NEGOTIABLE INSTRUMENTS

Preliminary Note

Kinds of Negotiable Instruments

A "negotiable instrument" means a bill of exchange, promissory note or cheque payable either to order or to bearer (Negotiable Instruments Act 1881, Sec. 13). It is not necessary that it should be expressly stated to be payable to the order of a person. If a bill or promissory note or cheque is payable to a particular person and there is nothing to indicate the intention that it is not transferable, it is payable to order, and is negotiable. If there is anything to indicate that it is not a negotiable instrument but an ordinary actionable claim the rules relating to negotiable instruments do not apply to it. Cheque is only a particular form of bill of exchange drawn on a special banker and payable on demand and the Act, therefore, practically deals with two kinds of instruments, the promisory notes and bills of exchange. The broad distinction between the two is that in the former the executant makes promise himself while in the latter he directs a third person to pay. The following definitions are given in the Act.

Definition of Pronote

A "promissory note" is an instrument in writing, (not being a bank note or currency note), containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or the order of, a certain person, or to the bearer of the instrument (Sec.4).

There must be an express undertaking to pay the amount mentioned in the instrument before it can be held to be a promissory note. A mere implied undertaking, by the use of word "debt" or "pronote" or "acknowledgement" in the instrument is not sufficient.[1] In case the terms are "I acknowledge myself to be indebted to X for Rs. 500, to be paid on demand for value received", the instrument will be a promissory note.

An instrument bearing one-anna revenue stamp (which was the stamp duty then payable) was in these terms "I had borrowed a sum of Rs. 50 bearing interest at the rate of annas four percent per mensem from B on 1st March, 1939 and have therefore executed this pronote so that it may serve as evidence". It was held that this instrument was not a promissory note as it did not contain an unconditional undertaking to pay.[2]

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1 *Akbar Khan* v. *Attar Singh*, A 1936 PC 171; *Lakhami Das* v. *Lakha Ram*, A 1935 All 410; *B.B. Lohar* v. *Prem Prakash Goyal*, A 1999 Sikkim 11.

2 *Bachan Singh* v. *Ram Avadh*, A 1949 All 431.

Definition of 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 (Sec.5).

Essentials of a Bill or Note

The following are the essential requisites of a bill or promissory note-

(i) It must be for payment of *money* alone;

(ii) The sum to be paid must be certain;

(iii) The promise, or order must be absolute and unconditional;

(iv) The maker or drawer must be a certain person;

(v) The payee and drawee must be certain persons.

Mode of Transfer or Negotiation

A bill of exchange, cheque or promissory note which is negotiable may be transferred by endorsement and delivery if the instrument is payable to order, or, by delivery only if it is payable to bearer (Secs.46 to 48). An endorsement may be in any form and mere signature of the endorser is sufficient. In the latter case, the endorsement is said to be "in blank" or general endorsement, as against an endorsement "in full" or special endorsement in which the name of the person in whose favour the instrument is endorsed is also mentioned. An instrument endorsed in blank may be negotiated further by mere delivery or the blank endorsement may be converted into a full endorsement in favour of another person by writing above the endorser's signature a direction to pay to another person as endorsee. Mere delivery with intention to transfer the property in the instrument will constitute effective endorsement.

Deed of Transfer

Sec. 137 Transfer of Property Act saves negotiable instruments from the other provisions of the Chapter on *Actionable Claims*. However, the Act does not apply to some territories. It must further be remembered that a transferee by negotiation under the Negotiable Instruments Act takes the instrument free from the liabilities and equities affecting the transferor and thus in certain cases stands in a better position than his transferor, while a transferee other than an endorsee takes it subject to all the liabilities and equities affecting the assignor.

Capacity of Parties

(a) Agent

A person can be made liable on a negotiable instrument by a duly authorised agent *acting in his name* (Sec. 27). The last four words are important

and the name of the person to be made liable should clearly appear in the instrument. It will not be sufficient that the name is disclosed in such a way that on a fair interpretation of the instrument he appears to be liable. The agent should also clearly indicate that he is not personally liable, otherwise the mere fact of his signing the instrument will make himself personally liable upon it (Sec. 28). Where a *hundi* was signed by "G.V. Athole, Managing Proprietor, Ganga Dhar and B. Friends" it was held that Athole was personally liable.[3]

(b) Corporation

Though a corporation is a person capable of entering into contract, it cannot bind itself by making, endorsing or accepting a negotiable instrument except in cases in which under the law for the time being in force it is so empowered (Sec. 26). If the corporation is a Company within the meaning of the Companies Act, its capacity is determined with reference to the memorandum and articles of association. When a company is empowered to make, draw, accept or endorse a bill or promissory note, the instrument should be made, drawn, accepted or endorsed in the name of the company, or, on its behalf and on its account, by a person duly authorised by it [(Sec. 47, Companies Act 1956: "Bills of exchange and promissory notes". *See also* Sec. 46 (Form of Contracts) and 48 ("Execution of deeds") of that Act] for the execution of deeds on behalf of companies. If a corporation exceeds its power and executes an instrument the act is ultra vires and even a bona fide holder cannot make the corporation liable.

(c) Firm

Firms are governed by the provisions of the Partnership Act. A partner of a trading firm is liable as a party to a negotiable instrument if the name of the firm appears on the instrument, as every partner can bind his co-partners by his acts which are done in the usual way for carrying on the business of the firm (Sec. 19). *The executant should, however, sign expressly as a partner and the name of the firm should appear on the face of the instrument* (Sec. 22). If it was not executed in the name of the firm, the latter will not be bound even if the money was borrowed for a purpose binding on the firm.[4] If the executant signs as "Managing Partner" of the firm then the intention to bind the firm is presumed.[5]

(d) Joint Hindu Family

We are here concerned with a joint Hindu family or a coparcenary within the meaning of Hindu Law and not with a Hindu undivided family within the

3 *Sita Ram* v. *Chimman Das*, A 1928 B 516, 30 BLR 1300, 52 B 640.

4 Cf *Mt Suraj Bahu* v. *Jaitley*, A 1946 All 372.

5 *Chandan* v. *Mt. Krishna Kumari*, A 1944 Oudh 273; *Vattumalli* v. *Medrarpu*, A 2003 AP 46.

meaning of direct taxes laws, which is different.[6] So far as sons are concerned their pious obligation to repay their father's debt is subject only to the condition of the debt not having been incurred for an illegal or immoral purpose, and it is immaterial whether the father contracted the debt for the family business or for the benefit of the family or for legal necessity or not and whether it was incurred for his own separate business.[7] However even the son's liability is limited to his share in the coparcenary property or in the property inherited by him from his father.[8] So far as members of the joint Hindu family other than sons of the *Karta* are concerned they are liable to the extent of their interest in the family property if the debt was contracted in the ordinary course of business,[9] while the liability of the executant and of other adult coparceners, provided they were consenting parties, extends to their separate property also.[10]

(e) Legal Representatives

A legal representative of a deceased person signing a negotiable instrument is liable personally, unless he expressly limits his liability to the extent of the assets received by him (Sec. 29). It will not be sufficient for the executant merely to describe himself as an executor or administrator.[11] The personal liability can be excluded by adding the words "without recourse" or "without recourse to me personally" to the signature, or by expressly stating in the body of the promissory note that the executant will be liable to the extent of the assets of the deceased.

(f) Persons of unsound mind and Minors

Every person who is capable of entering into a contract (Sec. 10, 11, 12 Contract Act) may incur liability under a negotiable instrument (Sec. 26, Negotiable Instruments Act). A bill executed by a person of unsound mind will therefore be void even against a *bona fide* transferee. But a minor may draw, endorse, deliver and negotiate an instrument so as to bind all parties except himself. The holder of a bill drawn by a minor is therefore entitled to receive payment from the drawee and, if necessary, to enforce it against any party but the minor. A minor is, however, not precluded from accepting the benefit of a negotiable instrument and can sue all the parties liable under it.[12] A *de facto* guardian cannot execute a negotiable instrument on behalf of a minor.[13]

6 *Sathyaprema Govinda* v. *C.E.D.*, (1997) 10 SCC 684 : (1997) 227 ITRI.

7 *Prasad* v. *Govindaswami*, (1982) 1 SCC 185 (paras 57 to 63) : A 1982 SC 84.

8 *CWT* v. *VP Singh*, (1996) 8 SCC 122 (para 16); See also Mulla's Hindu Law, 15th Edn., paras 234, 240, 270 and 290.

9 *Ram Nath* v. *Chiranji Lal*, A 1935 All 221 (FB).

10 *Shiv Bhagwan* v. *Onkarmal*, A 1952 Bom 365 (FB); See also Preliminary Note on MORTGAGE, *ante*.

11 *Kayya Lal Mudi* v. *Subhara Yadu*, A 1926 M 390.

12 *Ulfat Rai* v. *Gauri Shankar*, 33 A 657; *CJ Raghav* v. *Srinivas*, 40 M 308.

13 *Mynemi* v. *Kondamudi*, A 1946 Mad 1 (F.B.).

Presentment

Bill of exchange must be presented for acceptance and accepted by the drawee before the latter becomes liable under it (Secs. 61, 63, 64). Bills and promissory notes should be presented for payment. For the provisions of law relating to presentment, *see* Chapter V of the Negotiable Instruments Act. When a promissory note is payable on demand, and is not payable at a specified place, no presentment is necessary in order to charge the maker (Sec. 64 exception). Other cases in which no presentment is necessary are given in Sec. 76.

Notice of Dishonour

When an instrument is dishonoured, notice of dishonour must be given to the parties sought to be made liable, but no such notice is necessary to the maker of a pronote or the drawee or acceptor of a bill (Sec. 93). Other cases in which notice of dishonour is unnecessary are given in Sec. 98.

Contents of Notice of Dishonour

There must be something in the notice itself that there has been failure of payment on presentment and therefore dishonour of the promissory note.[14]

Bill or Note how Drafted

The drafting of a promissory note or bill of exchange is a simple matter. Care should only be taken to include all the essential ingredients of the negotiable instrument detailed above.

Date and Place

The date and place of a promissory note or bill is generally entered at the right-hand top corner. Sometimes, in promissory notes they are given at the end. They are not an essential part of the instrument, and, though it is always preferable to enter them, their omission does not invalidate the instrument. If no date is given, date of delivery will be considered to be its date and it may be filled in by the payee (Sec. 20).

Amount

The amount of the bill or note is usually entered in words in the body and in figures at the left hand top corner. Sometimes, in promissory notes, it is written only in the body both in words and figures. It may be mentioned either way, but as a safeguard against mistake or fraud it is better to enter it both in words and figures. In case of discrepancy, the amount in words shall be deemed to be the correct amount (Sec. 18). Care should be taken that nothing excess

14 *Kottan v. Kannan*, 1950 MWN 161

money should be undertaken to be delivered otherwise the instrument, will be invalid as a negotiable instrument, though in the case of such a promissory note it may, if attested and stamped, be used as a bond. The amount must be *certain*. A promise to pay "Rs. ———or such amount as may be found due"or "Rs. after deducting such amount as may be found due to me on account of " will not be in order in a promissory note.

Payee

The name of the payee is mentioned in the body, either by personal name or by official designation, but it should be certain or ascertainable. Two or more persons may be mentioned as payees jointly or the money may be made payable to one of two or one or some of several payees in the alternative [Sec. 13(2)]. If the payment is to be made to the bearer, the words "or bearer" are added, if it is intended to be payable to the order of the payee, the words "or order" are added or we might say "to the order of ———"[vide section 13(1), Expl. *(iii)*],but the addition of the words "or order" is not essential so long as a bill or note is negotiable, for, even if it is payable to a particular person, it can be endorsed by the payee to anyone else [Sec. 13(1), Expl. (1)], but if there is anything to show that it is not negotiable it cannot be endorsed, for example, when it is expressly stated that it shall be payable to the payee "only". In such cases, the rules relating to Negotiable Instruments do not apply and the pronote is like any other actionable claim.

Besides the name, sufficient description, (e.g. his or her father's name or her husband's name, occupation and residence) necessary for identification, should also be added.

Sometimes a promissory note is drafted in the form of a letter in which case the name of the payee is mentioned as the heading as "Dear Shri ——— " "To Shri ———" and he is referred to in the body by the pronoun "you".

Sometimes a promissory note is delivered to another person duly signed and stamped and with the amount payable mentioned therein but without the name of the payee, the intention being that such other person may insert his or any other person's name as payee. This procedure is perfectly regular and the person to whom such paper is delivered is entitled to convert it into a promissory note payable to himself or to a third person (Secs. 4, 20, Negotiable Instruments Act).[15]

Unconditional Promise

In a promissory note there should be an unconditional promise to pay. If the promissory note being in the form of a letter simply contains a request for the loan and an undertaking to repay it with interest, there is no unconditional

15 *Hriday* v. *Kailash*, A 1940 Pat 377, 186 IC 809.

promise as the promise is dependent on the advance of the loan.[16] A mere acknowledgment of a debt is not a promise to pay. The payment may be promised on demand, or on a particular date, or after a particular period from a certain event, or in instalments payable on certain dates, but if payment is agreed on the happening of an uncertain event (e.g. seven days after my marriage with A), it will not be an "unconditional undertaking". There is no objection if no time is fixed for payment, for in that case the money is payable on demand (Sec. 19). If the money is payable "on demand" the phrase does not import a condition to make the actual demand,[17] but the money is payable at once.

Payable to Bearer on Demand

A promissory note or bill for the payment of a certain sum of money to the bearer on demand is prohibited by the Reserve Bank of India Act 1934, Sec. 31, and is made a penal offence by Sec. 58B of that Act.

Several Executants

Where there are more than one executants of a promissory note, it should be clearly stated whether the undertaking by them is joint or joint and several. If the note begins with "we promise" and is signed at the end by two persons, they are jointly liable. If it begins with the words "I promise" and is signed by two persons, it would be considered that each is jointly and severally liable.

Order in Case of Bill

The drawer's order to pay to the drawee must also be unconditional. The order may be to pay "on demand" or so many days "after date" or "after sight".

Name of Drawee of Bill

The name and address of the drawee of a bill is mentioned either at the top in the same form in which letters are addressed, e.g.

"To

AB, etc."

or at the bottom left-hand corner.

The name must be certain, must be distinctly written with the addition of address, etc., sufficient for identification.

For bills drawn in fictitious name, *see* Sec. 42, Negotiable Instruments Act.

16 *Sarju* v. *Sukhulal*, A 1924 Pat 96, 79 IC 420.

17 *Perumal* v. *Alagirisami*, 20 M 245.

Consideration

A negotiable instrument is presumed to be made, drawn, accepted, endorsed or negotiated for consideration [Sec. 118 (a)], and it is not necessary to recite the consideration in the bill or note.[18] This presumption is not available where the actual consideration is different from that recited; however the real consideration can be proved by other evidence.[19] It is not usual to recite it in bills, but in promissory notes it is sometimes mentioned, and the practice is good as affording evidence against a possible plea of want of consideration and as enabling the payee to sue on the original consideration, in case the pronote is found to be defective or inadmissible in evidence.

Mostly where a pronote is executed for a loan, a separate receipt is also executed acknowledging the loan. This serves a useful purpose inasmuch as, if the pronote is, for any reason, inadmissible in evidence, the creditor can prove the debt by the receipt and sue for money had and received *i.e.* for the original consideration.[20] Besides the transaction can be made more secure by having the receipt attested. But the pronote itself should not be got attested, for, if pronote is attested, it requires the stamp duty of a bond.[1] [Sec. 2 (5) (b), (c), Stamp Act].

"Value Received"

The practice in England usually is to add the words "for value received" to every pronote and bill but, these words, it is submitted, are strictly speaking, unnecessary.

Interest

If interest is agreed to be paid, the rate must be specified. It will be payable from the date on which the money becomes due, which, in the case of agreement to pay on demand, is the date of the instrument. In case rate of interest is not specified in the negotiable instrument, then notwithstanding any agreement relating to interest between the parties, interest will be calculated at the rate of 18% per annum from the date on which the same ought to have been paid by the party charged until tender or realization of the amount due thereon. (Sec. 80, as amended in 1988)

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18 *Lal Girwal Lal* v. *Dau Dayal*, A 1935 All 509; *Lala Ram Nath* v. *Lala Ramchander Mal*, A 1935 All 154.

19 *K.P.O. Moideankutty* v. *Pappu Manjooram*, (1996) 8 SCC 586.

20 *See*, e.g., *Gulab Gir* v. *Nath Mal*, A 1932 Nag 33 (per Bose A.J.C., later Judge Supreme Court). See notes under precedent no. 107 of plaints in Mogha's Pleadings (XVI Edn), pp. 547-558.

1 *Jageshwar* v. *Collector*, A 1966 All 392.

Name of the Maker and Signature

The name of the maker or drawer is sometimes mentioned separately from the signature, but this is not strictly necessary so long as the name clearly appears from the signature. But in promissory notes given for loans the name of the maker, with additions, is generally mentioned in the beginning as "I, AB, etc." In that case also, signature is necessary at the end. Signature may be full or only initials or mark. In the latter cases it is better to write down the full name also under the signatures. This is particularly necessary if the name of the maker is not mentioned in the body.

Inchoate Instruments, Alteration

Unlike any other instrument, a negotiable instrument may be signed by the maker or drawer in blank. All that is necessary is that the signatures should be put on a paper stamped with the requisite stamp and the paper should be delivered by the maker or drawer to another person. The paper may be wholly blank or blank with regard to any particulars, e.g., date, amount, etc. The person to whom it is delivered has the right to write a promissory note or bill on it or to fill in the blanks and the only limit to the amount is that covered by the stamp duty (*see* Sec. 20). Any omission in the bill or note can therefore be made good by the payee under this section, but no material alteration in a negotiable instrument is permissible, and, if one is found to have been made, the instrument becomes void against any one who is a party thereto at the time of such alteration and who has not consented thereto, unless the alteration was made in order to carry out the common intention (Sec. 87). In order that the alteration may be material, it must make a change as regards the rights and liabilities of the parties and their legal position.[2]

Attestation

A bill or promissory note need not be attested. If it is attested by a witness and is not payable to order it will fall under the definition of a bond, as given in the Indian Stamp Act, and will therefore be chargeable with duty as a bond.[3]

Bills in Set

Sometimes bills are drawn in parts, each part being numbered and containing a provision that it shall continue to be payable only so long as the others remain unpaid. All the parts together make a set, and the whole set constitutes only one bill and is extinguished when one of the parts would be extinguished (Sec. 132). The object of the set is to avoid delay and

2 *Nathu Lal* v. *Mt. Gomti Kaur*, A 1940 PC 160. [*See also*, INTRODUCTION, PART IV : 'Material Alteration in Deed'].

3 ILR 8 Mad 87 FB.

inconvenience resulting from loss or miscarriage of the bill and to enable the holder to send the bill by different conveyance to the drawee to expedite presentment for acceptance and payment. Foreign bills are as a rule drawn in sets.

Holder in due course

Holder in due course is defined in Sec.9 read with Sec. 118(g) of the Act. A holder, to be a holder in due course, must not only have acquired the bill, note or cheque for valid consideration but should have acquired the cheque without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. The condition entails that he should act in good faith and with reasonable caution. Mere failure to prove good faith or absence of negligence on his part does not negate his claim, unless, of course, the court finds that the negligence was gross and extra-ordinary and that in face thereof there could be no sufficient cause to believe that the title was free from being defective.[4]

Section 131

Collection of Cheques (Sec.131) and drafts (Sec. 131 A) by a banker on behalf of its customer after the account is opened and the relationship of banker and customer has been established is protected where the banker in good faith and without negligence, receives payment for the customer. In such an event, the banker does not incur any liability to the true owner of the cheque or draft by reason only of having received such payment.[5] However, the banker who receive payment based on electronic image has a duty to verify *prima facie* genuinness of the cheque to be truncated and any fraud, frogery or tampering apparent on the face of the instrument that can be verified with due diligence and ordinary care (Explanation II)[6]

Dishonour of cheques for insufficiency of funds

Penal provisions have now been made for those who issue cheques which are dishonoured by the bank on ground of insufficiency of funds: Sec. 138 to 142 (w.e.f. 1.4.1989).

4 *U. Ponnappa Moothan Sons Palghat* v. *Catholic Syrian Bank Ltd.*, (1991) 1 SCC 113.

5 *Indian Overseas Bank* v. *Industrial Chain Concern*, (1990) 1 SCC 484.

6 Negotiable Instruments Amendment Act, 2002

PRECEDENTS

1—Bill of Exchange Payable on Demand

Lucknow
January 31, 1996

Rs.———

Pay to XY, etc., or order (*or*, pay to XY, etc., or bearer) (*or*, pay to my order), (*or*, pay to bearer), on demand (*or*, at sight) (*or*, on presentation) the sum of Rs.———(*in words*)

To

CD, etc. (*drawee*). (Sd.) AB (*drawer*)

2—Bill of Exchange, Payable after Date (with Interest)

Agra, January 15, 1996

Rs.———

———days (months) after date pay to XY, etc., or order (*or*, pay to XY, etc., or bearer) (*or*, pay to my order) (*or*, pay to bearer) the sum of Rs.———(*in words*), with interest at ———percent per annum.

To CD, etc. AB (*drawer*)

(*drawee*)

3—Bill of Exchange, Payable after Sight

——— (*Date*)

———(*place*),

Rs.———

———days (months) after sight pay to, etc., (*as in Form 2*).

4—Bill of Exchange Payable to Any One of Several Payees

Agra
January 15, 1996

Rs.———

———days (months) after date pay AB, etc., or CD, etc., or EF, or the order of any one of them, the sum of Rs. (*in words*).

To
XY, etc.
(*drawee*)

M. (*drawer*)

5—Bill of Exchange where the Drawer and Payee is the Same Person

Lucknow
January 31, 1996

Pay self (*or*, to my order) the sum of Rs.——(*in words*) only.

To
———

(Sd.) AB

6—Bill of Exchange Payable to Bearer

Allahabad
May 14, 1996

Rs.———

———days after sight (*or*, after date)[1] pay the bearer the sum of Rs.———(*in words*) only.

To
———

(Sd.) XY, etc.

7—Foreign Bill of Exchange

(*Drawn in Set of three Parts*)

First part

No.———Exchange for £

Bombay, January 15, 1996

———months after sight of this first of exchange (the second and third of the same date remaining unpaid), pay to CD, etc., or to his

1 A purely bearer bill cannot be made payable *on demand* (Sec. 31 Reserve Bank of India Act 1934).

order———pounds sterling (*in words*) (and charge the same to account of XY against your letter of credit No.———dated———).

To AB, etc.

(*drawee*) Signed (*drawer*)

Second and Third Parts

Same as first part substituting for the words "the first of exchange (the second and third of the same date remaining unpaid" the words "the second of exchange (the first and third of the same date remaining unpaid)" *or* "the third of exchange (the first and second of the same date remaining unpaid)."

8—Promissory Note Payable on Demand

Rs.——— Allahabad, January 20, 1996

On demand I promise to pay CD, etc., (*or*, to CD, etc., or order) the sum of Rs.——(*in words*) with interest at—— percent per annum.

Signature & Address

9—Promissory Note, for a Loan

Rs.——— Allahabad, January 20, 1996

In consideration of the loan of Rs. advanced by CD, etc., to me, I promise to repay the said loan of Rs.—— (*in words*) with interest at———percent per annum to the said CD or order.

(Signed)

10—Promissory Note Payable on a Fixed Date or in Instalments

Allahabad, January 13, 1996

Rs.———

I, AB, etc., promise to pay to CD, etc., or order the sum of Rs. (*in words*) on the——(*or*, —— month after date) (*or*, in twelve equal instalments of Rs.——(*in words*) each payable on the first day of every month commencing from the first day of February, 1996).

(Signed)

11—Promissory Note, with Details of Consideration

I, AB, etc., hereby promise to pay on demand (*or*, within ——— years from this date) to CD, etc., (or order) the sum of Rs.——— (*in words*) with interest at ——— percent per annum on account of the consideration received as specified below

(1) Rs.——— due from me to the said CD on account of a promissory note dated

(2) Rs.——— due from me to the said CD on account of the price of cloth purchased on

(3) Rs.——— due from me to the said CD on *bahī khata* account.

(4) Rs.——— now borrowed in cash by me from the said CD.

Dated the 3rd of June 1996.

Place : Agra

Sd.———

12—Promissory Note, in the Form of a Letter

Allahabad
January 28, 1996

Dear Shri CD, etc.

Whereas you have advanced to me today a loan of Rs.——— (*in words*) I hereby promise to repay the same to you on demand with interest at ———percent per mensem.

Yours sincerely
Sd.———
AB s/o.———, resident of———

13—Joint Promissory Note

Agra
May 5, 1996

Rs.———

On demand (*or*, ——— months after date) (*or*,——— days after sight) we hereby promise to pay to CD, etc., or order the sum of Rs. ——— (*in words*).

Name and address of drawers

1. ———

2. ———

Signatures of drawers

1. ———

2. ———

Or,

Whereas we, AB, etc., CD, etc., and EF, etc., owe Rs.———— to XY, etc., as detailed below :

1. ———

2. ———

We hereby promise to pay on demand (*or*, ————years after date) the said sum of Rs.———— (*in words*) to the said XY with interest at ——— percent per annum.

Dated the 3rd June, 1996

Place : Agra

Sd. AB

CD————

EF————

14—Joint and Several Promissory Note

In Form 13 *for the words* "we hereby promise" *substitute the words* "we jointly and severally promise".

15—Receipt of Consideration of a Promissory Note

I, AB, etc., acknowledge to have received this day the sum of Rs.———— (*in words*) from CD, etc., on account of the consideration of the promissory note executed by me today in favour of the said CD.

Dated the————day of————.

Witness—

(1) ———

(2) ———

Sd (AB)

Or

Received this day sum of Rs. (*in words*) etc., (*as in the Form above*).

Sd. AB

(S/o.

resident of etc.)

16— General Endorsement

"(Signed) AB"

17— Specific Endorsement

"Pay to XY or order

Sd. AB"

Or,

"Pay to order of XY

Sd. AB"

Or,

"Pay to XY—

Sd. AB"

Or,

"Pay to XY or bearer

Sd. AB"

18—Restrictive Endorsement

"Pay to XY only

Sd. AB"

19—General and Absolute Acceptance

(1) (Signed) "AB"

(2) Accepted-(Signed) "AB"

20—Qualified Acceptance

Accepted. Payable on giving up to me the bills of lading for———— per ship————.

Sd. AB.

21 Partial Acceptance

Accepted as to Rs.————————only.

Sd. AB.

(For precedents of Notice of dishonour, see under Notice)

NOTICE

Preliminary Note

Notice when given

A notice is given by one person to another sometimes because the law requires such notice to be given, sometimes because such notice is agreed upon by contract between the parties, sometimes as a matter of precaution with a view to have a claim amicably settled, if possible. When a notice is given under any law, e.g., in a suit against Government or Railway or under a contract, it should strictly correspond with the requirements of the law or terms of the contract. It is always preferable to use the very words of the statute or contract in drafting the notice.

Restrictions on the landlord's right to evict a tenant from certain accommodations have been placed by local laws. Amendment has also been made in Sec 106 of Transfer of Property Act by a local amendment in the State of U.P. providing 30 days, period of notice (instead of 15 days)[1]. Before drafting a notice to evict, these provisions should be looked into and a proper notice should be given.

How drafted

A notice is drafted generally in the first person as a communication addressed to the person to whom it is intended to be given. Sometime the ordinary form of a letter is used. A notice may be drafted even in the third person. The acts of which notice is intended to be given should be stated concisely and clearly, and the claim or demand of the notice-giver should be clearly and specifically made. In addition to this if any other fact is provided by the contract or statute to be entered in the notice, the same should be mentioned.

By Agent or Pleader

Notice may be given either by the party or by his agent or pleader but it must be on behalf of the principal. An agent must be specifically authorised to give such notice, and, although there is nothing to prevent authority being given orally, it is always safe to have it given in writing, unless the agent is the accredited agent of the notice-giver for the performance of the business to which the notice relates. A pleader must be instructed by his client to give the notice, but no *vakalatnama* or written power is necessary. He can act on oral instructions, but in order to safeguard their own interests pleaders are advised to have a regular instruction book in which they should record in writing the

1 The words 'expiring with the month of tenancy' have been deleted by Act III of 2003.

instructions received showing the action taken thereon. The instructions may be signed by the client. When an agent gives notice he must give it "As agent for and on behalf of ——" and when an advocate or solicitor gives notice he must give it "As Advocate/Solicitor for and behalf of ——" or "Under instructions from ——".

A Notice by a pleader generally starts with the opening sentence "Under instructions from my client Sri/Smt./Km. —— son/wife/daughter of —— (occupation) —— resident of —— I hereby give you the following notice." The paragraphs following this sentence should first set out, parawise, the relevant and material facts as in a plaint, and later, the occasion for giving the notice (corresponding to the para on "cause of action" in a plaint), and then the demand (corresponding to the prayer, i.e., the relief clause in a plaint), and finally the threat that unless the addressee meets the demand within the stated period "my client will be compelled to file a suit (*or*, take necessary legal proceedings) and you will be responsible for all costs and other consequences".

Service of Notice

As to service of notice, the best mode is personal service. The next best is service by post, in which case it should be sent in a registered cover, acknowledgement due, addressed to the usual place of residence or business of the addressee. Sometimes speical modes of service, e.g., leaving it at certain premises, sending it by post, or service on a relation or servant is provided in the law or contract, in which case the notice should be served in one of such ways. When a contract is made between the parties which provides for service of notice by one party on another, it is always better to provide for mode of service also. In case of service by post, although there will always be a presumption (which is rebuttable) that a letter addressed to the usual address of a person, if not returned in due course of post, was delivered to him, it is always better to provide for this also in the agreement.

Stamp Duty

No Stamp duty is required on any notice.

PRECEDENTS

A—NOTICE TO TERMINATE TENANCY*

1—Notice to Quit by Landlord

To

CD, etc., (*name, description and address of the tenant*).

I, AB, etc., (*or*, AB, etc., EF, etc., and GH, etc.) give you notice to quit and deliver up possession of the house known as No.

**When Notice not Required*

No notice is required to determine a tenancy which is for a fixed term. If the contract provides that the tenant would leave possession whenever required, in which case a mere demand is sufficient and notice is not necessary.[1] Where the tenancy automatically determined on the expiry of the stipulated period but the lessee continued to hold the property on payment of rent, it was held the lease got renewed from month to month and its termination could only be by giving a valid notice.[2] No notice is needed to a servant occupying quarters given by the master, as service occupation is not tenancy.[3]

When Notice Required

A notice is required only (1) when there is a condition of notice in the lease; (2) there is local custom or usage; (3) the tenancy is one from year to year or month to month; or (4) a forfeiture has been incurred and the landlord wishes to take advantage of it and to eject the tenant on that ground (*see* also the local amendments to Transfer of Property Act and rent control laws overriding that Act).

Length of Notice to Quit

In case there is a condition of notice in the lease or it is required under a local custom or usage such notice as stipulated in contract or required by custom or usage should be given. The contract of tenancy may provide for one month's notice or six months' notice.

In the case of periodic leases, *i.e.*, in case of tenancy from year to year or month to month, the provisions of Transfer of Property Act are to be looked into. Sec. 106 applies for agricultural and manufacturing

1 *Moosa Kutty* v. *Thekke*, 110 IC 398; A 1928 Mad 687; *Kuda Baksh* v. *Abid Hussain*, 120 C 279, 3 IC 837.

2 *Burmah Shell Distributing* v. *Khaja Midhat Noor*, (1988) 3 SCC 44.

3 *B.M. Lall* v. *Dunlop Co.*, A 1968 SC 175, (1968) 1 SCR 23 (servant is bare licensee).

road, situate at ——— of which you are now my (our) tenant on the——— day of next (or after the end of 15 days from the date of the service of this notice).

Signature of Landlord

Date———

purposes, as well as leases for other purposes. (Agricultural leases are, however, excepted from the operation of Transfer of Property Act and are regulated by local laws relating to agricultural tenures.)

Agricultural purposes include field tillage, gardens, coffee plantations[4] and indigo plantations. Manufacturing purposes include, making or manufacturing by aid of machinery, articles of trade and commerce.[5] Manufacturing purpose within the meaning of section 106, means the making or fabricating articles or materials by physical labour or skill or by mechanical power vendible and useful as such.[6]

In the absence of contract or local law or usage to the contrary the leases for agricultural or manufacturing purposes are deemed to be from year to year, terminable by giving six months' notice and the leases for other purposes are deemed to be from month to month, terminable by fifteen days' notice to commence from the date of the service[7]. In computing the period of yearly tenancy, the date on which the tenancy commenced, has to be excluded.[8] A house tenancy is presumed to be from month to month terminable by 15 day's notice. The fact that the rent of a house is payable annually is immaterial and is not sufficient to rebut the presumption of a monthly tenancy terminable by 15 days' notice.[9]

In U.P. on account of local amendment to Transfer of Property Act, vide U.P. Act 24 of 1954, 30 days' notice is necessary. In

4 *Murugesa Chetti* v. *Chinnathambi Goundan*, 24 Mad. 421.

5 *Jayanti Hosiery Mills* v. *Upendra Chandra Das*, A 1946 Cal 317; *William Jacks and Co.* v. *Joosab Mahomed*, 48 Bom 38.

6 *Allenbury Engineers Pvt. Ltd.*, v. *R.K. Dalmia*, A 1973 SC 425 (para 8).

7 The words 'expiring with the month of tenancy' has been deleted by Amendment by Act III of 2003.

8 *Dattonpant Gapalvarao Devakate* v. *Vithal Rao Maruthirao Janagaval*, (1975) 2 SCC 246.

9 *Mohendra* v. *Narendra*, 50 IC 918; *Mangal Singh* v. *Atra*, 3 LLJ 222, 60 IC 226; *Chunti* v. *Kripa Shankar*, A 1941 Pat 488, 194 IC 300.

2—Notice to Quit, by Landlord's Agent[10]

To

CD, etc.

I, XY, etc., as agent for and on behalf of AB, etc., hereby give you notice to quit and deliver up possession of the house in *Mohalla* in the city of ——— which you hold as the said AB's tenant under a lease dated ——— on the day of ——— next (*or*, after the end of 15 days from the date of the service of this notice).

3—Notice to Quit by Tenant

To

AB, etc.

I, CD, etc., hereby give you notice that I shall quit and deliver up possession of the house known as ———and situate at ——— and now held by me as your tenant on the, etc., (*as in Form* 1).

computation of 30 days the date on which notice is served shall be excluded.[11]

Form and Construction of Notice to Quit

The notice should be in writing and should be signed by or on behalf of the person giving it (Sec. 106). The party on whose behalf it is given should be clearly named and described. It may be given by a pleader or solicitor acting on behalf of his client. If the notice is given by a pleader or other agent, the name of the principal and the authority of the pleader or agent should be disclosed. The property to which it refers should be specified. The language of the notice should be clear and specific. Ambiguous phrases like "to vacate by——— (*date*) or upto ——— (*date*)" should not be used as these expressions are likely to render the notice invalid. Notice to quit is not vitiated by use of present tense to terminate; the interpretation is not to be pedantic.[12] It

10 *See also* precedent No. 50 *post*: "Notice through Advocate/Solicitor, Generally".

11 *Shiv Narain* v. *Chandrika Prasad*, A 1973 All 155.

12 *Abdul Jalil* v. *Haji Abdul Jalil*, A 1974 All 402; *Lakshmi Shankar* v. *J C Sharma*, 1980 ARC 43; *Bipat* v. *A D J*., A 1980 All 142.

4—Notice by Either Party to Determine Lease in Accordance with a Condition of the Lease

To

_____

I, the undersigned, give you notice that I desire that the term of lease created by the deed of lease dated———and made between you and myself shall determine on the ——— in accordance with the proviso (condition) in this behalf contained in the said deed of lease, and I hereby require you to (*or*, and I hereby give you notice that I shall) quit and deliver possession of the said premises on the said date.

5—Ditto, Another Form

In pursuance of a power contained in the lease dated——— under which the house known as———and situate at———thereby demised is held, I hereby give notice that it is my intention to determine the said lease and to put an end to the term thereby created on the———and I hereby require, etc., (*as in Form* 4).

is not necessary to specify any reason for terminating the tenancy and nothing unnecessary need be stated.

Notice by whom and to whom

If there are several landlords the notice should be on behalf of all. The notice to quit must be given by or on behalf of all the co-owners, but where lease was granted by a co-owner claiming or professing to be the sole owner or without disclosing other co-owners, the notice to quit given by him is sufficient to determine the lease,[13] as the grantor of the lease is the sole landlord or lessor though not the sole owner.[14] In case of a deity being the landlord any one *shebait* can act on its behalf if the others are either unable or unwilling to act to protect the interest of the deity.[15]

The notice to quit is to be addressed to the tenant. But when there are more than one tenant, before framing notice to quit it would be

13 *Nana Lal Girdhar Lal* v. *Gulamnabi Jamalbhai Motorwala*, A 1973 Guj 131 (F.B.)

14 *Sri Ram Pasricha* v. *Jagannath*, (1976) 4 SCC 184; *Subhendu Pd. Roy Choudhury* v. *Kamla Bala*, (1978) 2 SCC 89.

15 *Mool Chand* v. *A.D.J.*, 1986 AWC 723 (DB).

6—Notice to Demand Possession on the Expiry of a Lease

I, the undersigned, owner of the premises comprised in the lease dated———hereby give you notice that the said lease expired by efflux of time on the day of last and I hereby demand immediate possession of the said premises and also give notice that you will be held responsible for all damages which may be sustained by me by reason of your wilfully retaining possession thereof as well as for breach by you of the covenants contained in the lease.

necessary to ascertain whether they are joint tenants or they are tenants-in-common. In case of joint tenants, "tenants have unity of title, unity of commencement of title, unity of interest so as in law to have equal shares in the joint estate, unity of possession, as well of every part as of the whole, and right of survivorship", vide Woodfall's Law of Landlord and Tenant, 24th Edition. In the same text book at page 761 in respect of tenancy in common[16] it was stated that, "tenants in common need have only unity of possession; they may have unequal shares, and there is no right of survivorship. Each tenant in common could at common law make a lease in respect of his own share alone, the interest of each being separate and distinct, and if tenants in common all joined in one lease it operated as a lease by each of his respective share, and a confirmation by each as the shares of the others". In a case where a joint lease was executed by two tenants a notice to terminate tenancy to one of them was held to be good.[17] The Supreme Court has held that on death of a Mohamadan, his estate devolves on his heirs who succeed to the estate as tenants in common in specific shares.[18] Similarly, on death of original tenant, tenancy rights were inherited by his heirs who became tenants in common; notice to quit given to one of the heirs was held not sufficient and valid notice to all heirs or tenants in common.[19] In case of tenants in common, the notice should be sent to all jointly, but if it cannot be served personally and has to be sent by post, separate copies may be sent to each. But if for a long time only some of the heirs

16 See also *Badri Narain* v. *Rameshwar*, A 1951 SC 186 (para 10).

17 *Kanji Manji* v. *The Trustees of the Port of Bombay*, A 1963 SC 468; *H.C. Pandey* v. *G.C. Paul*, 1989 (2) ARC 26 (S.C.).

18 *Syed Shah Gulam Ghouse Mohiuddin* v. *Syed Shah Ahmad Mohiuddin Kamisul Qadri*, A 1971 SC 2184, (1971) 1 SCC 597.

19 *Ramesh Chand Bose* v. *Gopeshwar Prasad Sharma*, 1976 (2) ALR 711, A 1977 All 38.

7—Notice of Determination of Tenancy for Breach of Covenants

To CD, etc.

I, the undersigned, give you notice as follows :

1. The lease dated the ——— day of ——— and made between myself of the one part and yourself of the other part under which you hold the ——— (*describe the property*) contains a covenant by the lessee to the effect that you will not use the said premises except for the purpose of residence and a further covenant that in case of a breach of the aforesaid

remained in occupation and paid rent and were recognised by the landlord as tenants the other heirs who made no claim, may be deemed to have surrendered their tenancy.[20]

How to be Served

The notice should be sent by post or tendered or delivered personally to the party to whom it is addressed or to one of his family members or servants at his residence, or, if this is not practicable, it be affixed to a conspicuous part of the demised property (Sec. 106, Transfer of Property Act) or may be served in any other manner specially agreed upon. It is always better to provide in the lease some easy and simple mode of service of notices. Notice to company under registered post is considered valid.[21]

Notice of Re-entry

If a lessee renounces his character as such by setting up a title in himself or in a third person or breaks a condition of the lease, the breach of which entitles the lessor under the terms of the lease to re-enter, or becomes insolvent and the lease provides that in such event the lessor may re-enter, the lessor has a right to terminate the tenancy by giving notice in writing of his intention to do so [Sec. 111(g), Transfer of Property Act]. Although the giving of such notice may not be provided in the lease, yet the tenancy does not determine automatically by a breach, but the breach simply makes the lease viodable and the forfeiture is not complete unless the lessor gives notice of his option to determine the lease. In such notice, the ground on which the lessor claims forfeiture should be stated. The lessor should clearly state that he desires to determine the lease. It is better, though not absolutely necessary, to state the date on which the lessor wants the lessee to surrender possession.

20 *Bundoo* v. *Akbar Ali*, 1978 ALJ 215 (implied surrender).

21 *Kulkarni Patterns (Pvt.) Ltd.* v. *Vasant Baburao*, A 1992 SC 1097.

covenant the lessor would have a right of re-entry (*or*, a covenant to the effect that).

2. You have started a soap factory on the said premises since the----and have so committed a breach of the said covenant [*or*, you have ——— (*specify the act of breach*)] (*or, if there are several such acts say*, you have committed the several acts and omissions specified in the schedule hereto and such acts and omissions constitute a breach of the said covenant).

3. In pursuance of the aforesaid covenant for re-entry I, from the date given hereunder determine the said lease and I require you to quit and deliver up possession to me of the said premises on the (*or*, within days of the service of this notice).

8—Notice of Determination of Tenancy, for Denial of Title

To CD, etc.

I, the undersigned give you notice as follows :

1. By a lease dated the I demised the land described below to your deceased father EF on a perpetual lease for building a house.

2. The said EF built a house and on his death you succeeded to it as well as to the leasehold rights under the aforesaid lease.

3. By a sale deed dated ——you have now sold the said house on the said land to one XY and in the sale deed you have described yourself as the owner of the said land also and have professed to sell to the said XY proprietary rights in the said land, and have thereby renounced your character as lessee.

4. For the reason aforesaid I, etc., (*as in para* 3 *of Form* 7).

B—MISCELLANEOUS NOTICES BETWEEN LANDLORD AND TENANT

9— Notice to Repair by Lessee[1]

To CD, etc.,

As pleader for and on behalf of AB, etc., I hereby give you notice

1 This is necessary only where the Transfer of Property Act does not apply, as a statutory right in that behalf is given by Sec.108 (*f*) of that Act. The local rent control laws should also be consulted on the subject.

and require you within days (months) from the date of service of this notice to execute or cause to be executed the repairs detailed below and all other repairs which you are bound to execute under the covenant by you in that behalf contained in a lease dated ——— and made between yourself and the said AB (And that if you fail to comply with this notice the said AB will execute the same or cause the same to be executed and deduct the cost thereof from the rent payable to you or otherwise recover it from you).

Details of repairs———.

10—Notice to Repair by Lessor

To CD, etc.

I, AB, etc., hereby give you notice and require you in pursuance of the covenant contained in a lease dated———and made between yourself and myself within———months from the date hereof to put in good and substantial repair and condition the house comprised in the said lease and in particular that you do in a workmanlike manner the several repairs and amendments mentioned in the schedule hereto annexed AND I further give notice that if you make default in remedying such breach of covenant in manner mentioned above I shall enter upon the said premises in accordance with the said covenant and execute the said work at your expense as therein provided.

(*The schedule herein referred to*)

(Specification of repairs and amendments)

11—Notice by Tenant of Election to take Renewed Lease

To AB, etc., (*name and address of landlord*)

I, the undersigned, give you notice that pursuant to the proviso (covenant) for renewal contained in a deed of lease dated——— and made between yourself and myself I elect to accept a renewed lease of the property comprised in the said deed of lease for a further term of years on the terms and conditions specified in such lease and I hereby require you to grant the said lease to me accordingly.

12— Notice by Landlord of Election to Purchase Fixtures

To CD, etc., (*name and address of tenant*)

I, the undersigned, give you noitce that I intend on the determination of the term created by a deed of lease dated---- ----and made between myself and yourself to purchase such of the fixtures erected by you on the premises thereby demised as are specified in the schedule hereto in accordance with and on the terms specified in the proviso (covenant) in that behalf contained in the said lease.

The scedule herein referred to.

13 Notice of Assignment[2] by Tenant

To AB, etc., (*name and address of lessor*)

I, the undersigned, give you notice that by a deed of assignment dated the ———— I have assigned to XY, etc., all my rights and interest under the deed of lease dated ———— made between yourself and myself in the property comprised in the said lease.

C— MORTGAGOR AND MORTGAGEE

14—Notice of Demand of Mortgage Money

To AB, etc., (*mortgagor*)

I, CD, etc. (*or*, as pleader and agent for and on behalf of CD, etc.) hereby demand of you immediate payment of the sum of Rs.———— due to me (*or*, to the said CD) under a mortgage deed dated ———— executed by you with interest payable according to the term of the said mortgage deed.

15—Notice of Demand of Mortgage Money, when Parties are Representatives of the Original Mortgagor and Mortgagee

To AB, etc.

I, CD, etc., (*or*, as pleader and agent for and on behalf of CD, etc.) hereby give you notice as follows:

2 The expression "assignment" is not confined to actionable claims (See ASSIGNMENT OF ACTIONABLE CLAIMS, *ante*) but may be used for transfer of any movable or immovable property and includes assignment of lease.

1. By a deed of mortgage dated ——— ——— one EF owner of the property, described in the schedule thereto, mortgaged the said property to one GH for Rs. ——— repayable with interest at the rate therein specified.

2. On the death of the said GH his son JK succeeded to his rights and interest under the aforesaid mortgage, and subsequently by a deed of sale dated ——— the said JK assigned the said rights and interest with the said mortgage debt to me (*or*, the said CD).

3. At an auction sale held on the ——— in execution of a decree against the said EF the rights and interest of the said EF in the said property were purchased by you subject to the encumbrance created by the said mortgage deed.

4. I hereby demand of you payment of the principal and interest due to me (*or*, the said CD) under the aforesaid mortgage deed within 15 days, failing which I (*or*, the said CD) shall (*or*, I have instruction to) institute a suit for recovery of the same by sale of the mortgaged property.

16—Notice to Exercise Powers of Sale by Mortgagee

At the end of the notice of demand as in Form 14 *add, the following* or *for the words "failing which, etc.,", in para* 4 *of Form* 15, *substitute the following:*

"AND in default of you paying the said amount for a period of three calendar months from the service hereof I intend (*or*, I have instructions on behalf of the said CD) to sell the said mortgaged property or such portion thereof as I may think fit in pursuance of the power of sale conferred upon me (*or*, CD) by the said deed of mortgage (*or*, by law)."

17—Notice by Mortgagee to Tenant to Pay Rent to Him

To XY (*name and address of tenant*)

I, CD, etc., (*or*, as pleader and agent for and on behalf of CD, etc.)hereby give you notice that under a mortgage dated———made by AB, etc., I (*or*, the said CD) as mortgagee have (has) become entitled to the receipt of the rent of the (*describe the property*) which you hold as tenant of the said AB and I require you to pay to me (*or*, the said CD) all rent now due and henceforth to become due in respect of the said property

until you shall receive further notice from me (*or*, the said CD) and on no account to pay such rent to the said AB or any person on his behalf.

18 Notice to Tenant by Mortgagor

To

AB, etc.

WHEREAS I have mortgaged to XY, etc., the house situate at which you hold on lease from me, I hereby authorize and request you to forthwith attorn and become tenant of the said XY during the continuance of the said mortgage, to pay to the said XY, his heirs, executors, administrators or assigns all such rent as now is or hereafter shall be payable from you in respect of the said house and for so doing this shall be to you a sufficient warrant and authority.

19— Notice by Mortgagee Calling upon Mortgagor to Furnish Further Security

To

XY, etc.

I, AB,etc., hereby give you notice that the security furnished by you under the mortgage deed dated the ——— executed by you in my favour has been rendered insufficient in respect of the sum now due under the said mortgage (by Rs.——approximately) and you are, therefore, hereby called upon to furnish within one month of the receipt of this notice, security enough to render the said security sufficient for the sum due under the mortgage. Please take notice that in default of your compliance with the demand legal proceedings will be taken against you for recovery of the mortgage money payable under the said mortgage deed.

20—Notice by Mortgagee of Transfer of Mortgage

To AB, etc. (*mortgagor*)

I, CD, etc., hereby give you notice that by a deed of sale dated——— the debt due to me under the mortgage deed dated——— executed by you has been transferred by me with all the interest due thereon and the security for the same to GH, etc., absolutely to whom all payments of principal and interest must in future be made.

D—SALE OF LAND AND GOODS

21—Notice to Complete a Purchase by Vendor

To _____AB, etc.

(*Purchaser*)

I, CD, etc., (*or*, as pleader for and on behalf of CD, etc.) hereby give you notice that I am (the said CD is) willing and ready to execute a sale deed in your favour or as you may direct of (*briefly describe the property, or simply say*) the property contracted to be purchased by you by an agreement dated the and registered on the in accordance with the terms of the said agreement AND that I (the said CD) hereby require(s) you forthwith to tender such sale deed for execution and to pay the balance of the price in accordance with the terms of the said agreement AND that if you fail to comply with this notice within —— days from the date hereof or its receipt I (he) shall (will) then forfeit the deposit of Rs.———— paid by you as earnest money and either rescind the contract or resell the property in accordance with the provisions of the said agreement and claim from you the deficiency in price (if any) on such resale and all expenses attending the resale and any attempted resale and all costs, losses, damages and expenses incurred by me (him) by reason of your delay or default in performing the said agreement [*or*, I (he) shall (will) file a suit against you for specific performance of the contract and damages] [*or* will seek such relief as I (he) may be entitled to in law].

22—Notice to Complete Purchase by Purchaser

I, AB, etc., (*or*, as pleader for and on behalf of AB, etc.,) hereby give you notice that I am (he is) willing and ready to complete the purchase of (*breifly describe the property, or simply say*) the property contracted to be purchased by me (him) from you by an agreement dated the —— in accordance with the terms of the said agreement AND that I (he) require(s) you to complete the same AND that if you fail to complete the same within days from the date hereof I (the said AB) will bring a suit for specific performance of the contract and damages [*or*, will seek such relief as I (he) may be entitled to in law].

23—Noitce by Purchaser to Tenant of Property Purchased

I hereby give you noitce that under a deed of sale dated and registered on the the house known as and situate at held by you under a lease dated made by AB, etc., was sold by the said AB to me AND that all rent now due or to become due from the date of the said sale in respect of the said house must be paid to me or my authorised agent and not to the said AB or anyone on his behalf.

24—Notice by Seller or Donor to Tenant to Attorn to Transferee

To

AB, etc.

WHEREAS I have now sold to XY, etc., (*or*, made a gift to XY, etc.) of the house situate at which you hold on lease from me, I hereby authorise and request you to forthwith attorn and become tenant of the said XY and henceforth to pay to the said XY his heirs, executors, administrators, or assigns all such rent as now is or hereafter shall become due from you in respect of the said premises and for so doing this shall be to you a sufficient warrant and authority.

25—Notice of Sale of Business to Vendor's Creditors

I, AB, etc., (*or*, as pleader for and on behalf of AB, etc.), hereby give you notice that the business of a ———— herebefore carried on by me (the said AB) at ———— under the name and style of was as from the sold by me (the said AB) to CD, etc., who will in future carry on the said business under the name and style of———— AND I further give you notice that I (the said AB) will not be laible for any debts or liabilities incurred or contracts entered by the said CD or any other person whatsoever in connection with the said business after the ————(*date*).

For notices of Assignment of Actionable Claims, see under Assignment of Actionable Claims, Decrees, etc.

26—Notice of Intended Purchase to a Possible Pre-Emptor*

To

XY, etc.

For and on behalf of my client AB, etc., I hereby give you notice that subject to the option of purchase hereby given to you, the said AB has agreed to sell his property mentioned below to CD for the price of Rs.———— AND that in case you wish to purchase the said property at the said price please communicate your assent to me or to the said AB forthwith AND that if you fail so to communicate your assent within —— days of the receipt of this noitce the said AB will presume that you waive whatever right of pre-emption you may have and he will be at liberty to sell the said property to CD or any one else for the said price.

Description of property

* * * * *

* The right of pre-emption arises under some statute or under the Mohammedan Law or under a custom or contract. Such a statutory right has been held to be valid by the Supreme Court except insofar as it is based on vicinage[3] or consanguinity[4] in other words it is valid only in favour of cosharers and tenants. If a person having such right fails to avail of it when the property is offered to him he loses his right of pre-emption, unless the property is sold at a less price than that demanded from him. Therefore, in order to avoid future claims, it is always better to give notice of intended sale to all pre-emptors, though the giving of such notice is not obligatory and waiver can always be proved by an oral refusal or other conduct. The property, the price agreed upon, and the name of the vendee, should be mentioned in the noitce. In Haryana[5] and Oudh[6] it is not necessary to mention the name of vendee. In Haryana and Oudh such notice is given through court and reply is also given through court within three months. (*See* Sec. 10, and 11, Oudh Laws Act and Sec. 20, Punjab Pre-emption Act). In M.P. the notice may be given direct, and unless reply is given within one month the right of pre-emption is extinguished.

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3 *Bhauram* v. *Baijnath*, A 1962 SC 1476; folld. in *A. Razzaque Sajansaheb* v. *Ibrahim Haji Mohd. Husain*, (1998) 8 SCC 83.

4 *Atam Prakash* v. *State of Haryana*, A 1986 SC 859.

5 The Punjab Pre-emption Act, as in force in Haryana (It has been repealed in Punjab).

6 The Oudh Laws Act.

27—Reply of Pre-Emptor Agreeing to Purchase

In reply to your notice dated ——— I hereby give you notice that I am willing to purchase the property mentioned in your said notice for the price mentioned therein.

28—Reply Objecting to the Price

In reply to your notice dated———I hereby give you notice that I am willing to purchase the property mentioned in your said notice but I do not consider that the price mentioned in your said notice is correct or genuine. Therefore, I am willing to pay Rs. ———which is according to my information the price really agreed upon between you and the said CD or such other price as may be proved to have been so agreed upon or a fair and reasonable price.

29—Reply Challenging the Title of the Vendor, and also Reserving the Right of Pre-Emption

In reply to your notice dated ——— I hereby give you notice that the property mentioned in your said notice does not belong to you but belongs to me and that, therefore, there is no question of my purchasing it from you. I further give you notice that if you will sell the same to any person I shall take such legal action as I may be advised to take and will also in the alternative claim to prompt it at such price as may have been actually paid or promised by the vendee or as may be proved to be fair and reasonable.

30—Notice of Appropriation of Goods to Contract

We hereby give you notice that we have today set aside for you and appropriated to the contract of the ——— made between you and our firm, the following goods and that the same are ready for delivery to you here at any time between the hours of——— and ——— (*or*, for despatch to you according to your instructions).

(*Description and quantity of goods*)

31—Notice by Seller to Buyer to take Delivery

The undermentioned goods being ready for delivery, you are hereby requested to take delivery thereof without further delay. If they are not taken within ———days from the date of receipt of the notice I shall

hold you responsible for any loss incurred by me in consequence and also for my charges for the custody of the said goods.

32—Notice of Buyer to Seller of His Intention to Treat the Seller's Non-fulfilment of a Condition as Breach of Warranty[7]

I hereby give you notice that the condition that ——— contained in clause ——— of the contract made between you and me on the ——— has not been fulfilled. I have, however, elected to accept the goods and to treat the breach of condition as a breach of warranty only. By reason of such breach of warranty I have sustained damages to the extent of Rs. ——— which I claim to be entitled to recover from you.

33—Notice of Re-sale of Goods by Seller

WHEREAS on the ——— you purchased ——— (*specify goods*) from me and agreed to pay for and take delivery of the same within two weeks, and whereas you have not yet paid for the same and as per account given below Rs. ——— are now due to me from you, I hereby demand payment of the same and I hereby give you notice that if you fail to make the payment by the ——— day of ———the goods purchased by you and now lying at your risk in my godown at ——— shall be resold by public auction at ——— (*place*) at ——— (*time*) on——— (*date*) and you shall be liable for all loss that may take place on such resale.

Account above referred to

* * * *

(*Resale can be made under Sec. 54 of the Sale of Goods Act only if the property in the goods has passed to the purchaser*).

E—ARBITRATION

34—Notice Calling Upon a Person Designated in the Arbitration Clause to Appoint an Arbitrator (Sec. 11 of the 1996 Act)

Calcutta
September 3, 1996

To
The President
Chamber of Commerce
Calcutta

Dear Sir,

By an agreement in writing between us made on ---- we, the undersigned, had agreed to refer all future disputes between us to the arbitration of a person to be nominated by you. As differences have now arisen between us, we request you kindly to nominate a person to act as an arbitrator for the purpose of the aforesaid reference and intimate us of such appointment within ---- days of the receipt to this notice.

35—Appointment of Arbitrator pursuant to Arbitration Clause (Sec.11)

To XY, etc.

WHEREAS disputes and differences (*or*, certain differences detailed at the foot of this notice) have arisen between us, the undersigned AB, etc., and CD, etc., within the meaning of the arbitration clause contained in a deed dated---------- and made between us and we are desirous of having the said disputes settled by arbitration.

Now, therefore, in pursuance of the provisions of the said deed we hereby jointly nominate and appoint you to be the sole arbitrator to determine all such matters in difference between us as aforesaid and we hereby call upon you to act as such arbitrator.

36—Notice Calling upon the Other Party to Appoint Arbitrator (Sec.11)

I AB, etc., (*or*, as pleader for and on behalf of AB, etc.) hereby give you notice that I have (*or*, the said AB has) this day appointed XY, etc., to be the arbitrator on my (his) behalf to settle by arbitration in pursuance of the proviso in that behalf contained in the deed of dated the the disputes and differences that are pending between us (you and him) AND I hereby require you within thirty days from the service of this notice to appoint an arbitrator to act on your behalf in the matter of the said disputes and differences failing which I shall apply to the Hon'ble Chief Justice of the High Court (or the person/institution if any designated by him)[8] to make the necessary appointment under section 11 of the Arbitration and Conciliation Act 1996.

37—Notice to Appoint Arbitrator in Place of One Refusing to Act or Becoming Incapable of Acting or Who Dies (Sec. 15 read with Sec.11)

In the matter of arbitration between AB, etc., and CD, etc.

To CD, etc.

Take notice that XY the arbitrator appointed by you in this matter having refused to act (*or* having become incapable of acting by becoming insane) (*or*, having died) (*or*, having left for Africa to accept a long-term appointment there) I, the above named AB, hereby request you to appoint an arbitrator to act in place of the said XY and that if the appointment is not made by you within thirty days from the service of this notice I shall apply to the Hon'ble Chief Justice of the High Court for the appointment of an arbitrator in the place of the said XY.

F—PARTNERSHIP

38—Notice of Intention to Determine Partnership (Sec. 43 Partnership Act 1932)

I hereby give you notice that I intend to dissolve as from the ——— (*or*, the date of service of this notice on you) the partnership subsisting

8 In the case of an international commercial agreement the request will have to be made to the Chief Justice of India instead, vide Sec. 11 (12) (a)

between you and me in the business of carried on at under the name and style of .

39—Public Notice of Dissolution of Partnership (Sec. 45)

PUBLIC NOTICE IS HEREBY GIVEN that the partnership heretofore subsisting between the undersigned and CD, etc., and EF, etc., carrying on business as ——— at ——— under the firm name of is dissolved by mutual consent (*or*, by the death of the said CD) (*or*, by efflux of time) as from the day of .

40—Public Notice of Retirement of Partner, if the Business is to be continued by Remaining Partners (Sec. 32)

PUBLIC NOTICE IS HEREBY GIVEN that from the partnership heretofore subsisting between the undersigned and CD, etc., and EF, etc., carrying on business as — — at ——— under the firm name of ———, the said CD has retired with the consent of all the other partners; and ceases to have any interest in the said business and all debts due to and owned by the said firm will be received and paid respectively by the undersigned and the said EF who will continue to carry on the said business as partners under the same old firm's name.

41—Notice of Retirement [Sec. 32 (1) (c)]

Take notice that with effect from the I intend to retire from the partnership established between you and me by deed of Partnership dated ———.

Or,

I hereby give you notice under Clause ——— of our Partnership deed dated the ——— of my intention to retire from the partnership as from and immediately after the ——— next being the end of the current year of partnership (*or*, on the ——— next).

42—Public Notice of Election by a Minor on Attaining Majority[9]

PUBLIC NOTICE IS HEREBY GIVEN that I, the undersigned, having been admitted to the benefits of the partnership subsisting between AB, CD, EF and GH carrying on business as at under the firm name of and having now attained majority on the (and having on the come to know of my having been admitted to the benefits of the said partnership) do hereby elect to become (*or*, not to become) a partner in the said partnership.

43—Notice to the Registrar of Firms about Changes in the Constitution of Firm [Sec. 63 (1)]

I, CD, etc., hereby give you notice that with effect from the day of the following change has occurred in the constitution of the registered firm known as and carrying on business as at .

AB, a partner in the said firm, has retired and in his place XY has been taken as a partner.

(*Or*, AB, a partner in the said firm, has died and in his place his son XY has been made a partner.)

(*Or*, AB, a partner in the said firm, has under the authority conferred by clause of the Deed of Partnership dated been expelled from the said firm.)

44—Public Notice of Dissolution[10]

PUBLIC NOTICE IS HEREBY GIVEN that I, the undersigned, have retired from the firm known as and carrying on business as at .

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9 A minor who is admitted to benefits of a partnership may give public notice within six months of attaining majority or of obtaining knowledge that he had been so admitted, whichever date is later, that he has elected to become or not to become a partner in the firm and such notice shall determine his position as regards the firm. If he fails to give such notice he shall become a partner on the expiry of the said six months [Sec. 30(5)].

10 See Sec. 32 (3), Sec. 45 Partnership Act Unless public notice is given the ex partners continue to be liable as such to third parties for any act done by them which would have been an act of the firm if done before the dissolution : *Vinayak Keshav Paranjape* v. *Dena Bank*, A 1998 Bom 356 (paras 11-12); *Central United Bank* v. *Venkataram Naidu*, A 1963 Mad 302 (DB).

Or

PUBLIC NOTICE IS HEREBY GIVEN that the firm known as ——— and carrying on business as ———at ——— has been dissolved in consequence of———.

G—ASSIGNMENT

45—Notice of Assignment of Debt by the Assignor

To,

AB, etc. (*debtor*)

I, the undersigned hereby give notice that by an instrument in writing dated the I have assigned absolutely to XY, etc., the bond of executed by you in my favour and the debt due to me from you thereunder with interest already accrued and hereafter to accrue thereon (*or*, the sum of Rs.———and interest due to me on account of, etc.).

(*or*, the decree for Rs.———interest and costs passed on the by the court of———in my favour against you in suit No.——— of———).

And I require you henceforth in due course to pay the same to the said XY.

46—Notice of Assignment of Debt by Assignee

To

AB, etc. (*debtor*)

I, the undersigned, hereby give notice that by an instrument in writing dated the———executed in my favour by CD, etc., the said CD has assigned to me absolutely, etc., (*as in previous form*) and I require you in due course to pay such principal sum and all interest due and to become due thereon to me.

47—Notice of Assignment, (General Form applicable to both cases)

To

AB, etc. (*debtor*)

Notice is hereby given to you that CD, etc., has by an instrument in writing dated the ——— absolutely assigned to EF, etc., the bond dated the ——executed by you in the said CD's favour and the debt due to him thereunder with interest already accrued and hereafter to accrue thereon (*or*, the decree obtained by the said CD against you from the Court of the Civil Judge at Aligarh being decree No. ——— dated———) (*or*, the benefit of the contract of sale of 200 bars of silver made by you in favour of the said CD on the ——to be delivered on the———at the rate of ———).

48—Notice by Assignor of a Legacy

To

AB, etc., the executor of the Will of XY deceased.

I, the undersigned, hereby give you notice that by an instrument in writing dated the———the legacy of the sum of Rs.——— bequeathed to me by the Will of XY, etc., was assigned by me absolutely to CD, etc., and I hereby request you to pay the sum to the said CD as and when the same shall become payable together with such interest (if any) as may become accrued at the date of payment.

49—Notice to Insurance Company of Assignment of Policy

Dear Sir

I, the undersigned AB, etc., hereby give you notice that by a deed of assignment dated the———the policy of life insurance effected by CD, etc., with your corporation for the sum of Rs.———dated the——— and numbered———and all moneys assured by or to become payable under the said policy were assigned by the said CD to me absolutely (*or*, by way of mortgage) and I request you to note the assignment in your books and to acknowledge receipt of the notice.

H—MISCELLANEOUS NOTICES[11]

50—Notice Through Advocate/Solicitor Generally

Dear Sir

Under instructions of my client EF, etc. (*or*, As advised by my client AB, etc.), I hereby give you notice that (continue as in the other forms).

11 Several notices in this part are preparatory to filing a suit in Civil Court. For law on the respective topics, *see also* Mogha's Law of Pleadings, 16th Edition, Part II (notes below precedents of plaints).

51—Notice of Demand by a Creditor's Pleader

Under instructions from AB, etc., I hereby require you to pay to him the sum of Rs.———borrowed by your deceased father CD from the said AB on a promissory note (bond) dated the ——— together with all interest due in respect thereof on the date of payment AND I hereby give you notice that if you make default in doing so for days after the receipt of this notice I have instructions to file a suit for recovery of the amount due to the said AB as aforesaid in a competent court of law.

52—Notice of Demand of Possession of Property and Mesne Profits

I am instructed by AB, etc., to state as follows :

WHEREAS –

1. The land and house property detailed at the foot of this notice originally belonged to one XY deceased.

2. On the death of the said XY on the one CD has taken wrongful possession of the said property and had got his name recorded in the village papers as an adopted son of XY.

3. The said CD wrongfully sold the said property to you.

4. The said CD is not the adopted son of the said XY, and the said AB, being the sister's son of the deceased XY is his legal heir and entitled to possession of the said property.

Now, therefore, as pleader for and on behalf of the said AB I hereby require you to deliver back the said property to the said AB and pay him mesne profits of the said property from the date of your possession AND I hereby give you notice that in case you fail to do so for one month the said AB will institute a civil suit against you for recovery of the proprty and mesne profits.

53—Notice Demanding Possession of Property Held Under a Voidable Sale[12]

I am instructed by AB, etc., to state as follows :

12 In such cases when the person in possession is not a trespasser but holds a valid title until it is challenged by another person, no mesne profits are recoverable until the title is challenged and recovery of property is demanded. Therefore in

WHEREAS you are in possession of the property detailed at the foot of this notice under a deed of sale dated———executed by Srimati———;

AND WHEREAS the said Smt.———, having acquired the said property from her deceased husband XY under a will which granted to her only a limited estate in the same, was not competent to transfer the same beyond her life;

AND WHEREAS the said sale was not made for any legal necessity and is not therefore binding on the reversioners of the said XY;

AND WHEREAS the said Smt.———has died on———;

AND WHEREAS the said AB is the reversionary heir of the said XY and entitled to the said property after the death of the said Smt.—.

Now, therefore, as pleader for and on behalf of the said AB, I hereby give you this notice that the said AB hereby impeaches the said sale and requires you forthwith to deliver the said property to him AND I further give you notice that if you fail to so deliver the property and to pay mesne profits of the said property up to the date of delivery of possession, the said AB will institute a suit against you for possession of the said property and mesne profits.

54—Notice Determining a Continuing Guarantee given to a Banker[13]

Take notice that I hereby discontinue and revoke the guarantee dated the———whereby I guaranteed to you the payment of all moneys then or at any time due to you from AB, etc., on the balance of his account with you and I hereby give you further notice not to make any further advances or payments to or on account of or give further credit to the said AB or incur or allow to be incurred any further liability under the said guarantee.

55—Notice Determining a Continuing Guarantee, given to an Employer

Take notice that I hereby determine and revoke the guarantee

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all such cases notice is necessary, otherwise the court will not allow mesne profits for the period before the date of suit (*Bhirgu* v. *Narsingh*, 14 ALJ 1161).

13 A continuing guarantee may be revoked as to future transactions by notice to the creditor (Sec. 130, Contract Act) but such revocation does not affect the liability already incurred up to the date of such revocation. See also GUARANTEE, *ante*, Precedent No. 1.

dated——whereby I guaranteed to you the fidelity of AB, etc., as the manager of your estate and the payment of any sum that may become due to you on account of loss or damage sustained by you by reasons of any defalcation, mis-appropriation or any other wrongful act of the said AB, etc., in the course of his employment as such manager and I hereby give you further notice that I shall not be liable for any such loss or damage sustained by you on or after this date.

56—Notice Claiming Damages for Wrongful Dismissal

To

The————Co. Ltd.

I am instructed by my client Shri———to state as follows :

Whereas my client Shri————was employed by you as Manager of the———Mill at——— owned by you under a contract of employment dated the————and continued to be in such employment up to the————day of——— AND whereas by an order dated——— the Managing Director of the said Mill wrongfully dismissed him against the terms of the aforesaid contract and in pursuance of the said order relieved him of his duties on the day of

I am instructed to request you either to reinstate my aforesaid client Shri————in service and to pay his salary for the period from the date of his wrongful dismissal to the date of reinstatement or pay him Rs.————as damages for wrongful dismissal.

Please take notice that in default of your compliance with the aforesaid request within one month from the receipt of this notice my client will be compelled to seek his legal remedy by filing a suit against you for recovery of Rs.———as damages for wrongful dismissal.

57—Notice Claiming Damages for Defamation

To

The Editor & Publisher of———.

I am instructed by my client Shri——— to state as follows.

Whereas in your paper "The Observer" of the 3rd January 1999, you have published an article headed "Jobbery in the Education

Department" in which you have made the following defamatory remarks about my client Shri Director of Education of

(*a*) * * *

(*b*) * * *

(*c*) * * *

AND whereas these remarks are highly defamatory of my said client who has on account of them suffered in his reputation and has been lowered in the estimation of his friends and the general public; I have been instructed by the said Shri to demand of you, which I hereby do, within days from the receipt of this notice, a sum of Rs.————as damages and an unqualified apology duly and prominently published in "The Observer".

Please take notice that in default of your compliance with this notice, legal action will be taken either to prosecute you for defamation in a criminal court or to sue you for damages as my aforesaid client may be advised.

58—Notice of Claim under Sec. 106 of the Indian Railways Act 1989[14]

Notice of Claim for refund of overchange or compensation for loss, destruction or deterioration of goods to the General Manager[15] Northern Railways/Eastern Railway, New Delhi/Calcutta.

AB son of CD carrying on the business of————residing in house No.———— of Mohalla———street————at————hereby gives notice of his claim for compensation for loss as required by Sec. 106 of the Indian Railways Act.

14 The notice has to be given within a period of six months from the date of entrustment of the goods : Sec. 106 (1). The notice should actually reach the administration within time, not merely be posted within time : *Khandelwal Ferro Alloys* v. *Union of India*, A 1999 Bom 50, follg. *Union of India* v. *Amin Chand Pyarelal*, A 1974 P & H 190 and distg. *Union of India* v. *Sha Vastimull Harakchand*, A 1959 Mys 13 (case of non-delivery, for which it was held that no notice was necessary).

15 *Or*, Chief Commercial Superintendent : Sec. 192 ("any of the railway servants authorised by the General Manager").

1. That AB booked a consignment of ——— packages/tins (*mention the nature of the consignment*) from ——— a station of——— Railway to——— a station on ——— Railways on ——— under R.R. No.——— dated———.

2. That he was consignor and the consignee under the said R.R. of the said consignment.

3. That at the time of delivery at———station———packages/tins were not delivered while———packages/tins had been badly damaged which caused loss to the said AB. The said AB hereby makes a claim for compensation for loss due to short delivery/non-delivery of———packages/tins and for damages to———packages/tins. He claims a sum of Rs.——— for the same.

59—Notice under Sec.106 of the Railways Act (Another Form)

Notice on behalf of AB, etc., (*give full address*) under Sec.106, Indian Railways Act, for compensation for loss, etc., ——— to the General Manager——— Railway———.

Dear Sir,

I despatched a consignment consisting of ——— from ——— station to——— station both on ——— Railway (*or*, the former being on———Railway and the latter being on———Railway) in my name as a consignor and consignee on ——— by means of R.R. No.——— dated ———.

The said consignment should in the ordinary course have reached the destination within———days but the consignment remained undelivered (*or*, it was short delivered by ——— even after a lapse of——— days) and according to the endorsement made on the R.R. by the Railway authorities at the destination the consignment is not traceable.

That the loss of the consignment (*or*, short delivery) is totally due to the misconduct or neglect of the Railway administration and I hereby make a claim for compensation for the loss due to non-delivery (*or*, short delivery) the details of which are being given below. I claim a sum of Rs. ——— as the price and Rs. ——— for damages.

60—Notice under Sec. 106 of the Railway Act (Another form)

To

The Manager
Northern Railway/Eastern Railway
New Delhi/Calcutta

I, AB etc., hereby give you notice of my claim for compensation for loss as required by Sec. 106 of the Indian Railways Act.

(1) That I booked a consignment consisting of———packages from———a station on Northern Railways to ———a station on Eastern Railways on ——under R.R. No.———dated———.

(2) That I was the consignor and consignee both under the said R.R. of the said consignment.

(3) That at the time of delivery at———station———packages were not delivered at all while———packages had been badly damaged which caused loss to me.

(4) That I hereby make a claim for compensation for loss due to short delivery/ non-delivery of ———packages and for damage to——— packages.

I claim a sum of Rs.———for the same.

61—Notice of Suit Against Government[16] (Sec. 80 C.P.C.)

To

The Collector of ———/The Secretary to Government of———.

16 At least two months' previous notice of suit against the Government is necessary under sub-section (1) of Sec. 80 C.P.C. A suit to obtain an urgent or immediate relief, may be instituted with the leave of the court, without serving the notice [Sub-Sec.(2) of Sec. 80 C.P.C.] Such notice should state the name, description, and place of residence of the plaintiff, the cause of action (which means a short statement of the facts which constitute the ground on which the claim will be based), and the relief which is intended to be claimed, and may be given by pleader or agent on his behalf. It is not necessary that it should be addressed to a State Government or Union of India so long as it clearly states against whom the threatened suit will be instituted. The notice shall be delivered to or left at the office of the concerned authority (Sec. 80, C.P.C.). If the facts are long, it is sometimes more convenient to attach to the notice a draft plaint and refer to it in the notice which, in such a case, need not be detailed.

As Advocate for and on behalf of AB etc., I hereby give you notice that unless the sum of Rs. ——— is refunded to him the said AB will on the expiry of two months from the date of service of this notice institute a suit in a Civil Court of competent jurisdiction against the State Government for the refund of Rs. ——— and for the award of interest on that sum at the rate of———percent per annum from the———by way of damages, on the following cause of action :

(1) The said AB is the owner of the land described in the schedule below.

(2) The said AB has by a deed dated the———mortgaged the said land with possession to one EF, etc., and since the date of mortgage the said EF and not AB has been in possession thereof;

(3) The said EF failed to pay the Government revenue due in respect of the said land for the years ——— *Fasli*;

(4) Instead of taking proceedings for recovery of the said revenue from the said EF who was legally liable for it, the *Tahsildar* of——— attached the movable property of the said AB.

(5) The said AB had to deposit and he did deposit under protest in writing in the———the said sum of Rs. ——— being the revenue for the said years in respect of the said land in order to save his movable property and have it released from attachment.

(6) As the payment was made by the said AB under coercion he is entitled to have it refunded.

The schedule referred to herein

62—Notice of Suit Against Government, (Another Form)

To ———

I, AB, etc., (*or*, As Advocate for and on behalf of AB, etc.) hereby give you notice that unless proper and satisfactory amends are made I (the said AB) will after the expiry of two months from the date of service of this notice, institute a civil suit in a court of competent jurisdiction on the cause of action and for the reliefs appearing from the draft plaint appended hereto, which should be read as part of this notice.

(*Draft Plaint*)

63—Notice of Suit Against a Public officer*

To

CD, etc., Sub-Inspector in charge of —, Police Station, District .

As Advocate for and on behalf of AB, etc., and under his instructions I hereby give you notice as follows :

1. That in while you were Station Officer of the Police Station you maliciously and without any reasonable or probable cause arrested the said AB and searched his house and prosecuted him on a false charge of murder of his wife.

2. That while the said AB was in your custody in the police lock-up at you abused and beat him, gave him no food, did not allow him to sleep and caused him other inconvenience and tortures in order to extort money from him and, when he did not agree to pay you the money demanded by you as bribe, you challaned him on the said charge.

* It is not every suit against a public officer for which a previous notice is required, but such notice is required only if the suit is in respect of any act purporting to be done by the public officer in his official capacity, and the object is to make him personally liable for such act. Therefore though a receiver is a public officer and notice is necessary for a suit against him in respect of acts done by him as such,[17] no notice is necessary for a suit against a receiver for possession of property vested in him by order of the court.[18] The notice should be in the same form as a notice of suit against the Government. The cause of action should clearly indicate that the claim is in respect of an act done by the defendant in his official capacity. In a suit for damages against a public officer using defamatory language, insulting and assaulting his subordinates no notice is necessary as it is not an act purporting to be done by such public officer in his official capacity.[19] On the same principle sanction under Sec. 197, Cr. P.C. is not necessary before a public officer can be prosecuted for an offence of taking bribe under Sec. 161 of the Indian Penal Code.[20] Notice under Sec. 80 C.P.C. is necessary in suits on contract also.[21]

17 *Asia Khatun* v. *Amarendra Nath*, A 1940 Cal 578.

18 *Bhuban* v. *Biraj*, 1940 AC 1, 44 CWN 74.

18 *Narayan Hari* v. *Yeshawant Raoji Naik*, A 1928 Bom 352.

20 *Lumbardur Zutshi* v. *King*, 1950 ALJ 120, *Gill* v. *King*, 75 IA 61.

21 *Revati Mohan* v. *Jatindra Mohan*, A 1934 PC 96.

3. That after a protracted trial at which you gave false evidence and produced suborned witnesses the said AB was acquitted, the Sessions Judge finding that the case against him was false.

4. That the said AB had to undergo great physical and mental suffering while he was in the lock-up and as undertrial prisoner and had to spend Rs.50,000 in his defence.

5. The said AB, therefore, demands from you Rs.50,000 as damages for assault and battery, Rs.50,000 as damages for his physical and mental suffering during the period of trial and Rs.50,000 the cost incurred by him in his defence, total Rs.1,50,000, and gives you notice that if you do not pay this amount or make other suitable amends to the satisfaction of the said AB, the said AB will on the expiry of two months from the date of service of this notice file a suit against you for the recovery of Rs.1,50,000 as damages for assault and battery and malicious prosecution in the Court of the Civil Judge (Senior Division) at Agra.

64—Notice Demanding Delivery of Movable Property Deposited for Safe Custody

I, AB, etc., (*or*, as Advocate for and on behalf of AB, etc., and under instructions from him) hereby require you to deliver up to me (the said AB) within------days from the service of this notice upon you the several articles set forth in the inventory hereunder written which were entrusted to you by me (him) for safe custody AND FURTHER TAKE notice that if you fail to comply with this demand I (the said AB) shall (will) institute such proceedings against you as I (he) may be advised.

The inventory referred to herein.

65—Notice to Creditors of a Deceased Person Inviting Claims by Executors[1]

Notice is hereby given that all persons having claims against the estate of XY deceased who died on the------and whose Will was proved in the Court of District Judge of------by the undersigned the executor therein named are required to send particulars thereof in writing to the

1 See Preliminary Note under WILLS, *post* for when taking out a probate is obligatory and when it is not.

undersigned on or before the———next, after which date the undersigned will proceed to distribute the assets having regard only to the claims of which he shall then have had notice.

66—Notice to Creditors of a Deceased Person Inviting Claims by Administrator

Notice is hereby given that all persons having claims against the estate of XY etc., deceased who died on the——— and Letters of Administration of whose estate were granted on the——— by the Court of the District Judge of to the undersigned are hereby required to send, etc., (*as in Form* 65).

67—Notice Requiring Abatement and Removal of a Nuisance

I, AB, etc., (*or*, as Advocate for and on behalf of AB, etc., and under his instructions) hereby require you to remove the nuisance and obstruction described at the foot of this notice. AND I give you notice that in default of your so doing within——— days from the service of this notice I (the said AB) shall (will) take such steps as I (he) may be advised to secure the abatement, removal and discontinuance of such nuisance and obstruction and to recover such damages as I have (he has) sustained or may sustain by reason of the said nuisance and obstruction.

(*Description of the nuisance and obstruction. For example*). Obstruction to the light and air of the notice-giver's house situate at ——— passing through the windows in the western wall of the said house which you have blocked by building a wall alongside the said house.

Or, obstruction caused by you to the notice-giver's right of way from the house at ———to the public highway known as———by constructing your new house.

Or, nuisance caused by flowing the water of the kitchen and latrine of your house at———to my land on the west of the said house by constructing two water spouts in the western wall of your house.

68—Notice Requiring Abatement and Removal of a Nuisance (Another Form)

I, AB, etc., hereby give you notice as follows :

1. That I own a house in *mohalla*—— in the city of and have been in possession of it for the last 50 years.

2. That I have been residing in the said house with my family and my ladies who observe strict *purdah* and do not appear before the public and they have always been enjoying this seclusion from outsiders while residing in the said house.

3. That you have recently built a room on the roof of your house to the east of my house and in the western wall of the newly built room opened three windows overlooking the residential rooms, kitichen and the courtyard of the *zanana* portion of my house.

4. I, therefore, require you to close the said windows and give you notice that if you fail to do so within—— days of the receipt of this notice, I shall file a suit in the court for closing the said windows, damages and such other reliefs as I may be entitled to in respect of the aforesaid invasion of my right of privacy.

69—Notice of Dishonour of Bill to Drawer[2]

To

CD, etc.

I hereby give you notice that a bill of exchange No. dated drawn by you on AB, etc., for Rs.——payable to me—— months after date has been dishonoured by non-acceptance (*or*, by non payment).

70—Notice of Dishonour of Bill to Endorser

To,

EF, etc. (*endorser*)

I, hereby give you notice that the bill of exchange No.——dated the——drawn by AB, etc., on CD, etc., for Rs.——payable to XY, etc., or order—— months after date and bearing your endorsement has been dishonoured by non-acceptance (*or*, non payment).

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2 A notice of dishonour is necessary in the case of negotiable instruments. It is not necessary in cases mentioned in section 98, Negotiable Instruments Act. Such notice may be given to the party intended to be charged or his authorized agent, or in case of his death, his legal representatives and in case of insolvency, to his assignee or receiver. It may be sent by post to his place of business or, if there is no place of business, to his place of residence (Sec. 94). *See also* Preliminary Note under NEGOTIABLE INSTRUMENTS, *ante*.

71—Notice of Dishonour of a Cheque

To

AB, etc.

I hereby give you notice that a cheque No.——dated the ——— of ——drawn by you on the———Bank for Rs.———payable to CD, etc., or order and endorsed by the said CD to me has been dishonoured by non-payment.

(*For notice of Protest, see Statutory forms, prescribed under Sec.*101, *Negotiable Instruments Act*).

72—Notice of Sale of Pledged Articles

To

AB, etc., (*pledgee*).

Whereas on———you borrowed Rs.———from me on pledge of the articles mentioned in the inventory below and whereas per account given below Rs.——— are now due to me from you on account of the balance of the said debt and interest, I hereby demand the said amount from you and give you notice that in case you fail to make the payment by the———day of———the said articles shall be sold by public auction to the highest bidder at——(*place*) at———(*time*) on ———(*date*) (*or*, shall be sold by me privately at the best obtainable price) for realization of my dues and if the same are not satisfied from the sale proceeds after deducting the expenses incurred in sale or attempted sale the deficiency shall be recovered from you.

Account above referred to

* * * *

Inventory above referred to

* * * *

73—Public Notice of Termination of Agent's Authority

PUBLIC NOTICE IS HEREBY GIVEN that CD, etc., who was in the service of the undersigned as Sale Agent (*or*, as rent collector, *or*, a *Mukhtar Am*) has ceased to be in my service from the———day

of———————and he has no authority whatsoever to transact any business or to receive any money or to act in any way for or on my behalf (and the power of attorney executed by me in his favour on the has been revoked).

74—Public Notice of Sale of Business by Heirs

PUBLIC NOTICE IS HEREBY GIVEN that AB, etc., and CD, etc., the heirs and legal representatives of the deceased XY, etc., have sold to the undersigned the business of lately carried on by the said XY at and that all amounts now due and all debts now owing to the said business should be paid to the undersigned at its place of business AND further that all debts owing by the said business will be paid and discharged by the undersigned at the said place of business.

75—Public Notice by Father Repudiating the Debts of Son

PUBLIC NOTICE IS HEREBY GIVEN that my son AB, etc., has separated from me and has no claim or title to any of the properties possessed by me all of which are self-acquired properties and therefore neither myself nor any of the properties possessed by me shall be liable for any debts the said AB may hereafter contract or incur and anyone advancing money to him either personally or on the security of the said properties shall do so at his own risk.

PARTITION

Preliminary Note

What is a partition

Partition is the process by which property, which is held in undivided shares by joint tenants, tenants in common, or coparceners, is divided amongst them so that each co-owner thenceforth holds a divided share in severalty instead of an undivided share in the whole. It is possible that only one out of serveral co-owners may desire a partition and the others prefer to remain joint. In such a case, the property is divided only in two lots, one for the co-owner separating and the other jointly for the others.

How is Partition made

Partition may be made either by an agreement—oral or written, or through court, or by arbitration. If parties cannot agree, anyone or more of them may file a suit in the court.

Deed of Partition

No particular form of deed is necessary to effect a partition and it is sufficient if the intention to divide and to hold the property in separate lots in severalty is clearly indicated. The deed takes the form of transfer or release by each co-owner of his share in the joint property allotted to the other. In the case of joint tenants or co-parceners, each "releases and conveys" his share in the property allotted to the others in favour of the latter, while in the case of tenants in common, a "grant" is made instead of "release". The reason is obvious. In the case of joint tenants there is no defined share which a co-owner can grant or transfer, as it is in the case of tenants in common.[1]

It is advisable to execute a partition deed in duplicate, triplicate, etc., each of which is treated as an original, so that each party may take one of them. If it is not executed in duplicates, one party keeps the deed, and in such cases he should by a clause in the partition deed undertake to permit others to inspect and take copies thereof.

Recitals

A deed of partition generally contains recitals showing the title of the parties to the joint property, their respective shares in it, and a desire or

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1 For difference between the two, see *Venkatakrishna* v. *Satyayathi*, A 1968 SC 751; *Ram Awalamb* v. *Jata Shankar*, A 1969 All 526 (FB); See also Sec. 45 Transfer of Property Act, Sec. 106 Succession Act. In "joint tenancy" there is right of survivorship but not so in a "tenancy in common" where the shares are fixed.

agreement to partition it. Reference is also often made to the proceedings prior to the execution of the deed, e.g., the preparation and drawing of lots. These recitals should be carefully drafted.

Operative Words and Transfer Clause

After the recitals follow the witnessing clauses. The first contains the operative part of the deed containing the agreement to hold different lots in severalty and the release or grant by each co-owner in favour of the others with the usual habendum, which should entitle the transferee to hold the lot allotted to him in severalty. When the property is divided into two lots it is easy to effect the partition by two clauses of reciprocal grant or release but such clauses are likely to become complicated when there are several lots, as in that case as many conveyance clauses will be necessary as there are permutations and combinations of the co-owners. For instance if lots 1,2,3, and 4 are allotted to A,B,C,and D respectively, B,C, and D will convey their shares in lot 1 to A; A, C and D their shares in lot 2 to B; A, B and D their shares in lot 3 to C; A, B and C their shares in lot 4 to D. In such cases it may be found easier to have one clause agreeing to hold the different lots by different co-owner as absolute owner in severalty, and another general clause expressing a grant or release of each co-owner of his share in the lot allotted to others.

Money Compensation

Sometimes money compensation has to be paid by one co-owner to another for equality of partition to bring about equitable adjustment. This is known as "owelty" This may be recited in the recitals, and, if it has already been paid, an acknowledgment will be inserted in the conveyance clause relating to the grant or release by the persons receiving the consideration. If it is agreed to be paid in future the agreement should be definitely mentioned in the witnessing clauses as a covenant by the party agreeing to pay.

Covenants

The usual covenant in a deed of partition are covenants about encumbrances on the property, apportionment of the debts or continuance of the charges, covenant for further assurance, covenant for quiet enjoyment, about custody of title deeds and the right of production. In a partition of house property, covenants about easements of necessity may be necessary. If the property is leasehold property, covenant about payment of rent and performance of covenants of the lease are generally necessary. Any special covenant about any other necessary matter may be inserted in the usual way. A covenant that one co-owner transferring his share will give the option of first refusal to the other is valid.[2]

2 *Rattanlal* v. *Ramanuj Das*, A 1944 Nag 187.

In the case of dwelling houses the legislature has itself provided (Sec. 4, Partition Act 1893) that if a cosharer has transferred his undivided share in the family dwelling house to a stranger and that stranger then files a suit for partition, the Court shall allow any cosharer to buy that share from the plaintiff instead of dividing the house for separating that stranger's share. If the stranger transferee does not apply for separation of his share, the provisions of Sec. 4 would not come in operation[3]. This provision extends to all families, not merely Hindu families.

The value of each lot must be mentioned, either in the schedules in which the lots are mentioned, or in the recitals, or in a covenant, as may be convenient. The various lots of property allotted to each co-owner should be mentioned in separate schedules, and should be prepared with the same precision as "Parcels" in any conveyance.

Parties to the Deed

All co-owners should be parties to a deed for partition. If some of them are minors they may be represented by their guardians. The act of the guardian in this respect is generally binding on the minor, if the partition is to the advantage of the minor and is fair and equitable. If it is not, the minor has a right to get it re-opened on attaining majority. The necessity for the partition should in such cases be clearly mentioned in the recitals.

Title Deeds

Title deeds relating to the property falling to the lot of any party should be handed over to that party. If there are any title deeds which relate to properties falling to the shares of several co-sharers, one of the parties should by mutual consent, preferably expressed in the deed itself, retain them, undertaking their safe custody and to allow others to make inspection and take copies. It is not, however, absolutely necessary to add such a covenant to the deed itself and a partition deed would not be invalid for want of it.

Stamp Duty

Same as on a Bond for the amount of the value of the share or shares of the property. The largest share remaining separated after the property is partitioned or if there are two or more shares of equal value and not smaller than any of the other shares, then one of such equal shares shall be deemed to be that from which the other shares are separated : Provided always that--

Where an instrument of partition containing an agreement to divide property in severalty is executed and a partition is effected in pursuance of such agreement, the duty chargeable upon the instrument effecting such

3 *Babulal* v. *Habibnoor Khan*, A 2000 SC 2684, relied on *Ghanteshwar Ghosh* v. *Madan Mohan Ghosh*, A 1997 SC 471.

partition shall be reduced by the amount of duty paid in respect of the first instrument, but shall not be less than the amount provided by the local amendments made by the States in Article 45, of the Stamp Act.

Duplicates will be stamped as provided in Article 25, but the value of the stamp on the original should be denoted on each duplicate (Sec.16).

In the absence of a contract to the contrary, stamp duty is payable by the parties to the deed in proportion to their respective shares in the whole property partitioned [Sec. 29 (g)].

Registration

A partition of joint property is not an exchange within the meaning of Sec. 118, Transfer of Property Act and therefore, partition can be effected orally and need not be in writing. If, however, it is effected by an instrument in writing a deed of partition of immovable property of the value of Rs. 100 or upwards requires registration. However, a partition of a joint Hindu family property has been held not to amount to transfer.[4] Still, it will be expedient to have such a partition deed registered. A writing which contains a mere statement of partition previously made does not require registration.[5] A mere list of properties allotted at partition is not a deed of partition and does not require registration.[6]

An unregistered deed of partition by which the parties purported to effect a partition of their properties fell within the purview of section 49(*a*), Registration Act and though the deed was admissible in evidence for proving the factum of partition, it could not be used for proving that a particular property was allotted to a member upon partition as his share.[7] A partition deed of movable property does not require registration. If a partition includes both movable and immovable properties and the deed is not registered, it cannot be relied on even in support of a claim to movable property if the partition is one and indivisible, but it is otherwise, if the partition of movables is separate.[8]

It remains open to parties to effect partition orally and, thereafter, to record the factum of having made the division in the form of a memorandum. That would not require registration. The memorandum requires careful drafting so that it may not give the appearance of being the deed of partition in itself.

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4 *C.I.T.* v. *Keshavlal*, A 1965 SC 866; *Sarin* v. *Ajit Kumar*, A 1966 SC 432.

5 *Runganayaki* v. *Rukmani*, 45 MLJ 100, 72 IC 456; *Yendapalli* v. *Yendapalli*, A 1958 AP 147; See Preliminary Note under COMPROMISE etc., *ante*.

6 *Kshetra Mohan* v. *Tufani*, 37 CWN 112, 144 IC 863.

7 *Gopinath Sharma* v. *Hangsa Sharma*, A 1950 Assam 129.

8 *Pothi* v. *Nagarana*, 30 MLJ 62, 32 IC 486; *Caramchand* v. *Uma Datt*, 1932 ALJ 45, 138 IC 369.

PRECEDENTS

1—Deed of Partition between Two Tenants in Common

THIS PARTITION is made on the——— day of——— BETWEEN AB, etc., of the one part and CD, etc., of the other part.

WHEREAS——

Recitals

(1) The properties mentioned in the first and second schedules hereto belonged to one XY, etc.

(2) The said XY died on the——— leaving behind him the said AB, his son and the said CD, his daughter as his only heirs who inherited the said property under the Mohammedan Law in the shares of two-third and one-thirds respectively;

(3) The parties hereto have agreed to divide the said properties in the manner hereinafter appearing; and

(4) It has been agreed between the parties that the sum of Rs.——— should be paid by the said AB to the said CD for equality of partition.

NOW THIS DEED WITNESSES as follows:

Conveyance

1. In pursuance of the said agreement and in consideration of the transfer by the said CD hereinafter contained the said AB hereby grants and conveys to the said CD ALL THAT the undivided two-thirds share and interest of the said AB in the property described in schedule A hereto containing——— square metres and delineated on the plan annexed hereto and thereon shown with its boundaries coloured red together with all buildings TO HOLD the same to the said CD henceforth in severalty.

2. In further pursuance of the said agreement and in consideration of the transfer by the said AB hereinbefore contained and the payment of Rs.——— by the said AB (the receipt of which is hereby acknowledged) the said CD hereby grants and conveys to the said AB ALL THAT the undivided one-third share and interest of the said CD in the property described in the schedule B hereto containing——— square metres and

delineated on the plan hereto annexed and thereon shown with its boundaries coloured green together with all buildings thereon TO HOLD the same to the said AB henceforth in severalty.

3. Covenants

It is hereby agreed between the parties as follows:

(1) Encumbrances

There is no encumbrance or charge on the property hereby partitioned and that if any encumbrance or charge is found to attach to any part of such property both the parties shall be liable for the same in proportion to their shares in the joint property (*Or*, the property hereby allotted to each party has been allotted to it subject to any encumbrance or charge attaching thereto and the other party shall not be liable for any part of the same).

(2) Quiet Enjoyment

The property hereby allotted to each party shall be entered upon and henceforth held in severalty by such party without any interruption or disturbance by the other party or any one claiming through or under him.

(3) Further Assurance

Each party will at the cost of the person requiring the same do every such act or thing as may reasonably be required for further or more perfectly assuring the property hereby transferred by it to the other.

(4) Custody of Partition Deed

The said AB shall have the custody of this deed together with the maps annexed thereto and will at the request and cost of the said CD produce the same for inspection and will produce the same in evidence.

(5) Production of Title Deeds

Each of the parties hereto will at the request of the other produce for inspection by the other and produce in evidence in legal proceedings any title deed or document in his possession and in any way affecting the *title* of the party requiring such production to the property hereby transferred to it (*or*, The title deeds of the property partitioned shall be retained by the said AB who undertakes, at the request of any other party, to produce the same for inspection by such other party and to allow the latter to take copies thereof).

(6) Interpretation Clause

Wherever such an interpretation would be necessary in order to give the fullest scope and effect legally possible to any covenant or contract herein contained, the expressions "the said AB" and "the said CD" hereinbefore used include the heirs, successors, representatives and assigns of the said AB and the said CD respectively.

4. Value of Lots

It is hereby declared that the values of the properties mentioned in the first and second schedule hereto are Rs.————and Rs.———— respectively.

5. Arrears of Rent.

It is hereby agreed that each party will be entitled to realize the arrears of rent in respect of the property allotted to it and the other party hereby assigns to it its undivided right and interest in such arrears.[1]

The schedule herein referred to.

IN WITNESS WHEREOF, etc.

2 Partition Between Three Hindu Coparceners (One being Minor), and Mother

THIS DEED OF PARTITION is made on the————day of————BETWEEN AB, etc., of the first part, CD, etc., of the second part, EF, etc., a minor, acting through his father and natural guardian the said AB, of the third part AND GH, etc., of the fourth part.

WHEREAS—

(1) The said AB and his sons the said CD and EF form a joint Hindu family, and the said GH is the wife of the said AB and mother of the said CD and EF;

(2) The movable and immovable properties mentioned in the first, second, third and fourth schedules hereto is the joint property of the said family, part of it being ancestral property and part having been acquired by the family with joint funds or earnings of individual members thrown into the common stock;

1 This is necessary if the property is in possession of tenants and there are arrears of rent.

(3) The family also owns a sugar factory at———which has been closed for some time but there are outstanding debts of the factory which are entered in the books of the factory;

(4) Owing to diverse disputes between the said AB and CD and quarrels between the said GH and the wife of the said CD, the said CD has for some time past been living separately from others and it is now expedient that the family property should be partitioned;

(5) The said partition is also advantageous and beneficial to the interest of the said EF minor;

(6) Under the law the said GH being the mother of the said CD and EF is also entitled to a share in the said property on partition and each of the parties hereto is, therefore, entitled to a one-fourth share;

(7) On the advice of the friends of the family, the parties agreed to divide the said property amicably, and with this object the said AB prepared four equal lots of the said joint property and it was agreed that they should be allotted to the parties by drawing of lots; and

(8) Lots were accordingly drawn and the lots mentioned in the first, second, third and fourth schedules were drawn by the said AB, CD, EF and GH respectively.

NOW THIS DEED WITNESSES as follows:

1. In pursuance of the aforesaid agreement the parties hereto hereby agree and declare that the said AB, CD, EF and GH shall henceforth be separate owners of the properties mentioned in the first, second, third and fourth schedules hereto respectively and each of them shall hold and enjoy the property so allotted to him in severalty and free and discharged from all claims and demands of the others thereto or concerning therewith.

2. Each of the said parties AB, CD and EF hereby releases and conveys to the other of them and to GH its undivided share and interest in the property hereby allotted to such other and to GH respectively.

3. *Covenants, etc.*

(*As in Form* 1 *and any special covenants*).

4. It is hereby declared that the value of the properties entered in each of the first, second, third and fourth schedules is Rs.——.

5. *Arrears of Rent*

(*As in Form* 1, *if necessary*).

The schedule herein referred to.

3—Separation of the Share of One Co-owner from the Rest of the Estate

THIS DEED OF PARTITION is made on the————day of————BETWEEN AB, etc., and CD and EF minor sons of the said AB acting through their natural guardian the said AB of the one part AND XY, etc., of the other part.

WHEREAS-

(1) The late MN uncle of the said XY and father of the said AB was the owner of the properties mentioned in the first and second schedules hereto which are valued at Rs.——;

(2) Disputes having arisen between the said XY and AB about the right to succeed to the said property they were settled by a compromise effected between them on the——under which it was agreed that the said XY should get a 1/6th share in the said estate of the said MN and the remaining 5/6th should remain with the said AB;

(3) The said CD and EF being the sons of the AB have rights by birth in the said 5/6th share;

(4) The said AB, being in possession of the said entire estate has been paying 1/6th share of the net profits thereof to the said XY; and

(5) The said XY being desirous of separating her 1/6th share by partition, applied to the said AB and the said AB accordingly prepared certain lots of partition, out of which one lot comprising the property described in the first schedule hereto and representing approximately 1/6th share of the entire estate comprised in the first and second schedules was selected by the said XY, and the said AB on his own behalf and on behalf of the said CD and EF has agreed that the same should be given to her and the parties have further agreed that as the value of the property in the first schedule exceeds 1/6th of the entire estate by Rs.————the said XY should pay that sum to the said AB, CD and EF and that the said sum be deducted from the amount of her share of profits payable by the said AB, CD and EF for the year ————.

NOW THIS DEED WITNESSES as follows:

1. In pursuance of the aforesaid agreement and in consideration of the transfer by the said XY hereinafter contained and of the sum of Rs.———to be paid by the said XY as hereinafter stipulated the said AB on his own behalf and on behalf of the said CD and EF hereby grants and conveys to the said XY ALL that undivided 1/6th share of the said AB, CD and EF in the property mentioned in the first schedule hereto TO HOLD the same to the said XY henceforth in severalty.

2. In further pursuance of the aforesaid agreement and in consideration of the transfer hereinbefore contained the said XY hereby grants and conveys to the said AB, CD and EF ALL that the undivided 5/6th share in the property,described in the second schedule hereto TO HOLD the same to the said AB, CD and EF henceforth in severalty.

3. The said AB, on his own behalf and on behalf of the said CD and EF and the said XY, hereby agree with each other as follows:

(1) The said AB, CD and EF may deduct from the profits payable by them to the said XY for the year———a sum of Rs.———payable by her as hereinbefore mentioned;

(*Other covenants as in Form* 1 *or any special covenant*).

The schedule herein referred to.

IN WITNESS WHEREOF, etc.

4—Confirmation of a Partition Already made (Some Co-Sharers being Minor Members of a Joint Hindu Family,) when the Parties were Tenants in Common

THIS DEED OF PARTITION is made on the———day of———BETWEEN AB acting on his own behalf and as manager of a joint family governed by the Mitakshara School of Hindu Law and consisting of himself and his three minor brothers CD, EF and GH, sons of XY and residents of———(hereinafter in this capacity called the first party) of the one part AND JK, etc., of the other part;

WHEREAS—

(1) The said AB, CD, EF and GH and their aforesaid father XY on the one hand and the said JK on the other were owners in equal shares of

the property mentioned in the two lists called Lot No. 1 and Lot No. 2 annexed hereto;

(2) The said JK and the said XY now deceased and the then manager of the joint Hindu family consisting of himself and his aforesaid sons AB, CD, EF and GH being desirous of effecting a partition of the said property, the said two Lots Nos. 1 and 2 were prepared and by a drawing of lots on the in the presence of the said XY and said JK, Lot No. 1 fell to the share of the said XY and his aforesaid sons and Lot No. 2 fell to the share of JK;

(3) The said XY and the said JK agreed that partition should be effected in accordance with the aforesaid lots as drawn in the manner aforesaid;

(4) After the death of the said XY mutation was effected in the Revenue papers with the consent of the parties hereto in accordance with partition carried out in manner aforesaid, *i.e.*, the name of JK was entered on the property mentioned in Lot No. 2 and the names of AB, CD, EF and GH on property mentioned in Lot No. 1;

(5) The parties hereto have now agreed that in order to confirm the aforesaid partition carried out in the manner aforesaid a formal deed of partition should be drawn up and executed.

NOW THIS DEED WITNESSES as follows:

1. In pursuance of the said agreement and in consideration of the transfer hereinafter contained by the said JK, the first party hereby confirms the aforesaid partition and grants and conveys to the said JK as from the date of the said partition, *i.e.*, the ———day of———, ALL THAT the undivided share and interest of the said AB, CD, EF and GH in the property described in the list called Lot No. 2 annexed hereto TO HOLD the same to the said JK thenceforth in severalty;

2. In further pursuance of the said agreement and in consideration of the transfer by the first party hereinbefore contained, the said JK hereby confirms the aforesaid partition and grants and conveys to the said AB, CD, EF and GH as from the date of the said partition, *i.e.* the———day of , ALL that undivided share and interest of the said JK in the property described in the list called Lot No. 1 annexed hereto TO HOLD the same to the said AB, CD, EF and GH thenceforth in severalty.

3 and 4.(*as in Form* 1).

IN WITNESS WHEREOF, etc.

5—Partition of Leasehold Property

THIS DEED OF PARTITION,etc. (*as in Form* 1).

WHEREAS—

(1) By a deed of lease dated ——— one XY, etc., demised the land described in the first and second schedules hereto to the said AB and one EF, deceased father of the said CD, to be held by them as tenants in common in equal shares for the term of ——— years on the terms and conditions mentioned in the said deed of lease ———;

(2) The said AB and EF had obtained the lease of the said land for the construction of a sugar factory thereon in partnership but before this intention could be carried out the said EF died on the ———;

(3) The said CD has inherited the leasehold rights of the said EF in said land but he does not wish to join with the said AB in the construction of a sugar factory;

(4) The parties now want to build two residential houses separately on the demised land and have therefore agreed to make a division of the said land in the manner hereinafter appearing;

(5) It has also been agreed between the said AB and CD that a sum of Rs.——— should be paid by the said AB to the said CD for equality of partition.

NOW THIS DEED WITNESSES as follows:

1. In pursuance of the aforesaid agreement and in consideration of the assignment by the said CD hereinafter contained the said AB hereby grants and assigns to the said CD ALL that the undivided share and interest of the said AB of and in the leasehold land described in the first schedule hereto and delineated on the map annexed hereto and thereon shown as coloured red TO HOLD the same to the said CD henceforth in severalty for all the residue now unexpired of the said term of ——— years granted by the aforesaid lease subject nevertheless to the payment of the apportioned yearly rent of Rs.——— and to the performance and observance of such of the covenants and provisions and conditions

contained in the said deed of lease and to be performed by the lessee as affect the land described in the first schedule hereto.

2. In further pursuance of the said agreement and in consideration of the sum of Rs. paid by the said AB (the receipt of which is hereby acknowledged) and of the assignment by the said AB hereinbefore contained the said CD hereby grants and assigns to the said AB ALL, etc., (*as in Clause* 1, *substituting "second schedule" for "first schedule"*).

3. Each of the parties hereto hereby covenants with the other as follows:

(1) That during the continuance of the said term of ——————years and of any renewal thereof they will duly pay such part of the said yearly rent of Rs. ——reserved by the said lease as is hereby apportioned to be made payable by them at the time and in the manner provided in the said lease.

(2) That during the said term and renewal they will perform and observe the covenants and conditions contained in the said lease and to be performed and observed by the lessee so far as such covenant and condition in any way relate to the leasehold land assigned to him under this partition.

(3) That if and whenever on account of non-performance or non-observance of any of the covenants and conditions aforesaid by any of the parties hereto the other of them shall be called upon to pay and shall pay such apportioned part of the rent or any part thereof or shall incur any costs, charges, damages or expenses in respect of the covenants and conditions affecting the premises hereby assigned to the party so in default and in every such case such party will forthwith repay such sums of money, costs, charges, damages and expenses so paid or incurred to the party so paying or so incurring the same.

(4) *Other covenants as necessary.*

5. Interpretation clause (*as in clause 3 (6) of Form 1*)

(*Rest as in Form 1*)

The schedule herein referred to.

IN WITNESS WHEREOF, etc.

6—General Clauses in Partition Deed Relating to Debts

There are no debts owing by the family. If in respect of the transaction ..... (*specify details*) any amount is found due and payable to 'X' that amount is to be paid by AB and he alone and the properties in Schedule A (allotted to him) alone will be answerable for that amount.'

2 Such clause does not create a charge in favour of 'X' on the properties in Schedule A but is intended to confer a right of indemnity upon other membrs of the family if 'X' sought to enforce the liability against them : *M.C. Chacko* v. *State Bank of Travancore*, (1969) 2 SCC 343; *Akella Suryanarayana Rao* v. *Dwarampudi*, 55 Mad 436.

PARTNERSHIP

Preliminary Note

Definition

According to the definition in section 4 of the Indian Partnership Act, 1932, a 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. The agreement to share the profits of business is an essential element, and it is expressly provided by Sec. 5 that the relation of partnership arises from contract and not from status. The sharing of profits by joint owners of a property does not, therefore, make persons partners. The Act does not apply to a trading joint Hindu family[1] as that relationship arises from status and not from agreement.

It is not merely the name given to a deed which determines its character, and if the essential element of a partnership contract is omitted, the transaction will not be partnership contract though it may be called by that name. For example, in a case in which plaintiff advanced money and was to get interest on it at a fixed rate which was described as his share of profit and was to supervise the accounts and the actual business was done by the defendant, it was held that there was no partnership as there was no share in the profits as such.[2]

Deed of Partnership

Partnership can be created by oral agreement, but it is always safe, in order to avoid future disputes, to have a proper deed of partnership drawn up. It is executed by all the partners and is drafted as an agreement by them to carry on a business in partnership on certain terms and conditions. The nature of the business, the capital and the shares of the partners in the profit and loss, should be clearly specified and all the terms and conditions on which the business is to be carried on should be clearly mentioned.

Parties

All the partners should join in the execution of the partnership deed. If they are more than ten, in the case of a banking business, and more than twenty in the case of other business, the partnership should be registered as a company under the Companies Act, 1956 (Sec.11) and in that case Memorandum of Association and Articles of Association shall be drawn up. New partners can be admitted and also can retire during the continuance of the partnership. The term on which new partners are admitted should be stipulated and clearly stated in the deed, if one is drawn up. A minor cannot be a partner but he may

1 *Nanchand Gangarm* v. *M.M. Sadalge*, (1976) 2 SCC 429.

2 *Karnidan* v. *Sailaja Kant*, A 1940 Pat 683.

be admitted to the benefits of partnership.[3] His rights on such admission are laid down in section 30 of the Partnership Act. On attaining majority he should give notice whether he does or does not elect to become a partner. Such notice must be given within six months of attaining majority or obtaining knowledge of his having been admitted to the benefits of the partnership, whichever is later. If no notice is given, he shall become a partner in the firm on the expiry of the said six months [Sec. 30 (5)]. A firm cannot be a partner,[4] but a joint Hindu family may enter into partnership with a stranger but not with an individual member of the same family in his individual capacity.[5] It is not necessary that the duration of the partnership should be fixed beforehand. When no term is fixed, and no provision is made for dissolution, the partnership is called a "partnership at will" and such partnership can be dissolved by notice (Sec. 43). It should be clearly stated whether the business of partnership actually exists at the time or it is intended to start a new business. In the latter case, it is better to state when the business is intended to be started. Until the business actually comes into existence there can be no partnership and relations between the promoters of a business before the business is started are governed by general rules of contract and not by the law of partnership.[6]

Business

The business should be clearly defined. It should not be immoral, or illegal, or against public policy, as the contract to carry on such business will be illegal and not enforceable.

Firm Name

The name under which a partnership carries on business is the firm's name. Any name may be chosen, but the name should not contain any words expressing or implying the sanction, approval or patronage of the Government of India or the State Government, (Sec. 58, Partnership Act). The firm name is only a matter of convenience, as a partnership firm has not, unlike a company, a legal existence distinct from the partners but firms can sue or be sued in the name of the firm under a special enabling procedure given in Order XXX of the C.P.C.

Registration of Firm

Registration of a firm under Sec. 58, Indian Partnership Act, 1932, is not compulsory, but registration of the firm is a condition precedent to the right to institute a suit to enforce a right arising from a contract or conferred by the Act. Sec. 69 is mandatory.

3 *Ram Gopal* v. *Baij Nath*, A 1937 Cal 396, 172 IC 532.
4 *Hakmaji* v. *Punnaji*, 40 BLR 995, 178 IC 419, A 1938 Bom 453.
5 *In re: Lachman Das*, A 1945 Lah 61.
6 *R.R. Sarna* v. *J.Reuben*, A 1946 Oudh 68.

Terms of Partnership and Contents of Deed

Terms should be carefully settled and entered in the partnership deed. They will always depend on the nature of the business and it is not possible to lay down definitely what they should be. But as a general rule provision may be made for:

(*a*) Nature of business, duration of partnership, and name of firm.

(*b*) Shares of partners.

(*c*) Provision about capital and interest on capital.

(*d*) Banking account of the firm.

(*e*) Authority to draw upon the account and sign cheques.

(*f*) The method of keeping accounts and making up annual accounts or balance sheets.

(*g*) Management of business.

(*h*) Duties of Partners to each other (including respective covenants).

(*i*) Outgoings and profits.

(*j*) Arrangement on death of a partner or dissolution of partnership.

(*k*) Retirement and expulsion of partners.[7]

(*l*) Winding up.[8]

(*m*) Mode of service of notice.

(*n*) Arbitration.

Statutory provisions exists in the Indian Partnership Act, 1932, for some of these matters, and it is not necessary to make an express provision in respect thereof, unless the partners agree to vary such of them as can legally be so varied. For instance, the following agreements are implied in all partnership contracts:

(1) That the partners will carry on the business to the greatest advantage (Sec.9).

(2) That they will be just and faithful to each other (Sec. 9).

(3) That they will render true account and full information of all things affecting the firm to any partner or his legal representative (Sec.9).

(4) That every partner shall indemnify the firm for loss caused by his fraud or wilful neglect in the conduct of the business [Secs.10 and 13 (*f*)].

(5) That every partner has a right to take part in the business [Sec. 12(*a*)].

(6) That every partner is bound to attend diligently to his duties [Sec. 12(*b*)].

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7 *Vishnu Chandra* v. *Chandrika Prasad*, A 1983 SC 523, (1983) 1 SCC 22 [Sec. 32 (1) (b) of Act relied on].

8 If partnership is constituted for a specific job, e.g. execution of a works agreement, it comes to an end with the completion of the job : *Deoki Prasad Rajgarhiah* v. *Anar Dei Poddar*, A 1999 Pat 22 (case law). It is different from a partnership at will.

(7) That all differences shall be decided by a majority of the partners, but no change in the nature of business may be made without the consent of all [Sec. 12(*c*)].

(8) That every partner will have access to, and will be entitled to inspect, and take copies of, the accounts [Sec.12(*d*)].

(9) That partners shall not take any remuneration [Sec. 13(*a*)]

(10) That partners will share the profits and losses equally [Sec. 13(*b*)].

(11) That interest on capital shall be payable out of profits only [Sec. 13(*c*)].

(12) That a partner is entitled to interest at 6 percent per annum on advances above the capital [Sec. 13(*d*)]. .

(13) That the firm will indemnify a partner is respect of payments made in the ordinary course of business, or for protecting the firm from loss [Sec. 13 (*e*)].

(14) That the profits of the firm will be held exclusively for the purposes of the business (Sec. 15).

(15) That a partner deriving profits from any transaction of the firm or from the use of firm property or by carrying on business of the nature as and competing with that of the firm shall account to the firm for all profits so made (Sec. 16).

(16) That the mutual rights and liablities of the partners remain the same (*a*) inspite of a change in its constitution, (*b*) after the expiry of the fixed term, and (*c*) in respect of new undertakings or adventures (Sec. 17).

(17) That a partner has authority in an emergency to do all acts necessary for protecting the firm from loss (Sec. 21.)

Items (1) to (4) and (17) cannot be altered by contract, except item (4) in respect of "wilful neglect". All others are subject to contract to the contrary, and a contrary agreement varying the implied agreements may be made and recorded.

Sec. 19(2) provides that "in the absence of any usage or custom of trade to the contrary the implied authority of a partner does not empower him to:

(*a*) submit a dispute relating to the business of the firm to arbitration;

(*b*) open a banking account on behalf of the firm in his own name;

(*c*) compromise or relinquish any claim or portion of a claim by the firm;

(*d*) withdraw a suit or proceeding filed on behalf of the firm;

(*e*) admit any liability in a suit or proceeding against the firm;

(*f*) acquire immovable property on behalf of the firm;

(g) transfer immovable property belonging to the firm; or

(*h*) enter into partnership on behalf of the firm;

Accordingly, if authority to do any of these things is sought to be conferred on any partner it is necessary to make specific provision in that behalf in the deed, as it is unsafe and uncertain to rely merely on "usage or custom of trade to the contrary" which may not always be easy to prove.

Although it is not necessary to mention in the deed anything which is implied by law, yet sometimes, in order to make the deed a complete code of direction fully intelligible to the lay man for whom, and not the lawyers, it is drafted, it is thought advisable to incorporate all the terms and conditions in the deed.

To determine whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm regard shall be had to the real relation between the parties as stated in Sec. 6 of the Partnership Act. Vesting of the exclusive power and control, by agreement of the parties, in one partner or the operation of firm account by one of the partners alone does not detract from the factum of existence of partnership. Sec. 11 provides for determination of rights and duties of the partners by contract between them. Sec. 12 (Conduct of business) and Sec. 13 (Mutual rights and liabilities) are also both subject to contract between the partners. Thus law does not require that the power of all the partners be identical.[9] The partners might agree to share the profits in any manner.

Co-ownership is distinct from partnership inasmuch as—

(i) Co-ownership is not necessarily the result of agreement, but partnership is;

(ii) Co-ownership does not necessarily involve community of profit or loss, but partnership does;

(iii) One co-owner can, without consent of the other, transfer his interest to a stranger, a partner cannot do this.

The relationship among the partners is contractual. To constitute partnership, it is not incumbent that each partner contributes capital in the firm. The partnership sails primarily upon mutual confidence. It is illegal if constituted for some purpose opposed to public policy or the law. A partner cannot obtain private benefit at the expense of the firm. In all transactions which affect the partnership, he has to put in his best. With the co-partners he is to share the benefits.

Stamp Duty

The deeds should be written on stamp paper of the requisite value as required by Article 46.

Registration

Registration under the Indian Registration Act is not compulsory. But if the partnership deed or deed of dissolution of partnership relates to immovable property, then registration is compulsory.[10]

9 *Steel Brothers & Co.* v. *C.I.T.*, A 1958 SC 315.

10 See, however, footnote under Form 5, *post*.

GENERAL FORMS OF VARIOUS CLAUSES IN PARTNERSHIP DEED

1. Establishment of Partnership between Two Partners

The said AB and CD will become and remain partners in the business of ——— from the ——— day of ——— during the term of——— years (*or*, during their joint lives) under the firm name of ——— subject to determination as hereinafter provided.

2. Establishment of Partnership between Three or more Partners

The said AB, CD, EF and GH and the survivors of them will become and remain partners in the business of (*or, if business is already existing,* in continution of the business carried on for ——— years by the said AB and CD) from the ——— day of ——— during the term of———years if they or any two or more of them shall so long live (*or*, during so long as they or any two or more of them shall live) under the firm name of——— subject to determination as hereinafter provided.

3. Shares in Profits & Losses[1]

The partners shall be entitled to the net profits of the said business and shall be liable for losses in the following proportions viz. AB, ——— percent, CD, ———percent, EF, ———percent, etc. (*or*, in equal share).

4. Capital

The capital of the firm shall be Rs.——— which shall be contributed by the several partners in the following proportions, viz. AB, Rs. ———, CD, Rs.———, EF, Rs. ———, etc. (*or*, in equal shares).

5. Interest on Capital

Interest at the rate of ——— percent per annum shall be paid to each partner on the capital for the time being standing to his credit out of the gross profits of the business and such interest shall be cummulative so that any deficiency in one year shall be made up out of the gross profits of any succeeding year or years.

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1 In the absence of an express agreement the shares of partners in profits and losses are equal [Sec. 13(*b*)].

6. Loans by Partners or Profits Left

If any partner shall at any time advance to the firm any sum or sums beyond the amount of capital which he has agreed to contribure or, with the consent of other partners or majority of them, leave in the firm any part of the net profits carried to his credit at any annual general account, the same shall be considered as a debt due to him from the firm and shall bear interest at percent per annum payable annually but any such sum so advanced or left undrawn shall not be called in or withdrawn by him without giving months' written notice to the other partners and he shall be bound to accept repayment of or to withdraw the same on a like notice being given to him by the other partners, and, at the expiration of such last mentioned notice, interest shall cease to be payable theron.

7. Stock in Trade if Business existing at Commencement of Partnership

The stock in trade, plants, machinery and other things belonging to the said business at the commencement of the partnership (particulars whereof are entered in the schedule hereto) shall become the property of the firm and shall be taken over and adopted by the firm at Rs. (*or*, at a valuation to be made by ——————) as part of the capital to be contributed by the said ——————— (*former owner*).

8. Where Capital of the New Partnership consists Wholly of the Assets and Liabilities of an Old Firm

All the assets belonging to the said business lately carried on by the said AB, the particulars of which are specified in the first schedule hereto, shall become the property and assets of the firm and all the debts and liabilities of the said business mentioned in the second schedule hereto shall become the debts and liabilities of the firm. The said AB shall be credited in the books of the firm with the sum of Rs. 78,000 (being one half of the net value of the assets after deducting the said debts and liabilities) as so much capital brought in by him and each of the said CD, EF and GH shall pay to the said AB the sum of Rs. 26,000 (being one-third of the other half of the said net value) as a premium for his admitance into the said partnership and shall be credited with that amount as so much capital brought in by him. The said AB, his heirs, executors and legal

representatives shall, if and when required so to do, at the cost of the firm duly transfer or otherwise assure the said property in such manner as effectually to vest the same in the firm as part of the partnership assets and until this is done shall hold the same in trust for the firm.

9. Increase in Capital

If at any time or times hereafter it shall be determined by the partners (*or* by a majority of the partners) to increase the capital of the firm the additional capital required shall, unless otherwise agreed, be advanced by the partners in equal shares (*or*, in proportion of the shares held by them in the initial capital).

10. Place of Business

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

11. Reserve Fund

Out of the net profits of the said business as determined on settlement of every annual account, a sum calculated at———percent of such net profit shall be set apart and carried to a separate account to be called "the reserve fund" which shall from time to time be applied for the purpose of meeting extraordinary losses or expenses or for such other purposes and in such manner as the partners shall direct and subject thereto shall belong to the partners in the proportion in which they are entitled to profits. PROVIDED that whenever the reserve fund shall amount to Rs.——— the same shall not be further augmented unless the partners shall so agree.

12. Drawings by Partner

Each partner shall be entitled to draw out of the partnership business any sum or sums of money not exceeding Rs.——— per month for his own use, such sums to be duly accounted for on each succeeding settlement of account and division of profits of the partnership and any excess of the drawings found on such settlement shall be refunded (with interest at——— percent per annum).

13. Attention to Business by Partner

The said partners AB and CD shall, at all times during the partnership, devote the whole of their time and attention to the said partnership business

and diligently and faithfully employ themselves therein and carry on the same for the greatest advantage of the partnership and the said EF shall give such amount of supervision and attention to the said business as may be necessary for the efficient management thereof and except to that extent shall not be bound to personal attendance or participation therein, and the said GH shall not be bound to attend to the said business any further than he shall think proper.

14. Sleeping Partner

The said XY shall not be required to interfere with the carrying on management, or conduct of the said business and shall not sign the name of the firm.

15. Partners not to carry on Rival Business

No partner shall without the consent in writing of the other (*or*, others) carry on or be connected with, directly or indirectly, in any business of ——— except on account and for the benefit of the partnership.

16. Share not Transferable

No partner shall without the consent in writing of the other (*or*, others) assign or mortgage his share or interest in the partnership (except to any person whom he is authorised under the provisions hereinafter contained to introduce into the partnership, *or*, except to another partner).

17. Partners not to Contract beyond a Limit

No partner shall without the consent in writing of the other (*or*, others) buy, order or contract for any property or goods or article for the firm exceeding Rs. ——— in value.

18. Partner not to give Credit

No partner shall lend money or give credit to or have any dealings on behalf of the partnership with any person or company to whom the other partner or partners shall previously have forbidden him to trust or deal with.

19. Keeping of Accounts

Proper books of account shall be kept by the partners and entries

made therein of all such transactions and things as are usually entered in books of account kept by the persons engaged in concerns of a similar nature. The said books of account and all letters, papers and documents belonging to the firm shall be kept at the place of business of the firm and shall at all times be open to inspection by any partner or his agent who shall be entitled to take extracts and copies of the same.

20. Annual Accounts

On the ———— day of each year during the continuance of the partnership an account shall be taken of all the capital, assets and liabilities and of the profits and losses of the partnership so that actual receipts and payments alone shall be taken into account (*or*, including therein the profits earned or losses incurred but not actually received and paid) for the preceding year and shall be signed by each partner. Such account when signed shall be binding on the partners (*or*, and a copy of such account shall be furnished to each partner who shall be bound thereby) unless some manifest error shall be discovered within ———— months in which case such error shall be rectified. As soon as the annual general account shall have been signed by the partners the net profits (if any) of the business shall be divided between them in accordance with the provision of this deed. (Provided that if any partner refuses to sign the general account without assigning any valid reason for such refusal, a copy of the general account shall be posted to him by registered post and the account shall be deemed to be signed by him on the date of such posting).

21. Power to Dissolve in case of Losses, etc.

If at any time owing to losses or any cause whatsoever one-fourth of the entire capital of the partnership shall be sunk or reasonable apprehension shall be entertained that a call would require to be made for further capital to the extent of Rs. in order to carry on the work and business of the partnership, a majority in value of the partners may require the partnership to be dissolved and wound up as if the same had expired by efflux of time.

22. Provision for Death or Voluntary Retirement of one Partner

If any partner shall die or voluntarily retire, an account and statement shall be taken and made out of his share of the capital and effects of the

partnership and of all unpaid interest and profits belonging to him up to the time of his death or retirement for which purpose a valuation shall be made of any assets or effects requiring valuation and of the goodwill and the amount found to be due or owing to the deceased or retiring partner shall be paid by the remaining partner or partners to him or his representatives as the case may be within ——— calendar months from his death or retirement with interest from such death or retirement until payment at ——— per cent per annum, and on such payment the share of the deceased or retiring partner in the property or effects shall vest in the remaining partner or partners in the proportion (if more than one) in which they shall have contributed to the purchase thereof. The cost for carrying this provision into effect shall be borne by the remaining partner or partners and the out-going partner or the representatives of the deceased partner in shares proportionate to their shares in the capital.

23. Option of Representatives of Deceased Partner to be Sleeping Partner

If any partner shall die during the continuance of the partnership, his representatives shall have the option to be declared by notice in writing given to the surviving partners within ——— calendar months after his death of their succeeding to his share in the said business as from his death as sleeping partners, *i.e.*, as partners without the power to interfere in or having any control over the conduct or management of the said business, and if such option is so exercised the said business shall be carried on during the residue of the term of partnership as nearly as may be according to the provisions of this deed with the said representatives of the deceased as sleeping partners from the date of the death of the deceased, and all proper instruments for carrying the provisions of this present clause into effect shall be executed or made between them and the surviving partner or partners.

24. Outgoing Partner not to carry on Business

An out going partner, the amount or value of whose share in the partnership business shall have been paid or provided for in accordance with the covenants in this deed, shall not during the remainder of the term of the partnership carry on or engage or be interested directly or indirectly

in the business of ———— within ———— kilometres of the principal place of business of the said partnership.

25. Option to Purchase Share of Retiring, Deceased or Insolvent Partner

If during the continuance of the partnership any (either, *if there are two partners*) partner shall retire or die or become insolvent then the remaining partner or partners shall have the option (to be exercised by notice in writing to the retiring partner or to the legal representatives of the deceased partner or to the receiver of his estate, as the case may be, within a month after the retirement, death or inslovency) to purchase the share of the other partner at the date of his reitrement, death or insolvency in the capital and assets of the partnership on the following terms:

(*a*) The purchase price shall be the amount at which such share shall stand in the last balance sheet which shall have been prepared prior to retirement, death or inslovency or if the retirement, death or insolvency shall occur before the taking of the first annual general account, the amount credited to him as his share in the capital up to the date of his retirement, death or insolvency, *plus* the amount of interest on the aforesaid sums at the rate of ———— percent per annum from the date of the last general account or from the commencement of the partnership as the case may be or, in the case of further capital, from the date when the same was credited upto the date of retirement, death or insolvency (*or*, a sum equal to the amount of the share of profits of the said partner since the taking of the last general account or the commencement of the partnership as the case may be), *minus* any drawings by the said partner during the current year of the partnership such drawings being debited so far as possible against the sum payable in place of current profits.

(*b*) Of the purchase price the sum payable as interest or current profits shall be paid on the exercise of the option and the balance by ——— equal instalments at intervals of ——— months from the date of the exercise of the option, with interest at ——— per cent per annum from such date.

(*c*) The purchasing partner shall enter into a covenant to indemnify the said partner or his legal representatives or the receiver of his estate as the case may be, from the debts, engagements and liabilities of the partnership both existing and future.

(*d*) The surviving partner shall secure the payment of the said purchase price and interest and the performance of the said covenant of indemnity by a floating charge on the assets present and future of the said business.

26. Provision for vesting Assets in one Partner on Dissolution

Upon dissolution of the partnership in any event not otherwise herein provided for, the said business, and the assets and goodwill thereof, shall vest absolutely in the said CD if he shall be living and remaining partner in the said business subject to the discharge by him of the partnership debts and liabilities and to the payment by him to each of the other partners in satisfaction of the latter's share in the partnership business of the amount to which such partner would have become entitled as an outgoing partner under the provisions of this deed.

27. Provisions for Partners in Succession to Succeed to Whole Business on Determination of Partnership

Upon dissolution of partnership by efflux of time, the said AB shall have the option, to be signified in writing to the other partner or partners not more than ——— not less than———calendar months before the expiration thereof, to succeed to the whole of the said business, AND in case AB refuses or neglects to exercise such option, to be signified in like manner not less than ———— calendar months before the expiration of the partnership; CD shall have the like option to be signified in like manner before the expiration of the partnership AND in case he too refuses or neglects to exercise such option then the said EF shall have the like option to be signified in like manner before the expiration of the partnership; AND in case any partner shall elect to succeed to the said business as aforesaid a general account and valuation shall be taken and made at the expiration of the partnership at the expense of the partnership of the assets and liabilities thereof and the partner so succeeding to the said business shall within ——— months of the making of such valuation pay to the other partner (*or*, to each of the other partners) the sum which is found to be the value of his share of the capital, goodwill, interest and profits after making provision for all the liabilities of the partnership AND on such payment being made the whole of the assets and goodwill of the partnership shall as from the date of such expiration, become the sole property of the

partner so succeeding to the said business AND the partner so succeeding shall indemnify the other partner or partners against all the outstanding liabilities of the partnership on that day and such assurances and instruments (if any) as shall be necessary for vesting in the partner so succeeding all the assets of the partnership and for indemnifying the outgoing partner or partners against all liabilities of the partnership and for releasing each other from all claims on account of the partnership shall be executed by the parties at their joint expense.

28. Provision for Continuance of Partnership by Surviving Partners on Death, Retirement, or Insolvency

If during the continuance of the partnership any partner shall die or become insolvent or retire, the share of the deceased or outgoing partner shall, as from his so dying or ceasing to be a partner, belong to the remaining partner or partners, and if more than one in shares proportionate to their shares in the profits of the partnership, and the partnership shall be continued between the remaining partners if more than one under the provisions of this deed so far as applicable, and the outgoing partner or his estate or the legal representatives of the deceased partner (as the case may be) shall be entitled to a sum equal to the value of the share of such outgoing or deceased partner in the said partnership on the date of his retirement, insolvency, or death as the case may be; such value shall be the amount, etc., (*continue as in Clause (a) of para No.*25).

29. Mode of Valuing Goodwill

The value of the goodwill of the business shall, unless otherwise agreed, be taken to be three times the average net yearly profits of the said business during the – – – – years preceding the date on which valuation is made or from the commencement of the partnership if less than that time.

30. Mutual Release in respect of Former Deed of Partnership

In consideration of the premises the said AB and CD do and each of them does hereby mutually release and discharge the other of them, his heirs, executors, administrators and legal representatives from all claims and demands, actions and proceedings whatsoever for or in respect of

the covenants contained in the deed of partnership dated the ——— under which the said business has hitherto been carried which is intended to be wholly suspended by this deed.

31. Notice

Any notice hereby required or authorised to be given to any of the said partners shall be sufficiently given by leaving the same addressed to him at the principal place of business of the said firm or by sending the same by registered post to his usual or last known address.

32. Arbitration

All disputes and questions in connection with the partnership of this deed arising between the partners or between any one of them and the legal representatives of the other or others or between their respective legal representatives and whether during or after the partnership shall be referred to the arbitration of three arbitrators, one to be appointed by each party, and the third who shall be the presiding arbitrator, appointed by those two arbitrators.

PRECEDENTS

1—Deed of Partnership Between Two Persons Setting up a New Business[1]

THIS DEED OF PARTNERSHIP made on the ——— day of——— BETWEEN AB, etc., of the one part AND CD, etc., of the other part.

WITNESSES AND it is hereby mutually agreed that the said parties shall become partners upon the following terms:

1. Business and its Place

The partnership business shall be that of——— and shall be carried on at ——— or at such other place or places as the partners may from time to time agree upon.

2. Name

The name of the firm shall be ———.

3. Term

The partnership shall commence on the day of and shall continue for a term of——— years[2] determinable nevertheless as hereinafter provided (*or*, and thereafter until determined as hereinafter provided).

4. Capital

The capital of the partnership shall be a sum of Rs. and shall be provided by and belong to the partners in equal shares (*or*, in the following proportion);

If at any time hereafter any further capital shall be required for the purposes of partnership the same shall, unless otherwise agreed, be contributed by the parties in the said shares (proportion).

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1 This is a comprehensive form. In a simple case some of the conditions entered herein will not be needed and may be left out or suitably modified.

2 Sec. 42 (a) provides that "Subject to contract between the partners a firm is dissolved – if constituted for a fixed term, by the expiry of that term." Other clauses of this section provide for other contingencies in which the firm is dissolved.

5. Interest on Capital

Interest at the rate of ———— percent per annum shall be paid to each partner on the capital for the time being standing to his credit out of the gross profits of the business and such interest shall be cumulative so that any deficiency in one year shall be made up out of the gross profits of any succeeding year or years.

6. Profits and Losses

The profits and losses of the firm (including loss of capital) shall be divided between and borne by the partners in proportion to the capital for the time being credited to them in the partnership books.

7. Drawings by Partner

Each partner shall be entitled to draw out of the partnership business any sum or sums of money not exceeding Rs.———— per month for his own use, such sums to be duly accounted for on each succeeding settlement of account and division of profits of the partnership and any excess of the drawings found on such settlement shall be refunded (with interest at ———— percent per annum).

8. Books of Account

All necessary and proper books of account shall be kept properly posted up and shall not be removed from the place of business without the consent of the partners;[3]

9. Annual Accounts

On the ———— day of each year during the continuance of the partnership an account shall be taken of all the capital, assets and liabilities and of the profits and losses of the partnership so that actual receipts and payments alone shall be taken into account (*or*, including therein the profits earned or losses incurred but not actually received and paid) for the preceding year and shall be signed by each partner. Such account when signed shall be binding on the partners (*or*, A copy of such account shall

3 The words "and each partner shall have access to and shall be entitled to take copies of and extracts from such account books" are also ordinarily added; but as the right is statutory as provided in section 12(*d*), it is not strictly necessary.

be furnished to each partner who shall be bound thereby) unless some manifest error shall be discovered within months in which case such error shall be rectified. As soon as the annual general account shall have been signed by the partners the net profits (if any) of the business shall be divided between them in accordance with the provisions of this deed. (Provided that if either partner refuses to sign the general account without assigning any valid reason for such refusal, a copy of the general account shall be posted to him by registered post and the account shall be deemed to be signed by him on the date of such posting).

10. Manager

The said AB shall be the manager of the said partnership business and shall devote his whole time and attention to the management and shall receive a salary of Rs. per mensem for his services (and he shall manage the business according to the best of his ability and judgment).

11. Duties of Partners[4]

Each partner shall—

(*a*) diligently attend to the business and devote his whole time and attention thereto;

(*b*) Punctually pay his separate debts and indemnify the other partners and the assets of the firm against the same and all expenses therefor;

(*c*) Upon every reasonable request, inform the other partner of all letters, accounts, writings and other things which shall come to his hands or knowledge concerning the business of the partnership.

12. Acts forbidden

Neither partner shall without the consent of the other :

(*a*) Either directly or indirectly engage or be concerned or interested in any other business or occupation;

(*b*) Take any apprentice or hire or (except in cases of gross misconduct) dismiss any agent or servant of the firm;

4 For statutory duties (Relations of Partners to One Another), see also Chapter III of the Partnership Act.

(*c*) Lend any of the moneys or deliver upon credit any of the goods of the firm to any person or persons whom the other partner shall have previously forbidden him to trust;

(*d*) Except in the ordinary course of business give any security or promise for the payment of money on account of the firm;

(*e*) Stand surety or furnish guarantee for any person or do or knowingly suffer anything whereby the partnership property may be endangered;

(*f*) Assign or charge his share in the assets or profits of the firm;

(*g*) Draw or accept or endorse any bill of exchange or promissory note on account of the firm;

(*h*) Sign any cheque on behalf of the firm for a sum exceeding Rs. ————;

(*i*) Remit the whole or any part of any debt or sum due to the firm;

(*j*) Except in the ordinary course of trade, dispose by pledge, sale or otherwise any part of the partnership property;

(*k*) Buy, order or contract for any immovable property or any goods or articles for the use of the firm exceeding the value of Rs. ——;

(*l*) Undertake any journey or voyage on account of the firm necessitating an absence of more than ———— days from the head office of the firm.

13. Notice to Determine

After the expiration of the said term of ———— years the partnership may be determined by either party giving to the other not less than ———months' notice in writing (expiring on any anniversary of the commencement of the partnership) and on the expiration of such notice the partnership shall determine accordingly.[5]

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5 This is necessary if the partnership is to continue even after the term fixed until determined (as provided in brackets in clause 3). If the partnership is at will, Sec. 43 provides for its determination by notice, and no express provision in the deed is necessary for that purpose.

14. Determination in Certain Events

If either party shall—

(*a*) Commit a breach of any of the provisions of clause 11 and 12 hereto;

(*b*) Commit an act of insolvency; or

(*c*) Become physically or mentally unfit to attend to the business of the partnership; or

(*d*) Do or suffer any act which would under the law be a ground for dissolution of the partnership by the court, then and in any such case the other partner may within ———— calendar months after becoming aware thereof by notice in writing determine the partnership and in that case he shall have the option (to be exercised at the time of giving such notice) of purchasing the share of the other partner in the capital and assets of the business upon the like term as are set forth in the next clause hereof in relation to purchase by a surviving partner of the share of a deceased partner.

15. Option to Purchase Share of Retiring, Deceased or Insolvent Partner

If during the continuance of the partnership any (either, *if there are only two partners*) partner shall retire or die or become insolvent then the remaining partner or partners shall have the option (to be exercised by notice in writing to the retiring partner or to the legal representatives of the deceased partner or to the receiver of his estate as the case may be, within a month after the retirement, death or insolvency) to purchase the share of the other partner at the date of his retirement, death or insolvency in the capital and assets of the partnership on the following terms:

(*a*) The purchase price shall be the amount at which such share shall stand in the last balance sheet which shall have been prepared prior to the retirement, death or insolvency or if the retirement, death or insolvency shall occur before the taking of the first annual general account the amount credited to him as his share in the capital up to the date of his retirement, death or insolvency, *plus* the amount of any further capital brought by him into and credited to him in the books of the partnership, *plus* the amount of interest on the aforesaid sums at the rate of ———— percent per annum from the date of the last general account or from the commencement of

the partnership as the case may be or, in the case of further capital, from the date when the same was credited up to the date of retirement, death or insolvency (*or*, a sum equal to the amount of the share of profits of the said partner since the taking of the last general account or the commencement of the partnership as the case may be), *minus* any drawing by the said partner during the current year of the partnership such drawings being debited so far as possible against the sum payable in place of current profits.

(*b*) Of the purchase price the sum payable as interest or current profits shall be paid on the exercise of the option and the balance by —— equal instalments at intervals of ——— months from the date of the exercise of the option, with interest at ——— percent per annum from such date.

(*c*) The purchasing partner shall enter into a covenant to indemnify the said partner or his legal representatives or the receiver of his estate, as the case may be, from the debts, engagements and liabilities of the partnership both existing and future.

(*d*) The surviving partner shall secure the payment of the said purchase price and interest and the performance of the said covenant of indemnity by a floating charge on the assets present and future of the said business.

16. Dissolution

If the option to purchase is not exercised as aforesaid or if the partnership shall be determined or expire during the joint lives of the partners the partnership shall be wound up and the assets distributed as provided in the Indian Partnership Act, 1932.

17. Notice

Any notice hereby required or authorised to be given to any of the said partners shall be sufficiently given by leaving the same addressed to him at the principal place of business of the said firm or by sending the same by registered post to his usual or last known place of address.

18. Arbitration

All disputes and questions in connection with the partnership or this deed arising between the partners or between any one of them and the

legal representatives of the other or others or between their respective legal representatives and whether during or after the partnership shall be referred to the arbitration of three arbitrators, one to be appointed by each party and the third who shall be the presiding arbitrator, to be appointed by the said arbitrators.

IN WITNESS WHEREOF, etc.

2—Introduction of a New Partner in an Existing Partnership

THIS DEED OF PARTNERSHIP is made on the day of ——BETWEEN AB, etc., of the first part, AND CD, etc., of the second part AND EF, etc., of the third part.

Recitals of Old Partnership

WHEREAS the said AB and CD are now and have of some time past been carrying on the business of——— in partnership together at ———under the firm name of ——— (hereinafter called "the old partnership") under a deed of partnership dated the ————.

Agreement about New Partnership

AND WHEREAS it has been mutually agreed between the parties hereto that the said EF shall enter the said business as a partner therein upon the terms hereinafter contained;

AND WHEREAS the property of the old partnership has been transferred and the goods in possession of the old partnership have been delivered to the said AB, CD and EF as part of the assets of the partnership hereby constituted;

AND THIS DEED WITNESSES that the parties hereto hereby mutually agree as follows:

1. Term

The partnership hereby constituted (hereinafter called "the new partnership") will commence (*or*, shall be deemed to have commenced) on the ——— day of——— and from such date the deed of partnership dated ——— shall be (*or*, should be deemed to have been) superseded by this deed, and shall continue for the term of——— years;

2. Name

The firm name of the new partnership shall be———.

3. Capital

The capital of the new partnership shall be Rs. ———— whereof Rs. ——— represents the capital of the old partnership and shall belong as to Rs. ——— to the said AB and as to Rs. ——— to the said CD and the balance of Rs. ——— shall be contributed by and belong to the said EF and the said sums shall be credited to the said partners in the books of the partnership.

4. Interest

As clause 5 of Form 1.

5. Debts of Old Partnership

The said AB and CD shall discharge all the liabilities of the old partnership and shall indemnify and keep indemnified the said EF and the assets and the property of the new partnership against such liabilities and against all proceedings, costs, claims and expenses in respect thereof;

6. Profits of Old Partnership

All profits of the old partnership up to the commencement of the new partnership including profits earned but not actually distributed between the partners shall belong to the said AB and CD in the proportions in which they would be entitled thereto under the deed of partnership dated ———;

7. Profits of New Partnership

The profits and losses of the new partnership shall be divided and borne between the partners in the following proportions, namely the said AB , the said CD and the said EF ———.

8, 9, 10, 11, 12 and 13 (Conditions about accounts, management, duties of partners, etc., *as in Form 1 mutatis mutandis*).

14. Death or Insolvency of one Partner

(*a*) If during the continuance of the partnership any one of the partners shall die or become insolvent, his share in the goodwill, capital and assets

and undivided profits of the partnership shall belong to the surviving or solvent partners in shares proportionate to their own shares of property in the partnership or in such other proportions as they may agree and the partnership so constituted shall continue between them under the provisions of this deed so far as applicable.

(*b*) The legal representatives of the deceased or the receiver of insolvent partner shall be entitled to the fair value of the share of deceased or insolvent partner as at the date of death or insolvency in the goodwill, capital and assets and undivided profits of the partnership, including the profits and losses earned or incurred but not actually received or paid, after taking into account and making allowance for current drawings by such partner and any moneys owing by him to the partnership and the current liabilities to the partnership.

(*c*) The said fair value shall be certified by the auditors for the time being of the partnership and the certificate shall be binding upon and conclusive against the surviving or solvent partners and the representatives of the deceased partner or the insolvent partner or the receiver of his estate.

(*d*) The amount so certified shall be paid rateably by the surviving or solvent partners in proportion to their shares in the partnership.

(*e*) All deeds of release, indemnity and instruments necessary to give effect to the provisions of this clause shall be executed by the parties requisite and all costs of carrying out this clause into effect shall be charged as to one half against the deceased or insolvent partner and as to the remaining half against the surviving or solvent partners.

16, 17 and 18 (*Conditions about dissolution, notice, arbitration as in Form* 1).

IN WITNESS WHEREOF, etc.

3—A Simple Form of Deed of Partnership of a Small Dairy Business

THIS DEED OF PARTNERSHIP made on the day of———BETWEEN AB, etc., of the one part AND CD, etc., of the other part.

WITNESSES that it is hereby mutually agreed that the said AB and CD shall become partners in a dairy business upon the following terms :

1. Business

The partnership business shall be that of Dairy Farm consisting of the maintenance and upkeep of cattle, sale of milk, production and sale of cream and butter and such other work as the parties may agree upon and shall be carried on at————or at such other place or places as the partners may from time to time agree upon.

2. Term

The duration of partnership shall in the first instance be three years from the date hereof provided that the parties shall be at liberty to extend the said period by mutual consent from time to time.

3. Name

The name of the firm shall be————.

4. Capital

The capital of the partnership shall consist of Rs.————brought into the business in equal shares by each of the partners which sum shall be credited to him as his share of the capital, and such further sum as either partner shall with the consent of the other partner from time to time contribute for partnership purposes which shall be credited to his capital account.

5. Interest on Capital

Interest at the rate of 15 percent per annum shall be paid to each partner on the capital for the time being standing to his credit out of the gross profits of the business and such interest shall be cumulative so that any deficiency in one year shall be made up out of the gross profits of any succeeding year or years.

6. Profits and Losses

The net profits of the business shall be divided between the partners equally and they shall, in like proportion, bear all losses including loss of capital.

7. Management

The management shall be carried on jointly and both the parties shall be active partners : the said AB shall be in charge of accounts and the said

CD shall be in charge of the management of the dairy farm, but the parties may by mutual consent allot to each of them such duties as they may think necessary.

8. Work of Partnership

Any work to be done under the agreement or under any subsequent agreement by any partner may be done by the father or other relative of that partner or by any agent or servant appointed by him but the pay of any such agent or servant shall not be debited to the partnership account. Provided that if any partner shall fail to do the work assigned to him or to make satisfactory arrangement for that work, the other partner may do that work or have the same done by his agents or servants at his own cost and such other partner shall in that case be paid Rs.————per month as his pay for doing the additional work or having it done and such pay shall be part of the partnership expenditure.

9. Accounts

The accounts of the partnership business shall be taken half-yearly in the months of————and————in each year and profits or losses shall be determined. Any profit due to either partner may be taken by him or left as part of the capital of the business in which case interest shall be paid to him thereon as under clause 5 hereof.

10. Partners not to do Separate Business

Neither of the partners shall do any separate dairy business or allied business on his own account.

11. Dissolution

The partnership may be dissolved during the aforesaid term of three years if both partners mutually agree to such dissolution.

12. Winding up

At the time of dissolution of the partnership the business will be wound up in the following manner :

(*i*) Out of the assets of the firm the debts of the firm shall be paid first and out of the balance the capital contributed by each partner will be paid to him with interest.

(*ii*) The balance after paying off the debts and capital with interest will be divided equally between the partners.

(*iii*) The cattle belonging to the partnership may be either purchased by any partner at a valuation agreed upon between the parties or may be divided equally between the partners or may be sold. The division will be made according to the average yield of milk by each cattle, the average to be calculated on the preceding year's yield.

(*iv*) If one of the partners wishes to continue the business alone he can, at the time of winding up, claim the following privileges:

(*a*) He can retain the milk vans and delivery cycles on payment to the other partner half the value thereof less deduction at———percent per year from the date of purchase on account of depreciation of value;

(*b*) In the division of cattle he will have the right to take two cows and two buffaloes of his own choice;

(*c*) He will be entitled to have a lease of the other partner's share of such lands and buildings as shall have been used for dairy purposes at the time of dissolution, for a period of six months at such rent as may be agreed upon and if the partners cannot agree as to the rent, then at such rent as may be determined by ———;

(*d*) He will have a right to purchase the other partner's half share in all machines, furniture and appliances at the original cost price less a deduction of 10 percent per year from the date of original purchase in the case of machines and appliances and 5 per cent per year in the case of furniture.

IN WITNESS WHEREOF, etc.

4—Deed of Partnership between Several Persons for Starting Sugar Factory

THIS DEED OF PARTNERSHIP is made on the———day of ——BETWEEN AB, etc., of the first part, CD, etc., of the second part, EF, etc., of the third part, GH, etc., of the fourth part and JK, etc., of the fifth part.

WHEREAS—

1. The parties hereto have agreed to carry on in partnership the business of the manufacture of sugar at ——— and for this purpose to construct a sugar factory.

2. In pursuance of the said agreement the said AB and CD have acquired land measuring ——— *bighas* situate in plot No.——— in village———pargana———district———for Rs.———by a sale deed dated———.

NOW THIS DEED WITNESSES and the parties hereto hereby mutually agree with each other as follows:

1. The said partnership shall be carried under the name of———.

2. The total capital of the partnership shall be Rs.——— which shall be payable by each partner in proportion to his share in the partnership.

3. The shares of the partners in the partnership shall be as follows:

AB.....one-fourth

CD.....one-fourth

EF.....one-sixth

GH.....one-sixth

JK.....one-sixth

4. The land purchased under the said sale deed dated——— shall remain the property of the partnership and is hereby transferred by the said AB and CD to the said AB, CD, EF, GH and JK to be held by them as part of the property of the partnership.

5. The sum of Rs. paid by each of the said AB and CD as the price of the said land shall be credited to their respective shares in the capital of partnership.

6. The said AB shall do the work of construction of the building, of purchase and planing of the machinery and other work necessary for equipping the sugar factory and putting it in working order and shall be responsible for maintaining the building and the factory in proper order and good repair and in perfect working condition during the continuance of the partnership.

7. The said CD shall be the manager of the sugar factory and shall run the business of the partnership to the best of his ability and shall devote the whole of his time diligently to it.

8. The said CD will have full discretion to appoint and dismiss servants and agents for carrying on the business of the partnership on such pay and terms as may be approved by the majority of the partners.

9. The said AB shall be entitled to 5 percent and the said CD to 10 per cent of the net profits of the partnership as remuneration for their services and out of the balance, 15 per cent shall be kept in reserve fund and 70 per cent shall be divided amongst the partners in proportion to their shares in the partnership.

10. The reserve fund shall be utilized for renewal of any part of the building or machinery of the sugar factory and any balance thereof remaining at the date of dissolution of the partnership shall be dealt with as part of the assets of the partnership.

11. In case the said AB or CD is found negligent in the performance of his duties or guilty of misconduct, he may be removed by the majority of the partners and in case of such removal or of voluntary resignation or death of the said AB or CD the remaining partners may by majority of votes appoint another partner in his place on the same terms or employ an outsider on such pay or terms as they may determine.

12. The partnership shall continue for ten years and thereafter until determined as hereinafter provided.

13. If any partner shall be desirous of selling his share in the partnership he shall offer it first to all the remaining partners and if any partner shall desire to purchase it, he shall sell it to such partner at a fair valuation. In case more than one partner desire to purchase it, the same shall be transferred to them in equal shares. In case no partner shall desire to purchase it, the same may be transferred to any one and the transferee shall be admitted to the partnership on the same terms as are contained therein.

(Other terms regarding accounts, management, drawings, notice, arbitration, death of partners, dissolution of partnership, etc., *as in Form 1 mutatis mutandis*).

5—Deed of Dissolution of Partnership between Two Partners, One Taking over the Share of the Other[6]

THIS DEED made on the ——————day of ——— BETWEEN AB etc., of one part and CD, etc., of the other part.

WITNESSES as follows:

1. The parties hereto hereby declare that the partnership between them carried on under the deed of partnership dated————shall dissolve by mutual consent as from the date hereof and the said business shall henceforth be carried on by the said AB alone.

2. In consideration of the sum of Rs.————now paid by the said AB to the said CD (the receipt of which the said CD hereby acknowledges) and of the sum of the Rs.—————hereinafter agreed to be paid by the said AB to the said CD, the said CD hereby assigns to the said AB ALL that the share and interest of the said CD in the said partnership and the business, goodwill,[7] property, assets and book debts thereof and other debts and claims of the partnership outstanding against other persons TO HOLD the same to the said AB absolutely.[8]

6 Such taking over on dissolution of a partnership results only from distribution of surplus assets of the partnership (Sec. 46 and 48 Partnership Act) and is by way of adjustment of the rights of partners and therefore does not amount to transfer of property: *C.I.T.* v. *Dewas Cine Corporation*, A 1968 SC 676; *Malabar Fisheries Co.* v. *C.I.T.*, A 1980 SC 170.

7 For an interesting precedent in which continuing partner AB agreed to pay to the retiring partner CD a share in the net profits of the business in consideration for the goodwill, see *Devidas Vithaldas* v. *C.I.T.*, (1972) 3 SCC 457. The payments made to CD were held to be in the nature of royalty for licence to use the goodwill and as such were admissible as revenue expenditure for income tax purposes.

8 In such deeds it is also usual to include a clause appointing the continuing partner attorney for the retiring partner for realizing the assets or giving an authority to the continuing partner to realise all the assets and debts, etc., of the partnership but this is, it is submitted, not strictly necessary in view of the assignment by the retiring partner of all his rights and interest in the partnership in favour of the continuing partner which gives the assignee full right to sue (Sec. 130, Transfer of Property Act). In England it is considered proper to insert this clause in spite of assignment because there an assignee cannot sue until he has given notice of assignment to the debtor and it may be difficult to give such notice to all the debtors of the partnership. In India such notice is not necessary to enable an assignee to sue.

3. On the said AB paying to the said CD the said sum of Rs.——— together with interest as hereinafter agreed the said CD shall by a separate deed transfer absolutely to the said AB all his share and interest in the immovable property belonging to the said partnership.

4. The said AB shall pay to the said CD, the said sum of Rs.——— on the———together with interest on the said sum of Rs.———or the balance thereof for the time being remaining unpaid at the rate of——— percent per annum from the date hereof.

5. The said AB hereby covenants with the said CD to pay, discharge and fulfill all debts, liabilities and obligations of the partnership and all times hereafter effectually to indemnify and keep indemnified the said CD and his legal representatives and their estate and property therefrom and from all proceedings, costs, claims and expenses in respect thereof.

6. Each of the parties hereto hereby releases the other from all proceedings, accounts, costs, claims and demands in respect of the partnership but without prejudice to any rights or remedies under the provisions of this deed.

7. The said CD shall not during the period of———years from the date hereof carry on or engage or be concerned or in any way interest himself directly or indirectly in the business of a———.

8. Whenever the context so admits or requires the expression "the said AB" hereinbefore used shall include besides the said AB, his successor or successors for the time being in the said business so intended to be carried on by him as aforesaid.

(*For notices relating to Partnership, see under "Notice"*)

IN WITNESS WHEREOF, etc.

PATENTS

Preliminary Note

Law Applicable

The law relating to the protection of inventions and designs is contained in the Patents Act, 1970. It prescribes a procedure under which an inventor can obtain a patent which confers on him the exclusive privilege of making, selling, and using the invention throughout India, and of authorizing others to do so. He has to make an application to the Patent Office submitting specifications, etc., and has to pay a fee. The term of the duration of a patent is 14 years but, in the case of patents in the field of food, medicine and drug, the term will be 5 years from the date of sealing of the patent or 7 years from the date of the patent whichever is shorter (Sec. 53). An additional patent can be obtained for any additions or improvements to the invention and the life of the additional patent is the same as that of the original patent (Sec. 55).

The Central Government has the right to apply for revocation of the patent, on conditions specified in section 64 being satisfied, to the High Court. In a suit for infringement of the patent or on a petition of a person interested it can be revoked by the High Court. The Controller is also given power to revoke patents on grounds of non-working of the same even within two years from the grant of a compulsory licence or endorsement of 'Licences of right' (Sec. 89).

The Act should be studied for detailed provisions about the above and other matters relating to patents: it has repealed the old Act of 1911. It has been further amended in 1999 as India has ratified the World Trade Organisation (W.T.O.) Agreement which contains, *inter alia*, an agreement for the protection of trade related aspects of industrial property rights (TRIPS). This Agreement came into force on 1.1.1995. The patent cooperation treaty makes it possible to fill out a single application for a patent that will be valid in several countries, thus reducing costs and paperwork. Developing countries had been suffering from biopiracy by big corporations in the advanced countries, as evidenced in the recent controversies over *neem*, turmeric and *basmati* rice. There is opposition by Indian pharmaceutical companies and also by leftist political parties to some aspects of TRIPS. The new amendments of 1999, passed after a chequered history, provide for the grant of products patents, *interalia*, in the fields of agricultural chemicals and pharmaceuticals and also for grant of Exclusive Marketing Rights (EMRs). This has been done subject to certain safeguards in the public interest.

Designs continue to be governed by the Designs Act of 1911. Protection in respect of trade marks is secured by the Trade and Merchandise Marks Act 1958. All the three Acts are administered by the same Controller General of Patents. Designs and Trade Marks.

Assignment of Patent

Property in a patent is purely a creation of the statute. There is no such thing as common law property in a patent. Patent can be transferred from the original patentee to any other person by assignment or by operation of law. The rules of transfer are determined by statute. A patentee can also give licence to others to exploit the patent. Upon a grant of patent to two or more persons each of these persons, in the absence of an agreement to the contrary, is entitled to equal share in the patent : Sec. 50 (1).

The registered grantee or proprietor of a patent is empowered to assign, grant licence under or otherwise deal with the patent for consideration. In the case of co owners of patents the power is limited by Sec. 50. The power to assign etc. is also subject to any rights vested in any other person of which notice is entered in the register. Any equities in respect of the patent may, subject to the terms of the Act, be enforced in like manner as in respect of any other movable property.

In any contract relating to the sale or lease of a patented article, or in a licence to work the patent, it is not lawful to insert certain restrictive conditions regarding the purchase or use of non-patented articles. Such conditions will be void (Sec. 140). Conveyance or licence referred to above may be terminated, at any time, after the patent is no longer in force, by the purchaser, lessee or licensee of the patent by giving three months notice to the other side (Sec. 141).

For valid assignment, the following conditions are to be satisfied—

(1) The assignment, mortgage or licence is reduced to writing in a document embodying all the terms and conditions governing the rights and obligations between the parties;

(2) The application for registration of such document is filed in the prescribed manner within six months (unless extended by the Controller) (Sec. 68). When registered, the document takes effect from the date of execution.

A licence granted by a patentee is not valid unless it is in writing and an application for registration of the document embodying the terms of licence is filed with the Controller (Sec. 68). It may be exclusive, non-exclusive or limited. Exclusive licence has the effect of excluding the other persons including the patentee from the right to use the invention. In a limited licence the limitation may arise as to person, time, price, manufacture, use or sale. A mortgage or other interest may also be created in patent (Sec. 69).

Patent, like copyright is covered by the term "Intellectual Property" recognised as such internationally. It is a kind of monopoly right conferred by statute. The patentee gets the exclusive right to manufacture the property patented or to use the process patented for the maximum prescribed period. This is subject to certain restrictions in the public interest (Chap. XVI). When

the term has run out, the invention becomes public property. The granting of patent monopoly on consideration of disclosure of invention enables competitors in the field to manufacture new products or improved products or effect improvements in the manufacturing process. Much of the technical information otherwise would have remained secret and lost to the world. Patent specifications available to the public contain practically all information which relate to the field of technology except the industrial and business secrets, confidential information and know-how.[1]

An assignee may sue for infringements.

Co-owners

Where a patent is vested in two or more persons each may, unless an agreement to the contrary is in force work under the patent without the consent of the other or others, and without accounting to the other or others for the profits he makes [Sec. 50 (2)] . A cosharer cannot assign it to others without the assent of co-owners [Sec. 50 (3)]. Hence, the right of each owner as to working and accounting and limitations under which it is to be exercised should be expressly provided in the covenants contained in the deed of assignment creating the co-ownership.

One co-owner may assign his individual share but cannot assign the whole patent to release the rights of the others.

Licence

A patentee has power to grant licence to others to work the patent. The licence should be drafted like any other licence, either as a deed poll, when no covenants by the licensee are required, or as a deed by the parties. All the conditions of the licence, its duration, and the payments agreed upon, whether in a lump sum or a royalty, should be clearly stated.

1 For further details reader may refer to "Intellectual Property Law" by P. Narayanan (Eastern Law House) 1990.

PRECEDENTS

1—Agreement to Sell a Patent Applied for, But not yet Granted

AN AGREEMENT made on the———day of———BETWEEN AB (hereinafter called "the inventor") of the one part AND CD, etc., (hereinafter called "the assignee") of the other part.

WHEREAS AB is the true and first *inventor* of the invention of———.

AND WHEREAS the inventor on the———made an application bearing number[1]. for a patent for the said invention accompanied by a compete specification but the same has not yet been accepted (*or*, and the same has been accepted but a patent has not yet been granted).

Now it is hereby agreed as follows:

1. Agreement to Assign

The inventor shall sell and the assignee shall purchase the said invention and the patent and all the rights and interest of the inventor therein for the sum of Rs.———and for the payment of the royalty hereinafter mentioned subject to the conditions hereinafter mentioned.

2. Royalty

The assignee shall pay to the inventor during the term of such patent the sum of Rs.———for every———of whatever size and description manufactured according to the said patent which shall be sold by the assignee.

3. Accounts

The accounts between the parties shall be settled half-yearly on the———day of———and the———day of———.

4. Covenant to Obtain Patent

The inventor will take all necessary steps for obtaining the patent for

1 Sec. 20 (3) (a) makes the mention of the number of the application obligatory.

the said invention for himself and will then assign the said patent to the assignee and do all other acts and things necessary for the vesting of the same in him.

5. Covenant against Revocation

The assignment shall contain a covenant by the assignee to avoid revocation of the said patent or the granting of compulsory licence and to pay to the inventor as liquidated damages in the event of such revocation and on the grant of any such compulsory licence, the sum of Rs.———— and Rs.————respectively.

6. Covenant to Communicate Improvements

The assignment shall also contain a covenant by the inventor to communicate all improvement in the said invention to the assignee and to assist the assignee to procure patent for the same which shall be vested in the assignee upon the said term as if such improvements had formed part of the original invention.

IN WITNESS WHEREOF, etc.

2—Agreement to Sell a Patent

AN AGREEMENT made on the ———day of———BETWEEN AB, etc., (hereinafter called "the patentee") of the one part AND CD, etc., carrying on business as ————at ———— (hereinafter called "the assignee") of the other part.

WHEREBY it is agreed as follows:

1. The patentee shall sell and the assignee shall purchase the patentee's patent for ———No.———— dated——(*or*,the patent, full particulars of which are given in the schedule hereto) for the sum of Rs. ;

2. The purchase shall be completed on the at when the assignee shall pay the said sum of Rs.————to the patentee and the patentee shall execute a deed of assignment and do all such things as may be necessary to vest the said patent in the assignee (*or*, the assignee has paid Rs.————to the patentee the receipt of which the patentee hereby acknowledges and will pay the balance of Rs.——on the——— at ————when the patentee shall execute, etc.).

Rest as in Form 1, *substituting* "patentee" for "inventor".

3—Absolute Assignment of Patent

(*With variation for payment of royalty, and for the case of assignor being himself assignee of the patentee*).

THIS ASSIGNMENT is made on the———day of———— BETWEEN AB, etc.,(hereinafter called "the patentee") of the one part AND CD, etc., (hereinafter called "the assignee") of the other part.

WHEREAS the patentee is the inventor of an invention for——— under the Patent No.——— dated———(*or*, WHEREAS the patentee is entitled by assignment dated——— duly registered to the patent dated——— originally granted to XY for————).

AND WHEREAS the patentee has agreed with the assignee for the sale to him of the said patent and all improvements thereon or further inventions connected therewith for the sum of Rs.————.

NOW THIS DEED WITNESSES as follows:

1. In pursuance of the aforesaid agreement and in consideration of Rs.————paid by the assignee (the receipt of which the patentee hereby acknowledges) the patentee hereby assigns and transfers to the assignee ALL that the said invention and the said patents for the same with the full and exclusive benefit and advantage thereof and of all and every improvement, extension, renewal thereof TO HOLD the same to the assignee absolutely (subject to the payment of the royalties and moneys hereinafter reserved);

2. The assignee hereby covenants with the patentee as follows:

(*a*) *Covenant to pay royalty*—(*as in clause* 2 *of Form* 1).

(*b*) *Covenant to keep accounts*—(*as in clause* 3 *of Form* 1).

(*c*) *Covenant to avoid revocation and grant of compulsory licence*—(*as in clause* 5 *of Form* 1).

3. The patentee hereby covenants with the assignee as follows:

(*a*) That the said patent is subsisting and is not void or voidable;

(*b*) The patentee shall, whenever required, give to the assignee such assistance and information respecting the said invention and mode of working and using the same and all processes connected therewith as may be necessary for enabling him to use and exercise the said invention to the best advantage;

(*c*) That he will forthwith, from time to time, after marking or discovering any improvements upon the said invention or any further invention relating to————disclose the same to the assignee who shall be entitled to the sole and exclusive benefit thereof and if and whenever required by the assignee but at the cost of the assignee will give to the assignee full particulars as to the nature of and mode of performing the same and will, at the option of the assignee, either apply for and endeavour to obtain, or join with the assignee in applying for and obtaining, patent in respect of such improvement or further invention and when and if the same shall be obtained will at the like expense execute and do all instruments, acts and things necessary for vesting the same and the full and exclusive benefit thereof in the assignee;

(*d*) That he will at the expense of the assignee do all such acts and things as may be reasonably required by the assignee for enabling him to obtain and enjoy the exclusive benefit of any extension or further grant of any patents for the time being vested in the assignee by virtue of these presents;

4. The parties hereto hereby agree that wherever the context so admits the expressions "the patentee" and "the assignee" hereinbefore used shall include their respective successors and assigns.

IN WITNESS WHEREOF,etc.

4—Assignment of Share of Patent[2]

THIS ASSIGNMENT, etc. (*as in Form* 3).

WHEREAS the patentee is entitled, etc. (*as in Form* 3).

AND WHEREAS the patentee has agreed to sell to the assignee one half share of and in the said invention and patent for the sum of Rs.——.

NOW THIS DEED WITNESSES as follow:

1. In consideration of the said sum of Rs.——now paid by the assignee to the patentee (the receipt of which is hereby acknowledged) the patentee hereby assigns and transfers to the assignee one-half share or part of and in the said invention and patent TO HOLD the same to the assignee absolutely;

2 See also *precedent No. 10 under ASSIGNMENT, ante.*

2. The patentee hereby covenants with the assignee that the said patent is valid and subsisting and in full force.

IN WITNESS WHEREOF, etc.

5—Ditto, with Provision for Working Independently

In Form 4, *make the following additions :*

(1) At the end of the second recital add "upon the terms and conditions hereinafter contained".

(2) At the commencement of the first witnessing clause add "In pursuance of the said agreement".

(3) At the end, add the following covenants as third and subsequent witnessing clauses :

3. Either of the parties may manufacture and sell————under the said patent without accounting to the other for any profits derived therefrom;

4. Neither party shall grant any exclusive licence to manufacture or sell————under the said patent without previous consent in writing of the other but any royalties or profits derived by either party under any licence granted as aforesaid shall belong to the party granting such licence who shall not be liable to account to the other party for any part of such royalties or profits;

5. All fees connected with receiving or keeping in force the said patent shall be paid by the parties hereto in proportion to their respective shares in the said patent. If either party shall neglect or refuse to pay his share the other shall, on paying the same, have a first charge upon the share in the patent of the defaulting party for the amount so paid together with interest at————per cent per annum.

6. Either party may sell his share to a third person provided that the other party has first been offered and has not agreed to purchase it within————days from the date of the offer of the said share or interest at a price not exceeding that which is proposed to be actually received in respect of such sale.

7. *Interpretation clause*—(*as clause* 4 *in Form* 3).

IN WITNESS WHEREOF, etc.

6—Licence to Manufacture under a Patent (by Deed Poll)

KNOW ALL MEN BY THESE PRESENTS that I, AB, etc., in consideration of the sum of Rs.————paid by CD, etc., (the receipt of which is hereby acknowledged) hereby grant to the said CD full licence and authority to make use, exercise and vend the invention the subject of patent No.————dated————granted to me, for the term of——years computed from the date of grant.

Dated———— (*Signature*)————

7—Licence to Manufacture under a Payment on Royalty[3] System

THIS LICENCE made on the————day of———— BETWEEN AB, etc., (hereinafter called "the patentee") of the one part AND CD, etc., (hereinafter called "the licensee") of the other part.

WHEREAS

1. In consideration of the royalties hereinafter reserved the patentee hereby grants to the licensee full (*or*, full and exclusive) licence and authority to make use, exercise and vend————under and in accordance with the specification of the patent No.———— of———— within the State of West Bengal for a term of————————years from the date hereof;

2. The parties hereto hereby agree as follows :

(1) The licensee shall on the first day of each quarter of the year pay to the patentee a royalty of Rs.———for every——manufactured hereunder and sold during the preceding quarter;

(2) The licensee shall on the first day of each quarter of the year render to the patentee a true and full account of the number of—— manufactured and sold hereunder during the preceding quarter.

(3) The patentee shall not during the subsistence of this licence make use, exercise or vend or permit or authorise any person or persons other

3 On meaning of 'royalty', see footnote at p.113, *ante*.

than the licensee to make use, exercise or vend————under the said patent within the limits aforesaid;

(4) If the licensee shall commit a breach of his covenant in clause 1 or shall become insolvent or commit an act of insolvency the patentee may by notice in writing determine this licence and thereupon this licence shall forthwith cease and determine;

(5) If the patentee shall not within —— weeks of receipt of notice to that effect take all such legal proceedings as may be necessary to prevent infringement of the said patent in West Bengal the licensee may at his own cost and expense take such proceedings in the name of the patentee (*or*, the licensee shall be relieved from all further obligation to pay royalties hereunder);

(6) All royalties shall cease if the patentee fails to maintain the said patent or if the said patent is declared, by a competent court, to be void;

(7) This licence is exclusive and non-assignable.

IN WITNESS WHEREOF, etc.

8—Assignment of Trade Mark and Trade Name[4]

THIS ASSIGNMENT made on the————day of———— BETWEEN AB, etc., (hereinafter called "the vendor" of the one part and CD, etc., (hereinafter called "the vendee")of the other part.

WHEREAS the vendor is the registered proprietor of the trade marks and trade names[5], the particulars of which are set out in the schedule annexed; and

WHEREAS the vendee has agreed to purchase from the vendor for a sum of Rs. , the said registered trade marks and the right to the said trade names.

NOW THIS DEED WITNESSES as follows :

1. In pursuance of the said agreement and in consideration of the sum of Rs. ———— now paid by the vendee to the vendor (receipt of

4 See also *precedent No. 10 under ASSIGNMENT ante and footnote thereunder.*

5 On what amounts to infringement of trade mark, see *N.R. Dongre* v. *Whirlpool Corporation*, A 1999 SC 22, (1998) 5 SCC 714; *Rupa & Co.* v. *Dawn Mills*, A 1998 Guj 247 (case law); *Indo Pharma Pharmaceutical Works* v. *Citadel Fine Pharmaceuticals*, A 1998 Mad 347 (DB) (case law).

agricultural holding, and the law prescribes a particular form of receipt or any particulars to be mentioned in it, it should be given in such form and should contain such particulars.

Should be Signed

A receipt should be signed by the person granting it, and, though attestation is not legally necessary, it is always safe to have it attested by one or two witnesses. Even if it is not signed, so long as it can be proved by handwriting or otherwise that it was issued by a particular person, it will amount to a receipt issued by such person.

Obligation to give Receipt

A person who makes a payment or delivers any movable property is entitled to a receipt therefor, and if a receipt is demanded and not given the person refusing or neglecting to give the same is guilty of criminal offence, for which he may be punishable with fine up to Rs. 100 (Sec.65, Stamp Act).

Stamp Duty

If the amount of money paid or value of the property delivered does not exceed Rs.500, no stamp duty is payable, but if it exceeds Rs. 500, stamp duty, of one rupee is payable (Article 53). The duty is payable by the person executing the receipt (Sec.29).

Cancellation of Stamp

The adhesive stamp should be cancelled by the person affixing it, or by the person executing the receipt, by writing on or across the stamp his name or initials with the date of his so writing, or in any other effectual manner, so that the stamp cannot be used again. If the stamp is not cancelled, the receipt will be deemed to be unstamped (Sec. 12). An unstamped receipt can be admitted in evidence only on payment of a penalty (Sec. 35).

Exemption from Duty

The following receipts are exempt from stamp duty.

(*a*) Receipts endorsed on or contained in any instrument duly stamped or exempted under the proviso to Sec. 3 acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal money, interest or annuity, or other periodical payment thereby secured.

(*b*) Receipts for any repayment of money without consideration;

(*c*) Receipts for any payment of rent by a cultivator on account of land assessed to Government revenue.

(*d*) Receipts for pay or allowances by non-commissioned or petty officers, (soldiers, sailors or airmen of the Indian military, naval or air forces,) when serving in such capacity, or by mounted police constables;

RECEIPTS

Preliminary Notes

Definition of Receipt

A receipt is any note, memorandum or writing acknowledging receipt of any money, bill of exchange, cheque, promissory note or any other movable property in full or partial satisfaction or discharge of any debt or demand.

How Drafted

It is sometimes endorsed on the deed to which the payment relates, e.g. payment of rent may be endorsed on a deed of lease or repayment of loan on the back of the bond. Sometimes a separate deed is executed. When money is paid as consideration of a transaction endorsed by a deed (e.g. sale, mortgage) the acknowledgment is usually incorporated in the deed itself. For example, "In consideration of the sum of Rs.————paid by the purchaser to the vendor (the receipt of which the vendor hereby acknowledges, etc.)." The drafting of a separate receipt is also a simple matter as all that a receipt need contain are the amount of money or specification of other movable property received, the date of receipt, the name of the person paying or delivering it and the account on which the payment is made. The name of the person receiving the payment or delivery need not be separately mentioned if it sufficiently appears from the signatures at the end, or it may be mentioned in the body of the receipt. The date of receipt is usually mentioned at the end or sometimes in the body of the receipt. When the person granting the receipt is an agent, this should be clearly stated.

Precautions

Care should always be taken that the receipt does not contain any matter which may convert it in any other kind of deed mentioned in the Stamp Act. Otherwise it shall be chargeable with enhanced duty as such or may even require registration. For example, if in a receipt for earnest money on a contract of sale of land, a covenant to sell the land is also added, stamp duty will be levied as on an agreement and in Uttar Pradesh the document will require registration. But there is no objection to reciting any agreement already made with all its terms so long as the writing does not amount to a definite agreement *in itself*. For example, a vendor might say that he has made a contract for selling his land to the purchaser for Rs.————, and has received Rs.———— as part price or as earnest money, but he should not say that he will execute a sale deed or will sell the land on receipt of the balance of the price, etc. If a receipt is required to be given under a special law, e.g. receipts for rent of

agricultural holding, and the law prescribes a particular form of receipt or any particulars to be mentioned in it, it should be given in such form and should contain such particulars.

Should be Signed

A receipt should be signed by the person granting it, and, though attestation is not legally necessary, it is always safe to have it attested by one or two witnesses. Even if it is not signed, so long as it can be proved by handwriting or otherwise that it was issued by a particular person, it will amount to a receipt issued by such person.

Obligation to give Receipt

A person who makes a payment or delivers any movable property is entitled to a receipt therefor, and if a receipt is demanded and not given the person refusing or neglecting to give the same is guilty of criminal offence, for which he may be punishable with fine up to Rs. 100 (Sec.65, Stamp Act).

Stamp Duty

If the amount of money paid or value of the property delivered does not exceed Rs.500, no stamp duty is payable, but if it exceeds Rs. 500, stamp duty, of one rupee is payable (Article 53). The duty is payable by the person executing the receipt (Sec.29).

Cancellation of Stamp

The adhesive stamp should be cancelled by the person affixing it, or by the person executing the receipt, by writing on or across the stamp his name or initials with the date of his so writing, or in any other effectual manner, so that the stamp cannot be used again. If the stamp is not cancelled, the receipt will be deemed to be unstamped (Sec. 12). An unstamped receipt can be admitted in evidence only on payment of a penalty (Sec. 35).

Exemption from Duty

The following receipts are exempt from stamp duty.

(*a*) Receipts endorsed on or contained in any instrument duly stamped or exempted under the proviso to Sec. 3 acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal money, interest or annuity, or other periodical payment thereby secured;

(*b*) Receipts for any repayment of money without consideration;

(*c*) Receipts for any payment of rent by a cultivator on account of land assessed to Government revenue.

(*d*) Receipts for pay or allowances by non-commissioned or petty officers, (soldiers, sailors or airmen of the Indian military, naval or air forces) when serving in such capacity, or by mounted police constables;

(e) Receipts given by holders of family-certificates, in cases where the person from whose pay or allowances the sum comprised in the receipt has been assigned is a non-commissioned petty officer (soldier, sailor or airman) of any of the said forces and serving in such capacity;

(f) Receipts for pensions or allowances by persons receiving such pensions or allowance in respect of their service as such non-commissioned petty officers [soldiers, sailors or airmen] and not serving the Government in any other capacity;

(g) Receipts given by headman or lambardar for land revenue or taxes collected by him;

(h) Receipts given for money or securities for money deposited in the hands of any banker, to be accounted for.

Provided that the payment is not expressed to be received from, or by the hands of, any other than the person to whom the same is to be accounted for:

Provided also that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for, or upon, a letter of allotment of a share, or in respect of a call upon any scrip or share of, or in any incorporated company or other body corporate or such proposed or intended company or body, or in respect of a debenture being a marketable security.

[For other exemptions, see notifications of the Central Government under Sec. 9, Stamp Act].

Registration

If a receipt is for money paid on account of the creation, declaration, assignment, limitation, or extinction, of any right, title or interest, whether vested or contingent, of the value of Rs. 100 or upwards, to or in immovable property, registration is compulsory [Sec. 17(1)(c)]; otherwise a receipt does not require registration. A receipt for part of the debt does not require registration as it does not extinguish the mortgage. As to the question whether receipt for full payment of a mortgage debt does or does not require registration, Sec. 17(2)(XI) provides that if the receipt *does not purport to extinguish the mortgage* (even though it may evidence payment, the effect of which is to extinguish the mortgage), it does not require registration.[1] Care should therefore be taken to say nothing in the receipt which might be taken as purporting to extinguish the mortgage, e.g. the statement that "I will return the mortgage deed".

1 See discussion in *Totaram* v. *Harishchandra*, A 1937 Nag 402 at 405.
2 *Jwala Prasad* v. *Mohan Lal*, A 1926 All 693

PRECEDENTS

1—Receipt of a Bond Debt

Received this————day————from AB, etc., (*name and address*) the sum of Rupees Two thousand (Rs. 2,000) on account of principal and interest due to me under the bond dated the———.

(*Affix stamp and write signature and date across it).*

Or

I, CD, etc., (*name and address*) hereby acknowledge to have received from AB, etc., this day of the sum of Rs. (*words and figures*) on account of, etc., (*as in Form* 1)

2—Receipt for Balance of Account

Received this day from AB, etc., the sum of Rs. ————(*words and figures*) being the balance of account due from him to me at this date.

3—General Receipt in Full

Received this day from AB, etc., the sum of Rs.———— (*words and figures*) in full discharge of all claims which I have against him up to date.

4—Receipt of Mortgage Money

(*See under mortgage : General forms : "Consideration, Receipt"*).

5—Receipt for Part Payment of a Loan

Received, etc., (*as in above Forms*) on account of payment in part of the debt due to me under the bond dated .

6—Receipt for Payment of an Instalment

Received, etc., (*as in other Forms*) on account of the instalment due under the bond dated——on the day of .

7—Receipt for Rent

Received, etc., (*as in other Forms*) on account of rent of the house situate in ———— for the month of———— besides the sum of Rs. ———— on account of water tax.

8—Receipt by Agent

Received this day from AB, etc., the sum of Rs. ———— on account of rent of a house situate in ———— for the month of———— due to CD, etc.

Dated———. (Signed) ————

Agent for the said CD

9—Receipt for Price or Part of Price of Goods to be Made and Delivered

Received this day from AB, etc., the sum of Rs.———— the price (*or*, on account of price) of three tables and one chest of drawers to be built by me as per specification dated the———— and to be delivered to him on or before the———— (*or*, on receipt of Rs.———— on account of the balance of the price).

10—Receipt for Earnest Money for Sale of a House (with Recitals about Agreement to Sell)

WHEREAS I, AB, etc., have agreed to sell to CD, etc., my house situate at———— for Rs.———— and have agreed to receive Rs.———— as earnest money and it has been agreed that the balance of the price shall be paid and the sale deed executed on or before the ————. Now, I hereby acknowledge receipt of the said sum of Rs.———— as earnest money.

11—Receipt Endorsed on a Bond

Received this day from the within named CD, Rs.———— on account of (*or*, towards part payment of) the debt due under the within

written bond *(or*, on account of interest due to me under the within written bond on the).

12—Receipt Signed by the Payer and Payee[1]

The within named CD has paid and the within named AB has received this day Rs. towards, etc.

(Signed) CD

(Signed) AB

13—Receipt of a Debt

Borrowed and received from CD, etc., today the sum of Rs. repayable within years with interest at percent per annum

14—Receipt for Money Paid on Account of Work to be Done

Received this day from CD, etc., Rs.———on account of cost of repairs to be carried by me to the house of the said CD as per my estimate dated the———.

15—Receipt for Price of a Watch with a Warranty

Received this day from AB, etc., Rs.———the price of a gold watch warranted by us to keep correct time within two minutes per week for twelve calendar months from this date.

for CD & Co.

Dated———

(Sd.) CDF

16—Receipt of Title Deeds by Mortgagor from Mortgagee

I, AB, etc., hereby acknowledge that I have this day received from CD, etc., all the documents of title relating to the *(describe the property)* mortgaged by me to the said CD by a deed of mortgage dated———which mortgage I have this day paid off.

---

1 Signature of payer is sometimes obtained with a view to extending the period of limitation under Sec. 19 of the Limitation Act, 1963.

17—Receipt by a Legatee with full Discharge to the Executor

Received this day from AB, etc., executor of the will of my late father XY the sum of Rs.----------being my share of proceeds of the property of the said XY AND having carefully examined the accounts of the said executor with the vouchers, I hereby approve the same and accept the above-mentioned sum in full satisfaction of all my claims against the said AB on account of property of the said XY.