

J.K. SHAH[®]

**TEST
SERIES**



SUGGESTED SOLUTION

CS PROFESSIONAL

**Subject – Drafting, Pleading and
Appearances**

Topic – Ch 1 to 4

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Answer to Q1.A.

After attestation clause, signatures of the executants of the documents and their witnesses attesting their signatures follow. If the executant is not competent enough to contract or is juristic person, deed must be signed by the person competent to contract on its behalf. For example, if the deed is executed by the company or cooperative society then the person authorised in this behalf by and under the articles of association or rules and regulations or by resolution as the case may be should sign the document and seal of the company/society should be so affixed, thereto by mentioning the same.

In India, the Deed of Transfer is not required to be signed by the transferee even though the transferee is mentioned as party in the document. All conditions and covenants are binding upon him without his executing the conveyance, if he consents to it by entering into the lease granted under the conveyance. However, in case the deed contains any special covenant by the transferee or any reservation is made by the transferee then it is always proper to have the deed signed by the transferee also.

Attestation is necessary in the case of some transfers, for example, mortgage, gift, sale, and revocation of Will. In other cases, though it is not necessary, it is always safe to have the signatures of the executant attested. Attestation should be done by at least two witnesses who should have seen the executant signing the deed or should have received from the executant personal acknowledgement to his signatures. It is not necessary that both the witnesses should have been present at the same time. There is no particular form of attestation but it should appear clearly that witnesses intended to sign is attesting the witnesses. General practice followed in India is that the deed is signed at the end of the document on the right side and attesting witnesses may sign on the left side. If both the parties sign in the same line then the transferor may sign on the right and the transferee on the left and witnesses may sign below the signatures.

(5 marks)

Answer to Q1.B.

The 'arbitration agreement' under the Arbitration and Conciliation Act, 1996 means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of defined relationship whether contractual or not. It may be in the form of an arbitration clause in a contract or in the form of a separate agreement. It has to be in writing. It is in writing if it is contained in a document signed by the parties, or in an exchange of letters, telex telegrams or other means of telecommunication "including communication through electronic means" which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of agreement is alleged by one party and not denied by the other.

The important ingredient of the arbitration agreement is the consent in writing to submit dispute to arbitration. Consent in writing implies the application of mind to the reference of

dispute to arbitration in accordance with Arbitration and Conciliation law and the binding nature of the award made there under.

An arbitration agreement stands on the same footing as any other agreement. It is binding upon the parties unless it is intended with fraud, undue influence etc., in which case it can be avoided like any other agreement. An arbitration rests on mutual voluntary agreement of the parties to submit their differences to selected persons whose determination is to be accepted as a substitute for the judgement of a court.

Every arbitration agreement must have the following pre- requisites: (i) a dispute between parties to an agreement, requiring a settlement. (ii) its submission for a settlement to a third person. And (iii) a decision by such third person according to his own judgement based on the facts and circumstances of the dispute, which is binding on both the parties.

Section 7 of the Arbitration and Conciliation Act, 1996 defines 'Arbitration Agreement'. i. An arbitration agreement must comply with the requirements of a valid contract. ii. An arbitration agreement must be in respect of a dispute that is arbitrable.

(5 marks)

Answer to Q1.C.

Judicial control over delegated legislature can be exercised at the following two levels :-

(1) Delegation may be challenged as unconstitutional; that is the delegation can be challenged in the courts of law as being unconstitutional, excessive or arbitrary or

(2) That the Statutory power has been improperly exercised.

Limitations of delegated legislation set out under Article 13(3)(a) of the Constitution of India are as under :-

(a) Delegated Legislation should not infringe any provisions, basic structure (e.g Keshavananda Bharati, a famous case) or even the philosophy as described in The Preamble of the Constitution of India.

(b) Delegated Legislation should not infringe any fundamental right. Even the procedure must confirm such rights.

(c) Delegated Legislation should be within the limits laid down in the statute.

The validity of the rules can be described at this stage in two ways :-

(i) They run counter to the provisions of the Act, and

(ii) They have been made in excess of the authority delegated by the legislature. Here the substance of the Rules and Regulations impugned has to be looked into and not the procedural requirements of the rule-making that may be prescribed in the statute. Latter is looked into procedural ultra vires rule. High Court and Supreme Court have struck down defective Delegated Legislation Rules etc time and again.

(5 marks)

Answer to Q2.A.

A deed between two or more parties where as many copies are made as there are parties, so that each may be in possession of a copy. This arrangement is known as deed pool. In other

words A deed poll is a legal document binding only to a single person or several persons acting jointly to express an active intention.

A deed made and executed by a single party e.g. power of attorney, is called a deed poll, because in olden times, it was polled or cut level at the top. It had a polled or clean cut edge. It is generally used for the purpose of granting powers of attorney and for exercising powers of appointment or setting out an arbitrator's award. It is drawn in first person usually.

(4 marks)

Answer to Q2.B.

Section 175(1) : No resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or members of the committee, as the case may be, at their addresses registered with the company in India by hand delivery or by post or by courier, or through such electronic means and has been approved by a majority of the directors or members, who are entitled to vote on the resolution. A resolution in draft form may be circulated to the directors together with the necessary papers for seeking their approval, by electronic means which may include E-mail or fax.

Provided that, where not less than one-third of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board.

Section 175(2): A resolution under section 175(1) shall be noted at a subsequent meeting of the Board or the committee thereof, as the case may be, and made part of the minutes of such meeting.

(4 marks)

Answer to Q2.C.

Outsourcing is the contracting out of a company's non-core, non-revenue producing activities to specialists. It differs from contracting in that outsourcing is a strategic management tool that involves the restructuring of an organization around what it does best i.e., its core competencies. The common types of outsourcing are Information Technology (IT) outsourcing, Business Process Outsourcing (BPO) and Knowledge Process outsourcing (KPO).

A good outsourcing agreement is one which provides a comprehensive road map of the duties and obligations of both the parties - outsourcer and service provider. It minimizes complications when a dispute arises. However, many a times people neglect to pay attention while drafting an outsourcing agreement. Before finalizing an outsourcing agreement, the terms should be thoroughly discussed and negotiated to avoid any misunderstanding at a later stage. It is advisable to consult a lawyer before finalizing any outsourcing agreement.

(4 marks)

Answer to Q3.A.

THE DEED OF SALE is made on this..... day of..... BETWEEN AB of, etc. (vendor) of one part and CD of, etc. (purchaser) of the other part.

WHEREAS by an order made by the District Judge of..... in Case No..... of under Act VIII of 1890 (cause title) the said AB was appointed certificated guardian of XY who was then and is still now a minor. AND WHEREAS by an order dated..... the..... day of..... made by the District Judge of..... in Misc. Judicial Case No. ... of..... the said AB was authorised to sell the lands, hereditament and tenement belonging solely and exclusively to the said minor on terms there under contained which property is fully mentioned and described in the Schedule hereto.

AND WHEREAS the said order is still in full force and virtue. AND WHEREAS in pursuance of the said order the said AB as such certificated guardian has contracted with the said CD for absolute sale of the said property at and for the sum of Rs.....

NOW THE INDENTURE WITNESSETH that for the consideration as aforesaid and in exercise of the powers, authorities and liberties conferred upon and vested under and by virtue of the hereinbefore recited order dated..... and all other powers and authorities enabling him in that behalf the said AB do hereby grant, convey, sell, transfer, assign and assure as certificated guardian of the said minor the said property and every part whereof unto and to the use of the said CD, To Have and To Hold the same absolutely and for ever.

AND THIS INDENTURE FURTHER WITNESSETH that the said AB do hereby covenant with the said CD that the said AB has not here to before done, executed, performed or knowingly suffered to the contrary any act, deed or thing whereby or by reason or means whereof the said property or any part thereof may in any way be encumbered or prejudiced in title or estate or the said AB may be hindered or prevented from granting, transferring, conveying, selling, assigning or assuring the same in the manner hereinbefore indicated.

The Schedule above referred to

IN WITNESS WHEREOF, etc.

Signed, sealed and delivered

.....AB

(8 marks)

Answer to Q4.A.

Summon Case : According to section 2(w) of the Code of Criminal Procedure, 1973 summon-case means a case relating to an offence, and not being a warrant-case. Those cases in which an offence is punishable with an imprisonment of fewer than two years is a summons case. A summons case doesn't require the method of preparing the evidence. Nevertheless, a summons case can be converted into a warrant case by the Magistrate if after looking into the case he thinks that the case is not a summon case.

Important points about summons case are as under:

- A summons case can be converted into a warrant case.
- The person accused need not be present personally.

- The person accused should be informed about the charges orally. No need for framing the charges in writing.
- The accused gets only one opportunity to cross-examine the witnesses

Warrant Case : According to Section 2(x) of Code of Criminal Procedure, 1973 a warrant case is one which relates to offences punishable with death, imprisonment for life or imprisonment for a term exceeding two years. The trial in warrant cases starts either by the filing of FIR in a police station or by filing a complaint before a Magistrate. Later, if the Magistrate is satisfied that the offence is triable exclusively by the Court of Session, he sends the case to the Sessions court for trial. The process of sending it to Sessions court is called “committing it to Sessions court”.

Important features of a warrant case are as under:

- Charges must be mentioned in a warrant case
- Personal appearance of accused is mandatory
- A warrant case cannot be converted into a summons case
- The accused can examine and cross-examine the witnesses more than once
- The Magistrate should ensure that the provisions of Section 207 are complied with. Section 207 of Cr. P.C. 1973, include the supply of copies such as police report, FIR, statements recorded or any other relevant document to the accused.

(5 marks)

Answer to Q4.B.

The draftsman must be cautious about the appropriate use of the words and should be clear of its meaning. The following rules may be prescribed for the guidance of the draftsman for using any particular word and phrase in the drafting of the documents:

- (1) For general words refer to ordinary dictionary for ascertaining the meaning of the words. For example, Oxford Dictionary or Webster’s Dictionary or any other standard dictionary may be referred to for this purpose.
- (2) For legal terms refer to legal dictionary like Wharton’s Law Lexicon or other dictionaries of English Law written by eminent English Lexicographers as Sweet Cowel, Byrne, Stroud, Jowit, Mozley and Whiteley, Osborn etc. In India, Mitra’s Legal and Commercial Dictionary is quite sufficient to meet the requirements of draftsman.
- (3) As far as possible current meaning of the words should be used and if necessary, case law, where such words or phrases have been discussed, could be quoted in reference.
- (4) Technical words may be used after ascertaining their full meaning, import of the sense and appropriate use warranted by the circumstances for deriving a technical or special meaning with reference to the context.
- (5) The choice of the words and phrases should be made to convey the intention of the executor to the readers in the same sense he wishes to do.

(6) The draftsman should also use at times the recognised work of eminent legal expert on the interpretation of statutes.

(5 marks)

Answer to Q4.C.

NOTICE is hereby given that the persons named below, who are Members of.....
(Name of the Company), having its Registered Office at....., and who have requisitioned the convening of an Extra-Ordinary General Meeting of the Company, hereby, in exercise of the powers and rights conferred by Section 100 of the Companies Act, 2013, give Notice that the said requisitioned meetings shall be held on day, the20....., ata.m./p.m. at (address) to consider the following proposal:

State the proposal

{OR for considering and, if thought fit, passing the following Ordinary/ Special Resolution:

Reproduce the Resolution}

Names of requisitionists:

1.
2.
3.
4.

Note :

A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company. Proxies, in order to be effective, should be duly completed, stamped (if applicable) and signed and must be received at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting.

By Order of the Board of Directors

For(Signature)

Place(Name)

Date :20
Company Secretary
(ACS/FCS

No.....)

Further Notes:

1. A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company. Proxies, in order to be effective, should be duly completed, stamped (if applicable) and signed and must be received at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting.

2. The requisition dated, referred to above, signed by the requisite number of Members in terms of Section 100 of the Companies Act, 2013, and all documents referred to in the Notice are available for inspection by any Member at the Registered Office of the Company on any working day of the Company between the hours of 11:00 a.m. and 1:00 p.m. upto the date of this Extra-Ordinary General Meeting and at the venue of the Meeting for the duration of the Meeting.

3. Route-map to the venue of the Meeting is enclosed.

(5 marks)