

## Mortgages and Pledges

### MORTGAGES

#### HISTORICAL BACKGROUND

**Mortgages in India.** A very early form of mortgage among Hindus and Mahomedans was the one which took the form of a conditional conveyance. Among Muslims, it was developed as a device for evading the Koranic injunctions against usury. The transaction was called a *bye-bil-wafa* (sale with a promise). The mortgagee enjoyed the usufruct in lieu of interest and became the absolute owner if the debt was not paid. This form of mortgage is common among the Hindus also and is known variously—in Bengal as *Khatkabala*, in Madras as *Avadhi Vikrayam* or *Muddata Kriyam*, and in Bombay as *Gahan Lahan*. This type of security bore a close resemblance to the Roman 'fiducia'. Corresponding to the Roman *Pignus* there are the usufructuary mortgagees of Indian law. The usufructuary mortgage is called in Madras *Bhogyam* or *Swadhina Ayakam*. In Malabar, it is known as *Kanom* or *Otti*. The Roman *hypotheca* is also reproduced in the latter developments of the mortgage in India. The simple mortgage of India which corresponds to the 'hypotheca' is known in the vernacular of the Madras Presidency as *Dhrista Bhandaka* or *Chupudu-Ayakam*, *Tanaka* or *Adaimana Patram*. The Transfer of Property Act of 1882 codified *inter alia* the law relating to mortgagees.

#### DOCTRINE OF EQUITY OF REDEMPTION

**Meaning of equity of redemption.** The mortgagor's right to redeem the mortgage is jealously guarded by the courts. If the mortgagor stipulates with the mortgagee to redeem the property within a specified time and to forfeit the property in the event of default, he will not be held to his contract in a Court of Equity. For the reason even when the time for exercising the contractual right to redeem has gone by, the mortgagor can still in equity

claim to redeem the property. This right of the mortgagor is called the Equity of Redemption, Lord Bramwell defines it in *Salt v Marquess of Northampton*<sup>1</sup> Act thus:

“An equity of redemption is a right not given by the terms of the agreement between the parties to it, but contrary to them to have back securities given by a borrower to a lender on payment of principal and interest at a day after that appointed for payment, when by the terms of the agreement between the parties the securities were to be the absolute property of the creditor. This is now a legal right of the debtor.”

The doctrine of equity of redemption is expressed in the maxim ‘once a mortgage, always a mortgage.’ As explained by Lord Davey in *Noakes & Company v Rice*,<sup>2</sup> the maxim means “that a mortgage cannot be made irredeemable and that a provision to that effect is void.”

**Meanings of the expression—equity of redemption.** The residue of interest left in the mortgagor after he has mortgaged the property is also called the equity of redemption. This must not be confused with the equitable right to redeem also designated the equity of redemption. As Lord Parker observes in *Kreglinger’s case*.<sup>3</sup>

“The equity to redeem which arises on failure to exercise the contractual right of redemption must be carefully distinguished from the equitable estate which, from the first, remains in the mortgagor and is sometimes referred to as an Equity of Redemption.”

**Under the Transfer of Property Act—recognition of the doctrine of equity of redemption.** The statutory interference suggested by the Privy Council in *Thumbuswami’s case* was effected by the enactment of the Transfer of Property Act in 1882. By s. 60 of the Act the right of redemption was conferred. This right can be claimed when the principal money of the mortgage becomes due and subsists until put an end to in due course of law. It is noteworthy that s. 60 is not subject to a contract to the contrary. This makes it clear that the equitable right to redeem subsists until the mortgagor’s interest is effectually extinguished by due process of law.

This is a new legal right to the debtor not provided for under the terms of contract, but contrary thereto, to have back the securities against payment of mortgage debt even after the appointed date. The other doctrine that followed is ‘once a mortgage always a mortgage’. As explained by

1 (1892) AC 1.

2 (1902) AC 24.

3 (1914) AC 25.



Lord Davey in *Noakes & Co. v Rice*,<sup>4</sup> the maxim means—"A mortgage cannot be made irredeemable and a provision to that effect is void." Formerly a mortgagor in English law had no power to grant any lease of the property in the absence of express authority provided for in the mortgage deed. Section 18 of the Conveyancing Act of 1881 as re-enacted by s. 99 of the Law of Property Act 1925 remedied the anomaly by conferring such a power to grant agricultural lease for 21 years and building lease for 99 years.<sup>5</sup> The law in India on the subject is contained in s. 65A of the Transfer of Property Act 1882 as amended by Transfer of Property Amendment Act (XX of 1929) which permits a lease of the mortgaged property subject to certain reservations in the absence of contrary provisions in the deed of mortgage. The leading case on the subject is *Madan Mohan v Raj Kishore*.<sup>6</sup>

It is well-settled that when a person enters into possession of immovable property not in the assertion of any absolute title but on the basis of unregistered mortgage deed in his favour and remains in possession for more than 12 years, he acquires the status of a mortgagee by the doctrine of prescription and even though unregistered mortgage deed is not a valid transaction for want of registration, the mortgagor is entitled to redeem the property. Such an unregistered mortgage deed cannot be treated as an agreement to enter into a mortgage deed in future.<sup>7</sup>

The Law of Property Act 1925 [*vide* s. 85(2)] has completely amended the law—a legal mortgage is no longer a conveyance of the property.<sup>8</sup>

The Act, however, gives the mortgagee a power of sale of the property,<sup>9</sup> also to have a Receiver appointed (*vide* s. 101) to take possession of the property, also the right of foreclosure which the court may in its discretion refuse and direct sale of the property (s. 91 of the Act). The law in India on this subject is contained in ss. 67, 69, 69A of the Transfer of Property Act.

Although a deed of mortgage, in particular a simple mortgage, may not contain any covenant as to title, etc., as in the case of sale under s. 55(2) of the Transfer of Property Act, nevertheless under s. 65 the mortgagor shall be deemed to contract with the mortgagee as to his title and power to mortgage. He is also deemed to have covenanted with the mortgagee as to defend his title and payment of all public charges. In the case of leasehold estate, he is to keep alive the lease by payment of rent and performance of all other covenants and conditions of the lease. In default on his part the

4 (1902) AC 24.

5 Venkatasubba Rao's *Principles of Equity*, p. 163; Topham's *Real Property*, 11th Ed., p. 205.

6 21 CWN 88.

7 *Vora Aminbai v Vora Taherali* AIR 1998 Guj 31.

8 Topham's *Real Property*, 11th Ed., pp. 194-195.

9 Section 103 of the Law of Property Act 1925.

mortgagee under s. 72 of the said Act can meet all the expenses at the first instance and all such amounts will be added to his claim.

**Equitable mortgage.** The court of equity recognised two types of other mortgages known as equitable mortgage. This is based upon the maxim—“Equity looks at the intention of the parties rather than the form”, e.g. (1) mortgage by equitable owners of their equitable rights, and (2) creation by legal owners of equitable rights by way of security. Such a mortgage can be created by deposit of original title deeds<sup>10</sup> without word of mouth, and even without writing provided the mortgagor intended to create a security on the properties relating thereto. It may or may not be accompanied by a memorandum. It differs from an English mortgagee in this sense that the mortgagee acquires no legal estate in the property. All that he can claim is at least an equitable charge. So he has no right of foreclosure. He has no right of possession; so he cannot enter into possession and collect the rents and profits of the mortgaged property.

In India, such a mortgage can be created only in Presidency Towns. The deposit of title deeds must in any event be made within the said towns.

Since the introduction of the new s. 96 of the Transfer of Property Act in consequence of the amending Act 20 of 1929, such a mortgage has been placed by far on a better footing, viz. that of a mortgage by a deed under s. 58(f) of the Act.<sup>11</sup> The Privy Council in *Imperial Bank of India v Rai Gyawthu*<sup>12</sup> observed that the requisites of such a mortgage are (a) debt, (b) deposit, and (c) intention to create security. Order XXXIV, r. 15 of the CPC as amended in 1976, makes all the provisions of the order relating to simple mortgage applicable to mortgage by deposit of title deeds and also to charges as contemplated under ss. 58 and 100 of the Transfer of Property Act, respectively.

As regards *raiya*ti holdings, s. 7 of the West Bengal Land Reforms Act 1955, has imposed certain restrictions on the general power to mortgage under the Transfer of Property Act. A mortgage by a *raiya*t of his holding or any share thereof other than a simple mortgage or an usufructuary mortgage not exceeding 15 years shall be void.

This section came into force from 1st March 1965; vide Calcutta Gazette Notification No. 2798 L/Ref. of 22nd February 1965.

**Mortgage and charge.** A mortgage as defined in s. 58 of the Transfer of Property Act is the transfer of an interest in specific immovable property for the purpose of securing payment of money advanced or to be advanced by

10 Topham's *Real Property*, 11th Ed., p. 208.

11. B.B. Mitra on *Transfer of Property Act*, 12th Ed., p. 849.

12. 76 IC 910; 50 IA 283.



way of loan, an existing or future debt, or the performance of any contract or engagement which may give rise to a pecuniary liability.

It is distinguishable from a charge as defined under s. 100 of the Transfer of Property Act in which there is no transfer of any property or any right therein, e.g. security bond. A charge is at best the creation of a right of payment out of any particular property without any transfer of any interest or fund therein. A mortgage is in essence a transfer of some interest in some specific immovable property.<sup>13</sup> Under Or. XXXIV, r. 15(2) of the CPC as amended in 1976, a decree ordering payment of money charged on some immovable property can be realised by its sale in execution.<sup>1</sup> It cannot be enforced against a *bona fide* purchaser for value except when the same is created under a decree or order of the court which can be enforced by sale of the property in execution.<sup>2</sup>

A charge may be created by operation of law, e.g. arrears of land revenue, arrears of rent under s. 65 of the Bengal Tenancy Act, arrears of consolidated rates and taxes under the Calcutta Municipal Act. They are enforceable against the property.

The transferor in case of the mortgage is called the *mortgagor*, the transferee the *mortgagee*, the principal money and interest of which payment is secured for the time being are called the *mortgage money*, and the instrument of transfer, a *mortgage deed*.

**Mortgagor, mortgagee and mortgaged properties.** Any person, company, association or body of individuals not otherwise disqualified can be the mortgagor. In the case of a company or association, such a mortgage must be authorized by the Memorandum and approved by a Resolution of the Board of Directors or the governing body as the case may be. Under s. 292 of the Companies Act 1956, it is the Board of Directors who can borrow money on mortgage and the same shall be done by resolutions passed at the Board and general Meetings. A minor or a lunatic cannot create any mortgage in respect of their properties.<sup>3</sup> A mortgage by a lunatic is void under s. 11 read with s. 12 of the Indian Contract Act. A partner has no implied authority to mortgage any immovable property belonging to the firm.<sup>4</sup> A person whose property is being managed by the Collector cannot create nor submit his property to any mortgage.<sup>5</sup>

13 *Shiva Prosad v Benimadhab* AIR 1929 Pat 529.

1 *Shiva Prosad v Benimadhab* AIR 1922 Pat 520.

2 *Seethalakshmi v Srinivaso* AIR 1958 Mad 23.

3 *Mohori Bibi v Dharmadas Ghosh* 30 IA 114.

4 Section 19(2)(g) of the Indian Partnership Act.

5 *Mulla's Code of Civil Procedure*, 12th Ed., p. 1382.

A Karta of a Mitakshara joint family cannot create a mortgage except for legal necessities and for the benefit of the estate. An executor in the absence of any restriction can mortgage any property belonging to the estate of the deceased for the purpose of administration.<sup>6</sup> A minor is not disqualified to be a mortgagee in India and also under the English law in respect of a legal estate.<sup>7</sup> A trustee cannot be the mortgagee of a trust property. A guardian of a minor is in the same position as that of a trustee. A specific immovable property of description sufficient to identify it within the meaning of ss. 21 and 22 of the Registration Act can be mortgaged, but the position is different in case of floating charge created by a company unless the same is crystallised.<sup>8</sup>

The following are the different kinds of mortgage:

(i) *Simple mortgage*. In a simple mortgage, in this sense that the *mortgagor*, without delivering possession of the mortgaged property, binds himself personally to pay the *mortgage money*, and agrees, expressly or impliedly, that in case he fails to pay according to his contract, the property will be sold and the proceeds to be applied in payment of the mortgage money.<sup>9</sup>

(ii) *Mortgage by conditional sale*. In a *mortgage by conditional sale*, the *mortgagor* ostensibly sells the mortgaged property on condition that in default of payment of the *mortgage money* on a certain date the sale shall become absolute, or on condition that on such payment being made the sale shall become void and the buyer shall transfer the property to the seller, provided that no such transaction shall be deemed to be a mortgage unless the condition is embodied in the document which effects or purports to effect the sale.<sup>10</sup> Where clauses of deed consistent with express intention of making the transaction a conditional sale with option to repurchase, the Supreme Court held that the document was not a mortgage by conditional sale.<sup>11</sup>

(iii) *Usufructuary mortgage*. It is a transfer of a right to possession of the mortgaged property and the right to receive the rents and profits accruing from such property. Where the lessor of a leased property creates a usufructuary mortgage in respect of such property what he transfers under s. 109 of the Transfer of Property Act as a mortgagor in favour of the usufructuary mortgagee includes his right to possession of such property and the right to receive the rents and profits accruing from it. Section 109 entitles the usufructuary mortgagee from the lessor as against the lessee, for all rights which the lessor had against such lessee.<sup>12</sup>

6 *Sunil v Sisir* (1969)67 IA 102.

7 *Raghava v Srenivasa* ILR 40 Mad 308.

8 *I.P. Jones & Co. v Ranjit* AIR 1927 Cal 682.

9 Section 58(b) of the Transfer of Property Act.

10 Section 58(c) of the Transfer of Property Act.

11 *Tamboli v Ghanchi* AIR 1992 SC 1236.

12 *Narpatchand v Shantilal* AIR 1993 SC 1712.



In a usufructuary mortgage, the mortgagee delivers possession of the mortgaged property or expressly or by implication the mortgagor binds himself to deliver its possession to the mortgagee, and authorizes him to retain such possession until payment of the mortgage money and to receive the rents and profits accruing from the property, or any part of such rents and profits, and to appropriate the same in lieu of interest or in payment of the mortgage money, or partly in payment of the mortgage money, or partly in lieu of interest.<sup>13</sup>

(iv) *English mortgage*. It is out and out conveyance subject to proviso for redemption. In an *English mortgage*, the mortgagor binds himself to repay the mortgage money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage money as agreed. This right of redemption is provided under s. 60 of the Transfer of Property Act 1882. An *English mortgage* usually provides for appointment of a Receiver to take charge of the mortgaged property and to collect the rents, issues and profits.<sup>14</sup>

(v) *Mortgage by deposit of title-deed*. Within the towns of Calcutta, Madras, Bombay or any other town specified by any State Government, a mortgage by deposit of title-deeds is effected by the mortgagor delivering to the creditor, or his authorised agent, documents of title to immovable property, with intent to create a security thereon.<sup>15</sup> It was held that a mortgage by deposit of title-deeds can be created even in the case of a barred debt. No written acknowledgement is necessary.<sup>16</sup> It is however always prudent to have a record of transaction as already effected to avoid the difficulty to establish the creation of the mortgage. In any event the original title deeds are to be deposited or with the intention to create security some documents or copies of documents relating to the property.<sup>17</sup> Section 96 of the Transfer of Property Act inserted by the Amending Act XX of 1929 has put such a mortgage on the same footing as a mortgage by a deed under s. 58. The corresponding amendment in adjective law is Or. 34, r. 15 of the CPC now Or. 34, r. 15(1) by the amendment of the CPC 1976.

Delivery of document of title alone is sufficient to create an equitable mortgage. There is no necessity to execute any document. In case, a document was executed for the purpose of creating a mortgage under s. 58(f) of the Transfer of Property Act no doubt it requires registration. A

13 Section 58(d) of the Transfer of Property Act.

14 Section 58(e) of the Transfer of Property Act.

15 Section 58(f) of the Transfer of Property Act.

16 *Monoj Kumar Saha v Nabadwip Chandra Poddar* 82 CWN 166.

17 *Punjab and Sindh Bank Ltd. v Ganes Das AIR 1935 Lah 721*; *State Bank of Mysore v Official Liquidator* 58 Comp Cas 609; *C. Asiamma v State Bank of Mysore AIR 1990 Ker 157*; *Amulya Gopal Majumdar v United Industrial Bank AIR 1981 Cal 404*.



letter or a memorandum executed after delivery of the documents and only endorsing the earlier deposit of title deeds which already had created the mortgage does not require registration. The law as settled is that where a document is executed simultaneously with the delivery of title deeds, the intention of the parties being to create a separate mortgage in the document in question for securing the money advanced under a promissory note such document requires registration.<sup>18</sup>

(vi) *Anomalous mortgage*. An anomalous mortgage is the combination of any of the above forms of mortgage, or any other mortgage which is not one of them.<sup>19</sup>

**Mortgage how effected?** When the principal money secured is one hundred rupees or upwards, a mortgage, other than a mortgage by deposit of title deeds, can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.<sup>20</sup>

**Mortgagor's rights.**<sup>1</sup> At any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage money, to require the mortgagee (i) to deliver to the mortgagor the mortgage deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee, (ii) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor; and (iii) at the cost of the mortgagor either to re-transfer the mortgaged property to him, or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgement in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished.<sup>2</sup> The mortgage money may be deposited in court.<sup>3</sup>

Provided that the right conferred as above has not been extinguished by act of the parties, or by decree of a court, or operation of law.

This right of the mortgagor is called a right to *redeem*, and a suit to enforce it is called *suit for redemption*.<sup>4</sup> Such a right can under no circumstances be negatived though the mortgagor may be precluded from exercising the same for a short period.<sup>5</sup> So a stipulation in the mortgage deed giving the mortgagee option to purchase the equity of redemption at a

18 *Hubert Peyali v Santhavilasathu* AIR 1998 Ker 344.

19 Section 58(g) of the Transfer of Property Act.

20 Section 59 of the Transfer of Property Act.

1 Section 60 of the Transfer of Property Act.

2 Section 60 of the Transfer of Property Act as amended by Act XX of 1929.

3 Section 83 of the Transfer of Property Act.

4 Order XXXIV, Rule 7 of Code of Civil Procedure.

5 *Jeevan v Smith* (1882)20 Ch D 727 (729).



specified price is invalid.<sup>6</sup> Nevertheless, it is quite lawful to make a *bona fide* conveyance with option to repurchase.<sup>7</sup> Where a mortgagee having the power under the deed of mortgage enters into an agreement in that behalf the mortgagor can nevertheless redeem the property.<sup>8</sup>

Where the previous owner has mortgaged the property during his lifetime which is subsisting at the time of his death, then after his death his heirs only inherit the mortgagor's interest in the property. By discharging the mortgage debt his heir who has inherited the property acquires the interest of the mortgagee in the property. As a result of such payment made for the purpose of clearing of the mortgage the interest of the mortgagee in the property has been acquired by the heir.<sup>9</sup>

In a usufructuary mortgage if for some default in payment of rent or rent decree is obtained and the mortgagee pays off the same even then the mortgage in question is liable to be redeemed at the option of the mortgagor. The mortgagee cannot escape from his obligation by bringing the equity of redemption to sale in execution of a decree on the personal covenant. By virtue of purchase of the property by the mortgagee in court sale, no merger takes place between the two rights nor the mortgage stands extinguished.<sup>10</sup>

A mortgagor interested in a share only of the mortgaged property cannot redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except only where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor. This is known as the principle of indivisibility of mortgage.<sup>11</sup>

In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the mortgaged property, together with the mortgage deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee—

- (i) where the mortgagee is authorized to pay himself the mortgage money from the rents and profits of the property—when such money is paid;
- (ii) where the mortgagee is authorized to pay himself, from such rents and profits or any part thereof, a part only of the mortgage money—when the term (if any) prescribed for the payment of the mortgage money has expired, and the mortgagor pays or tenders to the

6 *Globe Finance Corporation v Montgomery* 18 TLR 661.

7 *Barton v Bank of South Wales* (1890)15 App Cas 379.

8 *Mansoor v Usman* AIR 1944 Bom 156.

9 *R.M. Arunachalam v I.T. Commr.* AIR 1997 SC 2905.

10 *Parichhan Mistry v Acchiabar Mistry* AIR 1997 SC 456.

11 Section 60 of the Transfer of Property Act.

mortgagee the mortgage money or the balance thereof or deposits it in court.

The Code of Civil Procedure as amended in 1976, Or. XXXIV, r. 10 gives the mortgagor relief against costs in case where he deposits the amount or an amount not substantially deficient at the time of institution of the suit.

**Implied contracts by mortgagor.**<sup>12</sup> In the absence of a contract to the contrary, the mortgagor is deemed to contract with the mortgagee—

- (i) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same;
- (ii) that the mortgagor will defend, or if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title thereto;
- (iii) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property.

**Mortgagee's rights.** In the absence of a contract to the contrary, the mortgagee has, at any time after the mortgage money has become due to him, and before a decree has been made for the redemption of the mortgaged property or the mortgage money has been paid or deposited, a right to obtain from the court a decree that the mortgagor shall be absolutely debarred of his right to redeem the property, or a decree that the property be sold.<sup>13</sup>

The mortgagee has under s. 68 of the Transfer of Property Act a right to sue for the mortgage-money in the following cases only—

- (a) where the mortgagor binds himself to repay the same, *i.e.* in cases where the mortgage contains a personal covenant, *i.e.* English mortgage and simple mortgage;
- (b) where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property is wholly or partially destroyed or the security is rendered insufficient, and the mortgagee has given the mortgagor a reasonable opportunity of providing further security enough to render the whole security sufficient, and the mortgagor has failed to do so; *vide* also s. 66 of the Transfer of Property Act—Impairment of the security;
- (c) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor; and

12 Section 65 of the Transfer of Property Act.

13 Section 67 of the Transfer of Property Act.



(d) where, the mortgagee being entitled to possession of the mortgaged property, the mortgagor fails to deliver the same to him or to secure the possession thereof to him without disturbance by the mortgagor or any person claiming under a title superior to that of the mortgagor.

Provided that, in the case referred to in cl. (i), a transferee from the mortgagor or from his legal representative will not be liable to be sued for the mortgage-money.

Where a suit is brought under cl. (i) or cl. (ii), the court can, at its discretion, stay the suit and all proceedings therein, notwithstanding any contract to the contrary, until the mortgagee has exhausted all his available remedies against the mortgaged property or, what remains of it, unless the mortgagee abandons his security and, if necessary, re-transfers the mortgaged property.<sup>14</sup>

**Further charges.** *Further charge or advance* is a second or subsequent loan of money to a mortgagor by the mortgagee either upon the same security or an additional one. Further charge includes all cases in which the same parties to the original deed desire to increase the liability to which the land is already subject.

A deed of further charge is a deed of further mortgage, requiring therefore to be executed, attested and registered as a mortgage deed.

**Reconveyance of mortgaged property.** In an English mortgage and in a mortgage by conditional sale, the mortgagor makes a conveyance of his property to the mortgagee. If the mortgagee receives the mortgage-money, the mortgaged property has to be reconveyed to the mortgagor. It was held by the Privy Council in *Pattabhiramier v Venkatrow*<sup>15</sup> that the time fixed in a mortgage deed is not the essence of contract. A reconveyance should be made by a separate deed, executed, attested and registered as a mortgage deed. Reconveyance of the mortgaged property to the mortgagor is not, however, absolutely necessary to effect redemption of other mortgages as, if the mortgage money is fully paid, there is no debt left and its security is automatically extinguished. The payment of the mortgage money is usually endorsed on the mortgage deed which is returned to the mortgagor. This procedure is regarded as sufficient.<sup>16</sup> The position is different in the case of English mortgage which is a conveyance, i.e. absolute transfer of the property, subject to the proviso for redemption and the deed itself provides for reconveyance of the property. The remedy is sale and not foreclosure.<sup>17</sup> An agreement of mortgage does not create any right and cannot be specifically

14 Section 68 of the Transfer of Property Act.

15 (1871)13 MIA 560.

16 *Kunja Bihare v Bisheswar* (1934) 148 IC 68; AIR 1934 Oudh 98.

17 Section 67 of the Transfer of Property Act.

enforced.<sup>18</sup> But when the mortgagee has advanced the money and the mortgagor refuses to execute the mortgage the former can bring a suit to compel execution of the mortgage.<sup>19</sup>

**Mortgage of future crops.** A mortgage of future crops is valid provided that the mortgagor has a potential interest in that out of which the property may arise.

### PLEDGES

**Pledge, pawnor and pawnee.** The bailment of goods as security for payment of a debt or performance of a promise is called a *pledge*. The bailor is called the *pawnor* and the bailee is called the *pawnee*.<sup>20</sup> A pledge is different from a mortgage as a pledgee only acquires the right to sell the pledged articles in case of default. The leading English case on the subject of bailment is *Coggs v Bernard*.<sup>1</sup> It was held that a bailment is a pledge when goods are delivered as security for money borrowed.

**Pledge how made.** A pledge can only be made effective by transfer of possession of the goods pledged, and therefore a mere licence to take, or a contract to give, possession although it may operate as a hypothecation, cannot constitute a pledge; but if, in pursuance of such contract under which an advance is made, the goods are afterwards delivered, there is complete pledge, and it is no objection that the advance and delivery of goods were not contemporaneous, nor is a pledge necessarily determined by the return of goods to the owner, for they may be delivered to him as agent of the pledgee or for temporary purpose or on trust.

**Pawnee's right.** The pawnee can retain goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.<sup>2</sup>

The pawnee cannot, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged, but such contract, in the absence of anything to the contrary, will be presumed in regard to subsequent advances made by the pawnee.<sup>3</sup>

If the pawnor makes default in payment of the debt, or performance at the stipulated time of the promise in respect of which the goods were

18 *S.K. Golim v Sadarjan Bibi* 43 Cal 59.

19 *Ghosh's Law of Mortgage*, 5th Ed., pp. 74-75.

20 Section 172 of the Indian Contract Act.

1 (1704)1 Sm LC (12th Ed.) 191.

2 Section 173 of the Indian Contract Act.

3 Section 174 of the Indian Contract Act.



pledged, the pawnee can bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he can sell the thing pledged on giving the pawnor reasonable notice of the sale.<sup>4</sup>

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee must pay over the surplus to the pawnor.

**Defaulting pawnor's right to redeem.** If the pawnor makes default in payment of the debt or performance of the promise, for which the pledge is made, at the stipulated time, he can redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay in addition any expenses which have arisen from his default.<sup>5</sup>

**Duties of solicitor or advocate acting for the mortgagee.** Same as in the case of conveyance, e.g., preparation of abstract on title searches, production and inspection of title deeds, requisitions on title, preparation of draft mortgage, execution and registration of the mortgage. He must also see that the mortgagor does not take advantage of the Moneylenders Act. He should advise his client to take the requisite licence under the said Act, specify the object of the loan in the deed of mortgage, get a solemn declaration from the borrower as to the object of borrowing. Further, he should insist upon entry of the loan amount in the books of the debtor and keep a copy thereof duly certified by the debtor.

#### REQUIREMENTS OF A DEED OF MORTGAGE

(1) A thorough investigation of title up to 60 years and preparation of an abstract on title and a thorough search in all the places as required in the case of sale.

(2) **Parties to the deed.** *Mortgagor* first and thereafter the *mortgagee*.

(3) **Recitals.** A short history of the property right up to its vesting in the *mortgagor* and the object of the loan—Amount and rate of interest.

(4) **Operative words.** In the case of a simple mortgage, the property is charged and assured as security for repayment of the mortgage debt. In case of *English mortgage*, it is out and out sale to the mortgagee subject to the covenant as to reconveyance upon repayment of the debt with interest.<sup>6</sup>

(5) **Possession.** An English mortgagee has the right to take possession of the property. Such a mortgage should contain a clause as to the appointment of a Receiver who may be a nominee of the mortgagee.<sup>7</sup>

4 Section 176 of the Indian Contract Act.

5 Section 177 of the Indian Contract Act.

6 Section 58(e) of the Transfer of Property Act.

7 Section 69A of the Transfer of Property Act.

**(6) Redemption.** Period is fixed by agreement between the parties. Under Act. 61 of the Limitation Act of 1963 a suit for redemption may be brought within 30 years from when the right to redeem accrues according to the agreement. In case where the property has been transferred by the mortgagee for valuable consideration the period of limitation is 12 years from the date of knowledge.

**(7) Execution and attestation.** Attestation is compulsory to every mortgage. In case where the mortgagor does not know the language, the deed must be explained to him by some competent person.

**(8) Registration.** Compulsory in case of mortgage of value above Rs. 100, and in all cases under the West Bengal Land Reforms Act (*vide s. 7*).

**(9) Delivery of title deeds.** A mortgagee is entitled to all the title deeds of the mortgaged property. If for any reason they are left with the mortgagor through inadvertence or negligence, he can manipulate a prior equitable mortgage by depositing the same elsewhere.

## FORMS

### Deed of Simple Mortgage

THIS DEED OF MORTGAGE made the ..... day of ..... BETWEEN AB of, etc. (hereinafter called the MORTGAGOR), of the one part and CD of etc., (hereinafter called the MORTGAGEE), of the other part, WITNESSES, that in consideration of a sum of Rs. .... lent and advanced to the MORTGAGOR by the MORTGAGEE the receipt whereof the MORTGAGOR does hereby and also by the receipt hereunder admit, acknowledge and confirm, he, the said AB does hereby and hereunder transfer and mortgage, as and by way of simple mortgage, unto and in favour of the said CD, his heirs, executors, administrators or assigns, ALL THAT property specifically described in the schedule hereunder, and charge and assure the same by way of security for the repayment of the said sum of Rs. .... together with interest thereon at the rate of ..... per cent per annum: AND the MORTGAGOR does hereby agree and covenant with the MORTGAGEE that he will pay or cause to be paid to the MORTGAGEE the principal sum aforesaid, together with the interest then due, on or before the ..... day of ..... without delay or default AND THIS DEED further witnesseth and it is hereby agreed and declared by and between the parties that in case the said sum of Rs. .... with interest thereon at the stipulated rate is not paid within the time and in the manner as aforesaid, it shall be lawful for the MORTGAGEE to enforce this mortgage and to cause the property or any portion thereof to be sold and appropriate



the proceeds towards satisfaction of the mortgage debt provided, however, that in the event of any shortfall or deficiency, i.e. should the claim be not then satisfied, the MORTGAGEE shall be entitled to recover the balance personally as against the MORTGAGOR who shall be entitled to redeem the said mortgage at his option by payment of the amount of mortgage debt inclusive of interest at any time before the..... day of..... AND THIS DEED further witnesseth that the MORTGAGOR does hereby covenant with the MORTGAGEE that notwithstanding any act, deed or thing herebefore done, executed, performed or suffered to the contrary, the MORTGAGOR has good title, full power and absolute authority to charge, assure and mortgage the said property in the manner hereunder effected and that the same is free from all encumbrances and attachments.

The Schedule above referred to

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

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

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

MEMO OF CONSIDERATION

Received a Cheque No. .... dated ..... for Rs. .... on B Bank etc.

Received payments  
Sd/. CD

Deed of Mortgage by Conditional Sale

THIS DEED OF MORTGAGE made this ..... day of ..... 2000 BETWEEN AB son of..... residing at..... hereinafter called the MORTGAGOR (which term shall include his heirs, successors, executors, administrators and assigns) of the one part and CD son of..... residing at..... hereinafter called the MORTGAGEE (which term shall include his heirs, successors, executors, administrators and assigns) of the other part WITNESSES that in consideration of the sum of Rs. .... paid to the MORTGAGOR by the MORTGAGEE (the receipt whereof the MORTGAGOR hereby acknowledges) the MORTGAGOR does hereby grant, transfer, convey, assign and assure to the MORTGAGEE ALL THAT etc. To Have and to Hold the same absolutely and for ever subject to the condition hereby expressly declared,

namely, that if and when the MORTGAGOR shall repay or cause to be repaid the said sum of Rs. .... with interest thereon at the rate of ..... per cent per annum on or before ..... day of ..... time for which purpose shall be deemed as essence of contract then and in such an event the sale hereby effected shall stand void and shall be of no effect to all intents and purposes and the MORTGAGEE shall at the costs of the MORTGAGOR reconvey and retransfer the said property and every part thereof as then existing to the MORTGAGOR provided, however, that if the MORTGAGOR shall fail and/or neglect to repay the said sum with interest at the said rate on or before the said date, or any portion thereof the sale hereby effected shall become absolute and the MORTGAGEE shall be entitled to foreclose the mortgage when and in such an event the MORTGAGEE shall be the absolute owner of the property freed and discharged from all right of equity of redemption of the MORTGAGOR, AND IT IS HEREBY further AGREED AND DECLARED that notwithstanding anything hereinbefore contained the MORTGAGOR shall remain in possession of the said property and pay all rents, cess, taxes, rates and other impositions which are now or may hereafter be imposed on the said property and in case the MORTGAGOR fails and/or neglects to make such payments on or before the due date of payments therefor, the MORTGAGEE shall be at liberty to pay the same and add such sum or sums to the principal money hereby secured which shall carry interest at the aforesaid rate. And that the MORTGAGOR does hereby covenant with the MORTGAGEE that he has good title to the property and absolute authority and power to transfer the same in the manner hereinbefore indicated and that the property is free from all encumbrances and attachments whatsoever.

*The Schedule above referred to*

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 MORTGAGOR in the presence of:

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

MEMO OF CONSIDERATION

Received of and from the withinmentioned MORTGAGEE the sum of Rs. .... being the consideration withinmentioned by Bank Draft No. .... dated ..... for Rs. .... issued by X Bank Ltd. payable in Calcutta.

WITNESSES:

Received

Signature of the MORTGAGOR



### Deed of Usufructuary Mortgage

THIS DEED OF MORTGAGE made this ..... day of ..... 2000 BETWEEN AB son of ..... residing at ..... hereinafter called the MORTGAGOR (which term shall include his heirs, successors, executors, administrators and assigns) of the one part and CD son of ..... residing at ..... hereinafter called the MORTGAGEE (which term shall include his heirs, successors, executors, administrators and assigns) of the other part, WITNESSES that in consideration of the sum of Rs. .... paid by the MORTGAGEE to the MORTGAGOR at the time of the execution of this deed (the receipt of which sum the MORTGAGOR hereby acknowledges), the MORTGAGOR does hereby convey as and by way of usufructuary mortgage to the MORTGAGEE ALL THAT etc. To Have and To Hold the same and posses as security until the repayment of the said sum with interest thereon at the rate of Rs. .... per cent per annum.

AND THIS INDENTURE further witnesseth and it is agreed and declared that the MORTGAGOR hereby delivers possession of the said property to the MORTGAGEE who shall retain such possession until payment of the said sum with interest as aforesaid and shall receive the rent, issues and profits accruing from the said property and pay all rents, cesses, taxes and other impositions and appropriate the balance firstly, in payment of the interest due and then in reduction or payment of the principal sum advanced and that on such payment and satisfaction of the whole of the principal sum and interest thereon the MORTGAGOR shall be entitled to get back possession of the said property.

AND it is further agreed and declared that the MORTGAGEE shall at all times hereafter until satisfaction of the mortgage debt take care of, manage and preserve the said property as a person of ordinary prudence would manage it if it were his own and use his best endeavours to collect the rents and profits thereof and make necessary arrangements for maintenance, preservation and repair of the said property and keep clear, full and accurate accounts of all sums received and spent by him as MORTGAGEE and furnish the MORTGAGOR at his cost true copies of such accounts and of the receipts and vouchers by which they are supported.

AND it is furthermore agreed that in any event after expiry of ..... years the mortgage debt shall be deemed as satisfied and extinguished out of the usufruct of the property and the MORTGAGEE shall unconditionally reconvey the property to the MORTGAGOR at his costs and expenses.

#### *The Schedule above referred to*

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 MORTGAGOR in the presence of:

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



## MEMO OF CONSIDERATION

Received of and from the withinmentioned Mortgagee the sum of Rs..... being the consideration withinmentioned by Bank Draft No..... dated ..... for Rs. .... issued by X Bank Ltd. payable in Calcutta.

WITNESSES:

Received  
Signature of the MORTGAGOR

**Deed of Usufructuary Mortgage by Conditional Sale  
(Anomalous Mortgage)**

THIS DEED OF MORTGAGE made this ..... day of ..... 2000 BETWEEN AB son of ..... residing at ..... hereinafter called the MORTGAGOR (which term shall include his heirs, successors, executors, administrators and assigns) of the one part and CD son of ..... residing at ..... hereinafter called the MORTGAGEE (which term shall include his heirs, successors, executors, administrators and assigns) of the other part WITNESSES that on consideration of the sum of Rs. .... now paid to the MORTGAGOR by the MORTGAGEE (the receipt whereof the MORTGAGOR does hereby acknowledge), the said AB hereby conveys to the said CD. ALL THAT, etc. (*describe the property*): from this day AND THAT the MORTGAGEE shall be in possession of the mortgaged property under the terms of the deed for securing payment on the..... day of..... of the principal sum secured, with the interest thereon at Rs. .... per cent per annum, which mortgage-money will be set off against the usufruct of the mortgaged property, and the MORTGAGEE does hereby promise to keep clear accounts thereof.

The MORTGAGOR hereby agrees that the MORTGAGEE shall retain possession of the mortgaged property until the principal sum together with the interest due be paid off out of the proceeds of the property and on payment of the aforesaid sum, the MORTGAGEE shall execute and register a release of the mortgaged property in favour of the MORTGAGOR, AND THAT the MORTGAGEE shall not do, execute, perform, nor suffer to the contrary any act, deed or thing whereby or by reason or means whereof the value of the said property in his possession may be diminished or the same may otherwise be prejudiced in title or estate.

The MORTGAGOR does also agree to pay the Government revenue and the municipal taxes of the said property regularly, and in case he fails to make such payment, the MORTGAGEE shall be at liberty to pay such revenue and taxes, and such sum paid shall be considered an additional principal sum advanced to the MORTGAGOR, and shall carry interest at the rate stipulated above AND LASTLY, the MORTGAGOR also agrees that if he, the MORTGAGOR, does not pay the principal sum with the interest then due on the stipulated date, this conveyance will become absolute and the MORTGAGEE will be



entitled to foreclose the mortgaged property, and thereafter the MORTGAGOR, his heirs, executors, administrators or assigns shall be absolutely debarred of all the rights to redeem the same.

*The Schedule above referred to*

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 MORTGAGOR in the presence of:

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

#### MEMO OF CONSIDERATION

Received of and from the withinmentioned Mortgagee the sum of Rs. .... being the consideration withinmentioned by Bank Draft No. .... dated ..... for Rs. .... issued by X Bank Ltd. payable in Calcutta.

WITNESSES:

Received

Signature of the MORTGAGOR

#### Deed of English Mortgages

THIS DEED OF MORTGAGE made this ..... day of ..... 2000 BETWEEN AB son of ..... residing at ..... hereinafter called the MORTGAGOR (which term shall include his heirs, successors, executors, administrators and assigns) of the one part and CD son of ..... residing at ..... hereinafter called the MORTGAGEE (which term shall include his heirs, successors, executors, administrators and assigns) of the other part. WHEREAS the MORTGAGOR is absolutely seized and possessed or is otherwise well and sufficiently entitled to an absolute estate of inheritance or an estate equivalent thereto free from encumbrances to the lands, hereditaments ..... fully mentioned and described in the Schedule hereto AND whereas the MORTGAGOR intending to borrow a sum of Rs. .... approached the MORTGAGEE which the MORTGAGEE has agreed to lend and advance on having repayment thereof with interest at .....% per annum and secured by a conveyance by way of mortgage of the said property. NOW THIS DEED witnesseth that in consideration of the sum of Rs. .... this day paid to the said AB by the said CD (the receipt whereof the said AB hereby acknowledges), the MORTGAGOR hereby agrees with and covenants to pay to the MORTGAGEE on the ..... day of ..... the sum of Rs. ...., with interest thereon in the meantime at the rate of ..... per cent per annum computed from the date of this deed such interest to

be paid monthly and every month on the 15th of every current month AND THIS DEED also WITNESSES that for the consideration aforesaid the said AB, as the beneficial owner, does hereby grant, transfer, convey unto and to the use of the said CD ALL THAT etc. (*describe the property*): TO HAVE AND TO HOLD the same absolutely and for ever PROVIDED ALWAYS that if the MORTGAGOR shall pay or cause to be paid the sum of Rs. .... with interest thereon, on the ..... day of ....., according to the foregoing agreement in that behalf, the MORTGAGEE, shall, at the request and costs of the MORTGAGOR, reconvey to him or them as he or they shall direct, the said property. AND THAT the MORTGAGOR does hereby covenant unto the MORTGAGEE that the MORTGAGOR has absolute title to the land, hereditaments, messuages and premises hereby granted and conveyed and that the MORTGAGOR has good right, full power, absolute authority and indefeasible title to grant, convey, transfer, assign and assure the same unto and to the use of the MORTGAGEE in the manner hereinbefore indicated and further the MORTGAGOR and all persons having lawfully or equitably any estate or interest in the same shall at all times hereafter during the continuance of the security does execute or perform or cause to be done, executed and performed all such further or other acts, deeds and things as may be reasonably required for further and more perfectly assuring the same unto and in favour of the MORTGAGEE.

PROVIDED, HOWEVER, and it is further agreed by and between the parties that if the MORTGAGOR commits any default in payment of the principal amount on the due date or any three instalments of interest, whether they have been demanded or not it shall be lawful for the MORTGAGEE to institute a suit for sale and to have a Receiver appointed over the mortgaged property.

*The Schedule above referred to*

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

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

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

MEMO OF CONSIDERATION

Received of and from CD the sum of Rs. .... being the loan amount for the said Mortgage.

WITNESS:

I say received  
Signature



**Mortgage of Land and Building to be erected thereon to Secure Present and Future Advances**

THIS DEED OF SIMPLE MORTGAGE made this ..... day of ..... 2000 BETWEEN AB son of ..... residing at ..... hereinafter called the MORTGAGOR (which term shall include his heirs, successors, representatives and assigns) of the one part and CD Company Ltd. registered under the Companies Act 1956 having its registered office at ..... hereinafter referred to as the CD Company, the MORTGAGEE (which term shall include its successors and assigns) of the other part.

WHEREAS AB is the sole owner and in possession in his own right of the open lands measuring ..... square feet affronting ..... Road in the city of ..... and numbered as Plots Nos. 2, 3 and 4 in the ..... Housing Scheme of the Improvement Trust free from all encumbrances fully mentioned and described in the Schedule hereto and hereinafter referred to as the said property.

AND WHEREAS the said AB intends to erect a two-storeyed building thereon having five shops on the ground floor and residential quarters on the first floor.

AND WHEREAS the plans of the said building have been approved and sanctioned on the ..... day of ..... 20..... by the requisite Municipal Corporation.

AND WHEREAS the said AB has approached the said CD Company for a loan or financial accommodation up to Rs. .... (Rupees ..... only) immediately against security of the said property and for such further or other sum or sums of money not exceeding Rs. .... (Rupees ..... only) in any event and against such security as aforesaid as and when required during the period of construction of the building of the said premises AND whereas the said CD Company has agreed to do so on the assurance of the said AB for repayment of the said sum and all further sums to be advanced to the said AB with interest in all cases at the rate of ..... and in the manner hereinafter appearing.

NOW THIS DEED WITNESSES that in pursuance of the said agreement and in consideration of the sum of Rs. .... (Rupees .....) only now paid by the said CD to the said AB which said sum the said AB hereby admits and acknowledges as having received AND ALSO in consideration of the further sum or sums hereinafter to be advanced the said MORTGAGOR hereby covenants with the MORTGAGEE to pay to it within a period of ..... years the sum of Rs. .... with interest on the same at the rate of .....% per annum AND ALSO such sum or sums as may hereafter be advanced by the said CD to the said AB with interest thereon at the rate aforesaid calculated from the time or respective times of advancing the same AND it is hereby declared and agreed that the said CD shall upon the requests of AB advance

the further sum or sums of money not exceeding limit of Rs. ....  
(Rupees ..... only) as aforesaid.

AND THIS DEED ALSO WITNESSES that in further pursuance of the said agreement and for the consideration aforesaid, the said AB as the beneficial owner hereby charges and assures by way of first mortgage unto the said CD ALL THAT open land comprising Plots Nos. 2, 3 and 4 on the ..... Road in the city of ..... (*full description*).

AND ALSO ALL THAT the building consisting of five shops and residential quarters now in the course of construction upon the said three plots of land by the said AB with all fittings and fixtures TO HAVE AND TO HOLD the same with all the rights of a simple MORTGAGEE under the Transfer of Property Act. The charge hereunder created shall extend to the building as and when gradually constructed and when completed to the entirety of the same.

PROVIDED ALWAYS that if the said principal sum or sums of money hereinbefore covenanted to be paid with interest at the rate and within the period stipulated shall not be duly paid or if the MORTGAGOR fails and/or neglects to complete the building or delays in so doing, the MORTGAGEE may at its discretion refuse to make any further advance or advances and shall have the right to enforce the security hereunder created and to sell the property and/or such of the buildings which might then be complete and realise out of the proceeds of such sale all sums due to it together with principal and interest after paying the costs and expenses of such sale and if the mortgage debt be still unsatisfied the MORTGAGEE may enforce the loan against the person or other property of the MORTGAGOR and in case of there being a surplus, the same shall be refunded to the MORTGAGOR.

PROVIDED HOWEVER and it is further agreed by and between the parties that if the MORTGAGOR commits any default in payment of the principal amount on the due date or any three instalments of interest whether they have been demanded or not it shall be lawful for the MORTGAGEE to institute a suit for sale and to have a Receiver appointed over the mortgaged property.

*The Schedule above referred to*

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 MORTGAGOR in the presence of:

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



## MEMO OF CONSIDERATION

Received of and from CD the Mortgagee the sum of Rs. ....  
(Rupees .....) being the loan amount for the mortgage of the property  
mentioned above.

WITNESS:

I say received  
Signature

**Deed of English Mortgage to  
Secure Existing Debt and Future Advances**

THIS DEED OF MORTGAGE is made this ..... day of ..... 2000 BETWEEN AB son of ..... residing at ..... (hereinafter referred to as the MORTGAGOR which term shall include his heirs, representatives and assigns) of the one part and CD son of ..... residing at ..... (hereinafter referred to as the MORTGAGEE which term shall include his heirs, successors and assigns) of the other part.

WHEREAS the said AB is the sole and absolute owner of the property intended to be hereby mortgaged: AND WHEREAS the said AB is indebted to the said CD in the sum of Rs. ...., and he has agreed to secure repayment thereof, and of any further or other sum or sums of money up to Rs. .... which may hereafter be advanced to him by the said CD with interest for the same, in the manner hereinafter expressed; NOW THIS INDENTURE WITNESSES that in consideration of the sum of Rs. .... already due and payable by the said AB to the said CD which the said AB does hereby admit, acknowledge and confirm and further advance of Rs. .... to be hereafter made at the reasonable satisfaction of CD making thus a sum total of Rs. .... upon having repayment thereof with interest at .....% per annum and secured by a conveyance of the property hereunder fully described, the said AB hereby agrees with the said CD that he shall pay him, on the ..... day of ..... the sum of Rs. .... with interest for the same at the rate of ..... per cent per annum, computed from the date of this deed: AND ALSO to pay the said CD such sum or sums of money as may hereafter be advanced by the said CD to the said AB with interest thereon at the rate aforesaid, computed from the time or respective times of advancing the same: AND ALSO, so long as any principal money hereinbefore agreed to be paid shall remain unpaid after the day hereby appointed for payment thereof, to pay to the said CD interest thereon at the rate aforesaid on the ..... day of ....., and the ..... day of ..... AND THIS DEED ALSO WITNESSES that in consideration of the premises the said AB as the beneficial owner hereby grants, transfers, conveys to the said CD ALL THAT, etc. (*describe the property*): TO HAVE AND TO HOLD the same to the said CD absolutely and for ever: PROVIDED ALWAYS that if the principal sum or sums of money hereinbefore agreed to be paid, with interest thereon, shall

be duly paid at the time or times hereinbefore appointed for payment thereof, then and in such case the said mortgaged property shall, at the request and costs of the said AB, be reconveyed to him absolutely.

AND THAT the MORTGAGOR doth hereby covenant unto the MORTGAGEE that the MORTGAGOR has absolute title to the land, hereditaments, messuages and premises hereby granted and conveyed and that the MORTGAGOR has good right, full power absolute authority and indefeasible title to grant convey transfer assign and assure the same unto and to the use of the MORTGAGEE in the manner hereinbefore indicated and further the MORTGAGOR and all persons having lawfully or equitably any estate or interest in the same shall at all time hereafter during the continuance of the security do execute perform or cause to be done executed and performed all such further or other acts, deeds and things as may be reasonably required for further and more perfectly assuring the same unto and in favour of MORTGAGEE.

*The Schedule above referred to*

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 MORTGAGOR in the presence of:

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

**Endorsements to be made on the above Deed  
on the Occasion of a further Advance**

I HEREBY ACKNOWLEDGE to have this day received from the within-named CD the sum of Rs. ...., being a further sum advanced on the within-mentioned security in terms of the mortgage Deed.

(Date)

AB

**Deed of Further Charge on Mortgaged Property**

THIS DEED OF FURTHER charge made this ..... day of ..... 2000  
BETWEEN AB son of ..... residing at .....  
hereinafter called the MORTGAGOR (which term shall include his heirs,  
successors, executors, administrators and assigns) of the one part and CD  
son of ..... residing at ..... hereinafter called the MORTGAGEE (which  
term shall include his heirs, successors, executors, administrators and  
assigns) of the other part, and supplemental to a deed of mortgage  
(hereinafter called the PRINCIPAL DEED), dated the ..... day of .....  
and made between the same parties, and registered in Book I, Vol. ....



pages ..... etc. etc., for securing the sum of Rs. .... and interest at the rate of ..... per cent per annum, on the property at, etc. WITNESSES, that in consideration of a further sum of Rs. .... now paid to the MORTGAGOR by the MORTGAGEE (the receipt of which sum the MORTGAGOR hereby acknowledges), the MORTGAGOR hereby agrees with the MORTGAGEE to pay or cause to be paid to him on the ..... day of ..... the said sum of Rs. ...., with interest thereon in the meantime at the rate of Rs. .... per cent per annum; AND ALSO as long thereafter as any principal money remains due under this further charge, to pay to him interest thereon at the same rate by equal half-yearly instalments on the half-yearly days as mentioned in the Principal Deed for payment of interest.

For the same consideration, the MORTGAGOR HEREBY FURTHER AGREES with the MORTGAGEE that the entire property as comprised in the PRINCIPAL DEED fully mentioned and described in the Schedule hereto shall remain charged also for the payment to the MORTGAGEE of the said further sum of Rs. .... and the interest thereon hereunder agreed to be paid, as well as the sum of Rs. .... and interest secured by the PRINCIPAL DEED, AND that all the provisions of the PRINCIPAL DEED shall *mutatis mutandis* apply as if the principal sum (Rs. ....) and the interest thereon had been originally secured by the PRINCIPAL DEED.

*The Schedule above referred to*

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 MORTGAGOR in the presence of:

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

MEMO OF CONSIDERATION

**Deed of the Reconveyance of Mortgaged Property**

THIS DEED OF RECONVEYANCE made this ..... day of ..... 2000 BETWEEN CD son of ..... residing at ..... hereinafter called the MORTGAGEE (which term shall include his heirs, successors, legal representatives and assigns) of the one part and AB son of ..... residing at ..... hereinafter called the MORTGAGOR (which term shall include his heirs, successors, legal representatives and assigns) of the other part WHEREAS by an Indenture of Mortgage dated ..... made BETWEEN the parties hereto and registered in Book I, vol. ...., page ..... to ..... being No. .... of the office of Sub-Registrar of ..... of ..... it was witnessed that for the consideration mentioned therein the property

fully mentioned and described in the schedule hereto and hereinafter referred to as the said property was granted, transferred, assigned and assured unto and to the use of the MORTGAGEE subject to the proviso for redemption thereunder contained AND whereas the MORTGAGOR has paid up, satisfied and discharged the entirety of the mortgage debt inclusive of all interest due thereon and also all costs due and payable to the MORTGAGEE on that account AND WHEREAS the MORTGAGEE has delivered back to the mortgagor all the title deeds in respect of the said property including the deeds of mortgage with full satisfaction endorsed thereon. Now this Indenture witnesses that in consideration of all principal money, interest and costs due under the hereinbefore recited Indenture of Mortgage having been paid, satisfied and discharged which the MORTGAGEE hereby admits, acknowledges and confirms the said CD hereby release the said AB from all his liability and obligation under the deed of mortgage hereinbefore recited and also the mortgaged property and does hereby grant, transfer and reconvey the same unto and to the use of the said AB ALL THAT property mentioned in the schedule TO HAVE AND TO HOLD the same absolutely, and forever freed and discharged from all principal moneys, interest and costs secured by and from all claims and demands and the security on that account created under the hereinbefore recited Indenture of Mortgage AND that said CD does hereby covenant with the said AB that he has not done, executed or suffered to the contrary any act, deed or thing whereby or reason or means whereof the mortgaged property or any part thereof may be affected or prejudiced in title or estate or he, the said CD, may be hindered or prevented from reconveying the same in the manner hereinbefore indicated.

*The Schedule above referred to*

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 MORTGAGOR in the presence of:

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

MEMO OF CONSIDERATION

Deed of Release of Mortgaged Property

THIS DEED OF RELEASE made this ..... day of ..... 2000 BETWEEN CD son of ..... residing at ..... hereinafter called the RELEASOR of the one part and AB son of ..... residing at ..... hereinafter called the RELEASEE of the other part.



WHEREAS by a deed of simple mortgage dated the ..... day of ..... made BETWEEN the parties hereto and registered in the office of Sub-Registrar of ..... in Book I, vol. ...., page ..... to ..... being No. .... for the year..... the properties described in the Schedule hereto were mortgaged by AB to CD to secure the repayment of the sum of Rs. .... lent and advanced by CD to AB with interest thereon at the rate of ..... per cent per annum AND WHEREAS the said AB has paid to the said CD a sum of Rs. .... in full satisfaction of all the dues of the said CD under the said deed inclusive of interest and costs. *Now this deed of release* witnesses that in consideration of the sum of Rs. .... being the principal sum, interest and costs due under the said deed having been paid by AB to CD (the receipt whereof the said CD does hereby admit, acknowledge and confirm the said CD does hereby release, discharge and reassure the properties described in the Schedule hereto from all principal moneys, interest, costs, claims and demands secured by the said deed of mortgage AND the said CD hereby covenants with the said AB that the said CD has not done, executed or performed or knowing suffered to the contrary or been a party or privy to any act, deed or thing whereby or by reason or means whereof the said properties or any one or part thereof is, are or may be affected or prejudiced in title or estate in any way whatsoever or that the said CD may be hindered or prevented from releasing and reassuring the same in the manner hereinbefore indicated.

*The Schedule above referred to*

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

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

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

MEMO OF CONSIDERATION

**Memorandum of Mortgage by Deposit of Title-deeds**

(SHORT FORM)

MEMORANDUM that this ..... day of ....., AB of, etc. (THE MORTGAGOR), as beneficial owner, has deposited with CD of etc. (THE MORTGAGEE), the original title-deeds comprised in the Schedule A hereto, relating to the premises belonging to the said AB and situate at ..... etc., described in Schedule B with intent to create security thereon for repayment to the said CD of the sum of Rs. .... this day lent and advanced by the said CD to the said AB on demand with interest for the same from this date at the rate of Rs. .... per cent per annum.

The said AB does hereby undertake as and when required by the said CD to execute and register at the costs of the said AB a legal mortgage in such form and containing such covenants and provisions as he may reasonably require.

*The Schedule A above-referred to*

Description of the Title Deeds deposited

*The Schedule B above-referred to*

Description of the property

Signature of the MORTGAGOR

### Deed of Sub-mortgage

THIS DEED OF SUB-MORTGAGE made this ..... day of .....2000 BETWEEN AB son of ..... residing at ..... hereinafter called the SUB-MORTGAGOR (which term shall include his heirs, successors, legal representatives and assigns) of the one part and CD son of ..... residing at ..... hereinafter called the SUB-MORTGAGEE (which term shall include his heirs, successors, legal representatives and assigns) of the other part.

WHEREAS by a deed of mortgage deed dated the ..... day of ..... and registered in Book I, vol. ...., pages ..... to ..... being No. .... in the office of..... the properties described in the Schedule hereto were mortgaged by XY to the SUB-MORTGAGOR AB as security for repayment of the sum of Rs. .... lent and advanced by the SUB-MORTGAGOR AB to XY with interest thereon at the rate of ..... per cent per annum ..... subject to the terms and conditions thereunder contained AND WHEREAS the said XY has paid from time to time an aggregated sum of Rs. .... in part payment of interest due on such mortgage AND WHEREAS a sum of Rs. .... as principal and a further sum of Rs. .... as interest are still due and owing to the said AB by the said XY upon the said mortgage AND WHEREAS the SUB-MORTGAGEE has agreed to lend and advance to the SUB-MORTGAGOR a sum of Rs. .... upon the security of the amount due under and by virtue of the said mortgage and against sub-mortgage of the said properties NOW THIS DEED OF SUB-MORTGAGE WITNESSES that in pursuance of the said agreement and in consideration of the sum of Rs. .... lent and advanced by the SUB-MORTGAGEE to the SUB-MORTGAGOR (the receipt whereof the SUB-MORTGAGOR hereby acknowledges) the SUB-MORTGAGOR does hereby covenant with and agree to repay the SUB-MORTGAGEE the said sum of Rs. .... with interest thereon at the rate of Rs. ....per cent per annum on or before the ..... day of ..... and as security for the same hereby transfers all



the debt secured by the aforesaid mortgage deed and benefits of the charge of and all securities thereunder created on all properties mortgaged as also all rights, remedies and benefits expressly or impliedly conferred upon the SUB-MORTGAGOR under and by virtue of the said mortgage-deed or otherwise by law or in equity.

*The Schedule above referred to*

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 SUB-MORTGAGOR in the presence of:

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

MEMO OF CONSIDERATION

**Mortgage-deed in favour of Bank  
to Secure Indebtedness on Loan Account**

THIS INDENTURE made the ..... day of ..... 2000 BETWEEN AB of ..... (hereinafter called the MORTGAGOR which expression shall be deemed to include his heirs, executors, administrators and assigns) of the one part AND the ELH Bank Limited, a Joint Stock Company incorporated under the Indian Companies Act and having its registered office at ..... (hereinafter called the BANK which expression shall include its assigns) of the other part.

WHEREAS the MORTGAGOR is the owner and the Proprietor of the messuages, lands, hereditaments and premises described in the Schedule hereto and intended to be hereby mortgaged free from encumbrances and whereas the BANK has agreed to lend to the MORTGAGOR the sum of Rs. .... only on having the repayment thereof with interest secured in the manner hereinafter appearing.

NOW THIS INDENTURE WITNESSETH as follows:

1. In pursuance of the said agreement and in consideration of the sum of Rs. .... paid on or before the execution of these presents by the BANK to the MORTGAGOR (the receipt whereof the MORTGAGOR hereby acknowledges) the MORTGAGOR hereby covenants with the BANK as follows:

- (a) That the MORTGAGOR will pay to the BANK the said principal sum of ..... by equal half-yearly instalments of Rs. .... on the first day of ..... and the first day of ..... each year, commencing from ....., and any interest due thereon so that the whole debt is paid in full on or before the .....

- (b) That the MORTGAGOR shall in addition pay interest on the principal sum secured by these presents at the rate of ..... per cent per annum.
- (c) That the MORTGAGOR shall pay to the BANK interest at the rate stipulated in cl. (2) with half yearly rests on the ..... and ..... up to date of realisation in case the BANK has to institute a suit for recovery of the principal and interest or any portion thereof that may be due to the BANK. And if at any time six months' interest payable under these presents shall remain owing and unpaid then the interest so in arrears shall be converted into principal and until paid off shall carry interest at the aforesaid rate of ..... per cent per annum with half-yearly rests.
- (d) That the MORTGAGOR shall and will during the subsistence of this security at his own costs and charges and expense keep and maintain the said premises hereby mortgaged in good repair and tenantable condition.
- (e) It is hereby agreed and declared that in case any of the instalments of principal or interest payable under these presents be not satisfied on the dates hereinbefore appointed for the payments of such instalments of principal or interest then the whole amount of principal remaining unpaid together with interest due shall at once become payable to the BANK and the BANK may forthwith enforce at once any of the remedies to which a holder of a simple mortgage is entitled under the Transfer of Property Act.
- (f) That the MORTGAGOR will within one month from the date of these presents insure and keep insured the building and such other part of the mortgaged premises as are of an insurable nature or any part or parts thereof from loss or damage by fire in the full value thereof in some insurance office to be approved of by the BANK in the joint names of the MORTGAGOR and the BANK as mortgagee (the relative policy to contain the agreed BANK clause of the Fire Insurance Association) and will duly pay all premiums and sums of money payable for that purpose and will deliver to the BANK the policy for such insurance and the receipt for every such payment within seven days after it shall become due and in case the MORTGAGOR shall neglect or refuse to keep the said premises insured to the amount aforesaid or to deliver such policy and receipts as aforesaid then and in every such case it shall be lawful for the BANK to insure the same to the amount aforesaid or any less amount and all sums of money expended by the Bank in or about such insurance as aforesaid with interest for the same at the rate of Rs. .... per cent per annum (with half-yearly rests) computed from the time or respective times of advancing the same shall be repaid by the MORTGAGOR to



the BANK on demand and in the meantime shall be a charge on the premises hereby mortgaged in addition to the principal sum and interest thereon.

- (g) That the MORTGAGOR agrees that all sums of money awarded as compensation for any compulsory acquisition of any portion of the mortgaged property by any Government, municipal or railway or district board authority shall be receivable by the BANK direct on behalf of the MORTGAGOR and that such money as well as moneys received under and by virtue of any such insurance as aforesaid shall at the option of the BANK either be forthwith applied in or towards substantially rebuilding, re-instating or repairing the said premises or in or towards payment of the principal money, interest and costs for the time being remaining due on the security of these presents.

2. For the consideration aforesaid and in further pursuance of the said agreement the MORTGAGOR hereby grants and transfers by way of simple mortgage unto the BANK all the property described in the Schedule hereto together with all rights, easements and appurtenances thereto and all his rights, title and interest in and to the said premises to the intent that all the said premises hereby mortgaged shall remain and be charged by way of simple mortgage and free from all encumbrances as security for the payment to the Bank of the said principal money, interest and costs in accordance with the covenants hereinbefore contained.

3. That the MORTGAGOR shall allow the BANK, its servants, agents and surveyors at all reasonable times to enter the said premises and view and examine the state and condition thereof.

4. Provided always that the MORTGAGOR may at any time after giving the BANK thirty days' notice pay the BANK the whole of the principal sum and interest and costs that may be due to the BANK.

*The Schedule above referred to*

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 MORTGAGOR in the presence of:

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

### Memorandum of Pledge of Movables

To

CD of, etc. (the PLEDGEE)

The articles specified in the annexed schedule which I, the undersigned AB of, etc (THE PLEDGOR) have this day deposited with you, are to be held as a security for the repayment to you, within ..... months from this date, of the sum of Rs. .... which you have this day lent and advanced to me, together with interest at the rate of Rs. .... per cent. per annum. And I hereby authorize and empower you, in the event of non-payment thereof within that period, to sell the same or cause the same to be sold at any time in any way you may think proper, at my risk and on my account and out of the proceeds of such sale, after paying all costs, charges and expenses of and incidental to the same, to retain, appropriate the said sum of Rs. .... and interest, and to pay the balance (if any) to me. You would not be liable for any loss or damage of or to the said articles unless caused by your own wilful negligence or default. In case of any shortfall I shall remain personally responsible to pay for the same to you with interest at the aforesaid rate.

Signed, sealed and delivered

AB

*The Schedule above-referred to*

### Mortgage-deed with Guarantors

THIS DEED OF MORTGAGE is made this ..... day of ..... 2000 BETWEEN X Ltd. an existing company within the meaning of the Companies Act 1956 having its registered office at ..... (hereinafter referred to as the MORTGAGORS which term shall include its successors and assigns) of the first part and Friendly Society Ltd. registered under the West Bengal Societies Registration Act and having its principal office at ..... (hereinafter referred to as the MORTGAGEES which term shall include its successors and assigns) of the second part and AB and CD, sons of EF residing at ..... (hereinafter called the GUARANTORS which term shall include their heirs, executors and administrators) of the third part. WHEREAS the MORTGAGORS have, by the Indenture dated ....., acquired from the Improvement Trust a Plot No. .... situated in ..... measuring ..... acres in area or thereabout (and more particularly described in the Schedule hereunder) on lease with option to purchase all the said land together with all rights, easements and appurtenances to the same except mines, and mineral products, buried treasures, petrol oil and quarries whatsoever in, under or within the said land as mentioned in the said Indenture, for a consideration of Rs. ....



payable in seven instalments as therein described, out of which the said MORTGAGORS have paid to the said Improvement Trust, first ..... instalment with interest amounting to Rs. .... in addition to a sum of Rs. .... deposited as earnest money to be adjusted against the last instalment, and now only the remaining ..... instalments of Rs. .... each (which shall fall due on ..... and ..... respectively) remain to be paid out of which Rs. .... earnest money as aforesaid shall be adjusted against the last instalment. A sum of Rs. .... therefore remains to be paid to the said Lessor in respect of the aforesaid plot of land; AND WHEREAS the MORTGAGORS have on the said plot of land erected a building at the cost of about Rs. .... and have besides machinery installed thereon worth about Rs. .... AND WHEREAS the MORTGAGORS are under their Memorandum and Articles of Association empowered to raise money and secure the payment thereof by mortgage or otherwise of all those assets; AND WHEREAS in exercise of the said powers, the Board of Directors have by their Resolution No. .... dated ..... authorized Shree ..... ; and Shree ..... two of the directors of the Company, to sign and execute relevant mortgage-deed in favour of the MORTGAGEES and to comply with all other formalities (including registration, etc.) in respect thereof.

NOW THIS INDENTURE WITNESSETH as follows:

1. That in consideration of Rs. .... to be paid by the said MORTGAGEES to the MORTGAGORS by their cheque No. .... dated ..... on ..... Bank Ltd., at the time of registration before the Sub-Registrar, the said MORTGAGORS, as beneficial owners thereof, do hereby charge and assure unto the said MORTGAGEES, all the rights and interests in the said plot of land, building and the machinery aforesaid and more particularly described in the Schedule hereunder to have and to hold the same unto and to the use of the said MORTGAGEES subject, however, to the terms of the Indenture of Lease dated ..... except that the amount of Rs. .... still unpaid to the said Lessor shall be paid by the MORTGAGORS as and when it becomes payable under the terms of the said Indenture of Lease. Provided always that if the said MORTGAGOR shall pay to the said MORTGAGEES on or before the expiry of two years from the date of these presents the mortgage money including interest, if any, as may be then accruing thereon, then and in such an event the MORTGAGEES, will at any time thereafter upon the request and at the cost of the said MORTGAGORS release and retransfer the said property unto the said MORTGAGORS or as they shall direct.

2. That the MORTGAGORS hereby covenant with the MORTGAGEES that they shall pay or cause to be paid to the said MORTGAGEES by way of interest on the aforesaid principal amount of Rs. .... calculated at the rate of ..... per cent. in the meantime.

3. That the MORTGAGORS further covenant with the MORTGAGEES that notwithstanding the period of two years stipulated in cl. (1) hereof, the

MORTGAGEES shall be entitled to recover the mortgage money together with interest then accruing thereon, if any, after giving three months' clear notice to MORTGAGORS.

4. That the Guarantors in consideration of the MORTGAGEES having advanced the sum of Rs. .... to the MORTGAGORS as aforesaid, do hereby agree and covenant with the MORTGAGEES that if for any reason the MORTGAGORS wind up or suspend their business or are unable to pay this debt or the Lessor forfeits the lease of the plot of land aforesaid in default of the observance of the terms of the Indenture of lease aforesaid or any one or more of them or if there is a shortfall or deficiency in the sale proceeds of the mortgaged property, so that the mortgaged money is not fully recovered therefrom then and in such events, they will be jointly and severally liable for the payment of the mortgage money to the MORTGAGEES or such part thereof as might remain unrecovered at that time, which can in that case be recovered from their respective persons and properties.

5. Nothing herein contained shall in any way prejudice any of the remedies available to the MORTGAGEES under the law. Nor shall the liability of the GUARANTORS be in any wise affected by any concession or indulgence shown by the MORTGAGEES to the MORTGAGORS or by any extension of time granted by the former to the latter beyond that specified in cl. (3) hereof or otherwise.

6. And it is hereby declared that the expression MORTGAGORS and MORTGAGEES and the GUARANTORS where the context allows, includes all persons deriving title under them respectively.

*The Schedule above referred to*

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

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

Signed, sealed and delivered by  
Mr. .... pursuant to  
Resolution of Friendly Society Ltd.  
dated ..... in the presence of:

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



## Deed of English Mortgage

## Where part of the Consideration Money of a Sale is Unpaid

THIS MORTGAGE DEED is made this ..... day of ..... 2000 BETWEEN AB son of ..... residing at ..... (hereinafter called the MORTGAGOR which term shall where the subject or context admits of include his heirs, executors, administrators, representatives and assigns) of the first part and CD son of ..... residing at ..... (hereinafter called the MORTGAGEE which term shall unless the context otherwise requires include his heirs, executors, administrators, representative and assigns) of the second part.

WHEREAS the MORTGAGEE was the sole and absolute owner of Premises No. .... fully mentioned and described in the Schedule hereto and hereafter referred to as the said property AND WHEREAS by an Indenture of Conveyance executed this day immediately prior to these presents the MORTGAGEE has granted, conveyed, sold, transferred, assigned and assured the said property unto and in favour of the MORTGAGOR for the sum of Rs. .... absolutely and forever.

AND whereas at the treaty for the sale it was finally agreed by and BETWEEN the parties hereto that the MORTGAGOR shall pay a sum of Rs. .... and secure the balance at Rs. .... by execution of an English Mortgagee on the said property on terms hereunder contained AND WHEREAS the MORTGAGOR is by virtue of the said conveyance absolutely seized and possessed or is otherwise well and sufficiently entitled to an absolute estate of inheritance or an estate equivalent thereto free from encumbrances to the said property. Now this Indenture witnesseth that in consideration of the sum of Rs. .... being the unpaid balance of the consideration money in respect of the sale and in consideration of the terms and conditions finally agreed to and decided between the parties and in consideration of the possession of the property having been delivered to the MORTGAGOR in pursuance of the said conveyance, the MORTGAGOR does hereby agree with and covenant to pay to the MORTGAGEE on or before the ..... day of ..... in the manner hereunder indicated the said sum of Rs. .... with interest thereon in the meantime at the rate of ..... per cent per annum computed from the date of these presents such interest to be paid monthly every month on the ..... of every current month without any delay or a single default and the MORTGAGOR as beneficial owner does hereby grant, transfer, convey, assign and assure unto and to the use of the MORTGAGEE the said property with all building, yards, courtyards, areas, drains, sewers, rights, liberties, easements, privileges, appendages, appurtenance whatsoever and all deeds, attaches, muniments, writings and evidences of title which in any way relate to the said promises TO HAVE AND TO HOLD the same absolutely and for ever subject to the proviso for redemption hereunder contained, that is, if the MORTGAGOR shall pay or cause to be paid the sum of Rs. .... with interest

thereon at 10% per annum for the debt hereof on or before the ..... day of ..... according to the agreement in that behalf, the MORTGAGEE, his heirs, representatives or assigns shall, at the request and costs of the MORTGAGOR, his heirs, representatives or assigns reconvey to him or them as he or they shall direct the said property. And that the MORTGAGOR does hereby covenant unto the MORTGAGEE that the MORTGAGOR has absolute title to the land, hereditaments, messuages and premises hereby granted and conveyed and that the mortgagor has good right, full power, absolute authority and indefeasible title to grant, convey, transfer, assign and assure the same unto and to the use of the MORTGAGEE in the manner hereinbefore indicated and further the MORTGAGOR and all persons having lawfully or equitably an estate or interest in the same shall at all times hereafter during the continuance of the security would execute or perform or cause to be done, executed and performed all such further or other acts, deeds and things as may be reasonably required for further and more perfectly assuring the same unto and in favour of the MORTGAGEE.

PROVIDED, however, and it is further agreed by and between the parties that if the MORTGAGOR defaults in payment of any instalments of the principal amount on the due dates or any two instalments of interest or commits any breach of the covenants, conditions and stipulations hereunder contained to be observed and performed on his or their part the entire mortgage money shall become at once due and payable and it shall be lawful for the MORTGAGEE to institute a suit for enforcement of the mortgage and sale and to have a Receiver appointed over the mortgaged property notwithstanding the fact that the period of redemption hereunder provided shall not have then expired.

And that the MORTGAGOR, his heirs, executors, administrators, representatives and assigns to the intent that he shall personally remain responsible for performance of all covenants on his part covenant and agree with the MORTGAGEE as follows that the mortgagor shall, after appointment of such Receiver, shall not receive or collect any payment in respect of the mortgaged premises and shall forthwith deliver possession and attorn all tenancies to the Receiver so appointed without any objection of any kind whatsoever, and that the MORTGAGEE shall be entitled to apply for such direction or directions on the Receiver as in law he may be entitled to do so.

And also in case the MORTGAGOR fails and/or neglects to pay the mortgage money as hereunder provided, the MORTGAGEE shall be entitled to cause the property to be sold, and in that event he shall, out of the proceeds of such sale at the first instance, be entitled to repayment of the mortgage money with all interest at the rate aforesaid payable till the date of payment or realization through court and in the event of any deficiency, the MORTGAGOR and also the confirming party shall remain personally liable for the same and submit to a personal decree on that account.



And that the MORTGAGOR shall at all times during the continuity of the security hereunder created keep the property with all buildings, erections, fixtures, etc. in good repair and condition and shall not cause nor suffer, any loss, damage or mischief thereto until the said sum of Rs..... with all interest and the costs, charges and expenses of the MORTGAGEE, if any, is fully paid and also free from encumbrances and attachment and duly insured against fire and other insurable risks during the subsistence of this mortgage and shall not deliver possession of the property to any person or persons. And that the MORTGAGOR shall not suffer any decree or attachment affecting the property and that the MORTGAGEE shall be entitled to have property insured unless the mortgaged premises already insured by the MORTGAGOR who shall give timely information thereof to the MORTGAGEE and any expenses incurred by the MORTGAGEE in that behalf shall be added to his claim and shall bear interest thereon at the rate mentioned above.

And that the MORTGAGOR shall not grant any lease or leases of the property or any portion thereof not let out the same except on monthly tenancy basis nor erect any temple or other place of religious worship, nor create any trust or debutter or settlement or endowment except with the consent and permission in writing of the MORTGAGEE who shall be entitled to refuse in all such cases at his absolute discretion without assigning any reasons. The MORTGAGOR shall, in the event of any such lease or leases granted with the permission of the MORTGAGEE, keep the mortgagee apprised of the terms and conditions under which the MORTGAGOR shall propose to give the mortgaged premises or portion thereof on lease and shall give sufficient notice thereof prior to the grant of any such lease and shall also make the entire premium if any available to the MORTGAGEE who shall credit and adjust the same against the mortgage debt.

And that MORTGAGOR shall, during the subsistence of this security, pay all his income-tax and other personal taxes and all public charges, e.g. rates and other assessments, impositions and outgoings in respect of the property and produce for inspection of the MORTGAGEE all paid up bills and challans as and when demanded nor submit to nor suffer any attachment or charge on the mortgaged property.

And that in case the MORTGAGOR sells any portion of the property, he shall obtain prior permission in writing from the MORTGAGEE and has to make the entire consideration money available to the MORTGAGEE who shall adjust the sum or sums so received *in pro tanto* satisfaction of the mortgage debt due to him.

And that on payment of the mortgage money and all expenses and charges that may have accrued due to the MORTGAGEE from the MORTGAGOR up till the date of redemption, the MORTGAGEE shall reconvey the mortgaged premises to the MORTGAGOR at the costs and expenses of the MORTGAGOR free from all encumbrances, if any, created by the MORTGAGEE in respect of the mortgaged premises and return all documents of title or other necessary

documents, which may be in possession of the MORTGAGEE, having been delivered to him by the MORTGAGOR or his representative in interest at any time prior to such redemption.

And that the MORTGAGEE shall have the right to assign the mortgage debt together with the security or nominate any person or persons to receive the mortgage money as shall remain outstanding from time to time and receipts of such person or persons shall be a complete discharge to the MORTGAGOR who shall have no liability to see the application of the money. And that MORTGAGOR shall keep the MORTGAGEE informed of all proceedings if any, for compulsory acquisition of the mortgaged property and developments from time to time and shall consent to the payment of the claim of the MORTGAGEE in full at the first instance together with all costs, charges and expenses ancillary or incidental thereto notwithstanding the period of redemption hereunder provided shall not have expired.

And that these presents shall at all times be construed as an English MORTGAGEE within the meaning of Transfer of Property Act and the MORTGAGEE shall have and be entitled to all powers, authorities, rights, remedies and reliefs open to the MORTGAGEE of the same description and that all notices, letters, etc. addressed to the MORTGAGOR shall be deemed to have been sufficiently served if sent at his residence or hereinbefore mentioned under certificate of posting.

#### *The Schedule*

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 MORTGAGOR in the presence of:

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

#### Deed of Floating Charge

THIS INDENTURE MADE this ..... day of ..... 2000 BETWEEN X Ltd. a Company registered under the Companies Act 1956 having its registered office at ..... (hereinafter referred to as the MORTGAGOR which term shall unless the context requires otherwise include his successors and assigns) of the one part and CD son of ..... residing at ..... (hereinafter referred to as the MORTGAGEE which term shall include unless the context otherwise requires his heirs, executors, legal representatives and assigns) of the other part.

WHEREAS the MORTGAGOR is in urgent need of capital for the purpose of its business.



WHEREAS at a meeting of the Board of Directors of the MORTGAGOR, held at its registered office on ..... day of ..... it was resolved that a sum of Rs. .... be raised as the loan on security of all the assets of the MORTGAGOR by creating floating charge thereon. And whereas the MORTGAGEE has agreed to lend and advance the same sum of Rs. .... upon the security of the entire undertaking of the MORTGAGOR as hereunder created. Now this Indenture witnesses that in pursuance of the said agreement and in consideration of the loan of Rs. .... advanced by the MORTGAGEE to the MORTGAGOR simultaneously with the execution of these presents, the MORTGAGOR doeth hereby covenant with the MORTGAGEE to repay the same on the..... day of ..... 2005 and shall meanwhile until such repayment pay interest thereon at the rate of ..... per cent per annum.

And this Indenture further witnesseth that in pursuance of the said agreements and the consideration aforesaid the mortgagor doeth hereby grant, convey, transfer, assure, assign and confirm unto the MORTGAGEE free from all encumbrances all the furniture, materials for manufacture, stores, stocks whether in process or otherwise, manufactured goods, machinery, fixtures, fittings, tools, implements, goods, chattels and effects which now or hereafter may belong to or be used or acquired by the MORTGAGOR in its said business whether mentioned in the said Schedules hereunder written or not with all accessories, additions, substitutes, replacements and the assets and book debts the particulars whereof are entered in the books of account of the said business of the MORTGAGOR and all moneys receivable by the MORTGAGOR by sale of their shares and/or by way of calls on shares or otherwise in connection with the said business of the MORTGAGOR and all securities for money and the benefit of all existing contracts and orders for the supply of articles and things manufactured by them in their said business and all goods, chattels and things which now are or may hereafter during the continuance of this security be placed or brought into or manufactured for the purposes of the said business of the MORTGAGOR whether in substitution of the goods, chattels and things mentioned in the said schedules or otherwise ALSO all the debts, securities, moneys, properties, freehold or leasehold and assets which now belong or hereafter may belong to the MORTGAGOR together with all the sheds, structures and factories as belong to the MORTGAGOR and as shown in the map or plan annexed hereto AND ALL the estate, right, title, interest, claim, demand whatsoever both at law and in equity of the MORTGAGOR in the properties hereinbefore mentioned and hereby transferred, assigned and assured and all deeds, documents and other evidence of title which in any wise relate or may relate hereafter to the said properties transferred and assigned (all the said properties hereafter referred to them as the mortgaged property) subject to the proviso that if the MORTGAGOR shall pay on or before the ..... day of ..... the said sum of Rs. .... with interest thereon at the rate of ..... per annum and all other sums of money due and payable to the MORTGAGEE under these



presents, then and in such an event the MORTGAGEE shall, at the costs of the MORTGAGOR, reconvey and reassure the mortgaged property unto and to the use of the MORTGAGOR at the costs and expenses of the MORTGAGOR. The charge hereunder created shall be a floating charge on all assets of the MORTGAGOR from time to time as a going concern. It will attach on the subject and the undertaking of the company all properties, present and future, as changing from time to time in the varying condition in which the same will happen and shall crystallise only on liquidation unless the same is for the purpose of reconstruction or in the event the interest or capital hereunder advanced falling in arrear.

The MORTGAGOR shall, during the subsistence of the security created by these presents, regularly and punctually pay from its business or otherwise all income-tax, sales tax, all such rates, taxes, assessments and impositions which now is or are or may hereafter be payable in respect of the said business and the premises where the said business are now or may hereafter be carried on and/or the mortgaged property or any portion thereof may be kept, stored or stocked as and when the same shall from time to time become due and payable and produce the receipts or other papers showing such payments to the MORTGAGEE for its inspection and in default of payment as aforesaid of the same by the MORTGAGOR the MORTGAGEE may in its discretion pay the same and add the same to its claim and further that the MORTGAGOR shall neither terminate nor accept the termination of its tenancy nor its surrender which it now have or may hereafter have, nor give up possession of the premises where the said business of the mortgagor is now or may hereafter be carried on or where the mortgaged property are now or may hereafter be situate, stored or kept without the consent in writing first had and obtained by the MORTGAGOR from the MORTGAGEE.

1. That these presents shall be a continuing security and the charge shall float on all properties, assets and credits of the mortgagor from time to time for all loans and advances made and to be made by the MORTGAGEE to the MORTGAGOR on the footing of these presents until the MORTGAGOR shall redeem the security hereby created.

2. It shall be lawful for the MORTGAGEE on the execution of these presents at all times upon 24 hours notice during the continuance of this security to enter into or upon the premises where the business of the MORTGAGOR are or may be carried on or wherein the mortgaged property or any part thereof may be kept to view the state of the conditions thereof and to take inventories and/or inspect accounts and other books of the company and to take copies or abstracts thereof.

3. It shall further be lawful for the MORTGAGEE, its servants or agents to take possession of all or any part or portion of the mortgaged property hereby charged and either to remove the same or to remain in possession thereof without removing the same and at its option to carry on the said business of the MORTGAGOR through the MORTGAGOR without being answerable for any loss on the account and for the benefit of the MORTGAGEE or allow the



MORTGAGOR to carry on the same subject to such superintendence and control as the MORTGAGEE may think fit to exercise and also relinquish possession of the mortgaged property and again to retake and retain possession thereof without invalidating the securities hereby created and without being answerable for any loss which may happen in or about the exercise or execution of any of the powers conferred on the MORTGAGEE by these presents or by any statute or for any loss which may happen by reason of any involuntary mistake whether of law or fact or by reason of circumstances over which the MORTGAGEE has no control and all moneys expended by the MORTGAGEE in that behalf shall be added to moneys hereby secured and bear interest at the rate of 12 per cent. per annum as aforesaid and after the moneys secured by these presents have become due and payable under these presents all moneys received by the MORTGAGEE by the sale of the mortgaged property and/or all or any assets, properties or goods, whether or not seized or taken possession of, shall be appropriated towards the claim of the MORTGAGEE notwithstanding any thing herein contained.

4. It shall be lawful for the MORTGAGEE after the moneys secured by these presents shall become due and payable under the provisions of these presents to sell the mortgaged properties or any of them either in one lot as a going concern or in separate lots pursuant to the powers of sale conferred on bailees or pledgees by the Indian Contract Act or under any other law in force and thereafter to appropriate the sale proceeds towards the claim of the MORTGAGEE and any notice addressed to the MORTGAGOR at its registered office under registered cover shall be sufficient for the purpose of the said Act and shall be deemed to have been served when in the usual course such registered cover should have been received by the MORTGAGOR if properly addressed at the registered office and put into post office.

5. That the MORTGAGOR shall give all necessary and effective authority and power under the Articles of Association of the MORTGAGOR to enable the MORTGAGEE to make call for the uncalled money due on the shares allotted or to be allotted.

6. That the MORTGAGOR shall, during the continuance of the security created by these presents at all times, keep the mortgaged property of the same value as they are now and shall also keep the mortgaged property insured against loss or damage by fire or theft or burglary for the full value thereof in the joint names of the MORTGAGOR and the MORTGAGEE and shall duly and punctually pay from its business or otherwise all premiums and moneys payable to keep up the said insurance and shall on demand produce to the MORTGAGEE the policy or policies of insurance and the receipts for every such payment of premium and that in default of effecting or keeping up such an insurance, it shall be lawful for the MORTGAGEE to insure and keep insured the mortgaged property or any part thereof for such sum as it may think fit and add to its claim under these presents all costs, charges and expenses in connection with the insurance unless these costs, charges



and expenses are repaid on demand by the MORTGAGOR which the MORTGAGOR hereby covenants to repay on demand and that all moneys which may be received in respect of the said insurance policies or any of them shall either be applied in making good the loss or damage or towards the discharge of the moneys that may be due and owing to the MORTGAGEE by virtue of these presents.

7. The MORTGAGOR shall, so long as it shall carry on the said business keep and submit to the MORTGAGEE and when required statement of stocks and goods comprised in the mortgaged property and accounts and any other information which the MORTGAGEE may require duly certified by the auditors and two directors.

8. That the MORTGAGEE shall not be bound to exercise all or any of the powers hereby conferred on it and the exercise of any of the said powers shall not prejudice or affect the rights of the MORTGAGEE under these presents for the recovery of the moneys hereby secured and/or for the realisation of the bills and properties hereby charged by a suit or otherwise.

9. That the MORTGAGEE shall be at liberty to have a Receiver appointed of the mortgaged property in case it may have to file a suit in respect of any matter arising under these presents and the MORTGAGOR shall not object to the appointment of such Receiver on sufficient security and usual remuneration.

10. The MORTGAGOR shall always keep the MORTGAGEE duly informed as to the whereabouts of the mortgaged property and every portion thereof and the MORTGAGOR covenants and declares that the mortgaged properties are not subject to any lien, attachment, encumbrances or *lis pendens* that the value of the mortgaged properties is not less than Rs. .... estimated and calculated at the present market rate.

And that the MORTGAGOR has authority to grant transfer, assure, assign and confirm the mortgaged property hereby granted, transferred, assured and assigned and confirmed or expressed or intended so to be unto the use of the MORTGAGEE in the manner aforesaid and the MORTGAGOR further covenants that the security created by these presents will attach to the mortgaged property and continue during the subsistence of this security although the mortgaged property or any portion thereof may be removed from the premises where they are now and attached to or embedded in some other premises and that the MORTGAGOR further covenants that it shall *at its own cost* and at the request of the MORTGAGEE do and execute or cause to be done or executed all such acts, deeds and things as may at any time hereafter or from time to time be reasonably required by the MORTGAGEE for further and more perfectly transferring, assuring and assigning and confirming the mortgaged property and every part thereof so as to protect and preserve the security created by these presents unto and to the use of the MORTGAGEE in the manner aforesaid.



*The Schedule above referred to*

The above Schedule is not exhaustive but illustrative; all properties, assets and credits of the MORTGAGOR as belonging from time to time stand charged as security in favour of the MORTGAGEE.

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

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

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

**Pari Passu Charge Agreement**

**TRIPARTITE AGREEMENT**

THIS TRIPARTITE AGREEMENT IS made this 5th day of June 1999 BETWEEN Castings Ltd., a company registered under the Companies Act 1956 having its Registered Office at 1 Netaji Subhash Road, Calcutta 700 001 (hereinafter referred to as the MORTGAGOR, which term shall unless repugnant to the context or meaning include its successors and assigns) of the first part, X Bank Ltd., a Banking Company within the meaning of the Companies Act 1956, having its Head Office and carrying on business at 14 Netaji Subhash Road, Calcutta 700 001 (hereinafter called the BANK which expression shall unless repugnant to the subject or context include its successors and assigns) of the second part and ELH Financial Corporation Ltd. a Company within the meaning of the Companies Act 1956 and having its Head Office and carrying on business at 9 Netaji Subhash Road, Calcutta 700 001 (hereinafter referred to as the CORPORATION, which term shall unless repugnant to the subject or context shall include its successors and assigns) of the third part.

WHEREAS the MORTGAGOR is seized and possessed of land measuring about 10 acres, situated at 1 Netaji Subhash Road, Calcutta 700 001 with structures, factory sheds, plant, machinery, furniture and fixtures and carrying on business as manufacturer of and dealer in all kinds of castings of machine parts.

AND WHEREAS by a Deed of Mortgage dated 5th January 1998 made BETWEEN the MORTGAGOR and the BANK, the MORTGAGOR borrowed Rs. 10 lacs from the BANK and the MORTGAGOR in consideration thereof conveyed assigned, granted and assured unto the BANK all those pieces and parcels of land, being the Premises No. 1 Netaji Subhash Road, Calcutta 700 001 and

described in the First Schedule hereunder with all buildings, structures and sheds created or constructed or to be created or constructed on the said land and all and singular plant, machinery, motors, electric and other installations, implements, equipments, spares, accessories, stores and other block assets but excluding raw materials, semifinished and finished products of the MORTGAGOR then being or which shall at any time hereafter during the continuance of the said security be brought in or affixed, installed or erected upon the said lands and buildings or kept anywhere else by the MORTGAGOR or which may belong to the MORTGAGOR or are capable of being transferred by the MORTGAGOR (all of which assets are collectively referred to as the PLANTS AND MACHINERY.

TO HAVE AND TO HOLD the said land, PLANTS AND MACHINERY unto the BANK absolutely but subject to the proviso for redemption of securities therein contained.

AND WHEREAS the MORTGAGOR being in further need of money has requested the CORPORATION to lend and advance to the MORTGAGOR a sum of Rs. 10 lakhs which the CORPORATION has agreed to do on certain terms and conditions and on the MORTGAGOR creating, *inter alia*, a mortgage by deposit of the Title Deeds of all lands, buildings and fixed machinery and on executing an Agreement of Hypothecation in respect of the PLANT AND MACHINERY of the MORTGAGOR in favour of the CORPORATION to secure such advance.

AND WHEREAS one of the terms and conditions of the said agreement with the Corporation is that the MORTGAGOR shall create a mortgage by deposit of Title Deeds and execute an Agreement of Hypothecation in favour of the CORPORATION and shall cause the BANK to enter into a Tripartite Agreement whereby the BANK mortgage shall be modified so that the mortgage by deposit of Title Deeds and Agreement of Hypothecation of the PLANT AND MACHINERY in favour of the CORPORATION shall rank *pari passu* in point of security and in all other respects with the Bank's mortgage and Hypothecation.

AND WHEREAS the BANK has agreed to the modification of its mortgage and Hypothecation so as to concede *pari passu*, charge on the BANK mortgage in favour of CORPORATION.

AND WHEREAS it is now necessary to record such an arrangement among the parties in a Tripartite Agreement.

NOW THIS AGREEMENT WITNESSETH and it is hereby agreed and declared by and among the parties hereto as follows:

1. The BANK shall whenever required by the CORPORATION make the Title Deeds available to the MORTGAGOR for the express purpose of being deposited with the CORPORATION with the intent to create in favour of the CORPORATION a Mortgage by deposit of the Title Deeds within the meaning of section 58(f) of Transfer of Property Act as security for payment of all moneys to be advanced by CORPORATION to the MORTGAGOR.



2. Notwithstanding anything to the contrary contained in the BANK Mortgage and the Corporation Mortgage, the rights of the BANK and CORPORATION in respect of the securities to be created by the Corporation Mortgage shall rank *pari passu* for all purposes and to all intents without preference and priority of one over the other.

3. During the subsistence of the securities mentioned in the immediately preceding paragraph all insurance policies in respect of the mortgaged premises shall be taken by the mortgagor in the name of the MORTGAGOR as Mortgagor and the BANK and the CORPORATION as mortgagees and shall be held by the CORPORATION and in case of moneys becoming due under such insurance the amount realised from the insurance company or companies shall be received in the first instance by the CORPORATION and shall subject to the mutual consent of the BANK and the CORPORATION be applied to the repairs and reinstatement of the mortgaged premises so damaged or destroyed and towards the payment of the dues of the Bank and the Corporation on *pro rata* basis.

4. The BANK or the CORPORATION or any of them shall be entitled to bring suits or proceedings for enforcement of the securities created in their respective favour or otherwise for realisation of the respective dues from the MORTGAGOR and in the event of the suit or proceeding by any of the parties it shall join the other as party to such suit or proceeding.

5. Notwithstanding anything contained in the Bank Mortgage or the Corporation mortgage the following provisions shall apply as between the BANK and the CORPORATION in relation to the mortgaged premises:

(i) If the BANK, the CORPORATION or any of them shall enforce their respective securities created by the Bank mortgage or the Corporation mortgage all monies realised from the enforcement of such securities or the amount realised from the insurance company or companies as mentioned in paragraph 3 above or any compensation money for acquisition or requisition of the mortgaged premises or any of them or any part thereof or any other realisation from the securities by enforcement or otherwise shall be applied in the manner hereinafter appearing:

(a) Firstly there shall be paid out of the said moneys all costs, charges and expenses incurred by the Bank or the Corporation or by both of them of and incidental to the enforcement of the securities or realisation or receipt of such moneys.

(b) In the event of the moneys available for distribution to the BANK and the CORPORATION being sufficient to pay to them the full amount of the moneys due under the Bank mortgage and the Corporation mortgage the same shall be applied

simultaneously in payment of the BANK and the CORPORATION of the full amount respectively due under the said securities and the surplus, if any, out of the said moneys shall be paid to the person or persons entitled thereto.

- (c) In the event of the moneys available for distribution to the BANK and the CORPORATION not being sufficient to pay to them the full amount of the moneys due under the Bank mortgage and the Corporation mortgage the same shall be applied *pari passu* as nearly as practicable towards payment to the BANK and the CORPORATION in proportion to the amounts due to them under the said Bank mortgage and the Corporation mortgage without any preference or priority whatsoever and shall be applied towards repayment of the dues of the BANK and the CORPORATION in proportion ratio with the total amount then due (including interest, costs, charges and expenses) by the MORTGAGOR to the BANK and the Corporation respectively bears to the amount available for distribution.

6. All the title deeds in respect of the mortgaged premises shall remain in the custody of the CORPORATION and the CORPORATION shall make the same available to the BANK as and when required by the BANK at the cost of the MORTGAGOR. Without the consent of the BANK the CORPORATION shall not part with the title deeds in favour of any one including the MORTGAGOR and after all dues of the CORPORATION under the Corporation Mortgage are fully satisfied the CORPORATION will make over the title deeds to the BANK instead of to the MORTGAGOR against proper receipt provided the Bank mortgage be then subsisting.

7. Prior to taking any action for the enforcement of the aforesaid securities the BANK and the CORPORATION shall duly inform the other of the same and each of them shall consult the other in respect of all matters pertaining to the securities aforesaid so far as the same is practicable without affecting its own right and each of them at all times keep the other informed of all serious and important matters coming to its knowledge relating to the mortgaged premises or any part or portion thereof or otherwise relating to the MORTGAGOR.

*The First Schedule above referred to*

ALL THOSE PIECES AND PARCELS OF LAND, containing an area of 10 acres, in Mouza....., Parganas ....., Thana ....., sub-Registrar's office ....., J.L. No. .... Plot and Khatian Nos. .... are as given below:

Particulars of Building existing or proposed



*The Second Schedule above referred to*

(Details of plant and machinery existing or proposed to be acquired)

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 the Board Resolution dated ..... of Castings Ltd. in the presence of:

For Castings Ltd.

Sd/-  
Managing Director

Executed for and on behalf of X Bank Ltd. by its Constituted Attorney Mr. ...., at Calcutta in the presence of:

For X. Bank Ltd.

Sd/-  
Constituted Attorney

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

For ELH Financial Corporation Ltd.

Sd/-  
Managing Director

Stamp Paper No. .... sold to ..... Advocate of the Mortgagor of 1 Old Post Office Street, Calcutta ..... at the Court Building at Calcutta.

Presented for Registration at 11.00 A.M. on ..... day of ..... 1999 at his residence by Mr. .... one of the executants.

Signature of Registrar of Assurances, Calcutta, dated .....

Signature of Executant

Execution is admitted by Mr. .... Managing Director of ELH Financial Corporation Ltd. of 3 Garia Road, Calcutta

For ELH Financial Corpn. Ltd.

Sd/-  
Managing Director

Execution is admitted by Mr. .... Managing Director of Castings Ltd., Calcutta

For Castings Ltd.

Sd/-  
Managing Director

Thumb impression of the  
Executants are dispensed with,  
Identified by Mr. .... son  
of ..... residing at 6 Garia Road,  
Calcutta, by Religion—Hindu by  
occupation—service

Signed by Mr. ....  
of 6 Garia Road, Calcutta

Dated .....

Signature of  
Registrar of Assurances, Calcutta

Having visited the residence and/  
or offices of Mr. .... and  
Mr. .... both of X. Bank Ltd.,  
2 Garia Road, Calcutta

I have this day examined the said  
Mr. .... and Mr. .... who have  
been identified to my satisfaction by  
Mr. .... son of ..... of  
7 Garia Road, Calcutta, by religion—  
Hindu, by occupation service and  
the said officer of the Bank as  
Constituted Attorney admitted  
execution of this document.

Dated .....

Signature of  
Registrar of Assurances  
Calcutta

### Transfer of Mortgage and Creation of Further Charge for Further Loan

THIS DEED IS MADE at Calcutta on this 20th day of December 1999 BETWEEN  
Mr. X of ..... and Mr. Y of ..... hereinafter  
referred to as the TRANSFERORS of the first part and Mr. PL of .....  
hereinafter referred to as the MORTGAGOR of the second part and  
Mr. T. of ..... and Mr. U of ....., hereinafter  
referred to as the TRANSFEREES of the third part.

WHEREAS the MORTGAGOR is absolutely seized and possessed of or  
otherwise well and sufficiently entitled to the land and premises at  
.....and more particularly described in the Schedule hereunder written.

AND WHEREAS by a Deed of Mortgage dated 1st March 1998 and made  
BETWEEN the MORTGAGOR and the TRANSFERORS (therein referred to as the



MORTGAGEES) the MORTGAGOR in consideration of sum of Rs. 4 lakhs lent and advanced by TRANSFERORS to the MORTGAGOR and agreed to grant and convey and assure unto the TRANSFERORS all the said piece and parcel of land together with buildings and structures standing thereon being Premises No. .... and more particularly described in the Schedule to the said Deed of Mortgage subject to covenant for redemption therein contained.

AND WHEREAS there is still owing by MORTGAGOR to the said TRANSFERORS the said principal sum of Rs. 4 lakhs, all interest on the principal having been paid upto date.

AND WHEREAS the MORTGAGOR has requested the TRANSFEREES to lend and advance to him a sum of Rs. 4 lakhs with a view to pay off the said mortgage debt to the TRANSFERORS and also a further sum of Rs. 1 lakh to meet certain liabilities of the Mortgagor thus aggregating to Rs. 5 lakhs.

AND WHEREAS the TRANSFEREES have agreed to lend and advance the said sum of Rs. 4 lakhs and Rs. 1 lakh upon the TRANSFERORS and the MORTGAGOR executing these presents.

AND WHEREAS at the request of the MORTGAGOR the TRANSFERORS have also agreed to execute these presents with a view to transfer the said mortgage debt and the security therefor to the TRANSFEREES upon payment of the said sum of Rs. 4 lakhs to the TRANSFERORS.

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

1. In consideration of the sum of Rs. 4 lakhs paid by the TRANSFEREES to the TRANSFERORS on behalf of and at the request of the MORTGAGOR on or before the execution of these presents (the receipt whereof the TRANSFERORS hereby admit and acknowledge) the TRANSFERORS do and each of them doth hereby assign and the MORTGAGOR hereby confirms unto the TRANSFEREES all that the said sum of Rs. 4 lakhs secured by the said Deed of Mortgage dated 1st March 1998 and all interest and costs henceforth to become due in respect thereof and the full benefit of the covenants power of sale and other powers and provisions contained in the said Deed of Mortgage for securing the payment of the said sum and interest together with the full power to demand sue for recover and give effectual receipts and discharge for the same respectively and all the right, title interest property claim and demand of the TRANSFERORS in the said moneys and premises to have receive and take the said sum of Rs. 4 lakhs and interest and costs and the premises hereby assign or expressed so to be unto the TRANSFEREES absolutely.

2. TRANSFERORS do and each of them doth hereby grant and transfer unto the transferees and the MORTGAGOR doth hereby grant and confirm unto the TRANSFEREES all and singular the land and the premises more particularly described in the Schedule in the said Deed being the same as described in the Schedule hereunder written comprised in and granted or otherwise assured by the said Deed of Mortgage and all their rights title interest and claims therein to have and to hold the land and the premises

hereby granted unto and to the use of the TRANSFEREES subject to such right or equity of redemption as is now subsisting in the said premises under or by virtue of the said Deed of Mortgage.

3. In pursuance of the said Agreement and in consideration of the said sum of Rs. 4 lakhs paid by the TRANSFEREES to the TRANSFERORS at the request and by the direction of the MORTGAGOR, as aforesaid, and in further consideration of the sum of Rs. 1 lakh lent and advanced by the TRANSFEREES to the MORTGAGOR on the execution of these presents (receipt whereof the MORTGAGOR doth hereby admit) making a total of Rs. 5 lakhs the MORTGAGOR doth hereby covenant with the TRANSFEREES that the MORTGAGOR will pay to the TRANSFEREES in 5 instalments of Rs. 1 lakh each year on 5th day of December the said sum of Rs. 5 lakhs with interest at the rate of twelve per cent per annum payable every month from the date of these presents and the first of such payment to be made on or before 1st March 2000 and the next and subsequent payments to be made on the 1st day of each and every succeeding month so long as the said sum of Rs. 5 lakhs or any part thereof shall remain unpaid to the TRANSFEREES with compound interest with monthly rests.

4. That all and singular the land and the premises hereby granted or conveyed shall stand charged with and remain security for the payment to the TRANSFEREES the said sum of Rs. 4 lakhs secured by the said Deed of Mortgage and interest thereon and other moneys due and payable thereunder but also of the said further sum of Rs. 1 lakh and interest thereon pursuant to the covenant in that behalf hereinbefore contained and shall not be redeemed or redeemable until the said aggregate sum of Rs. 5 lakhs and interest thereon shall be fully paid and satisfied.

5. The MORTGAGOR agrees and covenants that the power of sale and all provisions ancillary thereto other powers and provisions and the Mortgageor's covenants available to the TRANSFERORS for securing the payment of the principal and interest and all other moneys payable by the MORTGAGOR and contained in the Deed of Mortgage shall be available to the TRANSFEREES and shall extend and be applicable so as to be security for repayment of the said sum of Rs. 5 lakhs and interest at 12% per annum and all costs incurred in relation to the above security realisation of all moneys due by the MORTGAGOR under the said Mortgage.

6. IT IS HEREBY AGREED between the MORTGAGOR and the TRANSFEREES that the covenants and provisions in reference to the insurance of the mortgaged premises against fire, in the said Deed of Mortgage shall extend to and be applicable to the security hereby created by substitution of Rs. 12 lakhs in lieu of Rs. 10 lakhs under the said Deed of Mortgage and that in the event the TRANSFEREES becoming entitled to appoint a Receiver of the income of the said land and premises under the Transfer of Property Act 1882 the TRANSFEREES shall be entitled to appoint Mr. R as such Receiver instead of the person named in the said Deed of Mortgage and the due date referred in



the said Deed of Mortgage will be deemed to be extended to the date of 20th day of January 2008 and that if the MORTGAGOR fails to pay the mortgage amount on the due date or to pay any instalment of interest as herein provided on the date fixed for the payment thereof or commits breach of any other term of these presents and/or the Deed of Mortgage the TRANSFEREES shall have the option to claim the whole amount even though the due date has not expired.

AND IT IS HEREBY agreed and declared among the parties hereto that nothing in these presents contained shall be deemed to impose or continue any liability on the TRANSFERORS or any of them for the title to the property or render the TRANSFERORS or any of them liable for or in respect of the mortgaged debt hereby assigned or any part thereof or for the sufficiency of the security in any manner whatsoever and howsoever.

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

*The Schedule above referred to*

ALL THAT PIECE and parcel of land measuring about 5 cottahs with structures thereon being Premises No. .... registered in the Registration Office at ..... in Book No. 1, Being No. 2, pages 10 to 20.

Signed and delivered by Mr. X and Mr. Y the TRANSFERORS in the presence of:

Signature

Signed and delivered by Mr. PL the MORTGAGOR in the presence of:

Signature

Signed and delivered by Mr. T and Mr. U the TRANSFEREES in the presence of:

Signature

MEMO OF CONSIDERATION

Received by Cheque No. .... dated ..... for Rs. 4 lakhs on X Bank Ltd.

Received payments  
Sd/. X & Y

Received by Cash Rs. 1,00,000.

Received payment  
Sd/. PL

---

## Negotiable Instruments

**History of the origin of Negotiable Instruments.** In India, the Negotiable Instruments Act 1881, is the statutory law on the subject as the Bills of Exchange Act 1882, in England.

In ancient England, people used to keep their savings deposited with goldsmiths who in return issued a receipt or receipts known as "goldsmiths notes". They were equivalents to our present system of currency notes or bank notes payable on demand to the bearers;<sup>1</sup> cheques are later developments although it originated out of the system of banking as then controlled by goldsmiths as whenever any such depositor wanted to make any payment out of his deposit, he used to send a written order known as "Drawn Note" on the goldsmith. Cheques were later on invented out of "Drawn Notes."

Thus, the negotiable instrument came to be largely employed by merchants as an effective substitute for money.

In India, the banking business is of most ancient origin but was the monopoly of a class of people called *Subarnabanik* (goldsmith) and thereafter conducted by Shroffs, Seths and Poddars, particularly during the Moghul period. Nevertheless, instruments of exchange were in use from early times. In ancient society, every village had its Shroff who used to do not only the job of money-exchangers but also acted as bankers in remitting moneys and issuing letters of exchange.

The system of banking by Shroffs, Seths and Poddars continued till the days of the East India Company when the currency was unified and joint stock banks were established. In fact, the word 'hundi', a term used to denote instruments of exchange in vernacular, is derived from its Sanskrit

1 Davar's *English Banking History and Development*, 5th Ed., p. 5.



root "hund" meaning "to collect" and well expresses the purpose for which such instruments were utilised in their origin. It dates back to the days of the *Mahabharata*.<sup>2</sup> The ancient banking business in India was confined to the issue and discount of bills of exchange, money-lending and money changing. Before passing of the Act of 1881, the law of negotiable instruments was prevalent in England, viz., Statute 9 of William III C 17 relating to inland Bill of Exchange and 3 and 4 Anne C 8 relating to promissory notes was applied by the courts<sup>3</sup> in India when any question relating to such instruments arose between the Europeans. When the parties were Hindus or Muhammedans, the courts applied their personal law to their respective cases. The customs prevailing among the merchants of the respective community were recognised by the courts and applied to the transactions among them. There is no doubt that by the time the Act was passed in 1881, there had developed in the country a strong body of usage relating to hundies, which even the legislature could not ignore without hardship to native bankers and merchants.

### NEGOTIABLE INSTRUMENTS

**Negotiable instruments—negotiation.** A *negotiable instrument* means an instrument assignable by delivery or assignment. It may be either a promissory note, or a bill of exchange or a cheque payable either to order or to bearer.<sup>4</sup>

(a) A promissory note, bill of exchange or cheque, is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

(b) A promissory note, bill of exchange or cheque is payable to bearer which is to be so payable or on which the only or last endorsement is an endorsement in blank.

(c) Where a promissory note, bill of exchange or cheque, either originally or by endorsements, is expressed to be payable to the order of the specific person, and not to him or his order, it is nevertheless payable to him or his order at his option.

(d) A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one or two, or one or more of several payees.

2 Tanan's *Banking Law and Practice in India*, 19th Ed., p. 10.

3 *Brojo Lal Shaha Banikya v Budhilal & Co.* 55 Cal 551.

4 Section 13 of the Negotiable Instruments Act 1881.

(e) When a promissory note, bill of exchange or cheque is transferred to any person so as to constitute that person the holder thereof, the instrument is said to be *negotiated*.<sup>5</sup>

**Inland and foreign instrument: "at sight" and "on presentment": "after sight".** A promissory note, bill of exchange or cheque drawn or made in India, and made payable in, or drawn upon any person resident in India is deemed to be an *inland instrument*; and any such instrument not so drawn, made or made payable, is deemed to be a *foreign instrument*.<sup>6</sup>

In a promissory note or bill of exchange, the expressions *at sight* and *on presentment* mean 'on demand'. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque are payable on demand.

The expression *after sight* means in a promissory note after presentment for sight, and in a bill of exchange, after acceptance or noting for non-acceptance, or protest for non-acceptance.

**Bills or notes to bearer on demand illegal.** Promissory notes and bills of exchange cannot be made payable to bearer on demand; provided that cheques, or drafts payable to bearer on demand or otherwise, can be drawn on bankers, shroffs, or agents by their customs or constituents, in respect of deposits of money in the hands of such bankers, shroffs or agents, and held by at the credit and disposal of the person drawing such cheques or drafts.

**Holder: holder in due course: payment in due course.** The *holder* of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof, and to receive or recover the amount due thereon from the parties thereto.<sup>7</sup>

*Holder in due course* means any person who for consideration becomes the possessor of a promissory note, bill of exchange or cheque, if payable to bearer, or to the payee or endorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived this title.

*Payment in due course* means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to the person in possession thereof.

**"Endorsement": "endorser: endorsee".** When the maker or holder of any negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof, or on a slip of paper

5 Section 14 of the Negotiable Instruments Act 1881.

6 Sections 11 & 12 of the Negotiable Instruments Act 1881 also s. 21.

7 Section 10 of the Negotiable Instruments Act 1881.



annexed thereto or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to *endorse* the same and is called the *endorser*.<sup>8</sup>

If the endorser signs his name only, the endorsement is said to be *in blank*, and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the endorsement is said to be *in full*; and the person so specified is called the *endorsee* of the instrument.

Subject to the provisions as to crossed cheques, a negotiable instrument endorsed in blank is payable to the bearer thereof even although originally payable to order.

**Liability of endorser.** In the absence of a contract to the contrary, whoever endorses and delivers a negotiable instrument before maturity without, in such endorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor, or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such endorser.

Every endorser after dishonour is liable as upon an instrument payable on demand.<sup>9</sup>

**Maker, drawer and acceptor liable as principals.** The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor as the case may be.

**"Maturity": day of maturity on public holiday:** The maturity of a promissory note or bill of exchange is the date at which it falls due.

When the day on which a promissory note or bill of exchange is on maturity is a public holiday, the instrument will be deemed to be due on the next preceding business day.<sup>10</sup>

**"Day of Grace".** Every promissory note or bill of exchange, which is not expressed to be payable on demand, at sight, or on presentment, is at maturity on the third day after the day on which it is expressed to be payable.<sup>11</sup>

**"Dishonour by non-payment": notice of dishonour.** A promissory note, bill of exchange or cheque is said to be *dishonoured by non-payment*, when the

8 Section 15 of the Negotiable Instruments Act 1881.

9 Section 35 of the Negotiable Instruments Act 1881.

10 Section 22 of the Negotiable Instruments Act 1881.

11 Section 22 of the Negotiable Instruments Act 1881.

maker of the note, acceptor of the bill, or drawee of the cheque, makes default in payment upon being duly required to pay the same. As regards the dishonour by non-acceptance of a bill of exchange,<sup>12</sup> when a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give oral or written notice that the instrument has been so dishonoured, to all other parties whom the holder seeks to make severally liable thereon, and to someone of several parties whom he seeks to make jointly liable thereon; but it is not necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque.

No notice of dishonour is necessary—

- (i) when it is dispensed with by the party entitled thereto;
- (ii) in order to charge the drawer when he has countermanded payment;
- (iii) when the party charged could not suffer damage for want of notice;
- (iv) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable, without any fault of his own, to give it;
- (v) to charge the drawer, when the acceptor is also a drawer;
- (vi) in the case of a promissory note which is not negotiable; and
- (vii) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.<sup>13</sup> It has been laid down by the Supreme Court,<sup>14</sup> that a bill of exchange requires presentment for acceptance under s. 61 of the Negotiable Instruments Act and s. 62 of the Act deals with presentment for payment, s. 7 of the Act provides that a drawee becomes acceptor when he has signed his assent upon the bill. This is the analogy underlying the principle behind a cheque marked "good for payment" by any banker; nevertheless it was held by the Privy Council<sup>15</sup> that such marking is not acceptance within the meaning of the English Act, Indian Act or Common Law. Apart from mercantable usage, there cannot be oral acceptance by conduct or possession. Section 30 of the Act lays down liability in case of dishonour by the drawee or the acceptor, under s. 31 of the Act

12 Section 93 of the Negotiable Instruments Act 1881.

13 Section 97 of the Negotiable Instruments Act 1881.

14 *Jagivan v Ranchhoddas* AIR 1954 SC 544.

15 *Bank of Baroda Ltd. v Punjab National Bank Ltd.* 1944 AC 176 (PC).



the drawee is liable on the cheque if funds are there to the credit of the drawer to honour the cheque. The liability of a banker in respect of damages by reason of dishonour of a cheque is governed by this section. Section 32 lays down the liability of an acceptor of a bill of exchange in case of a bill is payable after sight, presentation for acceptance must precede presentation for payment, when a bill is payable on demand or at sight both stages may synchronise, when it is not paid or dishonoured it is really dishonoured for non-acceptance. Under s. 78 the holder of the instrument is entitled to payment and he is the person entitled to present a hundi for acceptance.

It must be remembered that acceptance is not necessary in the case of a cheque as in the case of a bill of exchange where acceptance only establishes the privity on the instrument between the drawee and the payee. Acceptance by endorsement of certificate for the purpose of clearance is not an acceptance to create negotiability.

**“Noting”: “protest”.** When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder can cause such dishonour to be noted by a Notary Public upon the instrument, or upon a paper attached thereto, or partly upon each. Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured.<sup>16</sup>

When such dishonour has been noted and certified by the Notary Public, such certificate is called a protest.

**Capacity to make, etc., negotiable instruments.**<sup>17</sup> Every person capable of contracting, according to the law to which he is subject, can bind himself and be bound by the making, drawing, acceptance, endorsement, delivery, and negotiation of a promissory note, bill of exchange, or cheque.<sup>1</sup>

An alien cannot draw a promissory note on the principle that all contracts with the alien are void<sup>2</sup> unless he lives here by the permission of the Government.

16 Section 99 of the Negotiable Instruments Act 1881.

17 A promissory note made by a minor is wholly void. He is not even precluded under s. 120 of the Act to deny its validity. Srinivasan's *Negotiable Instruments Act*, p. 1711.

1 Section 26 of the Negotiable Instruments Act 1881.

2 -Re, *Helbert Wagg & Co. Ltd.* (1956)1 All ER 129 at p. 143.

**Interest.** An agreement to pay interest can be entered in a promissory note or bill of exchange, and if no rate of interest is specified in the instrument, interest on the amount due thereon will be calculated at the rate of 18 per cent per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon.<sup>3</sup>

**Negotiable instruments, not duly stamped, or their adhesive stamps not cancelled.** The effect of the negotiable instruments not being duly stamped, or of the non-cancellation of their adhesive stamps is that the same is inadmissible in evidence.

### PROMISSORY NOTES

**"Promissory note".** A *promissory note* is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument. The essentials of a promissory note are, according to *Shri Bal Mukand v Munna Lal Ramji*<sup>4</sup> as follows:

The test is that it must be a promissory note in form and in intent. Even the absence of the words "I promise to pay" does not make any difference.

Section 4 of the Negotiable Instruments Act 1881, is complied with if the amount is specific, and the writing contains an unconditional undertaking to pay on demand and is signed by the debtor.

**Effect of attested promissory note.** A promissory note, not payable to order or bearer, should not be attested as, if attested, it will be construed to be a bond and, as such, will be liable for the stamp duty provided for a bond<sup>5</sup> and like any other unstamped or insufficiently stamped instrument, except an instrument chargeable with duty or a promissory note or bill of exchange, will be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion.<sup>6</sup>

3 Section 80 of the Negotiable Instruments Act 1881.

4 AIR 1970 Punj 516.

5 Section 2(5)(b) of the Indian Stamp Act 1880. See also *Barisal Rindan v Situl Chander* 34 CWN 911.

6 Section 35A of the Indian Stamp Act.



## BILLS OF EXCHANGE

**Bill of exchange.** A *bill of exchange* is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

**“Cheque”:** **crossed cheque: payment of cheques.** A *cheque* is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

Where a cheque bears across its face an addition of the words “and company” or any abbreviation thereof, between two parallel transverse lines or of two parallel transverse lines simply, either with or without the words “not negotiable”, that addition will be deemed a crossing, and the cheque will be deemed to be crossed *generally*; and where a cheque bears across its face an addition of the name of a banker, either with or without the words “not negotiable”, that addition will be deemed a crossing, and the cheque will be deemed to be crossed *pecially*, and to be crossed to that banker.

Where a cheque is crossed generally, the banker on whom it is drawn will not pay it otherwise than to a banker; and where a cheque is crossed specially, the banker on whom it is drawn will not pay it otherwise than to the banker to whom it is crossed, or his agent, for collection.

Cheque marked “Account payee” means that it can be encashed through the account of the particular payee only but an ordinary crossed cheque can be endorsed in favour of any person who, however, has to collect it through his banking account.

**Sets of bills: holder of first acquired part: stamps for parts of bills.** Bills of exchange can be drawn in parts, each part being numbered and containing a provision that it shall continue payable so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished; except that when a person accepts or endorses different parts of the bill in favour of different persons, he and the subsequent endorsers of each part are liable on such part as if it were a separate bill.

As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

Adhesive stamps cannot be used for parts of bills of exchange, not payable on demand and drawn in sets.

**“Drawer”, “drawee”, and “payee”:** **section 7 of the Negotiable Instruments Act: “drawee in case of need”.** The maker of a bill of exchange or cheque is called the *drawer*; the person thereby directed to pay is called the *drawee*;

and the person named in the instrument to whom or to whose order the money is by the instrument directed to be paid, is called the payee.

When in the bill or in any endorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a *drawee in case of need*.

**“Acceptor” and “acceptance”: “acceptance for honour”.** After the drawee of a bill of exchange has signed his assent upon the bill, or upon one part of the bill and delivered the same, or given notice of such signing to its holder, he is called the *acceptor*, and his act of doing so is *acceptance*.

When a bill of exchange has been noted or protested for non-acceptance, or for better security, any person, not being a party already liable thereon, can, with the consent of the holder by writing on the bill, *accept* the same for the honour of any party thereto.

**Liability of drawee of cheque.** The drawee of a cheque having sufficient funds of the drawer in his hand properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

**Liability of drawer.** The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptance thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer.

Section 138 of the Negotiable Instruments Act 1881 is a penal provision. When a cheque is returned by the Bank unpaid and so dishonoured on account of insufficient funds or the amount of the cheque exceeds the amount agreed or arranged to be paid from that account or to ‘stop payment’ order issued by the drawer in spite of his remaining liable to pay the amount in discharge of a debt, the drawer of the cheque comes within the mischief of s. 138 and is liable to punishment.<sup>7</sup>

**Dishonour by non-acceptance.** A bill of exchange is said to be dishonoured by non-acceptance when the drawee or one or several drawees, not being partners, makes defaults in acceptance upon being duly required to accept the bill, or where presentment is excused, and the bill is not accepted.

7. *Modi Cements v Kuchil Kumar* Cal LT 1998(2) SC 41; *Electronics Trade v Indian Technologists* JT 1996(1) SC 643; *K.K. Sidharthan v T.P. Praveena* JT 1996(9) SC 191; *R. Janardhana Rao v G. Lingappa* AIR 1999 SC 780.



## FORMS

### Promissory Note Payable on Demand

Rs. ....

Date

ON DEMAND (or at sight, or, on presentation), I promise to pay to AB (or, to AB or order) the sum of Rupees ..... (Rs. ....) only, with interest at the rate of 18 per cent per annum until payment, for value received.

CD (Debtor)

### Joint Promissory Note Payable on Demand

Rs. ....

Date

ON DEMAND (or, at sight, or, on presentment), we jointly and severally promise to pay to AB (or, to AB or order), at Delhi, the sum of Rupees ..... (Rs. ....) only, with interest at the rate of 18 per cent per annum until payment, for value received.

EF  
CE (Debtors)

### Joint Promissory Note Payable After Date or Sight

Rs. ....

Date

THREE MONTHS AFTER DATE (or, after sight), we jointly and severally promise to pay to AB (or, to AB or order) the sum of Rupees ..... (Rs. ....) only, with interest at the rate of 18 per cent per annum from the date hereof until payment, for value received.

EF  
CD (Debtors)

### Joint Promissory Note Payable in Instalments

Rs. ....

Date

WE JOINTLY and severally promise to pay to AB (or, to AB or order) the sum of Rupees ..... (Rs. ....) only (for value received), by instalments of Rs. .... per month with interest on each instalment at 18 per cent

per annum from the date hereof until payment, the first instalment with interest thereon to be paid on the ..... day of ..... next, and each succeeding instalment with interest thereon to be paid on the..... day of each following month at ....., until the whole of the said sum of Rs. .... be repaid; any one instalment being in arrear for seven days, the balance of the said sum of Rs. .... remaining owing shall become immediately payable, with interest thereon until payment.

EF  
CD (Debtors)

**Inland Bill of Exchange Payable on Demand**

Rs. .... Date

ON DEMAND (or, at sight, or, on presentation), pay to EF (or, to EF or order or, to myself or my order) the sum of Rupees ..... (Rs. ....) only, for value received.

CD (Drawer)

To  
AB (Drawee) or CD (Drawer himself)

**Inland Bill of Exchange Payable After Date or Sight**

Rs. .... Due ..... 19..... Date

Three months after date (or after sight) pay to EF or order (or to EF or order) or to bearer the sum of Rupees ..... (Rs.) only for value received.

To AB (Drawee) CD (Drawer)

In case of need apply to GH or, etc. (Drawee in case of need).

*Cheque*

No. ....

To AB etc. (Bank).

Pay to EF, or bearer/order Rupees .....  
Rs. .... only

CD (Drawer)



## Foreign Bill of Exchange in Sets

No. .... Exchange for £ .....

Calcutta, 1st January 2000

Six months after sight of this first of Exchange (second and third unpaid), pay to the order of AB ..... pounds for value received, and charge the same to account of Messrs. CD & Co. against your letter of credit No. ....

EF (Drawer)

To GH, London (Drawee)

## Foreign Bill of Exchange in Sets

No. ....

London, 1st February 20.....

At sixty days after sight of this first of Exchange (second and third unpaid), pay to the order of AB & Co. .... rupees, which place to account shipment of ....., etc. (name of goods), per s.s. ".....", etc. (name of ship).

CD (Drawer)

EF, Calcutta (Drawee)

To

## Foreign Bill of Exchange (French)

Paris le. ....

B.P. 1,000 fr.

A deux mois de vue vous plaira payer per cette seule de change a lordre de M. .... le somme de mille francs, valeur en marchandises (ou en Compte, ou en argent, etc.), sans autre avis de.

Votre serviteur

AB (Drawer)

.....  
A Messieurs CD & Cie,  
Ah Havre (Drawee)

Date

# PAY ORDER

**Popular Bank Ltd.**

Calcutta

Code No. 355

**NC PAYEE**

Valid for six months only

Date \_\_\_\_\_

Pay \_\_\_\_\_

Or Order \_\_\_\_\_

The Sum of \_\_\_\_\_

For Value Received \_\_\_\_\_

Not Over Rs. \_\_\_\_\_

Rs. \_\_\_\_\_

A/c. No. \_\_\_\_\_

For Popular Bank Ltd.

LF

23165974937481

Manager

Dy. Manager

**Not Transferable**

9
8
7
6
5
4
3
2
1

⑈423598⑈ 700359000⑈ 12





---

## Notice

The Doctrine of Notice developed out of decisions of Courts in Equity in England. Notice of equitable rights was imputed to the purchaser of any real property in cases where he failed to make diligent searches and enquiries as to the title of the vendor.<sup>1</sup> Maitland observes: "The Court of Chancery set up a standard of diligence for purchasers and a high one, and so high that at times it was difficult for a purchaser to buy land without having constructive notice of all trusts which concern the land."<sup>2</sup> Notice is defined under s. 3 of the Transfer of Property Act (Act IV of 1882): A person is said to have notice of a fact not only when he actually knows of the same but also when he should have known but for diligent searches and enquiries. A purchaser making no enquiry about encumbrances has constructive notice thereof.<sup>3</sup> The law relating to notice is adjective law and so to be followed rigidly. A notice failing to satisfy the requirements of a statute is fatal to the suit.<sup>4</sup>

**Kinds of notice.** There are three kinds of notice—

- (a) actual notice, *i.e.* when a person has acquired actual knowledge of a fact;
- (b) constructive notice, *i.e.* when but for wilful abstention from an enquiry or search which a person ought to have made, or gross

1 See Majumder's *Laws Relating to Notices*, 6th Ed., pp. 1 to 3.

2 Maitland on *Equity*, 2nd Ed., p. 117.

3 *Imperial Bank of India v U. Rai Gyaw, Thu & Co. Ltd.* 51 Cal 86; 50 IA 283 (PC). The title deeds of a property were with the bank by way of equitable mortgage. The respondent company advanced a loan to the owner on his representation that the property was free from encumbrances without asking for production of the title deeds. The Privy Council held that the respondent's mortgage was made with notice of the equitable mortgage in favour of the bank.

4 *Bengal Coal Co. v Sitaram* AIR 1935 Cal 667; 61 CLJ 560.



negligence, he would have known it, e.g. solicitor entrusted with preparation of a conveyance not doing any searches nor making an enquiry as to the claim of the dependants under the Hindu Adoptions and Maintenance Act 1956.

- (c) notice to the agent, i.e. information received by or given to the agent in the course of his ordinary duties, whether he communicates it to his principal or not. Notice to active partner has the effect of notice to the firm in the absence of fraud.<sup>5</sup>

**Requisites and service of notice.** A notice is an announcement or intimation and, in some cases, caution. So except notices prescribed under the Code of Civil Procedure and certain public notices used at the Government level, there is no hard and fast rule about forms. An actual notice to be valid must be clear and certain so as to bind the party who gives it and to enable the opposite party to act upon it and the information given by a person interested in the matter, in respect of which the notice is issued, must be definite.

Where a notice is required to be given by any statute, e.g., s. 80 of the Code of Civil Procedure; s. 106 of the Indian Railways Act 1989; s. 106 of the Transfer of Property Act 1882; s. 10 of the Carriers Act 1865; s. 54(2) of the Indian Sale of Goods Act 1930; s. 3 of the Arbitration and Conciliation Act 1996; s. 41 of the Presidency Small Causes Court Act; Art. 226 of the Constitution of India, it must comply with the requirements of law as regards addressee, contents of the notice and service thereof.<sup>6</sup> Where no mode of service is provided by law, it is usual to send the notice by registered post with acknowledgement due; where service by post is required by any Act or Rule, then unless a different intention appears the service shall be deemed to have been effected by properly addressing, pre-paying and posting by registered post a letter containing the document and to the correct address unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary post.<sup>7</sup> Refusal by the addressee to accept the notice after it was tendered to him by the peon raises a presumption of due service. Again, if the notice properly addressed is proved to have been put into the Post Office, it is presumed that it reached its destination at the proper time and was received by the addressee.<sup>8</sup> That

5 Section 24 of the Indian Partnership Act.

6 Meaning of "service"—Delivery with announcement of the contents to the person affected vide *Oxford Dictionary*.

7 Section 27 of the General Clauses Act 1897; see also s. 28 of the Bengal General Clauses Act 1899.

8 Presumption of service *re* notice sent by registered post—section 114, illustration (f) of the Evidence Act. See also *Amulya Charan v Corporation of Calcutta* AIR 1950 Cal 256.

presumption will apply with greater force to registered letters. Such presumptions are, however, rebuttable.<sup>9</sup> As to effect of endorsement 'not claimed' and 'left', see the decision in *H.K. Das v Hahnemann Co.*<sup>10</sup>

Out of the aforesaid notices, those under s. 80 of CPC, s. 106 of the Indian Railways Act 1989,<sup>11</sup> s. 10 of the Carriers Act<sup>12</sup> and, lastly, under s. 54(2) of the Indian Sale of Goods Act<sup>13</sup> are mandatory notices. A suit without any such notice must fail.

Some notices are also statutory but not mandatory, e.g. notice of allotment under s. 109 of the Transfer of Property Act, notice of transfer of actionable claim under s. 131 of the Transfer of Property Act and notice of revocation of agency.<sup>14</sup>

The above list is illustrative but not exhaustive.

Registration, possession and notice to agent as notice to principal are cases of constructive notices. The leading case on the subject, *Tilakdharilal's* cases,<sup>15</sup> laid down that it was obligatory on the part of all purchasers to examine title as recorded in the register and the omission to search attributed to gross negligence. The rule that registration operates as a notice has been adopted in England by s. 198 of the Law of Property Act and in India by Explanation I to s. 3 of the Transfer of Property Act 1872.

Possession in certain circumstances operates as constructive notice. This principle is enacted in Explanation II to s. 3 of the Transfer of Property Act and is also illustrated under s. 27(b) of the Specific Relief Act 1877, which is equivalent to illustration under s. 19 of the Specific Relief Act of 1963 (Act 47 of 1963). Lastly, under s. 229 of the Contract Act, notice to the agent is notice to the principal.

**Special provisions.** Where there are provisions in particular statutes about the requirement of notice and the manner of service of notice, the special provisions must be complied with for validity of the notice. The prescribed modes shall be the only valid mode of service for purposes of the particular statute. A notice under s. 106 of the Transfer of Property Act, i.e. notice to quit, must be in writing signed by or on behalf of the person giving it, either sent by post to the party or tendered or delivered personally to him or to one of his family members or servants at his residence or, if such tender or delivery is not practicable affixed to a conspicuous part of the property.

9 *Saibalini Saha v Snehalata Bose* 65 CWN 690.

10 70 CWN 262.

11 *Amar Nath Dogra v Union of India* AIR 1963 SC 424.

12 *British & Foreign Marine Insurance v Indo-General Steam Navigation* 1LR 38 Cal 50.

13 *Naraindas v Kunjilal* AIR 1924 Nag 162.

14 Section 206 of the Indian Contract Act.

15 *Tilakdharilal v Khedanlal* (1920)47 IA 239; 48 Cal 1.



Besides notice between private parties, there are special provisions for service on private persons by a public officer, e.g. a notice by a Controller or Appellate Officer under the West Bengal Premises Tenancy Act.<sup>16</sup>

There are important provisions in the Indian Railways Act prescribing service of notice on the Railway Administration or by the Railway Administration.<sup>17</sup>

There is a special provision in s. 194 of the Indian Railways Act 1989 where notice is served by post, similar to the provisions in the General Clauses Act and the Evidence Act.

It should further be noted that special statutes require specific grounds to be mentioned in the notice. They must be incorporated, e.g., notice under the Transfer of Property Act between landlord and tenant should be supplemented by the provisions of the West Bengal Premises Tenancy Act. Similarly, the notice of suit under s. 407 of the West Bengal Municipal Act 1993 must contain the particulars therein.

Notices are also required to be served on some public offices about certain facts, e.g. notice of accident under the Factories Act 1948, and the Workmen's Compensation Act 1923. Those statutes also prescribe the mode and form of notice.

**Notice of arbitration.** A notice of arbitration under the Arbitration and Conciliation Act 1996 should contain the following matters so long as no specific Rules are framed under the Act:

- (1) A demand that the dispute be referred to arbitration.
- (2) The names and addresses of the parties.
- (3) A reference to arbitration clause.
- (4) A reference to contract out of or in relation to which the dispute arises.
- (5) The general nature of the claim and an indication of the amount involved.
- (6) The relief or remedy sought.
- (7) A proposal as to the number of arbitrators which must not be of an even number.
- (8) The proposal for the appointment of a sole arbitrator and an appointing authority.
- (9) The notification of appointment of arbitrator(s).
- (10) The statement of claim.<sup>18</sup>

16 Rules 12 and 25 of the West Bengal Premises Tenancy Rules 1956.

17 Sections 192 and 193 of the Indian Railways Act 1989.

18 Roy Chowdhury & Saharay: *Law of Arbitration and Conciliation*, 4th Ed., p. 287.

## FORMS

### Notice by Landlord to Quit<sup>19</sup>

(Combined Notice under s. 106 of T.P. Act and  
s. 13 of W.B. Premises Tenancy Act)

To  
AB (*Tenant*)

*Re:* Premises No. ....

Dear Sir

I, the undersigned, your landlord and owner/lessor of the above premises, do hereby give you notice to quit, vacate and deliver peaceful vacant possession of the demised premises No. .... (or land, or farm, No. .... etc.) to me of which you now a monthly tenant under the English calendar at a rent of Rs. .... per month on the expiry of the month (.....) of ..... (or, the ..... day of ..... being the date of expiry of the month of your tenancy as you have failed and/or neglected to pay the said rent for ..... months and thereby made yourself liable to eviction even on that ground alone. Please note that your tenancy in respect of the demised premises and all your relationship with me as between landlord and tenant shall stand determined with effect from the said date. So if you fail and/or neglect to comply with this notice, I shall institute proceedings for recovery of possession against you, making liable also for *mesne profits*, damages and costs.

Particulars of the demised premises.

Dated this ..... day of .....

Yours faithfully  
CD (*Landlord*)

### Notice Demanding Possession after Expiry of Lease<sup>20</sup>

To  
AB (*Ex-tenant*)

*Re:* Premises No. ....

Dear Sir

I, the undersigned, owner of the house and premises (or land) situate at, etc., and your ex-landlord, do hereby give you notice that the lease dated

19 See *Surya Properties Pvt. Ltd. v Bimalendu Nath Sarkar* AIR 1964 Cal 1; 67 CWN 977. A combined notice or both the notices are necessary to proceed with a suit for ejection. The decision in *Muralidhar's case* AIR 1961 Cal 175 was dissented from.

20 It should be noted that in cases governed by the West Bengal Premises Tenancy Act or Non-Agricultural Tenancy Act the special grounds for eviction under those Acts should be mentioned.



the ..... day of ..... and made between you, of the one part, and myself, of the other part, has expired by efflux of time on the ..... day of ..... I have not agreed to any renewal or extension thereof nor otherwise permitted you to continue in occupation of the property in any way. So I hereby give you notice demanding delivery of possession of the said house and premises (or land) on or before the ..... day of ..... 2000 failing compliance, I shall institute a suit against you for recovery of possession and you will be held responsible for all damages and *mesne profits* that I may be entitled to in law as against you.

Particulars of the demised premises.

Yours faithfully  
 CD (Owner)

Date

**Notice to Determine Tenancy  
 for Breach of Covenants in a Lease**

To

AB (Tenant)

Date .....

Re: Premises No. ....

Dear Sir

I hereby give you notice that the indenture of lease dated the ..... day of ..... made ..... between you of the one part and me of the other part contained *inter alia* the following covenant/s to be observed and performed on your part, viz., ..... The said lease also provides for forfeiture of your tenancy interest in the said property and my consequential right of re-entry in the property on violation *inter alia* of any such covenant. As you have without my knowledge or consent (state the nature of breach or breaches) thereby violated and is still now continuously violating the terms of the lease (which are not at all waived or condoned by me) I hereby give notice of determination of the lease and call upon you to deliver possession of the property to me within ..... days of the receipt of this notice, failing which I shall exercise my right of re-entry and bring a suit for ejection against you also claiming *mesne profits*, damages and costs.

*Schedule of the property*

Yours faithfully  
 CD (Landlord)

### Notice by Tenant to Determine Lease

To

CD (*Landlord*)

Date .....

Re: Premises No. ....

Dear Sir

This is to write to you that, in pursuance of the power, authority and liberty for this purpose reserved in my favour under and by virtue of the deed of lease dated the ..... day of ..... 2000 and made between you, of the one part, and myself, of the other part, I hereby give you notice and determine the lease with effect from the ..... day of ..... 2000, when I shall quit, vacate and deliver up possession of the house and premises (or, etc.) as comprised in the said deed. Please take further notice that all our relationship also as lessor and lessee shall come to an end on that day and I shall no further remain responsible for performance or non-performance of any of the covenants, conditions and stipulations thereunder contained.

Yours faithfully

AB (*Tenant*)

### Notice by Landlord's Advocate to Quit

To

AB (*Tenant*)

Re: Premises No. ....

Client .....

Dear Sir

Under instructions from my client, CD of etc., I hereby give you notice to leave and vacate the house and premises (or, etc.) which you now hold, possess and occupy under my said client as a monthly tenant under the English calendar (or from year to year) on the expiry of the current month of tenancy and deliver peaceful vacant possession thereof to my said client as (state the grounds of eviction). Please note also that on and from the said date, the lease heretofore subsisting shall cease and stand determined. So the relationship of landlord and tenant as between you and my client shall also cease. Therefore, on your failure to deliver peaceful vacant possession as herein demanded, my client shall bring a suit for ejection against you making you liable also for *mesne profits*, damages and costs which please note.

Date

Yours faithfully  
EF Advocate for CD



**Notice by Landlord to Repair Dilapidations**

To  
 AB (Tenant)

Re: Premises No. ....

Dear Sir

Please take notice that in pursuance of the covenant contained in a deed of lease dated the ..... day of ..... 2000 and made between you, of the one part, and myself, of the other part [or, of cl. (m)] of s. 108 of the Transfer of Property Act (in the absence of any such agreement) I hereby give you notice to keep and maintain the above premises wind and watertight and in good and substantial repair and condition and in particular to execute the several repairs mentioned in the schedule hereto. You have violated the said covenant by not having the said repairs done so far.

Please take further notice that if you continue to make default or fail to remedy such breach of conditions in the manner above-mentioned within ..... days, I shall exercise my right of re-entry into the said premises in accordance with the said covenant and execute the said works at your costs and expenses as therein provided.

*Schedule above referred to*

Yours faithfully

CD (Landlord)

Date

**Notice by Tenant for Renewal of Lease**

To  
 CD (Landlord)

Re: Premises No. ....

Dear Sir

I, the undersigned AB your tenant state that, in pursuance of the agreement for renewal contained in the deed of lease dated the ..... day of ..... 2000, and made between yourself, of the one part, and myself, of the other part, I hereby give notice of my intention to have a renewed lease of the property comprised in the said deed of lease for a further term of ..... years; I therefore hereby request you to grant me a renewed lease on the terms and conditions specified in the said deed of lease and send me the draft thereof for approval.

Yours faithfully

AB (Tenant)

Date

### Notice to Tenant to Attorn

To  
AB (*Tenant*)

Re: Premises No. ....

Dear Sir

I, the undersigned CD, hereby authorise and request you, the above-named AB, forthwith to attorn to and become a direct tenant of EF of etc. (the purchaser or mortgagee, etc.) in respect of the above-mentioned house which you hold under me as my tenant; I further authorise and request you to pay to the said EF, his heirs, executors, administrators or assigns, all such rent as (now is and) hereafter shall from time to time become due by you for or in respect of the said premises (or, etc.); and for so doing, this shall be to you a sufficient warrant and authority.

Signed at ....., this ..... day of ..... 2000

Yours faithfully  
CD (*Landlord*)

### Notice to Debtor

To  
AB (*Debtor*)

Dear Sir

I hereby demand of you payment of the sum of Rs. ...., due on account of the loan taken by you on the ..... day of ....., with interest at the rate of ..... per cent. per annum, and request you to be good enough to pay or cause to be paid the said amount by the ..... day of ..... failing which legal proceedings will be taken for the recovery of the amount due with costs and interest without any further reference which please note.

Yours faithfully  
CD (*Creditor*)

### Notice by Lawyer to Debtor

To  
AB (*Debtor*)

Re: Client CD

Dear Sir

I am instructed by my above client, CD of, etc., to demand of you payment of the sum of Rs. .... due by you to my client as per account below, by



the ..... day of ....., failing which my client shall institute a suit against you for recovery of the amount due, with costs and further interest up to the full realization of the debt which please note.

*The account above referred to*

Date

Yours faithfully

### Notice of Dishonour (or Protest) of Bill of Exchange to Drawer

(Section 93 of the Negotiable Instruments Act 1881)

To

CD (*Drawer*)

Dear Sir

Take notice that a bill of exchange for Rs. .... drawn by you under date etc., on AB (drawee) and payable to me or order ..... days after date etc., has been dishonoured by non-payment (or non-acceptance) which has been noted and protested (*in case of a foreign bill*), and that you are held responsible therefor.

Yours faithfully

Date

EF (*Payee*)

### Notice of Dishonour (or Protest) of Bill of Exchange to Endorser

To

EF (*Endorser*)

Dear Sir

Take notice that a bill of exchange for Rs. .... drawn by CD under date the, etc., on AB and payable at, etc., and which bears your endorsement, has been dishonoured by non-acceptance (or non-payment) and noted and protested and that you are held responsible therefor.

CD (*Endorsee*)

### Notice of Dishonour of Cheque

(Section 93 of the Negotiable Instruments Act 1881)

To

AB (*Drawer*)

Dear Sir

Please take notice that a cheque No. .... dated the ..... day of ....., drawn by you on the ..... Bank for Rs. ...., payable to CD of etc. or

order (when required, add and endorsed by the said CD to EF of etc.), has been dishonoured by non-payment, and that you are held responsible therefor.

(Date)

Yours faithfully

CD (or EF)

### Notice by Partner to Determine Partnership

[Section 43(1) of the Indian Partnership Act 1932]

To

CD (*Partner*)

Date .....

Dear Sir

By virtue of the power for this purpose contained in clause ..... of the deed of partnership, dated the ..... day of ..... 2000 and made or expressed to be made between yourself of the one part, and myself of the other part [or under s. 43 of the Partnership Act (if the partnership is "at will")] I hereby give you notice that the partnership now subsisting between us under the said deed shall stand dissolved with effect from the ..... day of ..... 2000 (or immediately on receipt of this notice).

Yours faithfully

AB (*Other Partner*)

### Notice of Expulsion of Partner

(Section 33 of the Indian Partnership Act 1932)

To

AB (*Partner*)

Date .....

Please note that in *bona fide* exercise of the power and authority vested in us by virtue of clause ..... of the articles of partnership, dated the ..... day of ....., we, the undersigned being the majority of the partners, hereby determine the partnership heretofore subsisting between us and yourself as from the ..... day of ..... 2000, so far as you are concerned, and expel you therefrom on grounds that, etc., (state the grounds for expulsion).

Yours faithfully

CD

EF

(*Other Partners*)



Notice by Vendor to a Pre-emptor

To

AB

Date .....

Re: Premises .....

Please note that I intend to sell my one-third share in the property described in the Schedule hereto to CD of etc. for the price of Rs. .... As you have a prior right to purchase the same under Act ..... of ..... or by virtue of the provisions of the Deed of Partition (or Agreement or Lease dated ..... made between you and me) or under the prevailing customs in the locality, you are requested to signify your acceptance thereof at the aforesaid price within ..... days. In case I do not hear from you about your acceptance of the offer within the time aforesaid I shall complete the sale with the said CD without reference to or regard for such right which shall be deemed as extinguished for ever.

Schedule of the Property

Yours faithfully

ANOTHER FORM

To

AB

Re: Premises No. ....

Notice is hereby given pursuant to clause ..... of the deed of partition dated ..... executed between you and others of the one part and the undersigned of the other part, whereby each allottee covenanted not to sell his divided share to any outsider without first offering the same to the others. The undersigned is desirous of selling his share in the above property for which he has already received an offer for Rs. ....

Please take notice that pursuant to the said pre-emption clause you are given the first choice to complete the sale of the said share of the said property at the aforesaid price within a fortnight of the receipt of this. On your failure to do so within the aforesaid period the undersigned shall close the sale with the party offering the said price of Rs. ....

Dated the ..... day of ..... 2000.

Yours faithfully

CD

### Notice by a Vendor to Complete a Purchase

To

AB (*Purchaser*)

Date .....

Re: Premises No. ....

Dear Sir

Please refer to the agreement for sale dated ..... At all material times I was and am still now ready and willing to complete the sale of the above property in terms of the aforesaid agreement, but the same was not done for reasons of your own. You are, therefore, guilty of delay and laches in the matter. I hereby call upon you to have the conveyance executed by me against payment of the balance of the consideration money on or before the ..... day of ..... failing which that agreement will stand cancelled and the earnest money paid by you forfeited. This, however, is without prejudice to other rights and remedies available to me by reason of the breach of agreement on your part as aforesaid.

Yours faithfully

CD (*Vendor*)

### Notice by Purchaser to Complete a Sale

To

CD (*Vendor*)

Re: Premises No. ....

Dear Sir

Please refer to the contract dated the ..... day of ..... 2000, made between you, as vendor of the one part, and myself as purchaser of the other part, by which you agreed to sell to me the, etc., situate at, etc., for the sum of Rs. .... I was at all material times and till now am ready and willing to complete the purchase subject to your performing your part of the said agreement. So I hereby give you notice that if you still fail and/or neglect to carry out your part of the said contract within ..... days from this date, I shall institute a suit for specific performance of the said agreement with damages and costs as against you.

Yours faithfully

AB (*Purchaser*)

Date



**Notice of Re-sale of Goods on Buyer's Default**[Section 54, clauses (2) and (4) of the Sale of Goods Act 1930]<sup>1</sup>

To  
AB (*Purchaser*)

Dear Sir

I write to you demanding payment of a sum of Rs. .... due by you to me on account of sale and purchase of goods as per account stated below on or before the ..... day of ..... 2000 I hereby also give you notice that the goods purchased by you are lying at your risk at ..... So if you fail and/or neglect to make the said payment on or before the said date I shall proceed with the re-sale of the goods by public auction on the day of ..... at ..... p.m. and hold you liable for the shortfall, if any, on that account as also for all costs, charges and expenses incidental thereto and all losses and damages suffered by me.

*Account of the goods purchased above referred to*

Yours faithfully  
CD (*Seller*)

Date

**Notice to Determine Guarantee for Faithful Service**

(Section 127 of the Indian Contract Act 1872)

To  
EF (*Employer*)

Dear Sir

I hereby give you notice that the guarantee dated the ..... day of ....., which I executed in your favour for true and faithful service of AB of, etc., as, etc., and also for the payment of any sum that may become due to you on account of any loss or damage sustained by you by reason of any act, breach of trust, mismanagement, neglect, default or dereliction of duty on the part of the said AB while in due course of employment, is hereby revoked and determined the same being without consideration and so void. I therefore give you notice that I shall not be liable for any such loss or damage, if any, sustained by you hereafter.

Yours faithfully  
CD (*Surety*)

Date

1 The above section is based upon s. 48 of the English Act and under ss. 151, 152 and 161 of the Indian Contract Act 1872.

**Notice to Determine Continuing Guarantee**  
(Section 130 of the Indian Contract Act 1872)

To  
EF (*Creditor*)

Dear Sir

I hereby give you notice that the guarantee dated the ..... day of ....., which I executed in your favour for payment of all moneys which were then or at any time thereafter may be due to you from AB of, etc., on the balance of his account, is hereby revoked and determined; and I give you further notice that if you make any further advances or payments, or give further credit to the said AB, you would do so on your own and the same shall have nothing to do whatsoever with the said guarantee which stands hereby revoked.

Yours faithfully

CD (*Surety*)

Date

**Notice of Transfer of Mortgage**

To  
AB (*Mortgagor*)

Re: Premises No. ....

Dear Sir

Please take notice that, by a registered deed of assignment dated the ..... day of ....., and made between CD of, etc., of the one part and myself of other part all that principal sum of Rs. .... and interest thereon due by you to the said CD under and secured by a deed of mortgage dated the ..... day of ....., made between you of the one part, and the said CD of the other part, were for good and valuable consideration mentioned therein assigned unto and in my favour absolutely, together with the benefit of the security and all the premises (or, etc.) comprised in the said deed were granted, conveyed, transferred, assured and assigned to me, subject to the equity of redemption subsisting thereunder in your favour.

Please take further notice that all payments of principal and interest thereon shall therefore be made to me, and not to the said CD.

Yours faithfully.

EF of, etc. (*Transferee*)

Date



**Notice claiming Mortgage Money**

To  
AB (*Mortgagor*)

Re: Premises No. ....

Dear Sir

Please refer to the deed of mortgage dated the ..... day of ..... and made between yourself, of the one part, and myself, of the other part and note that the entire principal amount together with all interest has been due and repayable on the ..... day of ....., I therefore do hereby give you notice that if you fail and/or neglect to pay the said principal sum and interest within ..... days after the service of this notice, I shall immediately thereafter institute a suit for enforcement of the said mortgage for the sale (or foreclosure) of the mortgaged property.

Yours faithfully  
CD (*Mortgagee*)

Date

**Notice for Production of Documents**

To  
AB

In pursuance of your covenant contained in a conveyance (or, etc.) dated the ..... day of ....., and made between yourself, of the one part, and myself (or etc.), of the other part, I hereby give you notice to produce before me at, etc., on the ..... day of ....., all the documents mentioned in the said deed, for which I shall bear all the costs, charges and expenses. List of documents to be produced is given below.

*List of documents*

Yours faithfully

CD

Date

**Notice of Sale of Pledged Articles**

(Section 176 of the Indian Contract Act 1872)

To  
AB (*Pledgor*)

Dear Sir

I hereby demand of you payment of the sum of Rs. .... long overdue by you to me as per account below, request you to be good enough to pay or cause to be paid the said amount by the ..... day of .....; in default, the

articles pledged shall be sold by public auction to the highest bidder at the, etc., at ..... o'clock, on the ..... day of ..... Nevertheless you shall remain responsible for shortfall or deficiency, if any, which will be recovered from you after appropriation of the proceeds of such sale, first, towards the costs and expenses of such sale; secondly, all interest due until the date of sale; and, thirdly, the principal amount, all to be deducted therefrom. Be that so, I would ask you to attend such sale personally and exert yourself for the best price or prices which they may fetch.

*Account and the list of the articles above referred to*

Yours faithfully

(Date)

(Pledgee)

### Notice of Assignment by Assignor

To

EF (*Debtor*)

Date .....

Dear Sir

I, the undersigned AB (*creditor assignor*), do hereby give you notice that, by an instrument in writing bearing date, etc., and made between me and CD of etc., I, the said AB, have for valuable consideration transferred and assigned unto and in favour of the said CD the bond (or etc.), executed by you and bearing date, etc., whereby you became bound to me in the sum of Rs. .... together with all arrears of interest thereon due and payable (or, etc.). I hereby give you further notice henceforth to pay the said sum or sums to the said CD, his heirs, executors, administrators or assigns, for his or their own use and benefit.

Yours faithfully

AB

### Notice of Assignment by Assignee

To

EF (*Debtor*)

Date .....

Dear Sir

I, the undersigned CD of etc., hereby give you notice that, by an instrument in writing bearing date, etc., and made between myself and AB of, etc. (*creditor assignor*), a certain bond (or, etc.) executed by you and



bearing date, etc., whereby you became bound to the said AB in the sum of Rs. .... (or, etc.), has in consideration of the sum of Rs. .... been assigned by him, the said AB to me; and, as the said AB has refused to give you notice. I hereby give you further notice to pay the said sum of Rs. .... and all interests to become due upon or in respect thereof from the said ..... day of ..... (the date of assignment), to me, my heirs, executors, administrators or assigns, or as I or they shall direct.

Yours faithfully  
 CD (Assignee)

**Notice of Assignment of Policy of Life Insurance**

[Section 38(2) of the Insurance Act 1938]

To  
 The Zonal Manager  
 ..... Life Insurance Corporation of India

Date .....

Re: Policy No. ....

Dear Sir

I, the undersigned AB etc., do hereby give you notice that, pursuant to s. 38 of the Insurance Act (Act IV of 1938) and by a deed dated the ..... day of ....., and made between myself of the one part and CD of, etc., of the other part, the policy of insurance effected by me with ..... Co. on my life for the sum of Rs. ...., dated the ..... day of ....., and numbered ....., and all moneys assured by me or to become payable under the said policy, were assigned by me unto and in favour of the said CD absolutely, and I request you to acknowledge receipt of this notice and register his name as the assignee of the said policy for value. The policy is annexed hereto for your making the endorsement thereon.

Yours faithfully  
 AB (Assignee)

Encl: Policy No. ....

**Notice of Assignment of Lease**

(Section 109 of the Transfer of Property Act)

To  
 AB (Lessor)

Date .....

Re: Premises No. ....

Dear Sir

I hereby give you notice that, by a deed of assignment dated the ..... day of ....., and made between CD of, etc., of the one part, and myself of

the other part, the leasehold interest in the property known as, etc., comprised in a lease dated the ..... day of ....., and made between yourself of the one part, and CD of the other part, was assigned by the said CD unto and in my favour for the residue of the term of ..... years as provided therein subject nevertheless to the payment of the rent and to the performance and observance of the covenants on the part of the lessee, and the conditions of the said lease.

Yours faithfully  
EF (*Assignee*)

### Notice for Removal of Nuisance and Obstruction

To  
AB

Dear Sir

Please take notice that you are hereby required to remove forthwith the nuisance and/or obstruction arising from, etc., (describe the cause of nuisance) at, etc., which is causing injury to my personal comforts and health. In default, I shall be under painful necessity to take legal steps for securing abatement discontinuance and removal thereof without further reference to you.

This notice is given without prejudice to any right of action for damages, which I have already sustained and may sustain by reason of the continuity of the nuisance and obstruction.

Yours faithfully

Date

CD

### Notice of Suit against Municipality

(Under s. 407 of West Bengal Municipal Act 1993)

To

.....

..... Municipality

*Re:* Premises No. ....

Dear Sir

I hereby give you this notice that unless you withdraw the notice dated ..... served by you on me for demolition of the building (or for filling up of the tank) in the above premises and unless proper and satisfactory



amends are made in the meantime, I will, on the expiry of one month from the date of service of this notice, institute in a proper court a suit on the cause of action and for the reliefs set forth in the draft plaint sent herewith which is made a part of this notice.

Encl: A draft plaint.

Yours faithfully

AB

Date

PUBLIC NOTICES

Notice of Termination of Agent's Authority

(Section 208 of the Indian Contract Act 1872)

NOTICE is hereby given that the power-of-attorney given by the undersigned AB of etc. to CD of etc. has been revoked (or, that CD of etc. has ceased to be an attorney or agent of the undersigned AB of etc.) as from the ..... day of .....

The agency of the said CD having been thus terminated, he has no authority whatever to transact any business or to act in any way on behalf of the said AB; so any person transacting any business with him will do so at his own risk as to consequences.

Yours faithfully

AB

Date

Notice of Wife's Leaving Husband's Protection

NOTICE is hereby given that my wife, CD having left my care and protection on her own as from the ..... day of ....., I am not at present nor shall in future be responsible for any debt or liability incurred or to be hereafter incurred by her on any account whatsoever and further she has no authority to pledge my credit.

AB

Address .....

Date

### Notice to Creditors to Deceased's Estate

*Re: Estate of AB deceased*

NOTICE is hereby given that all persons having any claim as against the estate of the late AB who died at etc., on the ..... day of ....., are hereby requested to send full particulars thereof in writing together with the proof to the undersigned CD the executor named in the will (or, the administrator of the estate) of the deceased, at etc., within one month from the date hereof, after which date no claim will be entertained.

### Notice by Attorney to Creditors and Debtors to Deceased's Estate

*Re: Estate of AB deceased*

NOTICE is hereby given that all persons having any claim or claims as against the estate of the late AB of, etc., who died at, etc., on the ..... day of ....., and probate of whose will (or, letters of administration to whose estate) having effect throughout the whole of India (or throughout the State, .....,), was (or were), granted by the High Court of Judicature at ..... (or by the Court of etc.), on the ..... day of ....., to CD of, etc., the executor named in the said will (or the administrator of the estate) of the said deceased, are required to send full particulars thereof together with proof within one month from the date hereof to the undersigned attorney for the said executor (or administrator) at his office at, etc., after which time the executor (or administrator) will proceed to administer the assets having regard only to the claims of which he shall then have received notice, and no claim sent subsequently will be recognised.

And all persons indebted to or holding any securities or property belonging to the said deceased are hereby required forthwith to pay the amounts owing by them, or to deliver up the said securities or the property, as the case may be, to the said executor (or administrator) at the office of the said attorney, EF at his address aforesaid.

Date

EF

Attorney for the Executor (or Administrator)

### Notice of Dissolution of Partnership

[Section 45(2) of the Indian Partnership Act 1932]

NOTICE is hereby given that the partnership heretofore subsisting between the undersigned AB of, etc., and CD of, etc., carrying on business of (or, as) etc., at, etc., under the firm name of, etc., has been dissolved by mutual consent (or by effluxion of time, or, by the death of the said CD) as from the ..... day of ..... (if the business is to be continued, add) so far as the same concerns the said CD who has thus ceased to have any interest in the said business.



All debts due to or by the said firm will be received and paid respectively by the said AB who will continue to carry on the said business on his sole responsibility under the same old firm name (or under the new firm name of, etc.).

Date . . . . .

AB

**Notice of Suit to a Common  
Carrier for Damages for Loss of Goods**  
(Section 10 of the Carriers Act 1865)

Dated the ..... 2000

To  
The .....

Sir

Under instructions from my client Sri ..... (*name, description and address*) I call upon you to pay to my said client, within 30 days, from the date of receipt of this notice, a sum of Rs. .... detailed in the Schedule below, as compensation for the loss of ..... bags of (*name the material*) which were entrusted to you at your office at Calcutta (etc.) on ..... by M/s. .... for carriage for reward through your transport service (*state the nature of service*) to etc., the consignee being self (or, my client as the case may be), under Con. Note/Despatch Receipt No. .... dated ..... 2000.

The above loss is due to the misconduct and gross negligence on the part of the aforesaid (*name the carrier*) and/or their agents and/or employees in due course of employment.

Please take notice that in default of your compliance with this notice a suit will be brought against (*name the carrier*) for recovery of the said sum of Rs. .... together with all incidental costs after the expiry of the period hereinabove allowed.

Yours faithfully

*Schedule of claim*

NOTE: A common carrier is a person other than a Government engaged in the business of transporting for hire property from one place to another by land or inland navigation for all persons indiscriminately but did not include the Railway under sub-sec. (1) of s. 64 of the Indian Railways Act 1989 which made the Railway Administration liable as bailees as under ss. 151, 152 and 161 of the Indian Contract Act 1872.

## RAILWAY CLAIM NOTICES

**Notice to the General Manager of a  
Railway Administration claiming Compensation for  
Short Delivery, Non-delivery or Delivery in Damaged Condition**

Notice by party (simple form)

*Regd. with A/D*

Dated .....

*Subject:* Notice under s. 106 of the Indian Railways Act 1989

To

The General Manager ..... Railway, .....  
(name the Railway with address)

Details of consignment short delivered or lost or delivered in damaged condition.

Ex ..... on ..... Rly. .... to ..... on .....

Rly. Invoice No. .... P.W.B./B.R. No. .... dated .....

Sender/Consignor .....

Consignee .....

Endorsed to ..... for valuable consideration

Contents ..... bags/bales/tins, etc. of ..... each  
bag/bale weighing (or containing) .....

Date of delivery at the destination .....

Condition in which the consignment was delivered .....  
(state here shortage, or deterioration, etc.)

In case of total loss an averment to effect .....

Short (or damage) certificate issued by ..... on .....

Dear Sir

In serving you with the notice under s. 106 of the Indian Railways Act 1989, I hereby call upon the Railway to pay to me within ..... days from the date of receipt of this notice a sum of Rs. .... as compensation assessed on account of shortage (or loss/deterioration) of goods in the above consignment. Please note that unless the said sum is paid within the aforesaid time I shall file a claim before the Railways Claims Tribunal for recovery of the said sum with interest and costs.

Yours faithfully



Notice to the General Manager, Railway claiming  
Compensation for Non-delivery, Short Delivery/Deterioration, etc.

ANOTHER FORM

Regd. with A/D

Dated .....

To  
The General Manager .....

Railway, .....

Dear Sir

*Subject:* Notice under s. 106 of the Indian Railways Act 1989

Under instruction from my client Sri ..... of ..... I hereby give you this notice claiming a sum of Rs. .... as compensation for the loss of goods suffered by my above client for reasons of non-delivery/shortage (in case of short delivery)/destruction/deterioration (as the case is) as stated below:

The consignment of goods consisting of ..... bags/packets/tins, etc. of ..... each bag etc. weighing ..... kg. of ..... was/were booked by my client from ..... on ..... Rly. under R.R. No. .... dated ..... for carriage forward to ..... a station on ..... Rly., the consignor/sender being ..... and the consignee being ..... (or self) which was endorsed to my said client for valuable consideration.

At the time of taking delivery of the consignment on ..... at ..... (state here the condition in which the consignment is received) my client discovered a shortage and/or loss of ..... goods in the said consignment (or the entirety or portion thereof completely damaged) for which a certificate to that effect was issued by the ..... Rly. station on ..... etc.

(Or, the said consignment having been lost or misdirected elsewhere in course of transit and so not reached the destination as yet, the Railway Administration failed to deliver the same to my aforesaid client in spite of repeated demands).

These being the circumstances, I am instructed by my client to demand of the Railways to pay to me or to my said client, within ..... days from the date of receipt of his notice, a sum of Rs. .... as loss and damages suffered by reason of loss, deterioration or wrongful conversion of goods as aforesaid.

*Schedule of claim*

1. Loss for shortage of .....	
at Rs. .... per qtt.	
as per Bijuk/market rate .....	Rs. ....
2. For proportionate Rly. freight (in case of partial delivery) paid .....	Rs. ....
3. Other costs (packing cost, etc.) .....	Rs. ....
4. Costs of notices etc. ....	Rs. ....
	Total Rs. ....

Yours faithfully

**Notice to General Manager of a  
Railway Claiming Refund of Overcharge**

Dated .....

To

The General Manager, ..... Railway, .....  
(Name the Railway with address)

Dear Sir

*Subject:* Notice under s. 106 of the Indian Railways Act 1989

Under instructions from my client ..... (name, description and address) I hereby give you a notice calling upon the Railways for refund to my said client, within ..... days from the date of receipt of this notice, a sum of Rs. .... which the Railways wrongfully and/or illegally charged, in excess of actual legitimate and really payable freight which my client had to pay under Money Receipt No. .... dated ..... to Railways, for the carriage and delivery of the consignment from ..... a station on the ..... Rly. to ..... a station on the ..... Railway under R/R PWB No. .... dated ..... the consignor being (name and address) and the consignee being (name and address) endorsed to my client for valuable consideration.

Please note that in default of payment within the time aforesaid my client shall file a claim before the Railways Claims Tribunal against the Railways for recovery of the said sum with costs and interests.

Yours faithfully



Notice to a Railway claiming Damages for Liabilities  
in Tort of a Railway Administration (case of Physical Injury)

Dated .....

Regd. with A/D

To  
The General Manager, ..... Railway, .....  
(Name the Railway with address)

Dear Sir

*Subject:* Notice under s. 106 of the Indian Railways Act 1989

Under instructions from my client (state here name, description and address) I hereby give you a notice claiming damages of Rs. .... on account of personal injuries suffered by him as hereunder stated.

My said client was a qualified surgeon of good repute.

My said client had on (date) ..... purchased a 1st class ticket at ..... Rly. station on the ..... Railway for a journey from ..... to ..... by ..... (....., etc., name the train) and availed himself of a reserved seat in a 1st class compartment of the train. On ..... at about ..... hours the train while driven carelessly and negligently by the workmen of the Railway met with a serious accident after it had collided with another train waiting in a station of the same Railway. In the result my client who was thrown off his seat lost both of his arms and became permanently disabled and unfit for carrying on his livelihood as a surgeon.

My client is entitled to recover from the Railways a sum of Rs. .... as per account below.

Please take notice that unless the said Railway pay to my client the said sum of Rs. .... within 60 days from the date of receipt of this notice, my client shall file a claim petition before the Railways Claims Tribunal.

*Particulars of claim*

- |   |          |
|---|----------|
| (a) Medical expenses incurred for treatment                         | Rs. .... |
| (b) Physical and mental agony caused by injury                      | Rs. .... |
| (c) Loss of future earning as a surgeon because of the loss of arms | Rs. .... |

Total Rs. ....

Yours faithfully

**A Combined Notice under section 106  
of the Indian Railways Act 1989 and under  
section 80 of the Code of Civil Procedure 1908**

*Regd. with A/D*

The General Manager, ..... Railway                      Dated .....

(Address) .....

Dear Sir

Please take notice that my client (name, description) of ..... (address) will institute a suit against the Union of India, owning and administering the aforesaid Railway in a court of competent jurisdiction after expiry of two months after service of this combined notice of claim under s. 106 of the Indian Railways Act and s. 80 of the Code of Civil Procedure for reliefs hereunder claimed unless they are all granted to my client by the said Railway within the said period of two months.

The relevant facts justifying my client's claim and constituting cause of action of the proposed suit and relief thereunder will appear hereinbelow:

(a) On or about the ..... day of ..... my said client made over to the said Railway a consignment of ..... bags ..... each bag ..... weighing ..... kg. .... of ..... for carriage for reward from ..... a station on the said Railway to ..... a station on the same Railway under P.W.B. No. .... dated ..... consignor being M/s. .... and the consignee being self-endorsed to my client for valuable consideration. The said consignment has not reached as yet so far the said destination and so was not delivered to my client uptill now in spite of repeated demands.

(b) The loss and consequent non-delivery of the consignment is due to wilful act, default, misconduct, carelessness and gross negligence of the aforesaid Railway Administration, its agents and/or employees concerned. My client is at this stage unable to give full particulars of the same until after full disclosure of facts and evidences by the Railway as to how they have dealt with the consignment during the period the same was in possession and control of the Railway.

(c) My client hereby claims a sum of Rs. .... as damages suffered on account of the loss or non-delivery of the consignment and is entitled to recover the same as against the Railway.

The following are particulars of the claim:

- |  |          |
|--|----------|
| (i) Loss for shortage of at            |          |
| Rs. ....                               | Rs. .... |
| (as per Bijuk/market rate)             |          |
| (ii) For proportionate railway freight |          |
| (in case of partial delivery) paid     | Rs. .... |



(iii) Other costs (packing costs, etc.)	Rs. ....
(iv) Costs of notices etc.	Rs. ....
Total	<u>Rs. ....</u>

The cause of action arose on the ..... day of on account of wrongful loss caused to my client because of the non-delivery of goods without any just or sufficient cause.

(d) The names, addresses and description of the plaintiff and the defendant, nature of cause of action and relief claimed as required to be stated in the notice under s. 80 of CPC are contained in the particulars hereinbefore given.

Yours faithfully

STATUTORY NOTICE UNDER CODE OF CIVIL PROCEDURE 1908

**Notice of Suit of General Manger of different Railways  
under section 80, CPC, claiming Compensation for Short Delivery**

Regd. with A/D

Address .....  
Dated .....

To

1. The General Manager, ..... Railway, .....
2. The General Manager, ..... Railway, .....
3. The General Manager, ..... Railway, .....

Dear Sirs

*Subject:* Notice under s. 80 of the Code of Civil Procedure

Please take notice that my client (state here name, description and address) will institute a suit against the Union of India, owning and administering the aforesaid Railways in a court of competent jurisdiction, after expiry of two months after service of this notice unless reliefs claimed hereinbelow are granted to my client within the said period of two months. The relevant facts constituting the cause of action and reliefs claimed are as follows:

1. That on or about the ..... day of ..... my said client made over to the said Railway a consignment of ..... bags of ..... each bag containing ..... of ..... for carriage for reward, from ..... a station on the ..... Railway under Invoice No. .... R/R, P.W.B. No. .... dated ..... to a station on the ..... Railway, the sender/consignor being ..... and the consignee being ..... endorsed to ..... At the time of delivery of the said consignment on the ..... day of ..... bags were not

found and so short delivered (or ..... bags were received badly torn etc.) resulting thus in a shortage for which usual short certificate was given by the station concerned.

2. My client thus suffered a loss of Rs. .... full particulars whereof are given in the schedule below due to default and/or negligence and/or misconduct on the part of the aforesaid Railway, their agents and/or employees concerned. My client cannot at this stage give full particulars of the said default and/or negligence and/or misconduct until full disclosure of the conduct of the agent and employees of the Railways as to how they dealt with the consignment during the period while the same was in their possession, custody or control.

3. My client (name the client ..... ) has already served the Railway a notice dated ..... under s. 106 of the Indian Railways Act demanding the Railway payment of the said sum Rs. .... within 30 days from the date of receipt of the said notice but to no effect.

4. The following are particulars of the claim:

(a) Loss for shortage of ..... at Rs. .... per qt. as per Bijuk/ market rate	Rs. ....
(b) For proportionate Rly. freight (in case of partial delivery) paid	Rs. ....
(c) Other costs (packing cost, etc.)	Rs. ....
(d) Costs of notices etc.	Rs. ....
Total	<u>Rs. ....</u>

5. The particulars required under s. 80 of the Code of Civil Procedure are as follows:

(a) Name, address and description of the plaintiff .....	CD residing at .....
(b) Name, address and description of the defendant .....	Union of India representing the ..... Railway.
(c) Cause of action .....	Damages suffered due to short delivery or non- delivery of goods.
(d) Relief claimed .....	Decree for Rs. .... being the loss caused by short delivery or non- delivery of goods.

Yours faithfully



## SECTION 80 OF CODE OF CIVIL PROCEDURE 1908

NOTICE. (1) Save as otherwise provided in sub-section (2), no suit shall be instituted against the Government (including the Government of the State of Jammu and Kashmir) or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of—

- (a) in the case of a suit against the Central Government, except where it relates to a railway, a Secretary to that Government;
- (b) in the case of a suit against the Central Government where it relates to a railway, the General Manager of that railway;
- (bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other office authorised by that Government in this behalf;
- (c) in the case of a suit against any other State Government, a Secretary to that Government or the Collector of the district;

and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the court, without serving any notice as required by sub-section (1); but the court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (1), if in such notice—

- (a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1), and

- (b) the cause of action and the relief claimed by the plaintiff had been substantially indicated.

### Notice of Election by the Minor Concerning Partnership

[Section 30(5) of the Indian Partnership Act 1932]

NOTICE is hereby given that the undersigned AB, who was admitted to the benefits of the partnership subsisting between CD and EF (or etc.), carrying on the business of (or as), etc., at etc., under the firm name of etc., having attained majority on the ..... day of ..... (if necessary), add ..... and on the ..... day of ....., having obtained knowledge of the fact that he had been admitted to the benefits of the said partnership, does hereby elect to become (or, not to become) a partner in the said partnership.

Date

AB

### Notice by Purchaser's Solicitor Previous to Purchase of Property

NOTICE is hereby given that AB, of etc., having contracted on the day of ..... to sell the undermentioned property to my client, CD, of etc., any person or persons claiming any interest on the said property, or any part thereof, by way of sale, exchange, mortgage, gift, trust, inheritance, bequest, possession, lease, lien, easement or otherwise, is hereby required to communicate the same to the undersigned at his office at, etc., within ..... days from the date hereof, as otherwise the said sale will be completed without any reference or regard to any such purported claim or interest, which shall be deemed to have been waived to all intents and purposes.

The description of the property.

Date

EF, Solicitor for CD

### Notice of Sale of Business

NOTICE is hereby given that the business of etc., heretofore carried on by the undersigned AB at, ..... as its sole proprietor ..... was sold, transferred and assigned on the ..... day of ..... unto and to use of CD of, etc., who will nevertheless remain responsible for and to pay up, discharge and satisfy all its debts and liabilities up to and inclusive of the date of such transfer but not for any debts, performance or non-performance of any contract or contracts or other liabilities incurred, made or entered into by the said CD or any other person whatsoever in connection with the said business next after the said ..... day of .....

Date

AB



---

## Partnership

**Introductory observations.** The relationship between partners arises not out of status but from contract.

Partnership is the relation which subsists between persons carrying on a business in common with a view to profit.<sup>1</sup> Partnership is a contract between two or more persons to invest their money and effects and to utilise their labour and skill or some or all of them in lawful commerce or industry and to divide the profits and share the loss in certain proportions.

The word 'partnership' is defined in s. 4 of the Partnership Act (Act X of 1932) as a relation between persons who have agreed to share profits of business carried on by all or any one of them acting for all. As observed by the Bombay High Court,<sup>2</sup> partnership requires three elements—(a) an agreement entered into by all persons concerned; (b) distribution of the profits of the business; and (c) management of the business by all or any one or more of them acting for all, *i.e.*, mutual agency. One partner is not only an agent of the firm but also of the other partners and, if so, can bind another which falls within the scope of partnership subject to limitation under s. 20 of the Act as regards the implied authority of the firm, Societies and clubs whose object is not to acquire profits are not partnership; so the members are as such not liable for each other's debts.<sup>3</sup>

Out of these three, the third element, *i.e.* the element of mutual agency is most essential and it distinguishes partnership from other type of contractual relationship between the parties. If this element is absent the partnership fails.

1 Lindley on *Partnership*, 15th Ed., p. 11.

2 *Chimanram Motilal v Jayantilal Chhaganlal* (1939)41 Bom LR 899; AIR 1939 Bom 410 (DB).

3 8 Ex 898.

A partnership is distinguishable from associations, e.g. clubs, societies, co-operative bodies and incorporated companies. So societies and clubs, the object of which is not to acquire profit, are not partnership.<sup>4</sup> The tests of partnership was as laid down by the House of Lords in the case of *Cox v Hickman*,<sup>5</sup> the real intention and conduct of the parties appearing from the (a) written agreement, or (b) verbal agreement together with surrounding circumstances. So a partnership is possible between owners of a building or co-owners of a mine if they deal with the same in such a way as to amount to carrying on business<sup>5</sup> and satisfy the essential requirement of partnership. It is the question of agency and authority, in other words, the existence of the relationship as between the principal and the agent. Although people enjoy freedom of contract, nevertheless certain types of partnership are still considered illegal, e.g. (a) partnership from carrying on banking business with more than 10 persons (s. 4 of the Companies Act) or any partnership consisting of more than 20 persons; (b) for objects forbidden by law (see Akbari and Excise Act),<sup>6</sup> partnership for running a lottery,<sup>7</sup> for selling smuggled goods,<sup>8</sup> when the licence is worked by a third party; (c) when opposed to public policy e.g. traffic in public office;<sup>9</sup> and (d) partnership with alien enemy<sup>10</sup> or formed for the purpose of profits from some illegal venture, a criminal e.g. smuggling, theft, robbery etc.<sup>11</sup>

War puts an end to all contracts of partnership as between citizens of the Enemy States.<sup>12</sup> All contracts entered into before the outbreak of the hostility are abrogated if they enure to the aid of the alien enemy or involve any dealing with the alien enemy.

**Partnership—partner—firm and firm name.** Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually *partners* and collectively a *firm*, and the name under which their business is carried on is called the *firm name*.<sup>13</sup>

It is a voluntary contract as between people to place their capital, labour and skill in lawful commerce or business.<sup>14</sup> A valid partnership is possible

4 Lindley on *Partnership*, 15th Ed., p. 13.

5 (1860)8 HLC 268.

6 *Marudamuthu v Rangasami* (1901)24 Mad 401.

7 *Dorabji Tata v Lance* (1918)42 Bom 676.

8 *Briggs v Lawrence* (1789)2 Term Rep 456.

9 *Ledu Coachman v Hiralal* (1916)43 Cal 115.

10 *Marshall & Co. v Naginchand* (1918)42 Bom 473. Also see *Porter v Freudenberg* (1915)1 KB 857.

11 *Briggs v Lawrence* 3 TR 454.

12 Section 41(b) of the Indian Partnership Act.

13 Section 4 of the Indian Partnership Act.

14 Story on *Partnership*, s. 21.



between persons even though one is a *benamdar* for another and the existence of such a partnership cannot be questioned by a third party.<sup>15</sup> A firm must be registered under s. 58 of the Partnership Act or otherwise a suit filed whether as between partners or against a third party will not be maintainable. Section 69 is mandatory. Partnership Deed may contain no fixed period as its duration and no provisions for dissolution. Such a partnership is known as Partnership at Will.

**Multiple partnership.** The Partnership Act permits a person to become a partner with another person in a particular adventure or undertaking (s. 3). The same partners may enter into an agreement for the creation of two or more partnerships. The firm name is only a collective name for each of the partners but each partnership is a distinct relationship. Partners may agree to carry on a business and share its profits followed by separate agreement between the same partners to carry on another business and share profits therein. The intention will have to be ascertained by the terms of the agreement and the surrounding circumstances including evidence as to interlacing or interlocking of management, finance and other incidents of the respective business.<sup>16</sup>

**Partnership at will.** Where partners contemplated that the management would be carried on the rotation between them in four-yearly periods and the heirs of the partners would also carry on the management in rotation, the partnership could not be brought to an end by notice by either partner. The intention obviously was to have a partnership of some duration though duration was not expressly fixed in the agreement. Partnership will not be one at will if the duration can be implied.<sup>17</sup> But where duration is not only uncertain but the same depends upon an event which may happen *i.e.* grant of a permanent licence for running the particular business, the partnership will be at will.<sup>18</sup> Where a licence was granted to a proprietorship concern but the licensee entered into partnership with others he cannot institute suit for settlement of accounts on the basis of such illegal and forbidden partnership agreement.<sup>19</sup>

**Rights, duties and liabilities of partners.** Partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner or his legal representative.<sup>20</sup>

15 *Narul Hasan v Amir Hasan* AIR 1962 Cal 569.

16 *Dy. Commr. v K. Kelukutty* AIR 1985 SC 1143.

17 *K. Thiagarajan v E.M. Muthappa* AIR 1961 SC 1225.

18 *Gobardhan v Abani Mohan* AIR 1991 Cal 195.

19 *Gobardhan*, *ibid.*

20 Sections 9, 12 and 13 of the Indian Partnership Act.

Every partner must indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm. Every partner is liable, jointly or severally, for all acts of the firm done while he is a partner.<sup>21</sup>

**Partner is an agent—what a partner is not empowered to do.** A partnership business is the business of all partners and the power of management is co-extensive.<sup>1</sup> Each partner is in contemplation of law the general agent of the partnership. He may buy and sell goods on account of partnership, contract debts, pay debts, draw, make, endorse bills of exchange, cheque, etc. He can bind the firm by all acts done by him which are not in the nature beyond the scope of partnership. But there are statutory restrictions on his power.<sup>2</sup>

**Limitations of implied authority.** In the absence of an usage or custom of trade to the contrary, the implied authority of a partner does not empower him to—

- (i) submit a dispute relating to the business of the firm to arbitration;
- (ii) open a banking account on behalf of the firm in his own name;
- (iii) compromise or relinquish any claim or portion of a claim of the firm;
- (iv) withdraw a suit or proceeding filed on behalf of the firm;
- (v) admit any liability in a suit or proceeding against the firm;
- (vi) acquire immovable property on behalf of the firm; or
- (vii) enter into partnership with another on behalf of the firm.

**Consequence of notice given to the partner.** Notice to any partners who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of the partner.<sup>3</sup>

It is absurd to hold that the firm has notice of everything done by all its members.

**Consequences of partner being adjudicated an insolvent.** Where a partner in a firm is adjudicated an insolvent, he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is thereby dissolved.<sup>4</sup>

21 Section 10 of the Indian Partnership Act.

1 *Donaldson v Williams* (1833)2 LJ Ex 173.

2 Section 19 of the Indian Partnership Act.

3 *Lindley on Partnership*, 15th Ed., pp. 291-292 and see s. 24 of the Indian Partnership Act.

4 Section 41 of the Indian Partnership Act 1932.



It is well settled in England, as also in India, that a minor partner, i.e. partner admitted to the benefits of partnership, cannot be adjudged as insolvent, but in any case the entire property of the firm including the minors shall vest in the official assignee or Receiver in insolvency.<sup>5</sup>

**Non-liability of deceased partner's estate.**<sup>6</sup> Where under a contract between the partners, the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.

**Minors admitted to benefits of partnership.** The law regarding minors who have been admitted to the benefits of partnership is as follows:

1. Any person, who is a minor according to the law to which he is subject, may not be a partner in a firm, but with the consent of all the partners for the time being, he can be admitted to the benefits of partnership.<sup>7</sup>

2. Such minor has a right to such share of the property and of the profits of the firm as may be agreed upon, and he can have access to inspect and copy any of the accounts of the firm.<sup>8</sup>

3. Such minor's share is liable for the acts of the firm, but the minor is not personally liable for any such act.<sup>9</sup>

4. Such minor may not sue the partners for an account or payment of his share of the property or profits of the firm save when severing his connection with the firm, and in such a case the amount of his share will be determined by a valuation made as far as possible in accordance with the rules regarding the mode of settlement of accounts between parties; provided that all the partners acting together, or any partner entitled to dissolve the firm upon notice to other partners, may elect in such suit to dissolve the firm, and thereupon the court will proceed with the suit as one for dissolution and for settling accounts between the partners, and the amount of the share of the minor shall be determined along with the shares of the partners.<sup>10</sup>

5. At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of the partnership, whichever date is later, such person may give public notice that he has elected to become, or that he has elected not to become a partner in the firm and such notice shall determine his position as regards

5 *Sanyashi Charan Mondal v Krishnadone Banerjee* (1922)49 Cal 560 (570); AIR 1922 PC 237.

6 The Supreme Court summarised the incidents and true nature of benefits of a minor in the case of *Commissioner of Income-tax v Shah Mohandas Sadhran* AIR 1966 SC 15 (17) held—A guardian can do all that is necessary to effectuate the confirmor and receipts of the benefits of partnership.

7 Section 30(1) of the Indian Partnership Act.

8 Section 30(2) of the Indian Partnership Act.

9 Section 30(3) of the Indian Partnership Act.

10 Section 30(4) of the Indian Partnership Act.

the firm; provided that, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.<sup>11</sup>

6. Where such person becomes a partner—

- (i) his rights and liabilities as a minor continue up to the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of the partnership;<sup>12</sup>
- (ii) his share in the property and profits of the firm shall be the share to which he was entitled as a minor.<sup>13</sup>

7. Where such person elects not to become a partner—

- (i) his rights and liabilities will continue to be those of a minor under the law up to the date on which he gives public notice;
- (ii) his share will not be liable for any acts of the firm done after the date of the notice; and
- (iii) he will be entitled to sue the partners for his share of the property and profits in accordance with what is provided in cl. (4).<sup>14</sup>

**Dissolution of partnership.** The dissolution of partnership between all the partners of a firm is called the dissolution of the firm.<sup>15</sup>

The firm is dissolved—

- (i) by the adjudication of all partners, or of all the partners but one, as insolvent; or
- (ii) by the happening of an event which makes it unlawful for the business of the firm to be carried on, or for the partners to carry on partnership; e.g. partnership with alien enemy or one partner e.g. dentist is struck off the roll,<sup>16</sup> provided that, where more than one separate adventure or undertaking is carried on by the firm the illegality of one or more shall not, by itself, cause the dissolution of the firm in respect of its lawful adventures and undertakings.

Subject to contract between the partners, a firm is dissolved—

- (i) if constituted for a fixed term, by the expiry of that term;
- (ii) if constituted to carry out one or more adventures or undertakings by the completion thereof;

11 Section 30(5) of the Indian Partnership Act.

12 Section 30(7)(a) of the Indian Partnership Act.

13 Section 30(7)(b) of the Indian Partnership Act.

14 Sections 30(8)(a) and 30(8)(b) of the Indian Partnership Act.

15 Sections 41 and 42 of the Indian Partnership Act.

16 *Clifford v Timms* (1908) AC 12.



- (iii) by the death of a partner; and
- (iv) by the adjudication of a partner as an insolvent.

**Law of insolvency and partnership.** Under the English Law, no order of adjudication can be made against a firm but it can be made against the partners individually<sup>17</sup> but such an order may be made under the Indian Law.<sup>18</sup>

**Common partners.** A firm in England cannot bring an action against another firm in which there is a common partner. This is based on the common law principle that a suit between one house of trade against another house of trade having a common partner is not maintainable. The Judicature Acts being a rule of procedure do not create a cause of action which does not exist in common law.<sup>19</sup>

The only relief the plaintiff is entitled to is an account of the dealings and transactions of the partners.<sup>1</sup> Otherwise no justice could be done to the parties.

In India, however, the Civil Procedure Code under Or. XXX, r. 9, which corresponds with Or. 48(A), r. 10 of the Rules of the Supreme Court in England authorises such firms to litigate as against another under two circumstances, (i) the firm must carry on business in India; and (ii) all the partners must not be common.<sup>2</sup>

The rule does not alter the substantive law but qualifies the same.<sup>3</sup>

**Nomination of successor.** Introduction of a new partner is a matter of agreement between the partners.<sup>4</sup>

It is not uncommon in partnership agreements to find a clause as to nomination of a successor who has the right to be declared and admitted as partner in the event of death or retirement of a partner. It was, however, held by the Supreme Court that the nomination is not effective in case of partnership firm consisting of two partners only<sup>5</sup> as it stands dissolved on the death of a partner; nevertheless, in view of the rights and obligations of a person to be nominated as under s. 31 of the Act, the same principle in case of agreement between two persons<sup>6</sup> is applicable in case of partnership

17 Ex parte *Blain* 1879.

18 Section 99 of the Presidency Town Insolvency Act.

19 Lindley on *Partnership*, 15th Ed., p. 49.

1 *Meyer and Co. v Faber* (No. 2) (1923)2 Ch D 421 (435, 439).

2 Ghosh on *Law of Pleadings*, Ed. 1966, p. 196.

3 *Rustomji v Purushattam* (1901)25 Bom 606 (612); Mulla on *Code of Civil Procedure*, 12th Ed., p. 1031.

4 Section 31 of the Partnership Act 1932. See also s. 42 of the said Act.

5 *Commissioner of Income-tax v Govindram Sugar Mills* AIR 1966 SC 24 (27).

6 Desai on *Partnership*, 4th Ed., p. 203.

between two partners. The nomination must be specific. It may be made by will as specific legacy.<sup>7</sup>

**Registration of firms.** The registration of a firm can be effected under s. 58 of the Partnership Act at any time by sending by post or delivering to the Registrar of the area, in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the requisite fee, stating—

- (i) the firm name;
- (ii) the place or principal place of business of the firm;
- (iii) the names of other places where the firm carries on business;
- (iv) the date when each partner joined the firm;
- (v) the names in full and permanent address of the partners; and
- (vi) the duration of the firm.

The statement shall be signed and verified by all the partners or by their agents especially authorised in this behalf. The effect of non-registration under s. 69 of the Act is that it bars the right of suing by and on behalf of the firm.

**Execution and attestation—registration.** A deed of partnership, or of dissolution of partnership, must be executed and attested as a bond, and its registration is not compulsory; but where a deed of dissolution of a firm involves transfer of immovable property worth Rs. 100 or upwards, the deed is compulsorily registrable.

## FORMS

### Partnership among Solicitors or Advocates

THIS INDENTURE IS MADE this ..... day of ..... 2000 BETWEEN (i) AB son of ..... etc., hereinafter referred to as the first partner of the first part, (ii) CD son of etc., hereinafter referred to as the second partner of the second part and EF son of ....., etc., hereinafter referred to as the third partner of etc., of the third part Witnesseth that the said first partner, second partner and third partner hereby mutually covenant and agree to be partners in the profession of solicitors on terms as follows:

1. The said partners will carry on the profession of solicitors in partnership at ..... under the name and style of ..... as from the ..... day of .....

7 *Bachubhai v Shamji* (1885)9 Bom 536.



2. The partnership shall continue for the term of ..... years with effect from the said ..... day of ..... unless previously determined as hereinafter provided. The death, withdrawal or retirement (or bankruptcy) of any partner shall not determine the partnership as to the other partners.

3. The first party shall have ..... shares in the said partnership business and the second party ..... shares and the third party ..... shares and they shall be entitled to the net profits accordingly.

4. The capital requisite for carrying on the partnership business at present is Rs. .... which shall be contributed by the partners in proportion to their respective shares immediately on execution of these presents. Any further capital required from time to time shall be contributed by the partners in the shares in which they are for the time being entitled to the net profits of the said business and such capital shall carry interest at the rate of ..... per cent per annum payable on the ..... day of ..... in each year before any division of profits.

5. Subject to the provisions of these presents, the goodwill of the partnership business shall belong to the said **FIRST PARTNER** and **SECOND PARTNER** in equal shares.

6. The staff to be maintained shall consist of one managing clerk, one court clerk, two typists, one bill clerk and two peons. All appointments and dismissals, fixation of salaries, bonus, retirement benefits, etc. shall be done by the party of the first part.

7. Proper books of account *e.g.*, day book, cash book, ledger, law ledger and diaries, counsels' memo files shall be kept by the partners at the business premises and the same at all times be available for inspection by all the parties.

8. Each partner shall duly punctually make full and proper entries of all business transacted by him on account of the partnership and check up the bill or bills for all such matters but none except the first party shall have any right to settle any bill by forgoing any amount.

9. Each partner shall be entitled to draw a sum of Rs. .... each month and the balance on account of his share in the partnership property twice a year once on 2nd January and another on 2nd July after adjustment of all accounts of the firm; such account shall be prepared containing the details of the assets and liabilities of the firm, amount of capital contributed, amount due to each partner about his share of profits and shall be kept signed by the partners.

10. Each partner shall be just and faithful to one another, devote his whole time and attention to the partnership business and no partner shall, without the consent of the other partner or partners, engage in any other business or hold any office of profits or appointment nor do any professional work outside the office except free and voluntary service to his friends and



relations provided that each of them, the said FIRST PARTNER and SECOND PARTNER shall be at liberty to hold any office in the company and such honorary offices as he or they may think fit. Provided also that (save as aforesaid) all offices and appointments held by any partner during the partnership shall be held for the benefit of the partnership.

11. No partner shall pledge the credit of partnership except in the usual and regular course of the business or give credit to and conduct any business for any person, company or firm (other than such persons as are mentioned in the next following clause hereof) after being required in writing not to do so by the other partner or partners.

12. Upon the death of any partner and upon any person ceasing to be a partner, the share of the deceased or outgoing partner, including capital stock-in-trade and other assets shall be purchased by and belong to the remaining partners who shall take upon themselves all debts and liabilities when and in such an event, all deeds, papers and writings belonging to the firm shall be handed over to and retained by the surviving partners.

13. If, during the continuance of the partnership or at any time thereafter, any difference or disputes shall arise between the partners or their respective legal representatives or any other person or persons under these articles as to the meaning or construction on the rights and liabilities or matter or things done or to be done in pursuance hereof, such disputes and differences shall be referred to arbitration and award of the President of the Incorporated Law Society and his decision and award shall be final and binding upon the parties.

In witness whereof the parties have hereunto set and subscribed their respective hands and seal the day, month and year first above-written.

Signed, sealed and delivered  
etc.

AB  
CD  
EF

### Deed of Admission of Partner

ARTICLES OF PARTNERSHIP MADE this ..... day of ..... 2000 BETWEEN AB son of etc. .... of the one part and CD son of etc. of the other part to the following effect. WHEREAS the said AB has been carrying on the business in ..... as its sole proprietor under the name and style of ..... at ..... AND WHEREAS, for development of the said business by mutual assistance and co-operation the said AB has agreed to admit CD as a working partner and in consideration of the service to be rendered to pay him a sum equivalent to ..... % share of the net profits. NOW THIS DEED WITNESSETH and it is hereby agreed and declared as follows:

1. The said CD is hereby admitted as a working partner of the said AB in his said trade with effect from the date of execution of these presents in



consideration of good, faithful and efficient service to be rendered for development of the trade but shall have no claim to the assets or goodwill.

2. The said CD shall not have to contribute any sum towards the capital and shall have accordingly no claim or interest in the stock-in-trade and other assets or in the goodwill of the trade which shall all remain the exclusive property of AB as before but shall be entitled only to a sum representing ..... % of the net profits in exchange of good and faithful service to the said AB as hereunder stipulated.

3. The said CD shall serve the said AB truly and faithfully in all respects, carry out all his orders to the best of his knowledge, skill and power, observe all rules of the establishment, maintain and preserve all its trade secrets and shall do, execute and perform ungrudgingly all work entrusted to him by the said AB but shall have no right to interfere with the management.

4. The partnership hereunder created shall continue until such time when the same is dissolved by the said AB upon giving one month's notice in writing to the said CD provided, however, that in case of fraud, misconduct or dereliction of duty on the part of the said CD the same may be dissolved with immediate effect.

5. The said CD shall have no power to raise any loan or loans nor to pledge the credits of the firm under any circumstances.

6. The said CD shall not, during the continuance of this partnership directly or indirectly, serve anywhere in any capacity but shall devote his whole time and whole-hearted attention to the said trade and never make himself absent except casually without leave of absence and after dissolution shall not directly engage himself in any concern carrying on similar trade or business within a radius of ..... miles from its present place.

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 in the presence of:

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

Deed of Partnership between Two Partners

THIS DEED OF PARTNERSHIP is made this ..... day of ..... 1999 BETWEEN AB son of ..... residing at ..... of the one part and CD son of ..... residing at ..... of the other part.

THIS DEED WITNESSETH and the parties hereby agree as follows:

1. The parties hereto shall carry on business in co-partnership as manufacturer and trader of jute goods under the name and style of CD Brothers at ..... with effect from ..... until the expiration of 3 months' notice in writing to determine the partnership left by either party for the other at the place of business of the firm, at any time after the ..... day of ..... subject to the terms and conditions hereunder contained and subject to such change in the constitution of the firm, if any, hereafter effected by addition, withdrawal, retirement or expulsion of partner or partners.

2. Within ..... days from the commencement of the business, the firm shall be registered both under the Indian Partnership Act as also under the Income Tax Act and the rules prescribed under both the statutes shall be applicable to the firm.

3. The name of the firm shall be "Eastern Law House" and the same may be changed hereafter into some other name as desired by the partners.

4. The business of the firm shall at present be carried on at ....., etc., or such other place or places as the partners may hereafter from time to time determine.

5. The capital of the firm shall presently consist of a sum of Rs. .... to be contributed by the partners in equal shares, and shall be paid soon after the execution of these presents. Each partner shall be entitled to interest at the rate of ..... % per annum on the capital standing to his credit in the books of the firm to be paid at the first instance out of the gross profits except when the firm suffers any loss, such interest being cumulative the deficiency for one year will be made up out of the profits for the succeeding year or years.

6. If any partner is made to advance any further money or moneys over and above the proportion of capital agreed to be contributed by him to meet emergent expenses on behalf of the firm or shall choose to leave his share of net profits undrawn at any annual general accounting, he will also be entitled to interest thereon at the rate of ..... % per annum unless required by the other partner or partners to withdraw the same in which event the interest shall cease to accrue.

7. All outgoings and expenses of the firm shall be paid out of the capital and profits of the business and, in case of deficiency, by the partners in equal shares.

8. The bankers of the firm shall be Messrs. ...., etc., or such other bankers as the partners shall from time to time mutually agree upon, and all moneys, cheques and other securities belonging to the firm, except those required for current expenses, shall be paid into or deposited with the said bank.

9. All cheques drawn for amounts exceeding Rs. .... bills and other documents for the purposes of the firm shall be signed by both the partners;



each partner shall have the authority to sign all other cheques individually in the name of the firm.

10. The profits and losses shall belong to and be borne by the partners in equal shares.

11. In the event of any increase in the capital agreed upon by the majority or unanimously by the partners such additional capital unless otherwise agreed, shall be contributed by equal shares.

12. Partners may draw out in advance such sum or sums not exceeding Rs. .... in each month as may be agreed but, if on taking general accounts in any year, it appears that either partner has drawn more than his share of profits for that year, he shall refund the excess at once.

13. Both the partners shall attend diligently to the business of the partnership and carry on the same for the greatest advantage of the partners; and neither of them shall be, directly or indirectly, engaged or interested in any trade or business except that of the partnership.

14. Partners shall punctually pay and discharge their separate debts and liabilities, and shall indemnify and keep indemnified the firm effectually against the same.

15. No partner shall, without the consent in writing of the other partner or partners for the time being, release or compound any claim or debt due or owing to the firm or otherwise compound or settle the same or diminish any security without receiving the full amount thereof, or lend any money or deliver on credit goods belonging to, or otherwise give credit on behalf of, the firm other than in the usual course of the business of the firm, or contract debts and liabilities exceeding Rs. ...., or institute suits or proceedings or make himself liable as surety for any person, or sell, transfer or assign or otherwise deal with either absolutely or by way of mortgage or declaration of trust, his share or interest in the firm, or the profits and/or benefits thereof except in favour of another partner or do, execute or perform or suffer to the contrary any act, deed or thing whereby the property of the firm may be exposed to the danger of being seized, attached or taken in execution, when and in such an event he shall be liable to be expelled from the partnership, if so decided by the then majority of partners, who may in the alternative file a suit for dissolution of the firm with all consequential reliefs.

16. The partners shall keep and maintain proper books of account. The books of account securities, vouchers, etc. shall be kept at the place of the business and be open to the inspection of each partner or his agent at all reasonable times with power to take copies.

17. On the ..... day of ..... and on that day of every succeeding year, during the continuance of the partnership, a general account of the preceding year shall be taken and a just valuation made of all the assets and liabilities of the firm; such general account shall be audited by such registered accountant as the partners shall from time to time mutually



appoint, and shall be entered in a book and signed by both the partners, and when so signed, the entries in such book shall be binding on both, provided that, if within—months from the date of the signing of the book any manifest error shall be found therein, such error, shall be rectified. All profits (after setting apart an amount equivalent to ..... % thereof as Reserve Fund to meet emergent expenses) and loss shall be divided as aforesaid after such signature.

18. The firm shall not stand dissolved upon the death, retirement or insolvency of any partner, but upon dissolution in other cases it shall be wound up and the assets and liabilities dealt with in accordance with the provisions of the Indian Partnership Act.

19. If any partner infringes any one of the clauses hereunder or becomes insane, or is adjudicated an insolvent, the other partner may forthwith determine the partnership by notice in writing, and may thenceforth continue the business alone and may publish notice of the dissolution in the local Official Gazette and in local vernacular newspaper, and also inform the Registrar of Firms in writing.

20. Upon the dissolution of the firm either by death of a partner or by notice under cl. (19) the other partner may purchase his shares in the effects at a valuation to be made by arbitrators or their umpire as hereinafter mentioned. The price, when ascertained, shall be paid by three (*or etc.*) equal instalments at the end of four, eight and twelve calendar months (*or, etc.*), from such date of the award by the continuing partner or purchaser, who shall also execute all deeds and things necessary for indemnifying the outgoing partner or his estate from all the liabilities of the firm; and the outgoing partner or his representatives shall execute all such deeds and documents and do all acts necessary for effectually vesting in the purchaser the share purchased, including the goodwill, and the outgoing partner shall not carry on, or be engaged in any business competing with or interfering with the business of the firm, within a radius of ..... miles of, etc., during the remainder of the term of the said partnership term.

21. All notices required to be given to either partner hereunder shall be deemed to be duly served if addressed to such partner at the office of the firm and sent by registered post.

22. Any dispute or difference which may arise between the partners or their representatives, with regard to the construction, meaning and effect of this deed or any part thereof, or respecting the accounts, profits or losses of the business, or the rights and liabilities of the partners under this deed, or the dissolution or winding up of the business, or any other matter relating to the firm, shall be referred to arbitration and the decision of a sole arbitrator, if the parties in dispute so agree, otherwise to two or more arbitrators, according to the number of the partners of the firm one to be nominated by each party or his representative and in case of difference of



opinion between them, by the umpire selected by them at the commencement of the reference and this clause shall be deemed to be a submission within the meaning of the Arbitration and Conciliation Act 1996 including its statutory modification and re-enactment.

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 in the presence of:

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

### **Deed of Partnership between more than Two Partners**

THIS DEED OF PARTNERSHIP is made this ..... day of ..... 2000 BETWEEN AB son of ..... residing at ..... of the first part, CD son of residing at ..... of the second part, EF son of ..... residing at ..... of the third part and GH son of ..... residing at ..... of the fourth part.

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

1. The parties hereto shall at present constitute and become partners of the firm ..... subject to the terms hereunder contained subject to such modification in its constitution or object clauses as may hereafter be agreed.

2. The name of the firm shall, at present be, etc., and the objects of the partnership shall, etc., the partners shall enter into engagements on behalf of the firm in the firm's name only. The said name and the objects may be altered hereafter if so unanimously decided by all the partners then constituting the firm.

3. The business of the partnership shall be carried on at, etc., or at such other place or places as the partners shall from time to time determine.

4. The partners and their survivors will remain partners in the business, from the date of this deed, for a term of ..... years, if they, or any two of them, shall so long live, but subject to the provision for determination hereinafter contained.

5. Any partner may retire from the partnership at the end of ..... years, from the date of this deed, on giving to the other partners not less than—calendar months' previous notice in writing of his intention to do so, and at the expiration of such notice the partnership shall, as regards the partner giving such notice, stand dissolved; and the partner retiring during the continuance of the partnership shall not, during the remainder of the partnership term, carry on or be interested directly or indirectly in any other business competing or in way interfering with the business of the partnership, within a radius of ..... miles from the site of the firm's premises.

6. The retirement or death or insolvency of any partner shall not have the effect of dissolving the partnership between the partners; and the share of such retiring or deceased partner shall be purchased by one or more of the remaining partners at a price to be arrived at by the Auditor of the firm on the basis of last Balance Sheet and the working result upto the date of retirement and such sum will be paid to the retiring partner or the heirs of the deceased partner in four half-yearly instalments.

7. Every partner shall have a right to sell or mortgage his share or interest, but such partner, before selling or mortgaging it to a stranger, shall make the offer by registered letter to the other partners who shall have the first option to purchase the share at a valuation to be made. The Auditor shall value the share of the partner concerned on the basis of the Balance Sheet of the firm and in the event the outgoing partner does not agree to such valuation then he may get the share valued and he should be paid the average of the two valuations and such payment would be made in four half yearly instalments.

8. Every partner shall attend diligently to the business of the partnership and carry on the same for the greatest advantage of the partners; and no partner shall be directly or indirectly engaged or interested in any other trade or business except that of the partnership (or when required, substitute the following clause):

The said AB (or, etc.) shall be the manager of the business of the partnership and shall devote his whole time and attention to the management of the said business, he shall receive a salary of Rs. .... per month for his service in the firm and shall not be directly or indirectly engaged or interested in any other trade or business except that of the partnership.

9. No partner shall without the written consent of the other partners do any of the following things, namely, dispose of, or encumber any of the assets of the firm, borrow any money or incur any liability on behalf of the firm or stop operation of any banking account or cancel any transaction entered into by the firm. No partner shall without the written consent of the other partners keep the business place closed or prevent any partner from entering the business premises of the firm. In these respects the decision of the majority of the partners will be treated as the consent of the partners and/ or the firm.

10. Any partner may be expelled from the partnership after giving him opportunity to explain his conduct or allegations against him as regards fraudulent conduct misappropriation manipulation of accounts making secret profits or carrying on some other business competitive to the business of the firm or utilising the know-how and particulars of customers of the firm.

11. The capital of the partnership business shall be the sum of Rs. .... made up and raised as follows, namely, etc. and any further capital which



may be required hereafter shall be contributed by the partners in the proportions in which they shall for the time being be entitled to the net profits of the business.

12. Each partner shall be entitled to interest at the rate of ..... per cent per annum on the amount of his capital for the time being in the business, and at the rate of ..... per cent per annum for further advances.

13. The partners shall be entitled to share the net profit of the business as reflected by the audited accounts and shall share the losses reflected by the audited accounts of the firm in equal proportions irrespective of their capital contribution.

14. All outgoings and expenses of the partnership and all losses including interest and capital, shall be payable, first out of the profits, next, out of capital and in the case of further deficiency, by the partners in the proportion in which they are entitled to share in the net profits of the business.

15. An account of the partnership business shall be taken every six months, or at such times as the partners shall determine, and the net profits shall be divided between the partners.

16. All moneys and securities for money belonging to the partnership (except moneys required for current expenses) shall be paid into and deposited with K. Bank or such other bankers as the partners shall from time to time determine. Cheques drawn on partnership accounts shall be signed at least by two partners or by the authorised signatory.

17. The partners shall keep proper books of account which shall be kept at the place of business for the time being of the partnership, and each partner shall have access to and power to take copies of the same.

18. The partners shall get the accounts audited by a qualified auditor and such accounts to be finalised and copies of Profit and Loss Account and Balance Sheet to be furnished to each partner within six months of the closing of the Accounting Year which will end on 31st March every year.

19. If on the determination of the partnership by effluxion of time or otherwise than by death or retirement, there shall be two or more partners still living, an account shall be taken of the assets and the liabilities and transactions of the partnership and the assets as soon as they may be realized shall be applied first in the payment of the cost of realization, secondly in discharge of the liabilities of the firm; thirdly in payment of any unpaid profits or interest on capital due to any partner; fourthly in payment to each partner of the sums subscribed by each towards the capital; and lastly, the balance shall be divided among the partners for the time being in the shares, in which they shall then be entitled to the net profits of the partnership.

20. All the other matters, for which no provision is made in this deed, shall be decided by the majority of the partners.

21. All notices to be given either to partner or by a partner to the firm hereunder shall be deemed to be duly served if addressed to such firm or the partner at the address given hereinabove and sent by registered post.

22. Any dispute or difference which may arise between the partners or their heirs and representatives or between the firm and a partner with regard to the construction meaning and effect of this Deed or respecting accounts profits or losses of the business of the firm or the rights or liabilities of the partners hereunder or the dissolution or winding up of the business or any other matter relating to the firm shall be referred to arbitration of Mr. .... and this clause shall be deemed to be the submission and/or reference to the Arbitrator or the procedure for appointment of the Arbitrator within the meaning of the Arbitration and Conciliation Act 1996 including any statutory modification thereof. IN WITNESS WHEREOF the parties hereto have executed these presents on the day, month and year first above-written.

Signed, sealed and delivered by  
the said AB, CD, EF and GH  
respectively in the presence of:

AB  
CD  
EF  
GH

### Deed of Dissolution of Partnership

THIS DISSOLUTION OF PARTNERSHIP is made on this ..... day of ..... BETWEEN AB of, etc., of the first part, CD of, etc. (hereinafter called "*the Surety*"), of the second part, and EF of, etc., of the third part. WHEREAS it has been agreed between the parties hereto of the first and third parts that the partnership subsisting between them in the business of, etc., carried on by them at, etc., in the firm name of, etc., under the provisions of a partnership deed dated, etc., and made, etc., shall be dissolved by mutual consent as from the date hereof: AND WHEREAS prior to the execution thereof the said EF has delivered to the said AB the whole of the partnership stock, effects and credits: NOW THIS DEED WITNESSES as follows:

1. It is hereby recorded that the said partnership stood dissolved by mutual consent as from the day of ..... and the said business shall henceforth belong to exclusively and be carried on by the said AB as its sole proprietor.

2. In consideration of the sum of Rs. .... now paid (or agreed to be paid, hereafter) by the said AB and the surety to the said EF, the said EF, as beneficial owner, hereby assigns to the said AB, ALL his share and other right, title and interest in the said dissolved partnership, the goodwill, fixtures, fittings, book and other debts, benefits of contracts, and all effects thereof TO HAVE AND TO HOLD the same unto and to the use of the said AB absolutely and forever.



3. The said AB and the surety hereby jointly and severally agree with the said EF that they, or one of them, will pay or cause to be paid to the said EF the said sum of Rs. .... by instalments and the date following, namely (*state amounts and dates*), and shall further pay on all instalments in arrear interest at the rate of ..... per cent per annum from the date appointed for payment until actual payment thereof.

4. The said AB shall alone have full right, liberty and authority to collect all the assets of the said late partnership with power to appropriate the same for his use and benefit and to ask, demand, sue for, recover and receive, and to sign and give full and effectual receipts and discharges for all the debts, estate and effects of, or due or owing or in anywise belonging to the said partnership, and to settle all accounts, reckonings, matters and things whatsoever relative to the said business with all and every or any person or persons whosoever, and to compound for or release all or any of the debts or claims belonging thereto, and to institute any actions or other proceedings for compelling payment or delivery thereof.

5. The said AB shall alone remain solely and exclusively liable for the debts and liabilities of the said late partnership and also all future rent of the partnership business premises to be paid and discharged by him who shall further indemnify and keep indemnified the said EF therefrom and from all actions, proceedings, costs, claims and demands in respect thereof.

6. Each of the parties hereto shall respectively sign, execute and do all such further documents, deeds, acts and things as the other party may reasonably require for completely effectuating this agreement, and each party shall pay his own costs in connection therewith.

7. All moneys payable by instalments at a future date under this agreement shall become payable immediately in the event of any act of insolvency being hereafter committed or suffered by the said AB.

8. The said EF shall not, for the period of ..... years from the date hereof, carry on or be engaged or concerned in, either by himself or as partner with any person or persons, or as employee or director of any company, any business of, etc., within five miles of such business premises, but this clause shall cease to be of effect if three (or, etc.) of the before-mentioned instalments shall at any time be in arrear and unpaid.

9. For every breach of cl. 8 hereof, the said EF shall pay to the said AB the sum of Rs. .... as ascertained and liquidated damages.

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, CD and EF respectively in  
the presence of:

---

## Partition

**Introductory observations.** Partition means putting an end to joint ownership. It is effected by destruction of the unities, i.e. unity of ownership and unity of possession. It covers both, viz. division of title and division of possession. It is in effect surrender of a portion of the joint estate in exchange for absolute proprietary rights in a portion acquired from the co-sharers. In other words, it is the process by which the property held in common by joint tenants or tenants-in-common or coparceners is divided and each is allotted a defined share in severalty absolutely in lieu of his undivided share in the whole. It is effected by the process of mutual conveyance and release. It is a mixture of surrender and conveyance of rights in the property. It defines a fresh title and takes effect from the date mentioned in the deed.

In India, the Partition Act 1893 (Act IV of 1893), was enacted within a quarter of a century after the passing of the English Statute (English Partition Act, 31 Henry VIII C) which empowers courts in India to sell property under similar circumstances, even *suo motu* in cases where partition is difficult or unreasonable or will destroy the intrinsic value of the property.<sup>1</sup>

In India, there are three types of joint estate, viz. (a) joint tenancy; (b) tenancy in common; and (c) coparcenary. Mitakshara coparceners resemble in some respects joint tenancy of England and Dayabhaga co-sharers resemble tenants-in-common; nevertheless, on minute analysis there is not much difference between the two systems.

**Joint tenancy.** This is an English concept having very limited application in India. Section 106 of Indian Succession Act 1925 makes the principle applicable to a gift by Will of an Indian Christian, Parsee, and Muslim but not Hindu jointly to two or more persons whereby they take the property as joint tenants unless contrary intention is expressed. Joint tenants have unity

1 *Nitya Gopal v Pran Kristo* 57 CWN 439.



of (i) title, (ii) commencement of title, (iii) interest and (iv) possession. They have no defined interest in the property and none of them can transfer his share and on his death his interest in the property does not devolve on his heirs but goes to the other survivors.

**Tenancy-in-common.** When two or more persons get property by transfer or inheritance they become tenants-in-common having unity of commencement of title and unity of possession. The interest of a tenant in common is transferrable and on his death it devolves on his heir inasmuch as he has a definite share though undivided. A joint tenant has no defined share in the property.

Trustees, executors and administrators are like joint tenants although neither the Trust Act nor the Indian Succession Act says so in express terms. In the case of grant by the Government to two persons, even if they form a joint Hindu family, the judicial committee held that they take as tenants-in-common.<sup>2</sup> In Hindu law "partition does not mean simply division of the property into specific shares, it covers also division of title". So when in a Hindu coparcenary family a partition is effected, the same involves severance of the joint status as regards the separating members with all legal consequences resulting therefrom—a special feature quite distinct from *de facto* division of the property into specific shares.<sup>3</sup>

Section 6 of the Hindu Succession Act 1956, introduced an important change in the general rule of succession by survivorship in cases where a male Hindu dies leaving a female relative specified in class 1 of its schedule or a male relative specified in the class through such female. Formerly, under the Hindu law widows and daughters, except in Bombay (Mumbai), used to enjoy only the benefits of the estate left by their respective husbands and fathers in the absence of sons as joint tenants. The Hindu Succession Act 1956, is a charter of rights for the Hindu females giving them absolute estate with right of partition with some special provisions as regards dwelling-house under s. 23 of the said Act only when the male heirs decide to have the same partitioned. The Mahomedan Law does not recognise joint family system. Hence there is no presumption of jointness among them.

**Partition—whether a transfer or not?** A partition is not a transfer of property within the meaning of s. 5 of the Transfer of Property Act nor an exchange within the meaning of s. 118 of the said Act but a mixture of the surrender and conveyance of rights in the property. It was held by Privy Council that a partition does not give a co-sharer any title nor create any title in him. It enables him to obtain what is his own indefinite in specific forms. A deed of partition does not require any certificate under s. 230A of the Income Tax

2 *Mst. Badhu Rani v Thakur Rajendra Baksh* 60 IA 95; AIR 1933 PC 72.

3 *Girja Bai v Sadashiv* 43 Cal 1031 (1047, 1048) (PC).

Act 1961, for the purpose of registration. It is not even any exchange nor a conveyance.<sup>4</sup> Each co-sharer loses his right in the property or portion thereof allotted to the other.<sup>5</sup> All controversies to the contrary were settled by the Supreme Court in *V.N. Sarin v Ajit Kumar*.<sup>6</sup> The Supreme Court held it as a transfer of the joint enjoyment of the property by the coparceners into enjoyment in severalty. Section 10 of the Transfer of Property Act 1882, says that a transfer of property can be made without writing in cases where writing is not required by law, but if done by writing the provisions of the Stamp Act and the Registration Act are at once attracted.

Section 14 of the West Bengal Land Reforms Act 1955, excludes oral partition of holdings among co-sharer raiyats; such a partition can be effected under the court decree or by a registered instrument. A mere list, *i.e.* *chitta* of properties allotted or a memorandum of partition is not a deed of partition and so it does not require registration.<sup>7</sup> The basis of partition is equality, *i.e.* the parties shall have shares equal to the value of their undivided interest in the joint estate otherwise one will pay owelty money to another.

**Partition when operates as a transfer.** When the intention is fraudulent, *i.e.* to deprive creditors, it operates as a transfer under s. 53 of the Transfer of Property Act.<sup>8</sup>

**Adverse possession by one co-owner.** The Supreme Court held that the possession of a co-owner cannot be adverse unless such possession is hostile and in denial of the other's title to his knowledge and to the exclusion and ouster following thereon beyond the statutory period.<sup>9</sup> The same principle applies in the case of a transferee from a co-owner.<sup>10</sup>

**Agreement not binding on heirs.** Agreements made between coparceners that they would never effect severance of their interests may bind them if the same is a part of family arrangement for preservation of family peace. The Privy Council held that such an agreement might have bound the parties who agreed among themselves to abide by it,<sup>11</sup> but such agreements to the effect that neither the coparceners nor their heirs should ever effect any partition are not binding on the heirs on the principle that the same is a condition restrictive of enjoyment of an absolute estate. Unless the agreement

4 *Suhasini v Srinath* 49 CWN 769.

5 *Ramkrishna v Ganpat Mahadeo* 60 Bom 34; AIR 1936 Bom 10 at pp. 12, 17.

6 AIR 1966 SC 432; (1966)1 SCA 285.

7 *Kshetra Mohan v Tufani* 37 CWN 112, 114; AIR 1933 Cal 474.

8 *Woman v Ganpat* AIR 1936 Bom 10.

9 *Mahammad Baqqar v Nain-un-nisa* AIR 1956 SC 548. See also *Govinda v Upendra* 47 Cal 274.

10 *Dipnarain v Pundeo* AIR 1947 Pat 99.

11 *Jafri Begam v Ali Raza* 28 IA 111.



against partition between coparceners provided also against alienation, the alienee would be competent to seek partition. A direction in a will prohibiting partition is void.<sup>12</sup> A testator cannot restrain partition as it creates a perpetuity.<sup>13</sup>

The Partition Act provides that whenever in any suit for partition, in which a decree for partition might have been made, it appears to the court that a division of the property cannot conveniently be made and that a sale of the property subject to a reserve price and distribution of the proceeds would be more beneficial for all the shareholders, the court can, at the request of such shareholders interested to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.<sup>14</sup>

Deeds of partition are executed and attested like bonds, and their registration is compulsory if the value of the immovable property comprised therein is Rs. 100 or upwards; but deeds of partition made by the W.B. Revenue Officer do not require registration. All partitions under s. 14 of the W.B. Land Reforms Act require registration irrespective of the value.

**Partition of a dwelling-house.**<sup>15</sup> The purchaser of a share of a dwelling-house simply acquires the right to have the property partitioned but no right to joint possession. This right is subject to s. 4 of the Partition Act which is a corollary to s. 44 of the Transfer of Property Act and applies equally to Hindus, Mahomedans and other communities living in India and under which the court may direct sale of his share to any willing co-sharer.

The word dwelling-house has almost the same meaning both under s. 44 of the Transfer of Property Act and s. 4 of the Partition Act. It does not mean the house itself only. It includes adjacent building, gardens, court-yards and all that is necessary for convenient use and occupation of the property.

Section 23 of the Hindu Succession Act (Act XXX of 1956) restricts the right of a female heir as to demand for partition in a dwelling-house of the deceased unless the male heirs decide on partition. It is submitted that s. 23 of the Hindu Succession Act offends against Art. 14 of the Constitution of India being a clog upon a female's absolute right to the dwelling-house. This question was considered by the Calcutta High Court in *Surje Kumar v Maya Dutt*,<sup>16</sup> where the claim of a daughter for partition was rejected.

12 Section 138 of the Indian Succession Act.

13 *Kalicharan v Kironbala* 29 CLJ 494; 51 IC 948; see s. 11 of the Transfer of Property Act which enacts the same principle based on public policy.

14 Section 2 of the Partition Act 1893; *Satya Bhusan v Jatindra Mohan* 49 CLJ 136; AIR 1929 Cal 269.

15 Section 44 of the Transfer of Property Act.

16 86 CWN 358.

**Partial partition.** Although partition of the entire estate is the rule to avoid multiplicity of proceedings nevertheless, partial partition is recognised in law under certain circumstances. This Rule is a rule of adjective law.

This may be both with regard to the property and also the status of the persons even among the coparceners governed by the Mitakshara School of Hindu Law. The purchaser of a co-owner's share in any property can file a suit for recovery of that share only.<sup>17</sup>

By express agreement among themselves, the members of a joint family can make a division and severance of interest in respect of the joint estate, but they will be presumed to hold the rest as tenants-in-common in the absence of clear intention to the contrary. Similarly, a coparcener separated from others may have his interest partitioned, and it is open to non-separating members to remain joint as regards the rest of the estate.<sup>18</sup> A mere declaration and definition of the share of the coparceners is not partition.<sup>19</sup> The Income-tax Act 1961, requires certain conditions to give effect to partition under s. 171 of the Act, mere severance of status is not partition. Income from properties capable of division but not divided is liable to be assessed as HUF.<sup>1</sup>

A suit for partition must, however, be in respect of the entire estate and the entire joint family must be represented expressly or by implication<sup>2</sup> except when a portion of the property, viz. land is situate outside the jurisdiction of the court or not available for partition, e.g. being in the possession of a mortgagee or held by the joint family along with a stranger or in the possession of a trespasser<sup>3</sup> or where the properties belong to some and not to all the co-sharers.

**Partition and right of pre-emption.** Section 22 of the Hindu Succession Act (Act XXX of 1956) drawn up on the lines of ss. 3 and 4 of the Partition Act is easily workable. No suit but simply an application is necessary and the right of pre-emption is not confined to the family dwelling-house but extends to any property of the intestate. The object of this section is to prevent family property or business from breaking up or going out of hands. A deed of partition usually provides for right of pre-emption among the co-sharers in the event of sale of any allotment.

17 Section 44 of the Transfer of Property Act.

18 *Bhagwati Prasad v Rameshwari Kuir* 1951 SCR 603; AIR 1952 SC 72.

19 *Sushil v Ramchandra* AIR 1982 All 129.

1 *Kalloomal v CIT, Kanpur* AIR 1982 SC 160.

2 Order 2, rr. 1 and 2 of the Code of Civil Procedure.

3 *Harey v Hari* 40 CWN 1237.



**Essentials of deeds of partition.** The draftsman of a deed of partition will bear in mind that the following are essentials in a deed of partition:

- (i) recitals of the title of the parties;
- (ii) recital of the agreement to effect partition;
- (iii) accurate description of the allotments and their market values;
- (iv) provisions of owelty moneys (i.e. money compensation) to be paid by one co-owner for properties of greater value allotted to him for equality of partition with another co-owner in case of allotments of unequal values;
- (v) custody of the title deeds—*covenant as to production*;
- (vi) right of first purchase among the allottees in case of sale of any allotment particularly when the property is a dwelling-house;
- (vii) usual covenants as in a conveyance;
- (viii) date on which the partition will be effective.

The person who gets the largest share is entitled to the custody of the title deeds subject to a covenant for production and also to the original deed.

It is often desirable to execute a partition deed in duplicates according to the number of the parties, one party keeping the original and others getting the copies.

**Notional partition.** Under s. 6 of the Hindu Succession Act (Act XXX of 1956) although the devolution of the interest of a Mitakshara coparcener in the HUF estate is by survivorship upon the rest, nevertheless in the event of his death leaving a female as specified in class 1 of the schedule or male relations specified thereunder claiming through such female a notional partition is presumed and the share which would have been allotted to him vests in all such persons. This principle applies only in the event of intestate succession.

#### *Partition of shebait rights and debutter properties*

Family idols and places of worship are not divisible.<sup>4</sup> In the absence of any dedication of any property but used for merely for the benefit of the deity the same is not excluded from partition.<sup>5</sup>

A Hindu deity is a juristic person capable of holding the dedicated property and of being taxed through the shebait. The Hon'ble Dr. B.K. Mukherjea in his book on *Hindu Law of Religious and Charitable Trust*,<sup>6</sup> observed as follows:

4 Manu, Chap. IX, Verse 219.

5 *Sachindra v Hemchandra* (1931)35 CWN 151; 132 IC 688.

6 5th Ed., pp. 242-244.

It is now the settled law on the subject ever since the decision of the Judicial Committee in *Ramanathan v Murugappa*<sup>7</sup> that when the management can without detriment to the trust be held by turns the shebait can agree to do so in such order as they think proper on grounds of convenience in order to avoid any confusion. They can therefore agree to discharge their duties and functions by turns or in some other settled order. As regards the right of the shebait as to partition of the shebaiti rights through court in the absence of any agreement as between themselves His Lordship after having considered the decision of the Allahabad High Court in *Raman Lalji v Gopal Lalji*<sup>8</sup> observed that unless the shebait has any personal or pecuniary interest in the endowment or the income thereof, none can approach the court and ask for partition. This principle is also followed among the trustees and the above decision was followed in *Puranmal v Brijlal*.<sup>9</sup> In *Anandamoyee v Baikuntha*,<sup>10</sup> the Calcutta High Court held that the place of worship and place of sacrifice are indivisible. This question was considered by the Orissa High Court in the case of *Laksmidhar Patnaik v Rangapati*,<sup>11</sup> which held that the temple and its site were not partible; so also the house or rooms let out to tenants and the land leased out on rent as the shebait had no emolument but nevertheless the land on which their residential houses were constructed which they were enjoying generation after generation without payment of any rent and thus acquired a personal interest therein, i.e. emolument in the management of the temple. The portion so held can be partitioned without detriment to the title of the deity.

A partition of the debutter property for the purpose of convenience of the user for the seva is not a violation of the trust; yet a thakurbati and not even a thakurdalan is partible.<sup>12</sup> But a chandimandap was treated as partible.<sup>13</sup> In *Mahamaya Dasi v Haridas Halder*,<sup>14</sup> the Hon'ble Justice Ashutosh Mukherjee upheld the custom of the transfer as also division of the pala of Kalighat Temple among the shebait or in favour of a person standing in the line of succession and not disqualified by personal unfitness because of longstanding practice. Attachment and sale of such pala was held legal.<sup>15</sup> The interest of the shebait of the goddess Kali is saleable and divisible.

7 1916 LR 33 IA 119.

8 ILR 19 All 428.

9 ILR 39 All 651; AIR 1937 Ass 123.

10 8 WR 198.

11 AIR 1967 Ori 90 (93).

12 *Dharma Das v Gostha Behari* 16 CWN 29.

13 *Debendra v Haridas* 15 CWN 552.

14 ILR 42 Cal 480; 19 CWN 2081.

15 *Haridas v Charu* 37 CWN 978.



## FORMS

### Demand for Partition

*By Registered Post with A/D*

To  
G.H. (co-sharer)

Re: Premises No. ....  
Clients .....

Dear Sir

We are instructed by our client, AB of, etc., to write to you as follows:

Our client is a co-sharer with you in respect of the above property (or properties) which he desired to have partitioned by metes and bounds and approached you for that purposes on several occasions, but you put off the same on one pretext or another.

We, therefore, call upon you to have the said property (or properties) partitioned forthwith and on hearing from you we shall send you the draft deed of partition for your approval and return. Alternatively, if you so agree to have the same partitioned by arbitration you would nominate some person as arbitrator on your behalf and on hearing from you, our client would nominate and let you know the name of his arbitrator.

If you do not agree to any of the suggestions as aforesaid, our client shall on expiry of a fortnight from the date of receipt of this notice institute a suit against you for partition of the said property (or properties) with all consequential reliefs.

(Date)

Yours faithfully  
E.F. & Co. (*Attorneys*)  
(*Advocates*)

### Agreement for Partition

THIS AGREEMENT FOR PARTITION is made this ..... day of ..... 2000 BETWEEN AB son of ..... residing at ..... one of the co-owners of the one part and CD son of ..... residing at ..... the other co-owner of the other part.

WHEREAS the parties hereto are the joint owners of the property comprised in the schedules hereto as absolute co-owners AND WHEREAS the parties have agreed to have the same partitioned and divided by metes and bounds for better enjoyment and effective control and dealings of their respective shares NOW IT IS HEREBY AGREED by and between the parties as follows:

1. AB shall accept in severalty absolutely as his defined and demarcated share in lieu of his undivided share in the entire property the portion comprised in the first schedule and the said CD shall likewise accept in severalty as his defined and demarcated share the portion comprised in the second schedule, and the said CD shall pay to the said AB the sum of Rs. .... as owelty money for equality of partition (*or*, and the said CD shall pay to the said AB for equality of partition such sum as shall be determined and awarded by EF etc., to whom the same shall be referred for arbitration).

2. The partition shall be effective as from the ..... day of ....., when the mutual conveyances and releases shall be executed for completing and giving effect to the same, and the said sum (of Rs. .... ) shall also be paid. In case the said sum shall not be paid on that day for any reason whatsoever, the same shall be a first charge on the allotment and will carry interest at the rate of ..... per cent, per annum until payment or realisation.

3. The documents of title relating to the property shall be retained by the said AB, who shall enter into a covenant in favour of CD as to their production and delivery of copies thereof and an undertaking for safe custody.

4. The Deed of Partition shall be executed in duplicate and all the costs, charges and expenses of and incidental to this agreement and the partition to be made in pursuance hereof shall be borne and paid by the said AB and CD in equal shares.

#### *The First Schedule*

#### *The Second Schedule*

IN WITNESS WHEREOF the parties hereto have executed these presents in duplicate 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:

#### **Partition Deed**

THIS DEED OF PARTITION is made this ..... day of ..... 1999 BETWEEN AB son of ..... residing at ..... of the first part, CD, son of ..... residing at ..... of the second part and EF son of ..... residing at ..... of the third part.

Whereas AB is entitled to an undivided half share of and in all the properties described in the First, Second and Third Schedules hereto and



hereinafter referred to as the said properties AND WHEREAS CD and EF are each entitled to an undivided one-fourth share of and in the said properties AND WHEREAS for the purpose of partition and/or division of the said properties into separate lots in accordance with the respective shares of the parties as aforesaid and for more convenient and exclusive possession and better use occupation and enjoyment of the divided portions the said AB, CD and EF have mutually agreed and decided to have the said properties partitioned by metes and bounds in the manner hereinafter appearing, viz., that the said AB shall accept the properties set out in the First Schedule, the said CD shall accept the properties in the Second Schedule and the said EF shall accept the properties mentioned in the Third Schedule hereto as their exclusive properties in lieu of their respective shares in the joint estate all questions as to accounts and mutual dealings having been waived AND WHEREAS the said properties were valued by Sri ..... Engineer/Surveyor AND WHEREAS on the basis of the report of the said Engineer/Surveyor the values of the properties in the Schedule are Rs. ...., Rs. .... and Rs. .... respectively AND WHEREAS for equality of the partition the said AB and EF shall each pay to the said CD a sum of Rs. .... as owelty money which shall be a first charge on their respective allotments.

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. That in pursuance of the said agreement and in consideration of the absolute ownership acquired by the parties in respect of the allotments hereunder made under and by virtue of mutual transfers and releases hereunder effected, the said CD and EF hereby and hereunder grant, convey, transfer assure, assign, confirm and release unto the said AB ALL THAT the property (or properties) set forth in the First Schedule hereto together with all areas, sewers, drains, water, water courses, lights, liberties, easements, appendages and appurtenances whatsoever so as to constitute the said AB the sole and absolute owner of the property (or properties) comprised in the said First Schedule freed and discharged from all rights in common and all claims, demands whatsoever of the parties of the other parts concerning the same and TO HAVE AND TO HOLD the same absolutely and for ever in fee simple in severalty against the said CD and EF.

2. That in pursuance of the said agreement and in consideration of the absolute ownership acquired by the parties in respect of the allotments hereunder made by virtue of the mutual transfers and release hereunder contained, the said AB and EF do hereby and hereunder grant, convey, transfer, assure, assign, confirm and release unto the said CD ALL THAT the property (or properties) set forth in the Second Schedule hereto annexed together with all areas, sewers, drains, water, water courses, lights, liberties, easements, appendages and appurtenances whatsoever so as to constitute the said CD the sole and absolute owner of the property (or properties) comprised in the Second Schedule hereto freed and discharged from all rights in common and all claims and demands whatsoever of the other parties,

concerning the same TO HAVE AND TO HOLD the same absolutely and for ever in fee simple in severalty as against AB and EF.

3. That in pursuance of the said agreement and in consideration of the absolute ownership acquired by the parties in respect of the allotments hereunder made by virtue of mutual transfers and releases hereunder contained, the said AB and CD do hereby grant, convey, transfer, assign, assure and release unto the said EF ALL THAT the property set forth in the Third Schedule hereto together with all areas, sewers, drains, water and water courses, lights, liberties, easements, appendages and appurtenances whatsoever so as to constitute the said EF as the sole and absolute owner of the property (or properties) comprised in the Third Schedule hereto freed and discharged from all rights in common and all claims, demands whatsoever of the parties of the other parts concerning the same TO HAVE AND TO HOLD the same absolutely and for ever in fee simple in severalty as against the said AB and CD.

AND this deed furthermore witnesseth as follows:

- (a) That the said AB shall have the custody and possession of all the documents of title as also the original of this deed and will at the request and costs of either CD or EF, his heirs, successors or assigns produce or cause to be produced all or any of them for inspection or as evidence on their behalf at all trials, examination or commission or otherwise as may be required by him or them and unless prevented by fire or any other inevitable accident keep them safe, unobliterated and uncanceled.
- (b) That save and except the charge hereby created for owelty money, the properties set forth in the First, Second and Third Schedules hereto annexed are free from encumbrances.
- (c) That no party shall be entitled to any easements or quasi-easements over the allotments made to the other parties which are all hereby extinguished.
- (d) The parties shall enter upon their respective allotments and hold, possess and enjoy the same in severalty absolutely against each other without any claim, demand or interruption whatsoever.
- (e) Each party shall, at the request and costs of the other parties, do execute and perform or cause to be done, executed and performed all and every such acts, deeds and things or writings whatsoever as may be required for further better and more perfectly assuring the allotments hereunder made or for rectification of any error or omission.
- (f) That none of the parties shall be entitled to sell or otherwise transfer his allotment to a stranger unless he has first offered the same to the other party or parties and in cases only when they or each one of them have refused to take the same at the best available market price.



- (g) This partition shall not be reopened nor challenged under any circumstances by reason of any error or omission whatsoever, but the parties shall execute and register such further deed or deeds or writings as may be necessary to rectify the error or errors or implement the omission or commissions.

*The First Schedule above referred to*

\* \* \*

*The Second Schedule above referred to*

\* \* \*

*The Third Schedule above referred to*

\* \* \*

IN WITNESS WHEREOF the parties hereto have executed these presents in triplicate 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:

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

### Deed of Partition by Trustees

THIS DEED OF PARTITION by trustees made this ..... day of ..... 2000 BETWEEN AB son of ..... residing at ..... and XY son of ..... residing at ..... (hereinafter called the TRUSTEES) of the one Part and CD and EF sons of ..... residing at ..... (hereinafter called the BENEFICIARIES) of the other part.

WHEREAS GH son of Late ..... residing at ..... by his will dated ..... appointed the TRUSTEES to be the executors and TRUSTEES thereof and among other provisions, directed the TRUSTEE to hold the properties and administer the same in trust in the manner indicated therein until the youngest of the BENEFICIARIES, viz. the said EF shall attain majority when and in such an event the TRUSTEES would partition the same into two equal shares and grant, convey and transfer them unto and to the use of the BENEFICIARIES separately AND WHEREAS the said will was duly proved in the court of ..... and probate thereof was granted to the said AB and XY viz. to the trustees as executors appointed thereunder AND WHEREAS such probate is still in force and virtue AND WHEREAS the TRUSTEES as the executors have completed the administration of the estate of the deceased and filed the inventory and account AND WHEREAS the said EF has attained majority on the day of ..... AND WHEREAS the trustees have already divided and

demarcated the said properties into two lots, viz. lot A & lot B which are of equal value AND WHEREAS the said CD has agreed to accept lot A and the said EF has agreed to accept lot B as their defined and demarcated portions of the estate of the said GH. Now this Indenture witnesses that in exercise of the power and authority contained in the said will and all other powers enabling him the trustees as statutory owners do hereby grant, convey, transfer, assign and assure unto and to the use of the said CD the properties mentioned and described in Schedule A hereto TO HAVE AND TO HOLD the same absolutely as his own for his exclusive use and benefit freed and discharged from the trust created under the will and also all rights in common and in severalty as against EF.

AND this Indenture further witnesses that the TRUSTEES as statutory owners do hereby further likewise grant, convey, transfer, assign and assure the properties mentioned and described in Schedule B hereto unto and to the use of EF TO HAVE AND TO HOLD the same absolutely as his own for his exclusive use and benefit freed and discharged from the trust created under the will and also all rights in common and in severalty as against CD AND that the TRUSTEES do hereby covenant and agree with the said BENEFICIARIES that as TRUSTEES they have not done, executed and performed nor suffered to the contrary any act, deed or thing whereby or by reason or means whereof the trust estate may be prejudiced in title or estate or the trustees may be in any way hindered or prevented from granting, transferring and conveying them unto and to the use of the BENEFICIARIES in the manner hereinbefore indicated. And this Indenture furthermore witnesses that the BENEFICIARIES do hereby join with TRUSTEES and confirm and accept the partition of properties hereunder made to them respectively as testified by their being parties hereto and executing the same.

*Schedule A*

*Schedule B*

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

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

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

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

Memorandum of Oral Partition

THIS MEMORANDUM OF ORAL partition is made this ..... day of ..... 2000 BETWEEN AB son of ..... residing at ..... of the First Part, CD, son



of ..... residing at ..... of the Second Part and EF daughter of ..... residing at ..... of the Third Part.

WHEREAS one XY who was a Hindu governed by the Dayabhaga or Bengal School of Hindu Law died intestate on the ..... day of ..... leaving behind him surviving his two sons, viz. the said AB and CD and a daughter, the said EF as his heirs and legal representatives under the said School of Hindu Law and the movable and immovable properties described in Schedules A, B and C hereunder as part of his estate AND WHEREAS upon his death the said AB, CD and EF became entitled to the said properties absolutely and in equal shares by right of inheritance and succession AND WHEREAS for better use and enjoyment of the said properties the said AB, CD and EF had the same mutually partitioned and divided by metes and bounds in three equal lots, viz. the said AB agreed to and accepted the properties mentioned and described in Schedule A as his defined and demarcated share in the joint estate, similarly the said CD and EF have agreed to and accepted the properties mentioned and described in Schedules B and C respectively at a sitting held on ..... at ..... in presence of some of the well-wishers of the family AND WHEREAS notwithstanding the fact that no formal deed of partition was then executed by the parties the estate of the said XY has in fact, truth, reality and substance been partitioned by metes and bounds among his said heirs and legal representatives by conduct of the parties AND WHEREAS the parties have given effect to and acted upon such partition by entering into their respective allotments and have recorded their respective individual names in the Municipal as also Revenue Records of the properties and collecting the rents, issues and profits thereof accordingly AND WHEREAS in the circumstances aforesaid the said AB has become the sole absolute and exclusive owner of the properties described in Schedule A hereunder and the said CD has become the sole, absolute and exclusive owner of the properties described in Schedule B hereunder and the said EF has become the sole absolute and exclusive owner of the properties described in Schedule C hereunder. AND WHEREAS the parties have accepted the said partition as fair, final, conclusive and binding on them.

Now by this Memorandum the parties place on record, declare and confirm the said partition as final, conclusive and binding on the parties to all intents and purposes.

*Schedule A above referred to*

\* \* \*

*Schedule B above referred to*

\* \* \*

*Schedule C above referred to*

\* \* \*

IN WITNESS WHEREOF the parties hereto have executed these presents in triplicate 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:

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

### Deed of Partition of Mitakshara Coparcenary Estate where some Properties are Retained as HUF Estate

THIS DEED OF PARTITION made this ..... day of ..... BETWEEN (1) ..... son of ..... by caste Hindu, by occupation trader at present ..... hereinafter referred to as party of the FIRST PART, (2) Sm. .... wife of the said ..... by caste Hindu, by occupation trader and housewife at present of ..... hereinafter referred to as party of the SECOND PART, (3) ..... son of ....., by caste Hindu, by occupation trader of ..... hereinafter referred to as party of the THIRD PART, (4) Sri ..... by caste Hindu, by occupation trader at present of ....., hereinafter referred to as party of the FOURTH PART, (5) Sri ..... son of ..... by caste Hindu, by occupation trader at present of ..... hereinafter referred to as party of the FIFTH PART, (6) ..... son of ..... by caste Hindu, by occupation trader at present of ..... hereinafter, referred to as party of the SIXTH PART, and (7) ..... son of ....., by caste Hindu, by occupation ..... at present of ..... hereinafter referred to as party of the SEVENTH PART:

WHEREAS the parties hereto, *viz.* the parties of the first, third, fourth, fifth and sixth parts constitute a Mitakshara family joint in food worship and estate of which the party of the first part is the karta or head and the party of the second part his wife and the other parties are coparceners, AND WHEREAS the HUF estate of the family consists mainly of the properties described in Schedule I hereto. AND WHEREAS for reasons and considerations best known to the parties and for better management, enjoyment, control and administration of their estate the parties hereto have agreed to have the same partitioned by metes and bounds in the manner hereunder appearing, *viz.* that the HUF shall henceforth continue and constitute the parties of the first, fourth, fifth and seventh parts who represent  $\frac{4}{7}$ th share in the HUF estate which is valued at Rs. .... by mutual agreement and consent as under s. 269(q) of the Income-tax Act 1961, and a stamp duty of Rs. .... has been paid on the value of the separated  $\frac{3}{7}$ th share.



WHEREAS under the Hindu law to which the parties are subject the party of the second part, *viz.* the said Sm. .... being the wife of the karta is also entitled to a share in the said property in the event of partition and each of the other parties hereto is accordingly entitled to a  $\frac{1}{7}$ th share of the same.

WHEREAS the party hereto of the first part with the mutual consent of and agreement with the other coparceners divided the said HUF properties in four lots for the purpose of partition out of which one lot comprising the properties described in the Second Schedule hereto and representing approximately  $\frac{4}{7}$ th share of the entire HUF estate, including movables comprised in the First Schedule will continue as undivided and shall be retained by the said HUF as continuing and consisting of the parties hereto of the *first part, fourth part, fifth part and seventh part* and the second lot comprising the properties described in the Third Schedule hereto and representing the approximately  $\frac{1}{7}$ th share of the entire HUF estate shall be allotted to the party hereto of the second part as her separated share to which she is entitled to under the law in the event of the partition of the HUF estate as aforesaid and the third lot comprising the properties described in the Fourth Schedule hereto and representing approximately  $\frac{1}{7}$ th share of the entire estate shall be the allotted share of the party hereto of the third part as his separated share in lieu of his said undivided share and the fourth lot comprising the properties described in the Fifth Schedule hereto and representing approximately the  $\frac{1}{7}$ th share of the entire HUF estate shall be allotted to the party hereto of the sixth part as his separated share in lieu of his said undivided share in the joint family estate.

WHEREAS inasmuch as the value of the properties in the Second Schedule to be retained by the parties hereto of the first, fourth, fifth and seventh parts and to be continued as HUF properties including movables allotted as per books of account exceed  $\frac{4}{7}$ th share of the entire estates by Rs. .... they agreed to pay a sum of Rs. .... as an owelty money to the party of the third part for equality of partition (of which a sum of Rs. .... has already been paid on ..... ) and also to pay a further sum of Rs. .... to the party of the second part as an owelty money and such payment has already been made on ..... and whereas the value of the property allotted to the party of the sixth part as described in Fourth Schedule exceeds the value of  $\frac{1}{7}$ th share of the entire estate by Rs. .... the party of the sixth part has agreed to pay a sum of Rs. .... as an owelty money to each of the parties of the first, fourth, fifth and the seventh parts and the said amounts have already been paid on ..... (all such payments having been made by adjustment of entries in the books of account maintained by the said HUF in respect of its estate hereunder partitioned). WHEREAS in consideration of the absolute or sole ownership acquired by each party in respect of the allotment made out of the heretofore joint properties by mutual transfer and releases hereunder effected and in consideration of the covenants hereinafter mentioned and agreed to be observed and performed



by all the aforesaid parties the said parties resolved to incorporate the terms of the partition in a deed of partition as follows:

NOW THIS INDENTURE WITNESSES that in pursuance of the said agreement and in consideration of partition and/or division of the shares of the parties in their ancestral properties and allotment thereof in severally and individually to them as hereunder made under and by virtue of these presents the parties of the second, third and sixth parts and each of them do hereby grant, convey, transfer, assign, assure, release and confirm unto and to have the use of the parties of the first, fourth, fifth and seventh parts all the properties described in Schedule II so as to enable them to hold possess and enjoy the same as the continuing HUF properties with the party of the first part as its karta freed and discharged from all rights in common and all claims, demands whatsoever by the parties of the other parts in, to, upon or concerning the same subject however to the rights of their respective male descendants and jointly as between themselves.

In pursuance of the said agreement and in consideration of the partition and/or division of shares of the parties in their ancestral properties by allotment of portions thereof as hereunder effected the parties of the first, third, fourth, fifth, sixth and seventh parts do hereby grant, convey, transfer, release, assign, assure and confirm unto and to the use of the party of the second part the properties described in Schedule III so as to constitute her as the sole and absolute owner thereof and to have hold, possess and enjoy the same as her own freed and discharged from all rights in common and claims and demands whatsoever of the other parties concerning the same.

In pursuance of the said agreement and in consideration of the partition and/or division of the shares of the parties in their ancestral properties as hereunder made by their respective allotments as hereunder effected by the parties of the first, second, fourth, fifth, sixth and seventh parts grant, convey, transfer, assign, assure, release and confirm unto and to the use of party of the third part all the properties described in Schedule IV so as to enable him to have hold, possess and enjoy the same as his own freed and discharged from all rights in common and claims and demands whatsoever of the parties of the other part in to upon or concerning the same, but subject to the rights of his male descendants.

In pursuance of the said agreement and in consideration of the absolute ownership acquired by the parties in respect of their respective allotments as hereunder effected, the parties of the first, second, third, fourth, fifth and seventh parts do hereby grant, convey, transfer, assign, assure, release and confirm the properties described in Schedule V unto and to the use of the party of the sixth part so as to constitute him the sole and absolute owners thereof and to have hold, possess and enjoy the same as his own freed and discharged from all rights in common and claims and demands whatsoever of the other parties in to upon or concerning the same but subject to the rights of his male descendants.



AND this Indenture furthermore witnesseth as follows:

1. All Income-tax, Wealth-tax and other capital and revenue liabilities of the estate as on this day shall be borne and paid by the parties proportionate to the shares in the joint family properties hereunder partitioned.

2. That the parties hereto shall henceforth be the separate owners of the shares allotted to each of them and shall hold and enjoy the shares so allotted in severalty and free and discharged from all claims and demands of the other parties hereto or anyone claiming through, under or in trust for them.

3. None of the parties shall be entitled to sell, mortgage or otherwise deal in his or her share hereby allotted to a stranger unless he or she has offered the same to the other parties.

4. That it has been further agreed that each party shall execute and get registered, if necessary, any other deed or deeds, document or documents or receipt which he/she or they may be required to do at the instance of any other party or parties to this deed at the latter's expenses, in order to more effectually assure or confirm any right or title conferred on him/her under these presents.

5. That the original Deed of Partition shall remain with the party hereto of the first part and a true copy thereof signed by all the parties hereto will be delivered to each of the other parties hereto who shall be entitled to require production of the original from the former before any court or public officer or arbitrator or bank or insurance company etc., if so desired.

6. It is hereby agreed that each party will be entitled to realise the arrears of rent including arrears if any outstanding in respect of the property allotted to him/her without any claim or objection from any of the other parties and to effect mutation of their respective names in all public records.

7. That all revenue taxes and other public charges in respect of any property shall be borne by the party to whomsoever the same has by virtue of this deed been allotted.

8. Parties shall bear and pay all costs, charges and expenses in connection with the preparation, execution and registration of this deed and also the stamp costs in equal shares.

AND THIS INDENTURE furthermore witnesses that the parties do hereby covenant agree and declare that all of them had and still have good title full power and absolute authority to have the properties partitioned in the manner hereinbefore indicated and none of them has charged nor encumbered the same or any part thereof nor otherwise dealt with, nor done, executed or performed any act, deed or thing or suffered anything to the contrary whereby or by reason or means whereof the same may be affected or prejudiced in title or estate or they may be hindered or prevented from having the same granting, conveying or having the same partitioned

as effected by these presents AND THAT the respective allottees shall hold, possess, enjoy their respective allotments peaceably and quietly without any claim or demand or interruption whatsoever by any other parties AND THAT further the parties shall at the request and costs of any allottee or any person or persons claiming under or in trust from him do execute and perform all such acts, deeds and things for further better and most perfectly assuring the same according to the true intent and meaning of these presents.

*Schedule I above referred to*

\* \* \*

*Schedule II above referred to*

\* \* \*

*Schedule III above referred to*

\* \* \*

*Schedule IV above referred to*

\* \* \*

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

Signed, sealed and delivered at  
Calcutta in the presence of:

Sd. All seven parties

### Partition of a Debutter Estate

THIS DEED OF PARTITION made on this 5th day of October 2000 BETWEEN ..... AB, son of ..... by religion Hindu by occupation ..... hereinafter referred to as party of the first part and CD, son of ..... residing at ..... by religion Hindu by occupation ..... hereinafter referred to as party of the second part AND SREE SREE ..... JEW a deity consecrated and established by late ..... the grand father of the parties of the first and second parts at present located at the place of worship at premises No. .... which belongs absolutely to the deity, of the third part represented by the parties hereto as their present shebait:

WHEREAS the estate of the said deity consists of the properties namely the said premises No. .... and other properties altogether mentioned and described in SCHEDULE A & B under an endowment created by the said ..... many years ago AND WHEREAS the properties in SCHEDULE "B" are the parent estate of the deity which were expressly dedicated to be used as place of worship and sacrifice (which are inpartiable) AND WHEREAS the said late ..... acted as shebait of the said deity ever since the endowment was created until his death which occurred on ..... AND WHEREAS upon the



death of the said ..... the parties hereto who are his grandsons by a predeceased son became shebait and have been as such jointly performing the daily seva puja and the periodical worships of the said deity AND WHEREAS the parties are also jointly in possession of the other properties belonging to the deity which they acquired out of the income of the debutter estate AND WHEREAS the parties also developed the properties out of their personal funds and resources which are all mentioned in Part I of SCHEDULE "A" by constructing two pucca buildings thereon of which they have let out the ground floor and live in the first floor with the members of their respective families AND WHEREAS the parties have thus acquired a personal or proprietary interest in the said properties.

AND WHEREAS disputes and differences having arisen between the parties as to performance and non-performance of the seva and puja of the deity, apportionment of the income of the debutter estate their rights, duties, obligation and responsibilities and to avoid confusion on the subject the parties have agreed to discharge the functions attached to their offices as shebait severally and to worship the deity by turns, *i.e.* by palas on grounds of necessity and convenience and to manage and administer the debutter properties by partition or division thereof into two lots as hereunder appearing AND WHEREAS such partition being also necessary for the sake of convenience of the parties and benefit of the deity and its estate without any detriment to and in conformity with the trust or obligation attached thereto they have agreed to the sequence as follows, *viz.* that they should perform the daily seva and puja by turns, *viz.* by palas, *viz.* that the party of the first part shall do the same for the Bengali months of Baisakh, Ashar, Bhadra, Kartick, Pous and Falgoon and the party of the second part for the months of Jaistha, Sravan, Ashwin, Agrahan, Magh and Chaitra every year with effect from the beginning of the next Bengali year and the debutter estate shall be partitioned as hereunder provided.

NOW THIS INDENTURE of partition of debutter estate witnesseth that on and from the beginning of next Bengali year the parties shall perform the daily worship and periodical festivals of the deity according to their respective palas, *viz.* that the party of the first part shall perform the seva and puja alternatively for the months and the party of the second part for the months as hereinbefore stated and, further and without destroying the intrinsic value of the estate and for facilities for better enjoyment and administration of the estate of the deity the party of the first part as shebait of the deity do hereby grant, transfer, assign in favour of the party of the second part, the property fully mentioned and in Lot I of SCHEDULE "A" hereto to have and to hold and manage the same in severalty as shebait of the deity free from all rights in common without any detriment to the interest of the deity and subject to performance of the daily seva and periodical worships for the months hereinbefore mentioned which will be a first charge on the same AND THIS INDENTURE WITNESSETH THAT the party hereto of the second part do

hereby and hereunder accordingly grant, transfer, assign unto and to the use of the party of the first part the property mentioned in SCHEDULE "B" hereto To Have and To Hold the same in severalty as shebait of the deity free from all rights in common without any detriment to the interest of the deity subject to performances of the daily seva and puja and periodical worships of the deity for the months hereinbefore mentioned which will be a first charge on the same AND THIS INDENTURE FURTHER WITNESSETH AND it is agreed by and between the parties that the properties, viz. the temple and thakurdalan and the place of sacrifice mentioned in SCHEDULE "B" shall remain as absolute debutter without any claim for partition by any of the parties or any other right thereto on any account under any circumstances subject to peaceful occupation and enjoyment and in all cases for the exclusive performance of the daily seva and periodical worships.

*Schedule "A"*

*Lot I:* Description of the property allotted to the party of the first part.

*Schedule "B"*

*Lot II:* Description of the property allotted to the party of the second part.

*Schedule "C"*

Properties which will remain in exclusive possession of the deity.

IN WITNESS WHEREOF the parties have hereunto set and subscribed their respective hands and seal the day, month and year first above-written.

Signed, sealed and delivered at  
Calcutta in the presence of: