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

2



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 Ethel Samantha Webb's deed for 120 acres of Muscogee (Creek) tribal land, ecorded on July 13, 1907 at 2:00 PM, about a month before her 4th birthday Privatizing tribal lands was a major part of the federal government's policy of attempting to assimilate Native Americans into mainstream U.S. culture.

THE MUSKOGEE (CREEK) NATION.

New Born Indian Roll No 36

To Hill Unboin These Presents Shall Come, Greeting

LLOTMENT DEED

WHEREAS, By the Act of Congress approved March 1, 1901 (1) Sims, 56(), agreement railed by the Creek Nation May 35, 4001 it was provided that all hands of the Markogan (Creek) Thrie of Halansia, in Judian Terrology, except as therein provided, should be allotted among the cliters of usid tribs by the United States Commission to the Five Positival Thries on a tenspine needban sumplement of the shade in view as works at more Positival Thries on a tenspine needban sumplement of the shade in view at more

WHERMAS, It was provided by said Act of Congress that each eithen shall select, or have selected for him, from his allocment forty acres of land as a homestead for which he shall have a separate deed, and

WHEREAS, the said Commission to The Five Civilized Tribes, or its lawful successor, has certified that the land hereinafter described has been selected by or on behalf of

Ribel Samaritha Webb

a citizen of said tribe, as an allettanen, esclatoriaria a forty-acre homentead, as adoreaid, NOW, THEREFORR, I, the undersynthy, the Principal Chele et the Mankages (Creak) Nation, by yrites of the power and authority words in une by the shoreaid. Ref of the Compreof the United States, have grained and conveyed and by these presents do grant and convey

continuation markets in the section of the mortaness proves of the south mark quarket of the postimest quarket of Section Press, easily and the south and of the south section of the souther south and the south section of the south section of the souther south and the souther so

of the Indian Base and Meridian, in Indian Territory, containing_____

day of

one hundred test(120) acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to all provisions of said Act of Congress relating to appriatement and valuation and to the provisions of the Act of Congress approved June 2n, 1902 (Public No. 2no).

IN WITNESS WHERBOF, I, the Principal Chief of the Muskogee (Creek) Nation, have hereunto set my hand and caused the Great Seal of said Nation to be affixed this

A. D. 190

Department of the Interior,

Junes Kulyeph

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

Description and date

Deed of Sale

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

Created by Vinay Singh & Associates

"

Parties to the deed

6

".... 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

- 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....."

- Testatum

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



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*"

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"

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."

- 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....."

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.

- Testimonium

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



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"

Digital Signatures

Legal Recognition :

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



Digital Signatures

Usage in Government :

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



Digital Signatures

Where not applicable :

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



Created by Vinay Singh & Associates

immovable

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!

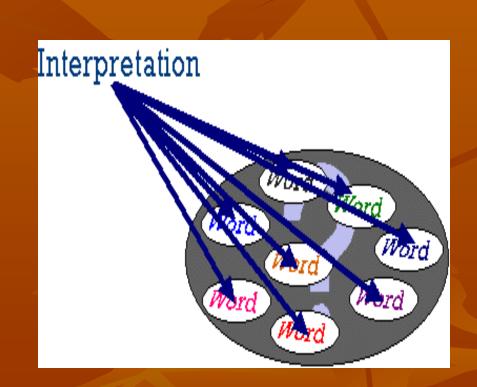
Rule of Interpretation...1

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

Created by Vinay Singh & Associates

Laws you should know

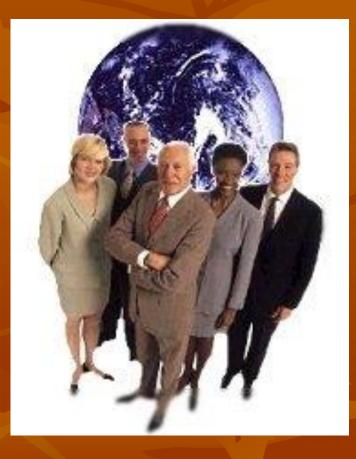
Indian Contract Act, 1872 Transfer of Property Act, 1882 Indian Registration Act, 1908 Indian Stamp Act, 1899 Sale of goods Act, 1930 Arbitration & Conciliation Act, 1996 Your local Stamp Act

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