. Venkatappa v Lingappa* AIR 1998 Kant 372.

5 *Kondapalli v Kondapalli* AIR 1999 AP 170.

6 *K.M. Rajendran v Arul Prakasam* AIR 1998 Mad 336.

7 *Ariff v Jadunath* 58 IA 91.

8 *Ali v Janabali* 62 CLJ 534.

instance of one party but not the other. Section 64 of the said Act provides for restoration of the benefits by the party avoiding the contract. The principles laid down under this section are not applicable to insurance policies which are discovered to be void by reason of concealment of facts<sup>9</sup> or to the benefits received by a minor or other incompetent persons.<sup>10</sup>

Where a sale deed was executed under no undue influence even though the vendor was old, blind, illiterate and tribal woman totally at the mercy of the person with whom she had been living till her death such person was in a position to dominate the will of the woman and obtain unfair advantage over her, the onus lies on that person to prove that sale deed was not executed under undue influence.<sup>11</sup>

A void contract is defined under s. 2(j) of the Indian Contract Act—a contract which has no legal effect. It may be classified as follows:

(a) *Consideration and object—unlawful.* If any part of a single consideration for one or more objects, or any one, or any part of any one, of several considerations for a single object, is unlawful, the agreement is void.<sup>12</sup>

The consideration or object of an agreement is unlawful, when—

- (i) it is forbidden by law, e.g. (a) partnership with illegal object, (b) trading with alien enemy,<sup>13</sup> agreement involving traffic in public office,<sup>14</sup> contract regarding sale and purchase of jute goods among persons not being habitual dealers, are void under the Jute Goods Act.<sup>15</sup>
- (ii) it is of such a nature that, if permitted, it would defeat the provisions of any law, e.g. agreement to defeat the provisions of insolvency law or the statute laws or common law among Hindus and Mahomedans, e.g. agreement in restraint of legal proceedings except reference to arbitration;
- (iii) it is fraudulent e.g. excessive high rate of interest,<sup>16</sup> agreement for sale which is hit by section 53 of the T.P. Act; and
- (iv) it involves or implies injury to the person or property of another; or the court regards it as immoral or opposed to public policy, e.g.

9 *Mithoolal Nayak v Life Insurance Corporation* AIR 1962 SC 814.

10 *Mohari Bibi v Dharmadas Ghosh* (1903)30 Cal 539 (PC).

11 *Sethani v Bhora* AIR 1993 SC 956.

12 Section 24 of the Indian Contract Act.

13 *Rodriguez v Speyers Brothers* (1919) AC 59.

14 *Saminatha v Muthusami* (1907)30 Mad 530.

15 Section 3C(1) of Jute Goods Act 1950.

16 Section 74 of the Indian Contract Act.

an agreement to purchase the share of company with a view to making others believe in a *bona fide* market.<sup>17</sup>

(b) *Agreement without consideration.* An agreement made without consideration is void,<sup>18</sup> unless—

- (i) it is a deed of gift, duly executed and registered, and made on account of natural love and affection between the parties; or unless
- (ii) it is a promise to compensate for something voluntarily done for the promisor; or unless
- (iii) it is promise in writing to pay a debt barred by the law of limitation.

(c) *Agreements in restraint of marriage, trade and legal proceedings.* An agreement in restraint of marriage of any person, other than a minor, is void.<sup>19</sup>

An agreement by which one is restrained from exercising a lawful profession, trade or business of any kind is void unless it is an agreement not to carry on business within a specified area, of which goodwill is sold, or such agreement (*i.e.* not to carry on business), between partners prior to dissolution of, or during continuance of, partnership.<sup>20</sup>

An agreement in restraint of legal proceedings is void unless it is an agreement to refer a dispute to arbitration.

(d) *Agreements with uncertain meaning, by way of wager and under mistake of fact.* An agreement, the meaning of which is not certain, or capable of being made certain, is void.<sup>1</sup>

An agreement by way of wager is void unless it is an agreement involving prize or sum of money of the value or amount of Rs. 500 or upwards, to be awarded to the winners of any horse race.

Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.<sup>2</sup>

The following are necessary to bring this section in operation:

- (i) Mutual mistake (vide s. 22 of the Indian Contract Act);
- (ii) Mistake of fact and not law except foreign law (s. 21 of the Indian Contract Act); and
- (iii) Mistake of facts essential to the contract.

17 *Scott v Brown Doering McNab & Co.* (1892)2 QB 724.

18 Section 25 of the Indian Contract Act.

19 Section 26 of the Indian Contract Act.

20 Section 27 of the Indian Contract Act.

1 Section 29 of the Indian Contract Act.

2 Section 20 of the Indian Contract Act.



(e) *Contract with Governments.* When it is not in compliance with Art. 299(1) of the Constitution of India.

(f) *Contract of corporation.* It is the doctrine of English common law that all contracts by corporation shall be made under the common seal except small matters of daily occurrence.<sup>3</sup> Modern authorities are however following the principle of convenience and are liberal in cases of trading corporations as regards contracts made in the ordinary course of business. In India the courts do not recognise the rights of individuals interested in the corporation but the rights of the corporation. A contract *ultra vires* the company cannot be ratified even unanimously by all its members.<sup>4</sup>

(g) *Contract of employment.* A contract of employment cannot ordinarily be enforced by or against an employer. The remedy is to sue for damages. There are of course certain exceptions such as in the case of a public servant dismissed in contravention of Art. 311 of the Constitution; reinstatement of a dismissed worker under the Industrial Law; a statutory body acting in breach of statutory obligations. Courts do not ordinarily force an employer to recruit or retain in service an employee not required by the employer.<sup>5</sup>

(h) *Commercial contract.* In commercial contracts between parties belonging to two different countries the governing law is determined by the intention of the parties. The true intention of the parties, in the absence of express selection, is to be ascertained by applying sound ideas of business, convenience and sense to the language of the contract itself.<sup>6</sup>

When the parties enter into an agreement with each other, it is the agreement alone which determines their rights and obligations *qua* each other. Neither the rule of promissory estoppel nor the doctrine of legitimate expectation can be applied to amend, alter or vary express terms of the contract between the parties.<sup>7</sup>

## FORMS

### Loan Agreement with Bank

THIS AGREEMENT is made the ..... day of ..... in the year ..... BETWEEN the ..... AB Bank Ltd., a banking company having its registered office

3 Mulla: *Contract*, 11th Ed., pp. 168-169.

4 *Ashbury Ry. Co. v Riche* LR 7 HL 651.

5 *Nandganj v Badri Nath* AIR 1991 SC 1525.

6 *National Thermal v Singer & Co.* AIR 1993 SC 998.

7 *AAA Film v Union of India* AIR 1999 Del 178.

..... at ..... (hereinafter called the BANK) of the ONE PART and Mr. .... son of ..... residing at ..... and carrying on business under the name and style of ..... at ..... hereinafter called the BORROWER of the OTHER PART.

WHEREAS the BANK through its branch at ..... has at the request of THE BORROWER agreed to grant him financial accommodation against his said business and for that purpose to allow him overdraft facilities through a cash credit account in the name of ..... up to the maximum limit of Rs. ....

NOW IT IS HEREBY AGREED by and between the parties as follows:

1. The BANK shall accommodate the BORROWER from time to time against his said business by overdraft as and when required by the BORROWER up to a maximum limit of Rupees ..... only inclusive of all interest and other charges, but nevertheless the liability of the BORROWER shall not be limited to the above maximum amount, if the borrowings inclusive of interest and other costs, charges and expenses exceed the aforesaid agreed limit.

2. The BORROWER shall pay interest on the said loan or advance at the rate of ..... per cent ..... on the daily balance of the said account and the same shall be debited in his said account on the last working day of each English month and form part of the principal and carry further interest at the said rate. In case the aforesaid limit is not availed of by the BORROWER or if for any reason whatsoever there is a credit balance in favour of the BORROWER, the BORROWER shall nevertheless remain liable to pay interest at the stipulated rate on Rs. ....

3. That the account in the books of the BANK shall be conclusive proof against the BORROWER of the amount or amounts of the BANK. In addition to the stipulated interest the BORROWER shall pay to the BANK the following further charges also:

- (i) usual incidental charges every six months;
- (ii) usual commissions on foreign, that is, outstation cheques, drafts, etc. and other usual; and
- (iii) customary charges.

4. The BORROWER has executed a relative pronote for the maximum limit of Rs. .... only carrying interest at the stipulated rate in favour of the BANK and has handed over the same to the BANK as security for the payment of any sum which may at any time be due to the BANK on the said cash credit account.

5. This agreement shall remain in force for a period of ..... years from the date hereof, unless otherwise extended or determined by the BANK. The BANK shall be at liberty to refuse overdraft and stop making advances at any time without assigning any reasons whatsoever even without any prior

notice in which event the BANK shall not be liable to pay any damages if suffered by the borrowers on that account.

6. On the expiry of the period specified in Para 5 above or at any time later or earlier, the BORROWER shall pay or cause to be paid to the BANK on demand the balance then outstanding and owing to the BANK on the said cash credit account (inclusive of interest and all other charges and expenses) as appearing from the books of the BANK which the BORROWER has agreed to accept as sufficient and conclusive evidence as against him of the amount due from him and in the event of the said demand being neglected and/or not complied with, the BANK shall realise the amount or amounts due through civil process with all expenses and charges actually incurred.

IN WITNESS WHEREOF the parties hereto have at ..... affixed their signature the day and the year first above-written.

WITNESSES:

1. .....  
 BORROWER  
 Address:

2. .....  
 Agent/Manager  
 Address:

### Agreement for Cash Credit

The ..... Bank ..... (hereinafter called the BANK) through their office at ..... having at the request of ..... (hereinafter called the BORROWERS) undertaken to open in the books of the bank at ..... a cash credit account with the BORROWERS up to the maximum limit of Rs. ....

It is agreed as follows:

1. That the BANK shall not, under this agreement, be required to make advances of such an amount that the total dues in this account including interest and other charges may, at any time, exceed the sum of Rs.....

The BORROWERS shall, however, be responsible for the payment of the entire amount that may at any time be due in this account although such amount may exceed the above-mentioned limit.

2. That interest at the rate of ..... per cent per ..... shall be calculated on the daily balance of the said account and shall be charged to the account on the last working day of each month and it will form part of the principal and will carry interest at the above-mentioned rate.

3. That on the ..... day of ..... 19 ..... next or on demand being made by the BANK on any earlier date, the BORROWERS shall pay to the

BANK the balance then outstanding and owing to the BANK on the said account inclusive of interest at the rate above mentioned to the date of payment together with all the charges and expenses charged or incurred by the BANK as ascertained by the books of the said bank which the BORROWERS agree to accept as sufficient proof of the correctness thereof, without the production of any voucher or paper.

4. That the head office of the BANK or the said Branch will be at liberty to sue the borrowers at ..... or at .....

5. That the BORROWERS will be liable for all costs of recovery incurred by the BANK before filing a suit and also for all costs in connection with the suit till recovery of full amount, whether such costs may be allowed by rules of court or not.

6. That a relative pronote dated ..... has been given to the BANK by the BORROWERS to secure payment of any sum which may at any time be due to the BANK on such account.

7. That the BORROWERS agree that when the Reserve Bank rate of discount is ..... per cent or above, they will pay as interest 1 per cent above the said Reserve Bank rate.

8. That the BORROWERS agree to pay incidental charges for every six months or part thereof (according to labour involved) during the time the account remains open.

9. That the BORROWERS shall not be entitled to any interest for any sum which may at any time stand to their credit in this account.

10. That the BANK will always be at liberty to stop making advances at any time without previous notice and without assigning any reason, even though the said limit of Rs. .... has not been fully availed of.

11. That the BORROWERS further agree to pay interest at the stipulated rate on ..... portion of the aforesaid limit even if the limit is not availed of at all or an amount less than the aforesaid portion is borrowed.

WITNESSED BY:  
.....  
Address .....  
Dated .....

Signature of BORROWER or BORROWERS  
.....  
Address .....  
Dated .....  
For the ..... Bank

WITNESSED BY:  
.....  
Address .....  
Dated .....  
.....  
.....

*Manager*  
Dated .....

## Agreement between Producers and Distributors

MEMORANDUM OF AGREEMENT made on this ..... day of ..... in the year ..... BETWEEN ..... of No....., a Registered Partnership Firm consisting of..... partners hereinafter called the PRODUCERS (which expression shall, unless excluded by or repugnant to the context, be deemed to include his/their heirs, executors, administrators, representatives and assigns) of the One Part and AB & Co. Ltd. a company registered under the Indian Companies Act (Act 1 of 1956) having its office at ..... hereinafter called the Distributors (which expression shall unless excluded by or repugnant to the context, be deemed to include their representatives and assigns) hereinafter referred to as PARTY of the Other Part:

WHEREAS PRODUCERS have made a preliminary arrangement of producing a Bengali Talkie picture tentatively called Approach written by .....

AND WHEREAS the PRODUCERS need financial assistance and co-operation and therefore approached the PARTY hereto of the other part for such help and assistance AND whereas the PARTY agreed to render such financial assistance to the PRODUCERS to the extent and upon the terms and conditions hereinafter following

NOW THEREFORE THIS INDENTURE WITNESSETH as follows:

1. That the PRODUCERS undertake to complete the shooting for the aforesaid picture ..... for an approximate cost of Rupees ..... only, including print and publicity at least with three top-rank artists.

2. That the PRODUCERS hereof shall arrange and bear the necessary amount required for the payment to the artists, workers and other costs necessary for the production except those hereinbelow mentioned.

3. That the PRODUCERS undertake to deposit with the PARTY as security the sum of Rupees ..... to be paid by instalments of Rs. .... on the date of signing of the contract and Rs. .... only on the date of the first shooting. If the PRODUCERS fail to complete one-fourth of the said picture approximately three thousand feet edited shots within two months from the first shooting date, then in that case the PRODUCERS shall also have to deposit a further sum of Rs..... as security with the PARTY. The amount so deposited shall remain to the credit of the PRODUCERS and would be returned to them within six months from the date of the last deposit to be made as aforesaid.

4. That the PARTY agrees to advance to the PRODUCERS for the production and completion of the aforesaid Bengali talkie picture a sum of Rs. .... to be paid in the following manner:

- (a) That the PARTY shall arrange the studio, laboratory and raw film for the production by the PRODUCERS of the aforesaid picture and shall pay the necessary costs thereof by debiting the amount to

the PRODUCERS from the first shooting date, provided that the PARTY shall arrange with the studio for allotting to the PRODUCERS at least eight days in a month and every month till the completion of the picture and shall, whenever necessary, enter into and sign a deed or documents in this behalf in which the PRODUCERS shall be a confirming party.

- (b) That the PRODUCERS shall arrange for the ..... editing and processing of the said film in any laboratory they may choose and the PARTY shall pay for the cost thereof and debit the amount to be paid to the PRODUCERS. The selection of the editor would be entirely with the PRODUCERS.
- (c) That the PARTY after providing the expenses as in cls. (a) and (b) with an approximate amount of Rs. .... shall pay to firstly the balance of Rs. .... out of Rs. .... so agreed to be advanced, up to the rush prints along with the progress of the shooting of the aforesaid picture by instalments as and when required by the PRODUCERS provided however, that the PRODUCERS shall not be entitled to demand from the PARTY any such advance of money unless and until the PRODUCERS has completed approximately three thousand feet edited shots of this picture aforesaid.

5. That in consideration of the financial help agreed to be rendered hereinbefore by the PARTY to the PRODUCERS, the PARTY shall receive a commission of 20% on the net collection of the PRODUCERS' share of the aforesaid picture "Approach".

6. That the PARTY shall further be the sole distributor of the aforesaid picture and shall have rights, privileges and benefits of the said picture and shall have a first charge on it till realization of the advance made by the PARTY as aforesaid to be approved of by the PRODUCERS or by their authorized agent.

7. That the PARTY undertakes to arrange for public exhibition of the said picture ..... within three months from the completion of the rush print in at least two best possible houses in Calcutta, i.e., one in the north and one in the south and four houses outside the municipal limits of the city of Calcutta area and the proceeds thereof shall be distributed as under—

- (i) after deducting ..... commission of the PARTY of the net collection on producer's share, the PARTY shall also deduct ..... from the balance therefrom to liquidate the principal of the amount of the advances made and the balance ..... shall be paid to the PRODUCERS direct or to its authorized agent, persons or company monthly showing in a statement the collection received from the date of release.

8. That if the sale proceeds of the said picture after public exhibition does not cover the dues of the PARTY within two years, the signatory of this agreement on behalf of the PRODUCERS shall be jointly and severally liable to pay back to the PARTY of the balance amount remaining unrealized as and when called upon to do so provided satisfactory exploitation of the said film is made by the PARTY.

9. That the PRODUCERS will keep necessary accounts and papers customary in this business and the PARTY will have the right to inspect and take copies or extracts therefrom at any time during office hours and a monthly statement of account should be submitted by the PRODUCERS to the PARTY.

10. That the PRODUCERS undertakes to complete the production of the said film within six months from the first shooting date in conformity with cl. 4(c) mentioned above

- (a) That the PRODUCERS will have the right to raise loan for the balance amount of Rs. .... or such amount as may be necessary for the completion of the said picture over and above the sum of Rs. .... to be advanced by the PARTY as aforesaid and the PARTY shall have no objection to that and will be added as a confirming party to the said transaction.
- (b) That the PARTY undertakes not to charge, mortgage, or hypothecate the picture without the written consent of the PRODUCERS.

11. That if the PRODUCERS fail to comply with any of the terms and conditions entered into by this agreement, the distributor will have the right to complete the picture and the money paid by the PRODUCERS will be repaid by the PARTY after the release of the picture and from the releasing houses.

12. That if the PARTY fails to comply with the terms and conditions of this agreement, the PRODUCERS shall have the right to complete the picture from such source as they may think fit and to cancel the PARTY as the distributor and have also the right to appoint another distributor and to accept advances from other sources and the money to be advanced by the PARTY will be repaid to them after release of the picture and from the releasing houses.

13. In the event of either party failing to act in accordance with the provisions of the agreement, the aggrieved party shall at the first instance try to settle the disputed points mutually and amicably, failing such attempt the point in dispute shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act 1996. If, however, the arbitrator declines to make any decision or award on the point referred to him then the parties concerned may settle the dispute by having recourse to appropriate legal proceedings.

IN WITNESS WHEREOF the parties to these presents hereunto set and subscribed their respective hands and seals the day, month and year first above-written.

Signed, sealed and delivered by A duly authorised by the partnership firm X & Co. in the presence of:

Signed and delivered by Mr. ....  
 ..... pursuant to the Board Resolution dated ..... of AB & Co. Ltd.  
 in the presence of:

### Advertising Agreement

THIS ADVERTISING AGREEMENT made this 15th day of May 2000 BETWEEN ELH Ltd. a company registered under the Companies Act 1956 and carrying on business at 54 Ganesh Chunder Avenue, Calcutta 700 013 (hereinafter referred to as the 'OWNER' which term shall include its successors and assigns) of the One Part and Advertising Co. Ltd. a company registered under the Companies Act 1956 and carrying on business at 11 Park Street, Calcutta 700 016 (hereinafter referred to as the ADVERTISER which term shall include its successors and permitted assigns) of the Other Part.

WHEREAS the OWNER is seized and possessed of the land and building being premises No. 54 Ganesh Chunder Avenue, Calcutta 700 013, having frontage on the open main road with 10 ft. wide open space.

AND WHEREAS the ADVERTISER has approached the OWNER for utilising part of this open space facing the road for the purpose of erecting structures, fixing the Board or hoarding and advertising the products for its customers.

AND WHEREAS the ADVERTISER has agreed to obtain the necessary permission of the concerned authorities at its own expenses and costs and the OWNER has agreed to sign and/or join in signing all applications and documents necessary for the purpose of obtaining permission for erecting the Board and/or hoarding and advertising.

AND WHEREAS the ADVERTISER has agreed to pay a monthly licence fee from the date of execution of these presents and to increase such payment by 10% on obtaining the necessary permission for erecting the structure and fixing the Board and writing the advertisement thereon.

AND WHEREAS the OWNER has agreed to the proposals.

NOW THESE PRESENTS WITNESSETH and the parties hereto agree as follows:

1. The ADVERTISER will obtain necessary sanction and permission from the authorities concerned for fixing two pillars of iron and steel within the open space of premises No. 54 Ganesh Chunder Avenue, Calcutta 700 013



on the North-Western corner and to fix the Board made of wood and tin of a size of 10 ft. wide and 20 ft. in height and to write on the Board such matters as are permissible under law for the purposes of advertising the products of the advertiser or the Advertiser's customers.

2. ADVERTISER will pay and bear all the costs, charges and expenses for the erection of the Board, writings and all rates taxes and levies payable in relation thereto.

3. The ADVERTISER will keep the OWNER harmless from and indemnified against all actions, proceedings, claims, losses damages and expenses for such erections, setting up of the Board for advertisements or any act of the ADVERTISER.

4. In consideration of the OWNER having agreed to allow the ADVERTISER to erect the pillars, fixing the Board and writing the advertising matters the ADVERTISER would pay to the OWNER a Licence fee of Rs. 10,000 per month in advance by the 10th day of each month commencing from May 2000.

5. The ADVERTISER will keep in deposit with the OWNER a sum of Rs. 1 lakh free from any interest by way of Security.

6. The ADVERTISER agrees that it will not display any objectionable matter or any matter which may cause annoyance to the public or in a manner which will cause nuisance to the locality or cause any injury to the building of the owner or to any next building.

7. The OWNER agrees to allow the authorised employees of the ADVERTISER and its authorised representatives to enter the said premises for erection of the poles and/or pillars, fixing of the board and writing the advertising matters on proper notice and during the hours that may be mutually agreed to without causing any inconvenience to the premises or to the neighbours.

8. The ADVERTISER shall maintain the said erection and advertising board in good condition and repair, make it absolutely safe for the inmates of the premises and others who may happen to be inside or outside the premises, with or without licence or any member of the public who may happen to be near the said Advertising Unit.

9. This AGREEMENT will be for a period of 5 years commencing from 15th May 2000 with the option of renewal for another five years at an enhanced licence fee to the extent of 30% of the then existing rate on terms and conditions to be mutually agreed upon.

10. The ADVERTISER agrees to pay all costs, charges and expenses and Stamp Duty, if any, for registering this Agreement.

11. The ADVERTISER may use Neon Signs or any other Visual Signs on the Board to be fixed or otherwise on the structure in a manner permissible under law and for this purpose make an arrangement to take electric connection from the OWNER'S lines with the permission of CESC Ltd. and having a sub-meter for that purpose at the cost and expenses of the

ADVERTISER and the ADVERTISER would be liable to pay the bills for the consumption of electricity, and other charges, according to the readings of the sub-meters.

12. The ADVERTISER hereby agrees and undertakes to attend to any repairs or any other defects within 24 hours of the complaint made by the OWNER or other aggrieved person and on failure to do so the OWNER will get the repairs done at the cost and expenses of the ADVERTISER which the ADVERTISER undertakes to pay to the OWNER within 3 days of the submission of the bills.

13. All disputes and differences arising out of or in relation to these presents or the subject-matter hereof shall be referred to the Arbitration of Mr. P.K. Lekhi whose decision shall be final and binding on the parties and in accordance with the provisions of Arbitration and Conciliation Act 1996.

IN WITNESS WHEREOF the parties hereto have executed these presents on the day, month and year first above-written.

Signed, sealed and delivered by  
Mr. ....  
pursuant to the Board Resolution  
dated ..... of ELH Ltd., the  
OWNER in the presence of:

Signature

Signed, sealed and delivered by  
Mr. ....  
pursuant to the Board Resolution  
of Advertising Co. Ltd., the  
ADVERTISER dated .....  
in the presence of:

Signature

### Agreement for Appointment of Sales Agent

THIS AGREEMENT is made on this 7th day of June 1999 BETWEEN Computer Company Ltd., a company registered under the Companies Act 1956 having its registered office at 7 N.S. Road, Calcutta 700 001 (hereinafter referred to as the COMPANY which expression shall unless the context requires otherwise include its successors) of the ONE PART and Mr. S. Tandon of 5 Bangalore Road, Bangalore, Karnataka (hereinafter referred to as the AGENT) of the OTHER PART.

WHEREAS the COMPANY is carrying on business as manufacturer of and dealer in Computers, Computer Hardwares and Computer Softwares for the last 10 years and selling its products both in domestic and export markets.

AND WHEREAS the AGENT was working with another company as the Chief Mechanic of the Computers and has acquired knowledge of repairs of

Hardwares and Softwares and is capable of rendering after sales service and maintaining Computers in good working condition.

AND WHEREAS the AGENT after leaving his employment has approached the COMPANY for agency to sell the products of the COMPANY on commission basis.

AND WHEREAS the AGENT has declared that he is not working for any other company and that he intends to work as agent for sale of computers and computer accessories as an independent contractor.

AND WHEREAS the COMPANY and the AGENT had discussions and negotiations relating to the sale of COMPANY'S products by the AGENT in the territories covered by the States of Karnataka, Kerala and Andhra Pradesh.

AND WHEREAS the parties herein have mutually agreed to the terms and conditions in regard to the sale of COMPANY'S products.

NOW THESE PRESENTS WITNESSETH and the parties hereby agree as follows:

1. The COMPANY hereby appoints the AGENT as the agent of the COMPANY in the States of Karnataka, Kerala and Andhra Pradesh for the sale of the COMPANY'S products including Computers, Computer Hardwares and Computer Softwares for a term of three years commencing from 1st July 1999 on terms and conditions mentioned hereinafter.

2. The AGENT shall:

- (a) use his best endeavours to promote and expand the sales of the COMPANY'S Computers, Hardwares and Softwares (hereinafter referred to as the "PRODUCTS") in the State of Karnataka, Kerala and Andhra Pradesh (hereinafter called the "TERRITORIES") to all potential purchasers thereof and work diligently to obtain orders therefor;
- (b) act loyally and faithfully and obey the orders and instructions of the COMPANY and if in any case it is not possible to obtain instruction in a particular matter to act in such a manner as the AGENT reasonably considers to be most beneficial to the interests of the COMPANY;
- (c) refrain from engaging or being interested directly or indirectly as the principal, AGENT, partner, director or employee in the production, sale or advertisement of goods of any description or kind or similar to or competitive with the products of the COMPANY without the prior written consent of the COMPANY;
- (d) not to take orders for the sale to any person of the products which he knows or has reason to believe are intended for re-sale outside the TERRITORIES without prior consent of the COMPANY;

- (e) refer to the COMPANY all enquiries for the products received from outside the territories as also from addresses in the territories for re-sale outside the territories;
- (f) take orders for sale of goods only subject to confirmation and acceptance by the COMPANY and on the usual terms and conditions;
- (g) not make any representation in selling the goods nor to give any warranties or concessions other than those contained in the COMPANY'S conditions of sale;
- (h) keep proper books of accounts and records of all enquiries and transactions relating to the products separate from other transactions outside the agency and submit reports from time to time to the COMPANY and allow the COMPANY'S authorised officer to inspect and take copies of such books of accounts and records;

3. The AGENT shall make market-survey and proper enquiries as to the financial stability of the intending purchasers of goods and furnish reports to the COMPANY. The AGENT shall attend and promote the sale of the products at all Sales Exhibitions and Trade Shows after properly apprising the COMPANY the particulars thereof.

4. The AGENT shall not assign, transfer or charge his rights under these presents and in all correspondence and commercial documents in relation to the products shall describe himself as the Selling Agent for the COMPANY'S products.

5. The AGENT shall defray all expenses of and incidental to the Agency, shall not make directly or indirectly any profit or take any benefit in the sale of the products and shall not divulge any information in relation to the COMPANY'S trade secrets or know-how or marketing technique or any method of manufacturing, selling or dealing in its products.

6. The AGENT agrees and covenants that the AGENT shall not act as the Selling Agent for any other company in Computer goods similar to the COMPANY'S products for three years within the said territories after termination of the present agreement.

7. The COMPANY shall at its own expense supply to the AGENT samples, patterns, catalogues, operating manuals, repairing manuals, particulars of parties and advertising materials as the COMPANY considers reasonably sufficient with a view to enable the AGENT to conveniently render after-sales-service to the purchasers of the products in the said territories.

8. Notwithstanding anything to the contrary contained herein the COMPANY reserves to itself its right:

- (a) to decline at its absolute discretion without giving any reason therefor any order or to submit any quotation or tender on any enquiry transmitted to the COMPANY by the AGENT;

- (b) to sell and supply the COMPANY'S products direct to customers in the said territories;
- (c) to transfer and assign its rights and obligations under this Agreement to any other concern after giving 15 days' notice to the AGENT.

9. It is agreed that if in the reasonable opinion of the COMPANY the AGENT is not producing adequate sales coverage in or through the said territories, the COMPANY may exclude a portion of the territories or otherwise vary the extent of the territories on prior notice to the AGENT.

10. In consideration of the services to be rendered by the AGENT the COMPANY will pay to the AGENT a commission of 10% on the invoice price of products sold in the territories upto a sale of Rs. 10 lakhs and thereafter 5% up to the sale of Rs. 20 lakhs and 2.5% on sale proceeds in excess of Rs. 20 lakhs. Such commission shall be paid on furnishing of accounts every three months.

11. The COMPANY shall reimburse every month actual expenses of travelling, advertisements, repairs to the computers sold and such other expenses as the AGENT might reasonably spend in relation to rendering of after-sales-service and promoting sales of the COMPANY'S products.

12. If any customer does not make payment or makes short-payment or returns the goods in respect of which the COMPANY has paid commission to the AGENT, the AGENT hereby undertakes and covenants to refund the commission received for such products.

13. In addition to any other rights herein or under the law, the COMPANY shall have the right at any time to give notice in writing to the AGENT terminating the Agreement forthwith if the AGENT commits a breach of any of the terms herein or it does any act of insolvency or the AGENT is prevented from performing his duties hereunder for 3 months for any reason whatsoever or the AGENT is guilty of any conduct prejudicial to the interests of the COMPANY or the AGENT purports to assign the burden or benefit or charge the benefit of this Agreement.

14. After termination of this Agreement the AGENT shall at his own expenses promptly return to the company all samples, patterns, catalogues, advertising materials, specifications and other materials, documents and papers relating to the business of the COMPANY which the AGENT might have in his possession or under his control.

15. The waiver by the COMPANY of any breach of any of the terms of this Agreement shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any subsequent breach.

16. There are no other promises, terms and conditions other than those contained in these presents.

17. This Agreement shall be renewable after the expiry of three years on the terms and conditions which might be mutually agreed upon.

IN WITNESS WHEREOF the parties have executed these presents on the day, month and year first above-written.

Signed, sealed and delivered by  
Mr. .... pursuant to  
Board Resolution of Computer Co. Ltd.  
dated 5th June 1999 in the presence of:

Signature

Signed, sealed and delivered by Mr. S.  
Tandon, the AGENT in the presence of:

Signature

### Agreement between Manufacturer and Dealer

THIS AGREEMENT is made on this ..... day of ..... 1999 BETWEEN AB carrying on business at ..... under the name and style of AB & Co. (hereinafter called the MANUFACTURER which term shall include its successors-in-interest) of the One Part and CD carrying on business at ..... (hereinafter called the DEALER which term shall include his successors and assigns) of the Other Part to the following effect:

1. The MANUFACTURER shall supply and the DEALER shall sell the whole of the seller's existing stock of ..... and other goods to be manufactured hereafter without any exception or reservation thereof.
2. The goods to be supplied shall be sold by the DEALER strictly at listed prices to retailers for which he will be entitled to a commission of .....% on all listed prices exclusive/inclusive of all railway freight (*as may be agreed*).
3. In case any portion of the goods shall remain unsold for over ..... months after supply and delivery, the DEALER shall return the stock to the MANUFACTURER.
4. The DEALER guarantees a minimum sale of the value of Rs. .... per year. In case the same falls short by 25% or more for any consecutive two years or more, this agreement may at the option of either party be rescinded.
5. The MANUFACTURER shall not, during the continuance of this agreement, appoint any other wholesale DEALER in respect of identical or renovated products nor make nor supply nor to anyone sell any portion thereof other than the DEALER.
6. Subject to what is stated in paragraph 4 hereof, this agreement shall remain in force for five years subject to the option of either party as provided therein and also subject to the condition that the DEALER shall not, during the currency of this agreement sell or encourage the sale of identical or similar products of any other manufacturer.
7. Any differences and disputes relating to these presents or the rights or obligations of the parties hereto in relation to transactions covered by

this agreement or arising out of or in relation to these presents shall be referred to the sole arbitrator Mr. XY for decision whose award shall be final and binding on the parties.

IN WITNESS WHEREOF the parties hereto have executed these presents on the day, month and year first above-written.

Signed, sealed and delivered by AB the manufacturer in the presence of:

Signed, sealed and delivered by CD the dealer in the presence of:

### Agreement between Merchant and Travelling Agent

THIS AGREEMENT is made on this ..... day of ..... 1999 BETWEEN AB son of ..... residing at ..... (hereinafter called EMPLOYER which term shall include his successors) of the One Part and CD son of ..... residing at ..... (hereinafter called the AGENT) of the Other Part.

WHEREBY IT IS AGREED as follows:

1. In consideration of good and faithful service to be rendered, the EMPLOYER hereby appoints the said CD as travelling agent for ..... years from the date hereof in the employer's business of manufacture and sale of detergents, on terms hereinafter mentioned.

2. The AGENT will, during the said period, diligently and faithfully serve the EMPLOYER in such capacity as aforesaid and will at all times obey and carry out the instructions of the EMPLOYER in regard to such service and all affairs ancillary or incidental thereto.

3. The AGENT will travel in the districts of, etc., and in such other district or districts as the EMPLOYER may at any time require for introducing new customers and/or pushing the sale of the products of the employer its trade or business.

4. The AGENT shall use his utmost endeavours to secure orders for the EMPLOYER'S goods and shall at regular intervals call on and report to the present and also future customers of the EMPLOYER in the district or districts concerned and also endeavour his best to secure fresh order or orders for such goods and to establish a market thereof and shall pass on all such orders obtained by him to the employer for execution without the least delay.

5. The AGENT shall at all times keep full and accurate accounts of all orders secured by him and of all other transactions and things done by him in connection with the said business, and forward to the EMPLOYER daily a statement of all business done by him during each day, specifying the persons or firms on whom he has called and the orders secured and moneys collected and spent by him.

6. If so directed by the EMPLOYER, but not otherwise, the AGENT shall collect debts and receive money on behalf of the EMPLOYER and give receipts for the same. Any money received by the AGENT shall be transmitted by him to the EMPLOYER on the day of receipt.

7. The AGENT will not at any time except under legal process divulge any trade or business secrets relating to the said business of the EMPLOYER or any customer or any AGENT of the said business which may become known to him by virtue of his position as AGENT or otherwise however save in so far as such disclosures are necessary in the interest and for the benefit of the said business and will be true and faithful to the EMPLOYER in all dealings and transactions whatsoever relating to the said business.

8. All moneys received by the AGENT on any weekday shall be deposited with the EMPLOYER on or before the close of office of the EMPLOYER.

9. During the continuance of his service the AGENT shall not serve any other concern nor be directly or indirectly interested therein and will not solicit orders in any other district than those specified in cl. 3 hereof without direction in writing of the EMPLOYER.

10. As consideration for the services to be rendered, the EMPLOYER will pay the agent a salary of Rs. .... per annum by monthly instalments of Rs. .... each, the first such instalment to be paid on the ..... day of ..... next, and will also pay to him a commission on the moneys actually received by the EMPLOYER in respect of all original orders obtained by the AGENT, at the rate of ..... per cent, and in respect of all subsequent orders for such customers at the rate of ..... per cent. The EMPLOYER shall have full discretion as to executing or non-executing any such order or orders secured without making himself liable to damages on that account in which event the AGENT shall have no claim against the EMPLOYER.

11. In addition to what is stated in cl. 10 hereof, the EMPLOYER shall also pay to the AGENT a fixed sum of Rs. .... per month to cover all expenses of travelling, board, lodging and otherwise (or the actual expenses incurred by him in connection with the business of the EMPLOYER).

12. In the event of the AGENT falling sick or being otherwise prevented from doing his work by reason of any accident or otherwise, he shall at the first instance be entitled to such leave with full pay as is provided for by the service rules governing the trade of the EMPLOYER whether of its own or of allied industries, but if his illness or incapacity is found to be incurable then the EMPLOYER may determine this agreement on payment of a sum equivalent to one .....s salary, in addition to all arrears of salary and commission earned by him at the date of such determination, provided that if the agent is dismissed for misconduct, the AGENT shall not be entitled to anything in excess of arrears of salary and commission as aforesaid.

13. Either party may at any time determine this agreement by giving to the other ..... calendar months' notice in writing, provided the



EMPLOYER may, in the event of any breach by the AGENT of this agreement, determine the same without notice or payment in lieu of notice.

14. After the determination of this agreement, the AGENT shall not for ..... years, directly or indirectly, carry on any similar trade and business or be interested or concerned in any way within any district or districts in which the agent has at any time travelled on behalf of the EMPLOYER, in any business similar to that carried on by the EMPLOYER at the date of such determination, and shall not solicit the customers of the EMPLOYER for orders.

IN WITNESS WHEREOF the parties hereto have signed these presents on the day, month and year first above-written.

Signed, sealed and delivered by AB  
in the presence of:

Signed, sealed and delivered by CD  
in the presence of:

### Agreement between Businessman and Manager

THIS AGREEMENT is made on this ..... day of ..... BETWEEN AB son of ..... residing at ..... (hereinafter called the EMPLOYER which term shall include his successors) of the One Part and CD son of ..... residing at ..... (hereinafter called the MANAGER) of the Other Part.

By THESE PRESENTS it is hereby agreed as follows:

1. In consideration of true, faithful and loyal service to be rendered, the EMPLOYER appoints the said CD as MANAGER in his trade carried under the name and style of ..... at ..... on terms hereunder mentioned.

2. The appointment will be effective from the day of ..... and the MANAGER will be paid a sum of Rs. .... per month as his salary with yearly increment of Rs. .... up to the limit of Rs. .... depending on faithful and efficient service.

3. The MANAGER shall keep in deposit with the EMPLOYER a sum of Rs. .... as security deposit on which he will be entitled interest at .....% per annum to be repaid at the end of his service under the EMPLOYER after adjustment of all his accounts.

4. The MANAGER shall, during the continuance of his service under this agreement, properly and faithfully serve the EMPLOYER in such capacity as aforesaid, and will always devote his whole time, attention and energy honestly and diligently in managing, superintending and improving the

said business to the utmost of his power, skill and ability, and will do and perform all such services, acts, matters and things connected therewith as the EMPLOYER shall from time to time direct.

5. The MANAGER will not at any time, except under legal process, divulge any trade or business secret relating to the said business of the EMPLOYER or any customer or agent of the said business, which may become known to him by virtue of his position as MANAGER or otherwise, save in so far as such disclosure shall be necessary in the interest and for the benefit of the said business and will be true and faithful to the EMPLOYER in all dealings and transactions whatsoever relating to the said business.

6. The MANAGER will keep and maintain or cause to be kept and maintained as may be approved by the EMPLOYER all files, documents and papers as also all such books of account or other books as the EMPLOYER shall provide for that purpose, and will enter, or cause to be entered therein, the usual accounts or particulars of all goods, merchandise, articles and things, bought, received and sold or delivered upon credit or otherwise in the course of the said business, and the rates and prices at which the same shall be so bought, received, sold or delivered in the course of the said business, and will at all times render faithful information concerning the said business and all transactions therein to the EMPLOYER, and furnish him from time to time with accurate accounts of all business dealings and also with a daily statement of the bank balance of the said business.

7. The said books of account shall all be kept at the office of the said business at, etc., and shall remain open at all reasonable times to the inspection of the EMPLOYER and any person authorised by him in writing in that behalf.

8. All moneys received by the MANAGER on any weekday, except such sum as shall be required to be retained as petty cash, shall be deposited in the account of the EMPLOYER at ..... Bank, on or before the close of the business hours and every payment exceeding Rs. .... made by the MANAGER on behalf of the said business shall be made by cheque drawn on the said bank.

9. The MANAGER shall, on completion of his service for one year, be entitled to ..... weeks' holiday during the following year and to casual leave not exceeding 15 days per year and in case of sickness to a further leave for another month per year, all with full pay and other benefits of service.

10. The MANAGER shall observe the rules of conduct of service of the establishment as may be in force from time to time.

11. During the continuance of his service, the MANAGER shall not serve under any other concern nor be directly or indirectly interested (except as a shareholder of any limited liability company, whose business may not compete with that of the EMPLOYER).

12. In the event of illness of the MANAGER, or other cause incapacitating him from attending to his duties for ..... consecutive weeks, the EMPLOYER may determine this agreement without notice on payment to the MANAGER of Rs. .... in lieu of notice, in addition to all arrears of salary and commission calculated up to the date of such determination.

13. Either party may determine this agreement by giving to the other ..... calendar months' notice in writing, but without prejudice to any right or claim which may have then accrued to either of the said parties by virtue hereof.

14. If the MANAGER enters into any plot or conspiracy against the EMPLOYER or misappropriates the funds and assets of the trade or commits a breach of any of the stipulations hereof, or shall commit an act of insolvency or compound with his creditors or if he otherwise misconducts himself (of which the EMPLOYER shall be the sole judge), it shall be lawful for the EMPLOYER to dismiss the MANAGER summarily from his employment without any such notice or payment.

15. After determination of this agreement, the MANAGER shall not for ..... years thereafter, be directly or indirectly interested in any business of the kind carried on by the EMPLOYER within a radius of ..... miles from the places of business of the EMPLOYER.

IN WITNESS WHEREOF the parties hereto have signed these presents on the day, month and year first above-written.

Signed, sealed and delivered by AB  
in the presence of:

Signed, sealed and delivered by CD  
in the presence of:

### Agreement with Agent for Procuring Purchaser

From AB (*intended vendor*)

To CD (*agent*).

Re: Premises No. ....

Dear Sir

In consideration of your procuring a purchaser by your initiative and labour for my property known as, etc., before the ..... day of ..... at the price not below the sum of Rs. ...., or such less price, if any, to which I may hereafter agree, I agree to pay you a commission at the rate of ..... per cent on the amount of the purchase money actually received by

me. You shall not be entitled to any commission on such part of the said purchase money as shall be paid to the mortgagee to redeem property, such part not exceeding Rs. .... in all. All unpaid sums kept outstanding by the purchaser on security of the said property or otherwise shall be deemed to have been actually received by me. I shall not engage nor appoint any other agent or agents for procuring a purchaser or purchasers so long as the authority hereunder given to you will remain valid. The above-mentioned commission shall not be payable in case the intended sale falls through or otherwise does not materialise for any reason whatsoever. This authority shall remain valid until ..... day of ..... when it shall automatically lapse and stand cancelled.

I agree and accept  
CD

Yours faithfully  
AB

### Agreement between Principal and Monopoly Agent

To

.....

Re: Works Order No. .... U/S. .... of .....

Dear Sirs

Referring to my personal discussions with your Mr. .... I write to confirm that I have had this day irrevocably appointed you as my sole and monopoly agent for the purpose of financing, clearing, lifting and handling the goods to be indented against Works Order quoted above and I hereby further nominate and appoint you as my constituted attorney in that behalf on *inter alia* the following terms and conditions:

1. That as handling agents you would operate the above indent and arrange with the manufacturers for early despatch of the goods and delivery thereof direct to you or your nominee (which I hereby consent) for which purpose you would arrange for the requisite finance, including carriage and delivery charges, at the first instance, all to be reimbursed out of the proceeds of sale thereof as hereunder contemplated.

2. You will furnish me with regular reports about the progress made by you, keep and maintain proper account of all receipts and expenses which shall be available for my inspection, once a week.

3. That for the purpose of handling and lifting the goods, you would also represent me to all intents and purposes before the manufacturers, *viz*, ..... in all its offices and also before other appropriate authorities including Banks, Post Offices, Railways, Roadways and Carrying Companies etc., so as to make the goods to be indented readily available to you straightway and to negotiate for and complete the sale and disposal thereof

in lots or altogether at price or prices acceptable to you directly or through brokers and/or agents. You will also collect and keep in your custody all proceeds of such sale or sales and give good, valid receipts and discharges thereof.

4. You will immediately be intimated of the receipt of despatch, advice from the producers by me and when you are to make and/or arrange for the requisite payment and obtain release of the necessary documents (and storage of the goods at your godown for which purposes you are also hereby expressly authorized) which shall be endorsed and/or transferred by me simultaneously in your favour.

5. If, however, there occurs any demurrage or damages to the goods due to any act, default or negligence on your part in making and/or arranging the payments and/or in obtaining release of documents, the same will be borne and paid by you personally. Similarly, I shall remain liable for any loss or mischief to the goods, if those are caused by any act, default or negligence or error in judgment on my part. Such loss shall be debited to my account with you.

6. I shall deliver or cause to be delivered to you such further or other deeds or writings if any when necessary addressed to appropriate authorities to enable you to pay the requisite money and obtain delivery of documents and also the goods concerned and shall not take any delivery of the documents nor the goods myself nor authorize anybody to do the same on my behalf or charge nor encumber them or any portion thereof in any way.

7. In case of any short delivery or non-delivery of the goods, you shall have the right to lodge claims and sue the railways or roadways or carrying companies for necessary reliefs and recover damage or compensation on that account.

8. Under all circumstances, the relative documents will be handed over to you directly by the manufacturers immediately against payment and I shall remain responsible to reimburse you for all losses, suffered on account of any act, negligence, default on my part in effecting delivery of the documents or withholding the same and otherwise dealing with the materials without your consent in writing first had and obtained, which consent you may refuse in your absolute discretion.

9. You will continue to act as my handling agents until the entire consignment (which is at present decontrolled) is sold by you.

Yours faithfully

**Agreement between a Cinema Artiste and Producer**

AN AGREEMENT made this the ..... day of ..... 2000 BETWEEN  
 Mr. .... son of etc. .... the proprietor/partner .....

a film producing concern named ..... having its office at ..... (hereinafter called the PRODUCER) of the One Part and CD son/wife/daughter of etc..... of ..... Road ..... (hereinafter called the ARTISTE) of the Other Part.

In consideration of good, faithful and diligent services to be rendered and the covenants and conditions to be observed and performed, the PRODUCER hereby engages and appoints the ARTISTE (who has passed the requisite sound and screen tests) as ..... in the film or picture named and styled as ..... to be produced by the PRODUCER (or in such films or pictures as may be produced from time to time) on *inter alia* terms hereunder mentioned, *viz.*:

1. That the ARTISTE will maintain himself/herself physically fit and act in any role to be selected by the director, answer and obey all notices and calls and regularly and punctually attend at the studio and/or the office of the PRODUCER or such other place or places as required by the PRODUCER ..... for rehearsals and the shootings of the said film and other purposes in connection therewith and observe and submit to all rules and regulations of the establishment in force from time to time in that behalf.

2. The ARTISTE shall devote exclusively and work solely for the PRODUCER during the subsistence of this agreement and shall on no account act in any capacity elsewhere nor pose for photograph or be interested in any other shooting free or on payment.

3. That the ARTISTE shall whenever required speak, act, sign, dance and play on instruments as the case may be and act and perform to the best of his/her ability, also allow the PRODUCER to take her photographs in any costumes, dress and poses, and to get her voice recorded either on tape, gramophone, disc, etc. and do all other acts, deeds and things, make all such services available as may be required by the producer for completion of the said film and exploitation thereof.

4. The PRODUCER shall be the sole proprietor of ..... and so entitled to the copyright and other rights of all pictures, photographs, both positive and negative, sketches, records of songs and other music in which the ARTISTE shall appear in connection with production and the ARTISTE shall have no claim whatsoever to any one of them on any account.

5. The ARTISTE shall not object to his/her name or any other name chosen by the PRODUCER as her film name or his/her photographs to be printed and published in all advertisements, posters, cards, booklet and other literature as desired by the PRODUCER.

6. As remuneration for all the services to be rendered, the PRODUCER shall pay a sum of Rs. .... to the ARTISTE of which Rs. .... is to be paid simultaneously with the execution of this agreement and a sum of

Rs. .... when the shootings of the film have been completed and a similar sum of Rs. .... immediately after the day of release of the said film. The total sum of Rs. .... thus to be paid under this contract constitutes the full consideration of the agreement paid or to be paid by the PRODUCER to the ARTISTE. The ARTISTE shall have a lien on the picture for all amounts unpaid.

7. In case any prearranged shooting engagement or rehearsal has to be cancelled, postponed or otherwise become infructuous owing to any act, default or negligence or inefficiency, irregularity on the part of the artiste or if he/she otherwise fails and/or neglects to perform his/her part of the agreement in the manner provided herein, he/she shall be liable for all costs thrown away and also further for all loss or damages sustained by the PRODUCER including loss of goodwill of the PRODUCER in addition to the termination of his/her services under this contract at the option of the PRODUCER. This clause, however, will not be operative in cases of absence on the part of the ARTISTE on medical grounds certified by a qualified doctor or in case where he/she suffers any injury in course of employment while in performance of his/her part under this agreement.

8. In the event of shootings at any place or places outside the studio, the PRODUCER shall bear and pay for all costs, charges and expenses of travelling by ..... rail, car, bus or air at the discretion of the PRODUCER and shall also arrange for his/her free board and lodging.

9. In the event of loss or deterioration of health or personal injuries to the ARTISTE by reason by fire accident or any act of default or negligence on the part of the PRODUCER in course of shooting or its rehearsal but not arising out of any wilful act, default or negligence on his/her part, the PRODUCER shall be liable to pay his/her compensation as provided by the law in force from time to time.

10. In case any differences or disputes shall arise between the parties hereto in relation to these presents or the rights or obligations of the parties the same shall be referred to Mr. Z for decision and award which shall be binding and conclusive upon the parties. The provisions of the Arbitration and Conciliation Act 1996 and any modifications thereof shall be applicable.

IN WITNESS WHEREOF the parties hereto have executed these presents on the day, month and year first above-written.

Signed and delivered by AB  
the PRODUCER

Signed and delivered by CD  
the ARTISTE

WITNESS:

## Publicity Agreement with a Cinema for Advertisement by Slide or Film

THIS AGREEMENT is made this ..... day of ..... 1999 BETWEEN AB son of ..... residing at ..... (hereinafter called the ADVERTISER) of the One Part and Joy Cinema situate at ..... represented by its proprietor CD son of ..... residing at ..... (hereinafter called CINEMA) of the Other Part.

WHEREAS the ADVERTISER is the sole proprietor of the Trade and business carried on under the name and style of AD Co. at..... AND WHEREAS for the popularity and/or publicity of the trade the ADVERTISER is desirous of advertising his products and/or business through the medium of cinema slides/cinema films and for that purpose approached the owner of the CINEMA who on terms and conditions hereunder mentioned has agreed to do so at the cinema aforesaid.

NOW THEREFORE THIS AGREEMENT WITNESSES as under:

1. This AGREEMENT will remain in force for a period of ..... years from the date of its execution.

2. That the ADVERTISER shall supply the CINEMA with a standard size slide measuring ..... inches by ..... inches containing exclusively matters and things relating to his said trade or business previously approved by the ..... CINEMA (which the CINEMA may reject at its discretion without assigning any reason) and the said CINEMA shall exhibit the said slide by projecting the same on its screen for not less than ..... seconds at a time in each show (or twice or thrice per week as may be agreed by and between the parties).

That the ADVERTISER shall supply ..... millimetre standard size film of length not more than ..... metres containing matter exclusively relating to his said trade or business for advertisement duly certified by the Board of Censors for exhibition which shall be exhibited by projecting the same on the screen of the said CINEMA at each show (or twice or thrice as may be agreed).

3. That the ADVERTISER shall pay to the said CINEMA for the exhibition of the advertisement a sum of Rs. .... only for each day the said slide/film is exhibited; such payment shall in all cases be made in advance weekly but not in cases where the CINEMA remains closed and the slide/film is not exhibited.

4. That the CINEMA shall not be liable to any damage to the slide/film due to natural wear and tear, heat or defect in the projector, but shall take every reasonable precaution for the safety and safe custody of the slide/film so long it is in the possession thereof. Any damage to the slide/film



necessitating its replacement or resulting in its loss shall be reported immediately to the ADVERTISER and no charges shall be made for its exhibition for the period it cannot be projected for any reason whatsoever.

5. That the ADVERTISER shall indemnify and keep indemnified the CINEMA, its proprietor, partner, servants, agents and business against all claims for damages and/or compensation or fine arising out of any action or prosecution at the instance of third parties or the authorities by reason of any prejudicial or injurious matter contained in the slide/film or its exhibition.

6. That the CINEMA shall have full right and liberty to refuse exhibition of the slide/film without assigning any reason and without any notice and without being answerable for any loss or damages caused to the advertiser.

7. That the CINEMA shall return the said slide or film to the ADVERTISER on determination of this agreement or when the exhibition is stopped on account of any injunction obtained by any third party otherwise against its exhibition in cases where any objection to its exhibition is raised by the authorities.

8. If the ADVERTISER shall become insolvent or compounds with his creditor or fails and/or neglects to make the weekly payment, the CINEMA shall be entitled to discontinue further exhibition without prejudice to its right to recover any sum due by the ADVERTISER.

9. In case any dispute or difference shall arise between the parties during the pendency of this agreement or after its termination or earlier determination as to its meaning and construction or to any other matter or thing arising directly or indirectly under this contract then and in such an event the same shall be referred to arbitration and the final decision of a single arbitrator to be mutually agreed between the parties who alone shall consider and determine the same and whose decision or award shall be binding and conclusive upon both the said parties, and this clause shall be deemed a submission within the meaning of the Arbitration and Conciliation Act 1996 or statutory modification or re-enactment thereof.

IN WITNESS WHEREOF the parties hereto have executed these presents on the day, month and year first above-written.

Signed and delivered by AB

Signed and delivered by CD  
representing the CINEMA

WITNESS:

## Loan Agreement re. Production of a Picture

Dear Sir

Re: .....

With reference to the sum of Rs. .... advanced by you this day under a hundi drawn in your favour and also all costs of realization thereof as between attorney and client, I am writing to you this letter to record the transaction as follows:

1. I am the sole producer of the above picture now under production at ..... and the same is free from all encumbrances, lien and charges and that I alone am entitled to enter into this agreement.

2. I shall utilize the said sum of Rs. .... in the production, preparation and completion of the said picture only.

3. Subject to the provisions of cl. 7, I shall deliver to you all prints (negative and positive copies) duly passed by the Board of Censors at my own costs and expenses after completion of the film and you shall keep the same in Government-approved places at my costs. If you do otherwise and if any loss is occasioned to me you will be held liable.

4. The said picture together with all prints, both positive and negative, and all duplicate and other copies and all moneys due and payable by exhibitors and other persons on account of hire or otherwise in connection with the said film and all the deposits in bank, furniture, fittings, tools, implements, dress materials, playwrights and other properties, assets and credit connected with the said picture shall stand charged in your favour as security for due repayment of the moneys due by me to you under these presents.

5. Subject to the provisions of cl. 7, I shall keep the said film with all accessories duly insured against loss or damage by fire, theft, etc., with some insurance company approved by you and hand over to you receipts obtained by me as and when payments are made for insurance premiums.

6. I shall not appoint any distributor or agent or otherwise part with the said picture except with your consent.

7. As soon as any distributor is appointed as per terms of cl. 6 or if you are asked to deliver the film directly to any show house you will have to release all prints (negative and positive copies) delivered to you in terms of cl. 3 provided always that all the conditions in this agreement will not be in force if you are paid the sum of Rs. .... plus all interest due thereon. If no money is paid to you at the time of release I undertake and authorise you to accept all sale proceeds till your dues are fully paid off.

8. If in working out this agreement or in any matter relating to this transaction, any dispute arises, each party will be entitled, without interfering

in any way with the production, publication, or exhibition of the film in question, to notify the other party for referring the dispute to arbitration in accordance with the Arbitration and Conciliation Act 1996.

9. If due to your laches in any way, I suffer loss, you will be held liable to compensate me.

Yours faithfully

### Agreement between a Solicitor and Articled Clerk\*

THIS ARTICLED CLERKSHIP DEED, made the ..... day of ..... 20..... BETWEEN AB of etc., a solicitor of the High Court ..... (hereinafter called the SOLICITOR) of the First Part, and CD of etc., (hereinafter called the ARTICLED CLERK) of the Second Part:

WITNESSETH, and it is hereby agreed and declared as follows:

1. The ARTICLED CLERK, of his own free will and accord hereby places and binds himself to the SOLICITOR as a candidate to serve under him honestly and faithfully in his profession of a solicitor from the date hereof for the term of ..... years.

2. The ARTICLED CLERK do hereby covenants with the SOLICITOR as follows:

- (i) That the ARTICLED CLERK will faithfully and diligently serve the SOLICITOR as his assistant and will not at any time cancel, spoil, destroy, waste, spend nor tamper with or destroy or do any other mischief to any of the books, papers, writing, stamps or other property belonging to the solicitor or his firm or to any of his clients.
- (ii) That the ARTICLED CLERK shall not serve under any other SOLICITOR nor in any other commercial or industrial firm or company nor participate in any trade or business nor otherwise carry on any business in competition with that of the SOLICITOR.
- (iii) That the ARTICLED CLERK will, at all times during the said term of article period, preserve the secret of the SOLICITOR and his firm, and readily and cheerfully obey and execute the lawful and reasonable commands of the SOLICITOR and his partners, behave properly with the SOLICITOR and his partners and their staff employed by them and their clients and will not absent himself nor keep aloof from his duties at any time during the said term without the previous consent of the SOLICITOR, but will, from time to time, and at all times during the said term, conduct himself with all due loyalty, obedience, diligence, honesty and propriety.

\* May be adapted to suit any other employer.

3. That in case the ARTICLED CLERK shall commit a breach of the foregoing covenant or if the solicitor or his firm shall sustain or suffer any loss, damage or prejudice by reason of any wilful act, default, neglect or improper conduct on his part, then and in such an event the articled clerk shall be liable to indemnify the solicitor and his firm on that account.

4. In consideration of the foregoing covenants and of the sum of Rs. .... now paid as premium to the SOLICITOR (the receipt of which sum the solicitor, hereby acknowledges), the SOLICITOR hereby covenants with the ARTICLED CLERK that the SOLICITOR will accept and take the ARTICLED CLERK as his assistant and will by best manner, and the utmost of his skill and knowledge give lessons on and teach and instruct him or cause to be taught and instructed in the practice or profession of a SOLICITOR, and also will give him all reasonable facilities to learn the work of a SOLICITOR and allow him while serving under these articles to study the course of legal education at the Law College as provided or approved by statute in force from time to time.

5. The SOLICITOR will at the expiration of the said term use his best endeavours to cause him to be admitted and enrolled as a solicitor of the High Court, provided the clerk shall have well, faithfully and diligently served his said clerkship, and shall have successfully passed all such examinations as articled clerks are by law or custom bound to pass before being admitted to practise as SOLICITORS.

6. The SOLICITOR hereby further covenants that if the SOLICITOR or the clerk dies within the first three years of the said term, then the SOLICITOR or his representatives will repay to the ARTICLED CLERK or his personal representative such portion of the said premium of Rs. .... as is hereinafter mentioned (that is to say).

- (i) If such death happens before the expiration of the first year of the said term the sum of Rs. ....
- (ii) If such death happens after the expiration of the first year and before the expiration of the second year of the said term the sum of Rs. .... and
- (iii) If such death happens after the expiration of the second year and before the expiration of the third year of the said term, the sum of Rs. ....

IN WITNESS, the SOLICITOR and the ARTICLED CLERK have hereunto set and subscribed their respective hands and seals the day, month and year first above-written.

Signed, sealed and delivered

**Agreement between Master and Workman**

AN AGREEMENT made the ..... day of .....20 ..... BETWEEN AB of, etc. (hereinafter called the EMPLOYER) of the One Part and CD of etc., (hereinafter called the WORKMAN) of the Other Part.

WHEREBY IT IS AGREED as follows:

1. In consideration of good and faithful service promised to be rendered and the duties to be performed and the covenants and conditions to be observed and fulfilled by the workman the EMPLOYER has appointed the WORKMAN as his assistant and/or to serve under him in his trade or business of export of goods on *inter alia* terms and conditions as follows:

2. The WORKMAN will serve the EMPLOYER as an assistant for a period of..... months (*or* years) from the ..... day of ....., and will do, execute and perform with all due despatch and punctuality according to the best of his intelligence, skill and ability, all such works as the EMPLOYER shall require him to do in such capacity and at all times, will conduct himself and behave honestly, faithfully and properly in the course of such service towards the EMPLOYER, his customers and his other workmen.

3. The WORKMAN will in no case during the continuance of this agreement (and even at any time thereafter) serve under any person or persons or company or firm carrying similar trade or business or himself carry on or be otherwise interested in any trade or business similar to and identical with that now carried on by the employer within a radius of five miles from the business premises or from its the then place or places without the written consent of the EMPLOYER.

4. The EMPLOYER will pay the WORKMAN a weekly *or* monthly wages of Rs. ...., payable on Saturday of every week (*or* on the last day of every month) so long as he shall do his duties faithfully, honestly and diligently and/or otherwise shall duly fulfil the terms of the agreement on his part herein contained.

5. If the WORKMAN shall make himself absent from the service of the EMPLOYER without notice or leave of absence or be found guilty of misconduct or commit any breach of this agreement or any act of indiscipline, it shall be lawful for the EMPLOYER to dismiss him summarily forthwith without prejudice to his other rights and remedies as against him when and in such an event he shall lose and forfeit all wages which may then be due to him, but if this agreement be otherwise determined as hereinafter provided, the WORKMAN shall be entitled to the said wages up to the time of such determination.

6. If the WORKMAN shall at any time be incapacitated by illness or accident arising out of any act, default, negligence on the part of the owner or other unavoidable causes, from efficiently performing his duties pursuant to this agreement, his wages shall not be payable during the time of such incapacity,

except according to the provisions of the Workmen's Compensation Act or any other law in force.

7. Either party may determine this agreement at any time by giving to either of them ..... days' previous notice in writing for that purpose.

IN WITNESS WHEREOF the parties hereto have signed these presents on the day, month and year first above-written.

Signed, sealed and delivered by AB

Signed, sealed and delivered by CD  
in the presence of:

### Agreement between Master and Domestic Servant

In consideration of good, faithful and honest service promised to be rendered, the undersigned AB of, etc., (MASTER) hereby agrees to appoint CD of, etc., (SERVANT), as domestic servant at the monthly wages of Rs. .... and I, the undersigned CD, hereby agree to serve the said AB honestly, soberly and faithfully at all times and in all respects and obey all his commands during my service, and conform to the rules of his establishment and conduct myself with propriety towards him, his family and friends and guests and not to absent or otherwise keep aloof from such service at any time without leave.

This agreement may be terminated at any time by either party giving the other one month's notice, or on payment by the said AB of a month's wages in advance, except in case of any act of indiscipline or breach of duty or misconduct on the part of the said CD when and in such an event notice to terminate such service may forthwith be given by the said AB without payment in lieu of notice or compensation whatsoever.

(Date)

AB

CD

### Agreement between Parent and Resident Governess

THIS AGREEMENT made the ..... day of ..... BETWEEN AB of, etc., (hereinafter called the EMPLOYER) of the One Part and CD of etc., (hereinafter called the GOVERNESS) of the Other Part. WHEREBY IT IS AGREED as follows:

1. The EMPLOYER will employ the GOVERNESS to take care of and look after moral welfare, discipline, good habits and health of the children and

enrich their mind with other accomplishments and best thoughts and teach them in such branches of arts and science and general education as are usually required by or given to children of their respective ages.

2. The hours of instructions shall be ..... hours daily excluding Sundays or other holidays as shall be fixed by the employer.

3. The GOVERNESS shall take sole charge of the said children between the hours of ..... and ..... each day, except during the vacation and impart education to them.

4. The GOVERNESS shall be entitled to a .....’s continuous vacation in each year at such time as the EMPLOYER shall approve.

5. In consideration of the service so to be rendered as aforesaid, the EMPLOYER will pay to the GOVERNESS an annual sum of Rs. .... as her salary by quarterly or monthly payments of Rs. .... each and a further sum of Rs. .... per week for her washing allowance.

6. The EMPLOYER shall provide the GOVERNESS with suitable accommodation with necessary furniture, fittings, etc., and also books and instruments for coaching the children.

7. The GOVERNESS will duly and faithfully perform the duties aforesaid during her engagement to the utmost of her ability, and conform in all respects to the reasonable requirements of the EMPLOYER or his wife and the rules and regulations of his establishment.

8. The GOVERNESS shall accompany and will never refuse to accompany the EMPLOYER to any place or places wherever the EMPLOYER shall be staying with the children.

9. The GOVERNESS shall be entitled to one month’s privilege leave and sick leave not exceeding 30 days in the aggregate with full pay during the continuity of her service under the EMPLOYER and not otherwise.

10. This agreement may be determined at any time by either party by giving either of them ..... month’s notice in writing. PROVIDED, HOWEVER, if the GOVERNESS fails and/or neglects to take proper care of the children to the reasonable satisfaction of the EMPLOYER or does any act jeopardising their mind, health, safety or education, then and in such an event the EMPLOYER shall be entitled to dismiss her forthwith upon payment of her salary up till date irrespective of the service of any notice upon her.

IN WITNESS, etc.

Signed, sealed and delivered

AB

CD

## Agreement between a School and a Teacher

THIS AGREEMENT made the ..... day of ..... 2000 BETWEEN AB School represented by its President/Secretary of, etc., (hereinafter referred to as the SCHOOL) of the One Part and CD of etc., (hereinafter called the TEACHER) of the Other Part. WHEREBY IT IS AGREED as follows:

1. In consideration of efficient service as a qualified teacher, offered by the TEACHER, the SCHOOL hereby engages the TEACHER to instruct the pupils of the SCHOOL at, etc., in such subjects as the SCHOOL shall from time to time prescribe (*or state the subjects*), and also to take such part in the internal organisation and discipline of the said school as it shall from time to time direct.

2. The SCHOOL shall pay the TEACHER, during the continuance of this agreement, a basic salary of Rs. .... per year (or a salary commencing at the rate of Rs. .... per year with annual increments of Rs. .... a year subject to a maximum salary of Rs. .... a year. Such salary shall be paid by equal instalments on the expiry of the month for which the same is due or before the 7th of every following month.

3. The TEACHER shall also be entitled to other payments, *e.g.* gratuity, dearness allowance, etc., as may be prescribed by the rules and in the absence thereof by rules governing Government institutions in that behalf unless otherwise provided therein simultaneously with his salary as aforesaid.

4. The TEACHER shall observe strict discipline, attend the classes regularly and punctually and impart such lessons and instructions, as the Secretary/Headmaster shall allot to him from time to time, all through school hours and also attend tutorial and special coaching classes as may be allotted to him even after school hours.

5. The TEACHER shall observe the rules and regulations of the University/Board of Secondary Education, submit to and obey all decisions of the Managing Committee, Headmaster and Secretary as may be given or imposed from time to time.

6. In addition to the duties of teaching, organisation and discipline the TEACHER shall, when required to do so, supervise and direct the regular games and pastimes of pupils and attend religious services held in the SCHOOL as social functions among students.

7. The TEACHER shall do his best to enforce and maintain discipline, good habits and morals among the pupils, and reform their character, but shall not be entitled to personally chastise or give corporal punishment any pupil without the sanction of the Headmaster or his or their guardian.

8. The TEACHER shall be entitled to such leave as is prescribed under the rules of the SCHOOL or observed in Government institutions.



9. Clauses (2) and (8) in so far as the increment and leave are concerned shall be operative only upon confirmation of service on completion of full one year of the educational session and subject to the teacher rendering satisfactory service and fulfilment of the terms of this agreement.

10. The TEACHER shall not do any private tuition to any student whether of this school or other school nor carry on any trade or business or profession nor be interested in any other educational institution unless otherwise expressly permitted by the school nor be concerned in plots or conspiracies against the school or the Government or the Managing Committee.

11. This agreement may be determined at the end of any school term by either party giving the other notice in writing to that effect within two weeks after the beginning of such term or at any time by the SCHOOL upon paying to the TEACHER, in addition to the proportion of his salary due up to the date of such determination, one third (or, etc.) of the said yearly salary. PROVIDED, HOWEVER in cases of gross misconduct or dereliction of duty or breach of any of the terms of this agreement (notwithstanding any waiver or condonation thereof) the school may determine this agreement forthwith without notice or compensation in lieu of notice, on paying the TEACHER the portion of salary due up to the date of determination.

IN WITNESS WHEREOF the parties here have executed these presents on the day, month and year first above-written.

Signed, sealed and delivered by AB  
President of AB School in the  
presence of:

Signed, sealed and delivered by CD,  
the Teacher in the presence of:

### Agreement between Firm of Solicitors and Managing Clerk

AN AGREEMENT, made the ..... day of ..... 1999 BETWEEN AB, CD and EF etc., practising as solicitors at, etc., under the style of the firm of AB & Co. (hereinafter called the SOLICITORS) of the One Part, and GH of, etc., (hereinafter called the MANAGING CLERK), of the Other Part: WHEREBY IT IS AGREED as follows:

1. In consideration of good, faithful and diligent services to be rendered and the duties to be performed, the SOLICITORS hereby engage the MANAGING CLERK to serve the said SOLICITORS in their profession as aforesaid for the term of ..... years with effect from the ..... day of ....., or earlier determination thereof as hereunder provided any time during the continuity of such service by either party upon giving to the other ..... calendar months' notice in writing of their intention to that effect.

2. The working hours of the MANAGING CLERK shall be normally from 10.30 am to 6 pm on week days and from 10.30 am to 2 pm on Saturdays. PROVIDED, HOWEVER, the MANAGING CLERK shall whenever required by the SOLICITORS attend on counsel and also clients even after the normal hours of business without, however, any extra remuneration on that account.

3. The MANAGING CLERK will devote his whole-time attention, and all his abilities and energies during office hours (subject to the usual or reasonable holidays) exclusively to the work of the said SOLICITORS and will not absent himself therefrom without the consent of the SOLICITORS.

4. The MANAGING CLERK shall remain responsible for safe custody and preservation of all case papers and evidences and will not under any circumstances cancel, obliterate, injure, embezzle, waste or do away with any of the books, deeds, papers, writings or other property of the SOLICITORS or their clients, nor, without their leave, lend the same to others or remove them or any of them elsewhere.

5. The MANAGING CLERK shall not, at any time hereafter without the consent in writing of the SOLICITORS, divulge or make known any of the trusts, secrets, accounts, matters or transactions of or relating to the said firm of SOLICITORS but will keep with inviolable secrecy all matters entrusted to him and faithfully and diligently serve the SOLICITORS and shall never take any gratuity or reward in any case without the express consent of the SOLICITORS.

6. The MANAGING CLERK shall at all times remain true and faithful to the SOLICITORS in all matters, dealings and transactions whatsoever, and shall, whenever, required, give to the SOLICITORS and each and every person constituting the firm a just and true account of the same and shall not enter into plots and conspiracies against them.

7. The MANAGING CLERK shall, all through his service under the said SOLICITORS, attend their office regularly and punctually and do all work such as keeping of day books, preparation of brief for counsel, attend references before the Registrar, Master and other officers, check up the work of the court clerk, bill clerk, typist and others and do other work required of him and will not, during the period of employment, render any legal or professional service to any other person or persons, directly or indirectly, whether for reward or free of charges.

8. The MANAGING CLERK shall not, after retirement or termination of the said employment, solicit the clients to any new solicitor nor do or suffer any act, deed or thing which may be prejudicial to or injuriously affect the interest of the SOLICITORS nor associate him with the opposite parties in respect of cases which he handled with a view to helping them nor secure any advantage by reason of his special knowledge of the secrets of the cases.

9. The SOLICITORS will pay the MANAGING CLERK a salary of Rs. .... per month.

10. In case the MANAGING CLERK shall commit any breach of this agreement or neglect any of his duties, or shall become insolvent or make any arrangement with his creditors, or is guilty of any such misconduct, whether in his said employment or towards the solicitors or any of the partners of the said firm as would, in the absence of any agreement in writing between the said parties, entitle the said firm or any partner thereof to dismiss him from their or his employment, it shall not be necessary for the SOLICITORS to give the MANAGING CLERK any notice whatsoever of their intention to determine his said employment, but they shall have power to dismiss him forthwith on paying such a proportion of his salary only as shall be due in respect of the then current quarter (or month) up to the date of such dismissal together with arrears (if any).

IN WITNESS WHEREOF the parties herein have signed these presents on the day, month and year first above-written.

Signed, sealed and delivered by  
AB, CD and EF partners of the  
firm AB & Co. in the presence of:

Signed, sealed and delivered by  
GH the Managing Clerk in  
presence of:

### Agreement between Solicitor and a Company

AN AGREEMENT made the ..... day of ..... 2000 BETWEEN AB & Co., whose registered office is situate at, etc. (hereinafter called the CLIENT), of the One Part, and CD of etc. (hereinafter called the SOLICITOR), of the Other Part: WHEREBY IT IS AGREED as follows:

1. The CLIENT does hereby appoint the SOLICITOR, and the SOLICITOR accepts the appointment to act for the CLIENT as SOLICITOR in all its legal affairs requiring the employment of a SOLICITOR, including all matters relating to conveyancing, compensation, litigation proceedings and otherwise.

2. The remuneration of the SOLICITOR, for all his work and labour as aforesaid shall be a sum of Rs. .... fixed per annum, payable by monthly instalments of Rs. ....

3. All disbursements and out-of-pocket expenses incurred by the SOLICITOR in or relating to the CLIENT'S business shall be paid by the CLIENT for which the SOLICITOR shall submit proper bills accompanied by vouchers.

4. The SOLICITOR shall, during the continuance of this agreement devote himself solely and exclusively to the legal business of the CLIENT, and shall not act as SOLICITOR for any other person or persons except his own relations.

5. The SOLICITOR shall, during the continuance of this agreement, conduct the said business of the CLIENT to the best of his skill and ability, and shall be entitled to employ, at the CLIENT'S expense, and with his approval, a sufficient number of staff of competent clerks and servants to carry on the said business promptly and satisfactorily.

6. Either party may determine this agreement by a notice in writing to the other party stating his or their intention to determine the same on the expiration of ..... months from the date of such notice, and the client may determine this agreement forthwith in the event of any fraud, misconduct or neglect of duties on the part of the solicitor. Upon the determination of this agreement and payment of the said salary due up to such determination, and payment of all disbursements and out-of-pocket expenses incurred up to the date thereof, the SOLICITOR shall deliver all deeds, documents and papers in his possession relating to the business of the CLIENT or as the CLIENT shall direct, and shall continue to afford him all reasonable assistance for concluding pending matters at the date of such determination without making any charge therefor.

IN WITNESS etc.

Signed, sealed and delivered, etc.

AB

CD

### Agreement between Publisher and Author

MEMORANDUM OF AGREEMENT made this 15th day of July 2000 BETWEEN Eastern Law House Private Ltd, a Company with limited liability, incorporated under the Indian Companies Act and having its registered office at No. 54 Ganesh Chunder Avenue, Calcutta 700 013 (hereinafter called the PUBLISHERS) which expression shall, unless excluded by or repugnant to the context, include the said Eastern Law House Private Ltd., its successors in the business (as the case may be) of the One Part AND Mr. P. Gupta of No. .5 C.R. Avenue, Calcutta 700 071 (hereinafter called the AUTHOR which expression shall, unless excluded by or repugnant to the context, include the said Mr. P. Gupta and his heirs, executors, administrators and assigns) of the Other Part.

WHEREAS the AUTHOR has written an original work entitled Publishers' Companion and is the owner of the copyright therein.

NOW IT IS HEREBY AGREED by and between the parties hereto as follows:

1. The AUTHOR grants to the PUBLISHERS the sole and exclusive right to print and publish the said work in book form in the territories of the world for all the editions and reprinted editions.

2. The AUTHOR warrants that the said work is an original work and that the AUTHOR is the owner of the copyright therein and that he has not made

any assignment of or granted any licence in respect of any of the rights relating to the subject-matter of this agreement and that the said work has not been published.

3. The AUTHOR shall not make any assignments of the rights to print and publish the said work in the territories of the world or grant any licence to print and publish the said work or any part thereof in the territories of the world without the consent in writing of the PUBLISHERS.

4. The time when a new edition or reprinted edition will be published is to be decided by the PUBLISHERS. The terms and conditions for such new edition or reprinted edition will be the same as those of this agreement. In such events, however, the AUTHOR shall have the option of editing and preparing the same for the press.

PROVIDED ALWAYS THAT in case of the AUTHOR'S inability or death, the publishers shall be at liberty to have it revised by any other person of the PUBLISHER'S choice and will have the right to use the name of the AUTHOR in that and all subsequent editions as previously used in the first edition. The revision charges and editing charges will, however, be debited to the AUTHOR.

5. The AUTHOR undertakes to deliver the complete typescript in duplicate of the said work to the PUBLISHERS ready for the printers.

6. The PUBLISHERS agree to print and publish the said work at their own cost, subject however to the approval of the typescript.

7. The number of copies of the said work to be printed, distributed and/or presented in each edition will be decided by the PUBLISHERS.

8. That prior intimation of, at least one year, should be given by the AUTHOR to the PUBLISHERS in writing in the event the AUTHOR decides to sell or present the copyright of the said work to anyone and in such case such transfer shall be subject to the terms and conditions as to the publication of future editions and reprinted editions contained herein.

9. The AUTHOR will neither write nor revise any other rival book against the said work for any other PUBLISHERS or publish any rival book against the said work either by himself or otherwise.

10. The PUBLISHERS shall pay to the AUTHOR during the legal period of his copyright the following royalties and fees:

(a) On each edition published in the territories of the world, except as otherwise provided in this agreement, a royalty at the rate of 10% (ten per cent) of the published price for the first seven hundred copies sold in India;

12 1/2% (twelve and one half per cent) of the published price for the next seven hundred copies sold in India; and

15% (fifteen per cent) for all copies sold in India thereafter.

- (b) On each copy sold outside India 10% (ten per cent) of the actual amount received from sale.

PROVIDED ALWAYS THAT royalties and fees shall only be payable upon amounts actually received by the PUBLISHERS AND no royalties and fees shall be payable in respect of any copies given away for review or other purposes, destroyed by fire, water, enemy action, in transit or accident.

11. The PUBLISHERS will prepare every year a statement of accounts showing the sales of the said work and will make payment to the AUTHOR, or his legal representatives.

12. That the AUTHOR warrants that the said work:

- (a) contains nothing of a defamatory, libellous or obscene character or of an otherwise actionable nature; and
- (b) is in no way whatever a violation or infringement of any existing copyright or of any proprietary or other actionable rights of others and that the AUTHOR and the author's legal representatives shall and will indemnify the PUBLISHERS against all loss and damage whatsoever to be incurred or sustained including any legal costs or expenses incurred by the PUBLISHERS by reason of any breach of this warranty.

Provided always that the PUBLISHERS shall have the right without prejudice to their other rights under this clause to alter the text of the said work as may appear to them appropriate for the purpose of removing any passage which in their absolute discretion or on the advice of their legal advisers may be considered actionable at law.

13. The copyright in the said work will remain the property of the AUTHOR.

14. The proof sheets of the said work shall be corrected by the AUTHOR.

15. The PUBLISHERS shall present the AUTHOR 20 (twenty) copies of the said work in each edition free of cost.

16. The AUTHOR shall prepare the contents, the table of cases, the table of statutes and the subject index, etc., ready for the printers and will deliver the same to the PUBLISHERS within two weeks from the date of receiving the printed pages of the text of the said work.

PROVIDED ALWAYS THAT in the case of the author's inability or failure to do the same, the PUBLISHERS shall be at liberty to appoint any other person of their choice to do the same and to fix his remuneration and such charges shall, however, be debited to the AUTHOR.

17. If the PUBLISHERS shall consider that the copyright in the said work has been infringed, the PUBLISHERS shall be at liberty to take such steps as they may consider necessary for dealing with the matter, and if they desire

to take proceedings they shall on giving the AUTHOR an understanding to pay all costs and expenses and to indemnify the AUTHOR against all liabilities for costs, be entitled to use the author's name as a party to such proceedings, but at the same time to control, settle or compromise as they think fit. Any profits or damages which may be recovered in respect of any such infringement of the copyright shall, after deduction of all costs and expenses, be divided equally between the AUTHOR and the PUBLISHERS.

18. If at any time any dispute or question shall arise touching the construction or effect of this Agreement or any clause or thing therein contained or respecting the rights or liabilities of the parties hereunder, the same shall be referred to the arbitration in accordance with provisions of the Arbitration and Conciliation Act 1996.

IN WITNESS WHEREOF the parties hereto have executed these presents on the day, month and year first above-written.

Signed, sealed and delivered by  
Director Mr. .... pursuant to  
Board resolution of Eastern Law  
House Private Ltd., dated .....  
in the presence of:

Signed, sealed and delivered by  
Mr. P. Gupta the author in  
presence of:

### Tenancy Agreement re. Residential House

AN AGREEMENT made this the 20th day of July 1999 BETWEEN AB, son of, WX residing at 3 Queen's Road, Calcutta hereinafter called the LANDLORD of the One Part and CD, son of YZ, residing at 5 Mott Street, Calcutta hereinafter called the TENANT of the Other Part witnesseth as follows:

1. That the LANDLORD shall let out and the TENANT shall take on monthly tenancy basis all that double-storeyed dwelling-house being premises No. 3 Queen's Road, Calcutta with bath, privies, garage, kitchen, store, compound, out-houses and all fittings and fixtures including electricity and water connection on terms and conditions hereunder contained.

2. That the TENANT shall keep in deposit with the LANDLORD a sum of Rs. 2 lakhs as security deposit or caution money and pay a sum of Rs. 5,000 only as rent per month which will increase progressively by 10% every five years in advance on the 7th of every current month without any delay or default and it is hereby recorded that the TENANT has this day paid to the LANDLORD the security money and also a further sum of Rs. 5,000 as rent for the month of August 1999 which the LANDLORD doth hereby admit, acknowledge and confirm.

3. That it is further agreed, declared and covenanted by and between the parties that the house will be used and occupied on the following conditions:

- (a) The LANDLORD shall keep the house in wind and watertight condition, whitewash all walls once in three years and paint all wood work once in five years.
- (b) Save and except as aforesaid, the TENANT shall otherwise maintain and preserve the property in good condition and order, protect the same against moth and white ants, replace all broken fittings and fixtures by substitutes of equally good quality.
- (c) All taxes (both owner's and occupier's share) at present existing shall be paid by the LANDLORD, but all increased or additional taxes, if and when imposed and other charges, if any levied by the municipality, shall be borne and paid by the TENANT without any right of reimbursement against the LANDLORD.
- (d) That the TENANT shall not make any material alteration to the property unless approved in writing and sanctioned by the LANDLORD and in any event such alteration, if permitted, shall be made by the TENANT at his own costs, expense and on such terms and conditions as may be imposed by the landlord. Such alterations and additions shall in all cases become the property of the LANDLORD and the TENANT shall not be entitled to any contribution by the LANDLORD or to any compensation on that account.
- (e) That the TENANT shall use the property as his residence with the members of his family and shall not transfer the tenancy or sublet the whole or any portion thereof nor keep any paying guests nor share accommodation nor carry on any trade or business nor store any inflammable or combustible goods except kerosene, coal, etc., in small quantities required for domestic consumption.
- (f) If the TENANT fails or neglects to pay the rent as hereinbefore stated or otherwise commits any breach of the covenants, conditions and stipulations hereunder imposed or is adjudicated an insolvent, it shall be lawful on the part of the LANDLORD to determine the TENANCY hereunder created by appropriate notice and to sue for recovery of possession notwithstanding any waiver of condition of the said breach.
- (g) The TENANT has had inspection of the property and is fully satisfied about its condition and internal arrangement and has thereafter freely and voluntarily agreed to the terms of tenancy hereunder provided and shall not hereafter make any grievance on any account whatsoever.



4. Save as aforesaid, the rights and obligations between the parties shall be governed by the law relating to statutory tenancy in force for the time being.

IN WITNESS whereof, etc.

Signed, sealed and delivered, etc.

### Agreement for Carriage of Goods

THIS AGREEMENT is made this 30th day of November 1999 BETWEEN ELH Manufacturers Ltd., a company registered under the Companies Act 1956 and having its registered office at 56 Karl Marx Sarani, Calcutta 700 023 (hereinafter called the EMPLOYER) of the one part and Carriers Co. Ltd., a company registered under the Companies Act 1956 and carrying on transport business, *inter alia*, at 5 Diamond Harbour Road, Calcutta 700 023 (hereinafter called the CONTRACTOR) of the Other Part.

WHEREAS the EMPLOYER manufactures and carries on business in structural engineering and mechanical equipment of various kinds and sizes.

AND WHEREAS the CONTRACTOR is a Common Carrier owning several trucks lorries and trailers for carriage of heavy materials by road from place to place having all-India permit and/or Road Licence and spare capacity and approached the EMPLOYER for carriage of its goods at competitive charges to which the EMPLOYER agreed.

NOW THESE PRESENTS WITNESSES and the parties hereby agree as follows:

1. This agreement will remain valid for a period of one year commencing from 1st December 1999 to 30th November 2000 after which date, the agreement will automatically stand terminated by the efflux of time unless extended further by mutual agreement.

2. The CONTRACTOR shall keep with the EMPLOYER a sum of Rs. 5 lakhs as interest-free security deposit. The Security Deposit shall be retained by the EMPLOYER as security for the due performance of the agreement on the part of the CONTRACTOR. On any breach of any of the terms of this agreement the Security Deposit shall forthwith become liable to be forfeited. The Security Deposit shall, unless forfeited, be liable to meet any damage, loss or avoidable expenditure caused to the EMPLOYER by any act of the CONTRACTOR.

3. On receipt of Notice from the EMPLOYER notifying to the CONTRACTOR the fact of the forfeiture of the Security Deposit either in full or in part, as compensation towards any loss or damage suffered by the EMPLOYER, the CONTRACTOR shall replenish the Security Deposit so that the same is always available to the EMPLOYER during the performance of the contract.

4. The EMPLOYER shall be at liberty to sue or recover the amount of damages and losses including all costs and expenses which the EMPLOYER

may have sustained, incurred or be put to in consequence of the default or failure on the part of the CONTRACTOR in due performance thereof. The EMPLOYER shall also be at liberty to retain, set off and appropriate all and every sum, which may, at any time, be due and owing to the EMPLOYER by the CONTRACTOR against the earnest money or any money payable or due to the CONTRACTOR.

5. The amount of Security Deposit will be refunded to the CONTRACTOR without interest on the expiry of the agreement after adjustment of dues of the EMPLOYER if any, against the CONTRACTOR. In case, however, the agreement is renewed or extended by mutual consent, the amount will not be refunded but kept as the Security Deposit against the renewed or extended agreement.

6. The CONTRACTOR shall furnish one copy of the Consignment Note priced Invoice to the Consignee of the goods within "THREE" days from the date of loading of Truck/Trailer at destination for the purpose of West Bengal Sales Tax Permit and Octroi Exemption Certificate. In case of failure to comply with the above the EMPLOYER or the Consignee will not be liable for payment of any detention or demurrage or any other charges incurred on this account. The CONTRACTOR shall not pay any Octrois/ Municipal Taxes on any account for transportation of any materials for and on behalf of the EMPLOYER without the written permission from the EMPLOYER. If any amount is paid without EMPLOYER'S permission, the liability will be with the CONTRACTOR only.

7. The nature of work to be performed by the CONTRACTOR and the charges payable to him for the services to be rendered shall generally be in accordance with the schedule given hereunder.

8. The CONTRACTOR guarantees the supply of vehicles requisitioned every day, including on holidays. The Trucks will be placed at such point as the EMPLOYER shall direct from time to time. All the Trucks/Trailers shall be in proper order and conditions and shall be driven by a properly qualified and experienced driver and shall be accompanied by at least one Cleaner, who will be required to assist in the loading and unloading of the said Truck/Trailer and stacking where necessary. All expenses incurred for running the said Trucks/Trailers and the salary and wages of the drivers and cleaners shall be borne and paid for by the CONTRACTOR.

9. The EMPLOYER will inform the CONTRACTOR over the phone or otherwise about the lifting of goods on the following day. On receipt of the lifting programme, specified number of Trucks/Trailers will be placed by the CONTRACTOR at the appointed date, time and place. Should the CONTRACTOR fail to supply the number of Trucks/Trailers requisitioned the EMPLOYER will arrange the number of Trucks/Trailers short supplied and any loss to the EMPLOYER on this account will be debited to CONTRACTOR'S account and will be recovered from the CONTRACTOR.

10. After the loading at the starting point is completed, the CONTRACTOR will be required to sign the office copy of the challan/ Materials/ Packages

loaded on the lorry in good order and conditions and of the weight mentioned in the Challan. The CONTRACTOR shall also be handed over three copies of the said Challan. After delivery of the Stores/ Materials/ Packages at the destination, the Contractor shall keep two copies of the Challan signed by the Consignee and further obtain Rubber Stamp of the Consignee thereon and handover one copy of the Challan to the Consignee. The CONTRACTOR shall submit one of such signed copies to the EMPLOYER immediately and the second copy shall be attached to the Bill of the CONTRACTOR to be submitted.

11. The CONTRACTOR shall duly cover the Stores/Materials/Items/ Packages carried by it as aforesaid with Tarpaulin and shall properly secure the same so that they may not be damaged or lost en route.

12. In case any Road Permit or other permit from Civil, Police or other authorities is necessary for the transport of the consignment, it shall be the responsibility of the Contractor to arrange for and obtain the same from the authorities concerned. The EMPLOYER, however, agrees to render necessary assistance by way of issuing letters, recommendations etc. in favour of the CONTRACTOR.

13. The CONTRACTOR'S Trucks/Trailers should reach destination within a reasonable time of their release from the loading stations. The CONTRACTOR'S representatives attending the Employer or Loading station must carry Identity Cards with them and they must help the EMPLOYER'S officials in inspecting the Road Permit, Licence etc. when required.

14. The CONTRACTOR shall remain responsible to make good any damage or loss caused to the EMPLOYER due to negligence, lack of proper care and caution on the part of any of the employees or men of the contractor or employees in the Truck/Trailer. The driver of the Truck/Trailer which might be hired by the CONTRACTOR from the market will also be deemed to be the CONTRACTOR'S man so far as this clause is concerned.

15. The CONTRACTOR shall be responsible for the protection and safe custody of the EMPLOYER'S stores, stocks and goods entrusted to it till such stock is duly delivered at the destination and shall also be responsible for any loss or damage to EMPLOYER'S stock while in transit, except in case of an accident. In the event of any accident happening before the stock is duly delivered which caused or is likely to cause damage to the stocks carried or is calculated in any manner detrimental to the EMPLOYER'S interest, the CONTRACTOR shall be held wholly responsible for reporting the accident to the nearest Police Station and/or nearest Office of the EMPLOYER within 24 hours of the actual occurrence.

16. Disputes regarding non-delivery/short delivery and any other dispute related to the despatch of the consignment from the Employer's premises and brought to the notice of the Carrier by the EMPLOYER should be settled within a period of four weeks from the date of intimation to the CONTRACTOR

failing which the agreement will be liable to be suspended/cancelled without prejudice to any liabilities that the CONTRACTOR is subject to under the terms and conditions of the agreement.

17. The CONTRACTOR shall assume all liabilities and keep the EMPLOYER wholly indemnified against any action or suits, claim, cost, damages, charges and expenses arising howsoever out of the work covered by the agreement.

18. The CONTRACTOR shall be fully responsible for complying with all the Acts, Regulations, etc. in regard to its workmen or vehicles and shall fully indemnify the Employer against any liability or action by the Contractor's workmen and others. The CONTRACTOR shall reimburse the Employer either from the "Security Deposit" or the Bills pending with the EMPLOYER for payment.

19. The EMPLOYER does not guarantee to the CONTRACTOR about the number of vehicles required per day, month nor does the EMPLOYER guarantee about the nature or quantities of stores or materials that will be made available to the CONTRACTOR for transportation.

20. The EMPLOYER reserves the right to appoint more than one CONTRACTOR for the same services. The EMPLOYER also reserves the right to amend/revise or modify the terms and conditions of the Contract or part hereof or cancel it any time during the currency of the Contract, without assigning any reason whatsoever.

21. The CONTRACTOR will submit its bills in triplicate along with receipted challans on completion of such transactions or services rendered by him to the EMPLOYER for arranging payment on verification within 90 days from the date of submission of the bills provided the bills are in order in all respects.

22. The CONTRACTOR shall at the starting point or the site of work, place and keep at such point or site a duly authorised representative empowered to act on its behalf, who will receive instructions from the EMPLOYER or its officers in relation to the carriage of the Stores/Materials/Packages. Provided, however, the entire responsibility for the transport and safe delivery of the Stores/Items/Materials/Packages shall be of the CONTRACTOR, who shall also be fully responsible for giving proper and adequate instructions to the Drivers, Cleaners and other staff and for providing the fuel, spare parts and other accessories that may be required for the purpose of the work entrusted to it under this Agreement. The CONTRACTOR or his duly authorised representative shall duly attend the office of the EMPLOYER whenever desired.

23. The CONTRACTOR shall not assign or sublet the Contract or any part thereof in any manner whatsoever without the previous permission in writing from the EMPLOYER.

24. Without prejudice to any other provision, the CONTRACTOR shall be bound to keep the EMPLOYER fully indemnified against any action, claim or

proceeding under the provision of any Act, Rules, regulations, bye-laws, notifications, direction or order having the force of law for anything done or committed by the CONTRACTOR in contravention of such provisions or for the infringement or violation by it, in the course of the execution or completion of the work under the Contract. If as a result of such action, claim or proceeding the EMPLOYER is adjudged liable to any penalty or to pay any compensation such liability shall be deemed to be the liability of the CONTRACTOR and the CONTRACTOR shall be wholly liable for all such penalties.

25. The CONTRACTOR shall be paid a sum of Rs. 250.00 per day per vehicle as "Detention Charges" in case its vehicle is held up either for loading or unloading for more than six working hours and an amount of Rs. 200.00 will be paid if the Vehicle requisitioned is not utilised but returned empty.

26. Each truck shall be required to carry upto 10 M.T. and Trailer 18 M.T. and *pro rata* rates will be payable for materials carried in excess of these weights. Items weighing 10 M.T. which can be carried within the standard size of the truck will be considered as normal load. Other items exceeding in height/width/length/weight will be considered as overdimensional and will be dealt with separately. Any item which can be carried by the trailer with maximum height and width of 8'-0" with weight of 18 M.T. length up to 43'-0" will be considered as normal trailer load. Other items exceeding in height/width/length/weight will be considered as overdimensional items and will be dealt with separately.

27. All disputes shall be subject to the jurisdiction of Calcutta High Court.

*The Schedule*

IN WITNESS WHEREOF the parties herein have executed these presents on the day, month and year first above-written at the Employer's office in Calcutta.

Signed, sealed and delivered by  
Mr. ....  
pursuant to Board Resolution  
dated ..... of the EMPLOYER  
in the presence of:

Signed, sealed and delivered by  
Mr. ....  
pursuant to Board Resolution  
dated ..... of the CONTRACTOR  
in the presence of: