

Introduction

- *In this session and the next, we will learn the art of drafting legal documents.*
- *One must exercise utmost care whilst creating or vetting legal documents as the consequences of even a minor carelessness can be devastating.*



Drafting of deeds

- **Importance of agreements for C.A.s**
- **Deeds versus Agreements**
- **Elements of a Deed**
 - ❖ **Written Matter**
 - ❖ **Signing**
 - ❖ **Delivery**



Types of Deeds

- **Constitutional Deeds**

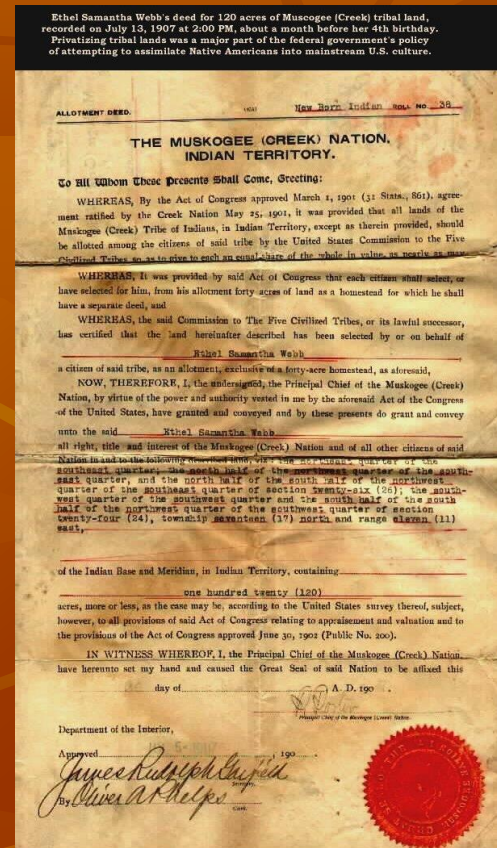
Partnership, LLP, Companies, Trusts

- **Property Deeds**

Conveyance, Lease, leave & license,
Business centre, Malls

- **Commercial Deeds**

Franchise, Agency, M&A's, Revenue
Sharing, Distributorship, Hire purchase



Essentials of a deed

- **Objects of a deed**
- **General guidelines for preparation**
 - All facts & terms to be stated
 - Meaning of words & phrases used
 - Intention of the parties
 - Recitals

Structure of Deed...1

- **Description and date**

“

Deed of Sale

This deed of sale made and entered into
this 24th day of January, 2003 between

”

.....

Structure of Deed...2

• Parties to the deed

“.... M/s XYZ Pvt. Ltd. an Indian Company registered under the Companies Act, 1956 having its registered office at 5,Jolly Towers, Nariman Point, Mumbai - 400 001(*hereinafter referred to as ‘the Vendor’*), which expression shall, unless it be repugnant to the context or meaning hereof, be deemed to mean and include their **successors, and assigns**, of the ONE PART, represented by its MD, Mr. A and

Structure of Deed...3

• Recitals

“WHEREAS by an agreement dated 22nd day of May 2004 between Lokhandwala Estates & Development Company Private Limited and the vendor herein, the latter purchased flat No. 504 of the approximate area of 420 sq. ft built up on the fifth floor of the Sunrise CHS LTd., Plot No. 201, Vrindavan Complex, Andheri (West), Mumbai - 400 053.....”

Structure of Deed ...4

• Testatum

“ NOW THIS INDENTURE
WITNESETH AND THE
PARTIES HERETO
AGREE AS FOLLOWS: ”



Structure of Deed ...5

■ **Consideration & Receipt**

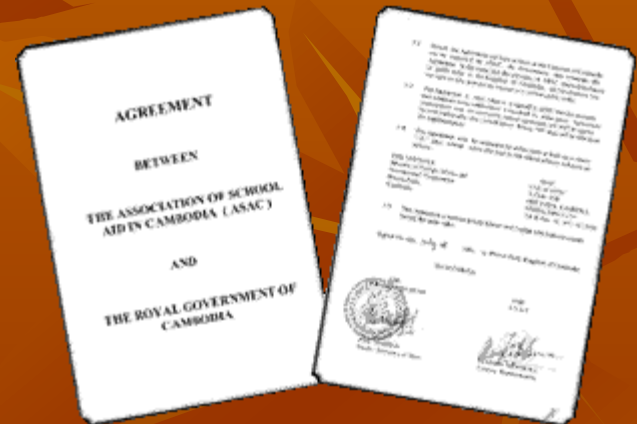
“The Vendor hereby sells, transfers and assigns unto the Purchasers, and the Purchasers have purchased the said shares together with the right, title and interest in the said Flat for the total consideration amount of **Rs. 12,00,000 (Rupees Twelve Lacs Only)**, with all original papers, documents, deeds, share certificate etc., **the receipt whereof the vendor hereby admits and acknowledges, in the manner more fully enumerated *infra*”**

Structure of Deed ...6

• Operative Words

“The Vendor hereby **sells, transfers and assigns** unto the Purchasers and the Purchasers hereby **acquire** from the Vendor

“ The Co. Hereby **appoints** the agent



Structure of Deed ...7

▪ **Covenants & Undertaking**

“ The vendor agrees and undertakes to obtain NOC from the Society in favour of the purchaser within seven days hereof.

The parties hereto covenant that they shall bear the transfer charges payable to the Society in equal part.”

Structure of Deed ...8

. **Parcels**

“The Vendor hereby sells, transfers and assigns unto the Purchasers and the Purchasers hereby acquire from the Vendor Flat No. 504 of the approximate area of 420 sq. ft built up on the fifth floor of the Sunrise CHS Ltd., Plot No. 201, Vrindavan Complex, Andheri (West), Mumbai - 400 053.....”

Structure of Deed ...9

■ Exceptions & Reservations

The Vendor hereby sells, transfers and assigns to the Purchaser, the said land free of all encumbrances save and except any minerals, ores or antiques which may be located thereon

The vendor reserves the permanent right of use over the bylane running from west to east on the north portion of the said land which provides access to the Vendor's property to the East of the said land.

Structure of Deed ...10

• Testimonium

“ IN WITNESS WHEREOF the parties hereto have set their hand on the day and year first herein above mentioned.”



Structure of Deed ...11

■ Signatures and Attestation

“SIGNED SEALED AND DELIVERED BY Mr. A on behalf of the the Withinnamed Vendor M/s XYZ Pvt. Ltd., in the presence of

Structure of Deed ...11

Digital Signatures

Legal Recognition :

- ✓ Section 5 overriding in nature
- ✓ Digital signatures on equal footing

A handwritten signature in black ink that reads "Deed." with a flourish at the end.A handwritten signature in black ink that reads "Deed." with a flourish at the end.A handwritten signature in black ink that reads "Jane Wright" in a cursive style.

Structure of Deed ...11

Digital Signatures

Usage in Government :

- Filing of application, forms, documents
- Issue of of licence, permit, etc.
- Receipt or payment of money



Deed.



Deed.



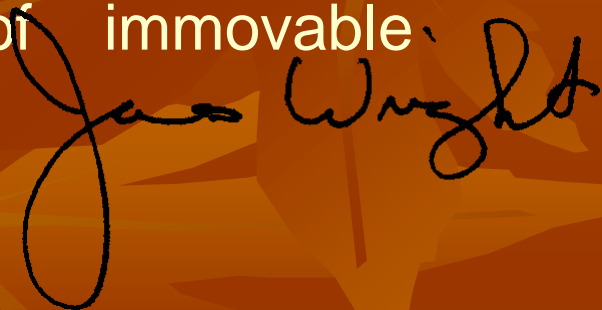
Joe Wright

Structure of Deed ...11

Digital Signatures

Where not applicable :

1. Power of Attorney
2. Negotiable instruments (other than cheque)
3. Trust or Will
4. Contracts for Sale/conveyance of immovable property or interest therein.
5. Other notified classes of documents



Interpretation of Deeds ...1

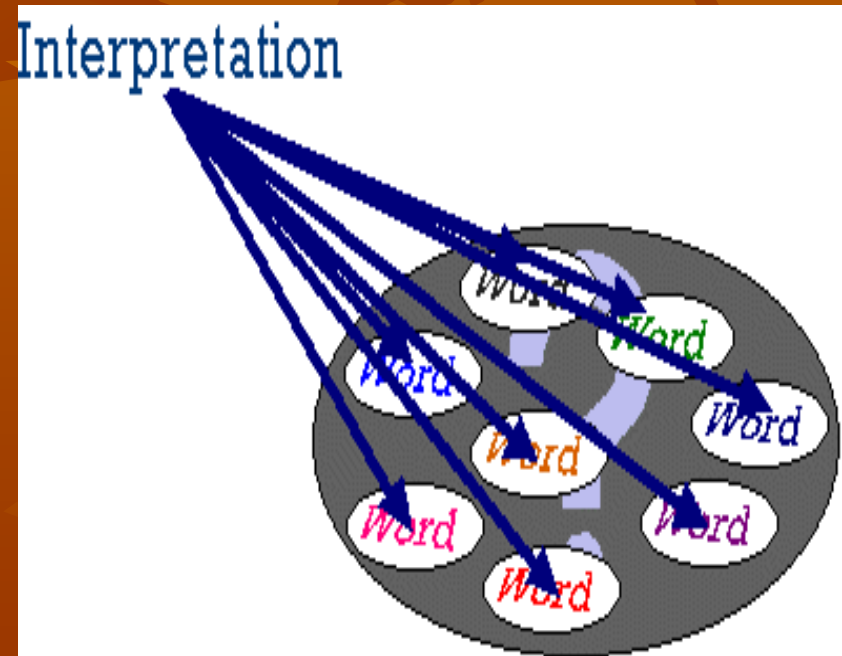
A Woman without her man is nothing

I didn't say he stole the money

Pray tell, William dear, is that child your target? You, as father, cry. But despair will not do. Do not, Will, despair! But cry, "Father!" as you target your child. That is, dear William Tell, pray!

Rule of Interpretation...1

- **Construction where wording is clear**
- **Construction where wording is ambiguous**
- **Words to be construed literally**
- **Document must be interpreted as a whole**



Rules of interpretation ...2

- **Provisional and Final Deeds**
- **Conduct of parties**
- **Provisos**
- **Jurisdiction of the Courts to reform terms**



Rules of interpretation...3

- **Substance over Form**
- **Inadequate consideration**
- **Clause Headings**

Interpretation of Arbitral Agreements

- **Independent of main Agreement**
- **Void Agreements**



Interpretation of a Partnership Deed...1

- **Rights & Duties of the partners**
- **Objective of the Partnership**
- **Preclusion of Fraud**



Interpretation of a Partnership Deed...2

- **Powers of a partner**
- **Consideration of the prevailing circumstances**

Interpretation of a Will

Will of a Dalal Street Broker

- **To my wife, I leave my lover and the knowledge that I wasn't the fool she thought I was.**
- **To my son, I leave the pleasure of earning a living. For 35 years he thought the pleasure was mine. He was mistaken.**
- **To my daughter, I leave Rs. 1 Crore. She will need it. The only smart thing her husband ever did was to marry her.**
- **To my valet, I leave the clothes he has been stealing from me for the past 10 years. Also the fur coat he wore at Manali last year.**
- **To my chaffeur, I leave my cars. He almost ruined them and I want him to have the satisfaction of finishing the job.**
- **Lastly, to my partner, I leave the advice that he take some other man in with him if he expects to do any business.**

Interpretation of a Will...1

- **Intentions of the testator**
- **Surrounding circumstances**
- **Avoidance of intestacy**



Interpretation of a Will...2

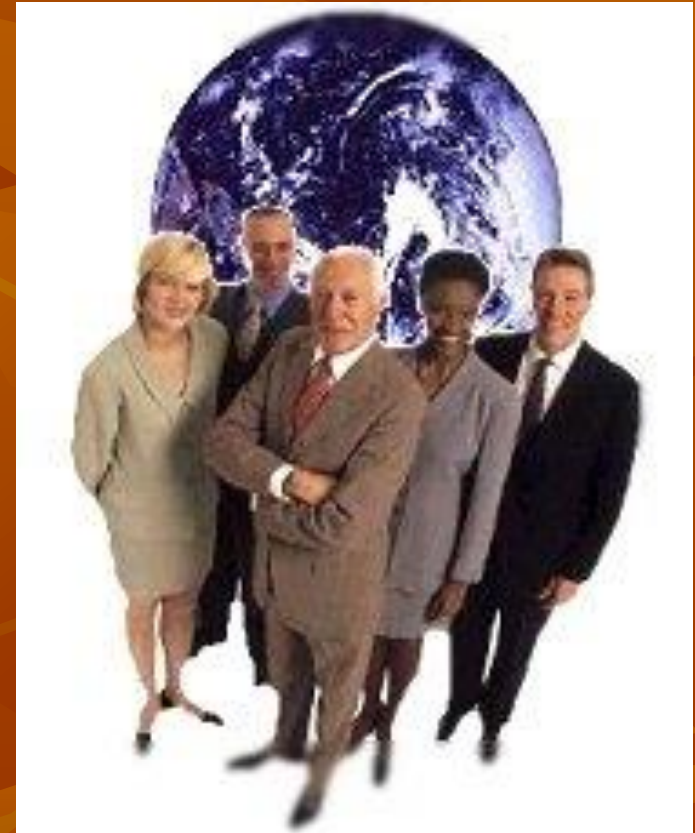
- **Harmonious Interpretation**
- **Later parts / last word to prevail**

Laws you should know

- **Indian Contract Act, 1872**
- **Transfer of Property Act, 1882**
- **Indian Registration Act, 1908**
- **Indian Stamp Act, 1899**
- **Sale of goods Act, 1930**
- **Arbitration & Conciliation Act, 1996**
- **Your local Stamp Act**

Some critical clauses

- **Alternate Dispute Resolution**
- ***Force Majeure***
- **Time of the Essence**



Common Latin terms

- **Ab Initio**
- **Ad hoc**
- **Ad interim**
- **Ad valorem**
- **Amicus curiae**
- **Apropos**
- **De Jure**
- **De Novo**
- **Ex post facto**
- **Ejusdem generis**
- **Fait accompli**
- **Inter alia**



- **Ipso facto**
- **Mesne profits**
- **Mutatis Mutandis**
- **Pari Passu**
- **Per se**
- **Pro rata**
- **Res Judicata**
- **Sine Qua non**
- **Sub judice**
- **Sui generis**
- **Suo moto**
- **Viva voce**