

Solved
Scanner Appendix

CS Executive Programme Module - I
(Solution of December - 2014)

Paper - 3: Economic and Commercial Laws

Chapter - 1: Foreign Exchange Management

2014 - Dec [1] (d)

Current account transaction has been defined under Section 2(j) of the Foreign Exchange Management Act, 1999 to mean a transaction other than a capital account transaction and includes :

- (i) Payment due in connection with foreign trade, other current business, services and short term banking and credit facilities in the ordinary course of business.
- (ii) Payments due as interest on loan and as net income from investments.
- (iii) Remittances for living expenses of parents, spouse and children residing abroad.
- (iv) Expenses in connection with foreign travel, education and medical care of parents, spouse and children.

2014 - Dec [2] (d)

Powers of Central Government to prohibit receipt of foreign contribution Section 9 deals with the powers of Central Government to prohibit receipt of foreign contribution in certain cases. Accordingly, the Central Government has been empowered to:

- (a) bar any person or organisation not specifically included in section 3, from accepting any foreign contribution;
- (b) demand a previous approval or permission to be taken by any person or class of persons, not specified in Section 6, before accepting any foreign hospitality;

- (c) ask any person or class of persons not specified in Section 11, to give the following details regarding the foreign contribution:
- (i) Quantum
 - (ii) Source, as to the person or class of persons from whom received
 - (iii) Purpose
 - (iv) Manner of receiving the amount
 - (v) Manner of utilization of amount
- (d) demand that any person or class of persons specified in Section 11(1) to obtain prior permission of the Central Government when considering the acceptance of any foreign contribution;
- (e) require any person or class of persons, not specified in Section 6, to furnish intimation, within such time and in such manner as may be prescribed, as to the receipt of any foreign hospitality, the source from which and the manner in which such hospitality was received.

However, the Central Government will only require any of the above specifications when they have reason to believe that the transaction is likely to affect prejudicially the sovereignty and integrity of India; or public interest; or freedom or fairness of election to any Legislature; or friendly relations with any foreign State; or harmony between religious, racial, social, linguistic or regional groups, castes or communities.

2014 - Dec [3] (c)

Methods of funding of FDI

Foreign Direct Investment (FDI) is a category of cross border investment made by a resident of another economy (the direct investor) with the objective of establishing a lasting interest in an enterprise. The motivation of the direct investor is a strategic long term relationship with the direct investment enterprise to ensure a substantial degree of influence by the direct investor in the management of the enterprise in which he has invested.

There are two modes of bringing in FDI into India

- **Automatic Route:** Under the Automatic Route, the foreign investor or the Indian Company does not require any approval from the Reserve Bank or Government of India for the investment.
- **Government Route:** Under the Government Route, the foreign investor or the Indian Company should obtain prior approval of the Government of India, Ministry of Finance, Foreign Investment Promotion Board (FIPB) for the investment.

Chapter - 3: Competition and Consumer Protection

2014 - Dec [4] (b)

Execution of Orders of the Commission imposing monetary penalty, Section 39 of the Competition Act, 2002, provides that if a person fails to pay any monetary penalty imposed on him under the Act, the Commission shall proceed to recover such penalty, in a manner as it thinks fit and as is specified by the regulations.

If, in a case where the Commission believes it would be expedient to recover the penalty imposed under this Act as per the provisions of the Income Tax Act, 1961, it may make a reference to this effect to the concerned income-tax authority. Then the penalty would be recovered as if it were tax due under the Income Tax Act.

Where a reference to the IT officials has been made by the Competition Commission for recovery of penalty, the person upon whom the penalty has been imposed shall be deemed to be an assessee in default under the Income Tax Act, 1961. The repercussion of this would be that the sums due by way of penalty will be treated as amounts due by way of penalty, fine and interest under the Income-tax Act, 1961.

The Tax Recovery Commissioner and the Tax Recovery Officer referred to in the Income Tax Act, 1961 shall be deemed to be the Tax Recovery Commissioner and the Tax Recovery Officer for this purpose. The Tax Recovery Officer could then draw a certificate or recovery like a demand relating to penalty under the Income Tax Act.

Chapter - 4: Intellectual Property Rights

2014 - Dec [1] (e)

Patentable inventions are those that have utility and novelty both. It would be an invention, the subject matter of which, as on the date of filing of the application of complete specification, has not fallen into the public domain, nor is a part of the state of the art for that object. For it to be called an invention, it ought not to be frivolous and should add something new to the state of technology existing then. It also needs to be original, as copied or reconstituted articles or technology cannot be patented.

2014 - Dec [2] (b)

Section 2 of the Copyright Act, 1957 defines artistic work as:

- (i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;
- (ii) work of architecture; and
- (iii) any other work of artistic craftsmanship.

These works need to be original in order to secure the protection offered by the Act. In the case of all artistic works, copyright ensures the exclusive right:

- To reproduce the work
- To communicate the work to the public
- To issue copies of the work to the public
- To include the work in any cinema to graph film
- To make any adaptation of the work, given to the creator of the work.

2014 - Dec [2A] (Or) (ii)

Registration of Geographical Indication

Section 8 of the Geographical Indications of Goods (Registration & Protection) Act, 1999 provides that “a geographical indication may be registered in respect of any or all of the goods, comprised in such class of goods as may be classified by a region or locality in that territory, as the case may be the Registrar and in respect of a definite territory of a country.”

The Registrar has also the right to classify the goods as per the International classification of goods for the purposes of registration of geographical indications. He will include it in his register and also cause it to be published in an alphabetical index of classification of goods. Any doubts or questions arising as to the class within which any goods fall or the definite area in respect of which the geographical indication is to be shall be finally determined by the Registrar.

Prohibition of registration of certain geographical indications

Section 9 of the Act prohibits registration of certain geographical indications.

They are as follows :

- (a) such use of any geographical indication that would be likely to deceive or cause confusion; or
- (b) use of any geographical indication that would be contrary to any law for the time being in force; or
- (c) that which comprises or contains scandalous or obscene matter; or
- (d) that which comprises or contains any matter likely to hurt the religious sensibilities of any class or section of the Indian populace; or
- (e) an indication that cannot secure protection in a court; or
- (f) that composed of purely generic names or indications of goods or are nor ceased to be protected in their country of origin or which have fallen into disuse in that country; or
- (g) those which, although literally true as to the territory, region or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality, thus gaining an undue advantage by causing a misunderstanding to the persons trusting the geographical indication, shall not be registered as a geographical indication.

2014 - Dec [3] (a)

A Well-known trade mark in relation to any goods or services means a mark which has become so popular among the public, which uses such goods or services such that the use of such mark in relation to other goods or services, would be likely to be taken as indicating a connection between the goods & services and the first mentioned goods or services.

Well-known trade marks are marks generally acknowledged to have a high degree of recognition and reputation in the areas of trade of the proprietors of such marks and in many cases reaching even far beyond such areas.

Well-known trade mark are critical business assets which can be used and traded just like any other assets. As such, these critical business assets deserve the fullest and widest possible protection so as to allow the owner to fully enjoy the use of such trade mark, without worrying about infringement or passing off.

This need for specific protection for well-known trade marks is recognised in various international obligations which set out the principles for the protection of well-known marks, with individual countries setting out the extent to which protection is to be afforded under the various laws and treaties.

Whether a trade mark is well-known depends on the following factors:

- (i) the degree of knowledge or recognition of the trade mark in the relevant sector of the public;
- (ii) the duration, extent and geographical area of any use of the mark;
- (iii) the duration, extent and geographical area of any promotion of the mark;
- (iv) the duration, extent and geographical area of any registrations to the effect they reflect use or recognition of the mark;
- (v) the record of successful enforcement of rights in the mark; and
- (vi) the value associated with the mark.

The protection is afforded not only to use of the mark in case of similar goods, but also to dissimilar ones, in order to avoid confusions in the minds of the consuming public.

Chapter - 5: Law Relating to Arbitration and Conciliation

2014 - Dec [1] (b), (c)

(b) Arbitration is an effective form of alternative dispute resolution (ADR), which allows disagreements between two parties to be resolved outside of the traditional court system, by agreeing upon an arbitrator or arbitrators to determine the matter. In an arbitration case the parties to a dispute will refer it to the 'arbitrators' or an 'arbitral tribunal' - by whose decision or award they agree to be bound. Arbitration is often used to resolve commercial disputes, particularly in the context of international commercial transactions, as it saves time and legal cost.

An *ad hoc* arbitration is one which is not administered by an arbitral institution such as the ICC, LCIA, DIAC or DIFC. The parties, in such a case, have to settle upon the mandate or the terms of reference upon which the arbitration is to take place. This includes the time, place and methodology to be used. If the parties approach the arbitration with open minds and a spirit of cooperation, *ad hoc* proceedings have the potential

to be more flexible, faster and cheaper than institutional proceedings. There can be substantial cost and time savings as compared to institutional arbitration.

Alternatively, the two can be combined, leading to a better structured process that benefits all involved.

Advantages of *ad hoc* arbitration

- (i) Beneficial for smaller claims and for parties who cannot bear the financial rigors of institutional arbitration.
- (ii) More flexible process.
- (iii) Quicker as there are no set or regulated time lines.

(c) Section 2 (1) (e) in The Arbitration And Conciliation Act, 1996 defines “Court” as the principal Civil Court of original jurisdiction in a district and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

The definition comes into use when arbitration fails and the matter comes up before a Court for settlement. With the help of this definition, the relevant court can then be selected for proceeding on the matter that could not be resolved by arbitration.

2014 - Dec [2] (c)

The definition of “legal representative” given under Section 2(1)(g) of the Arbitration and Conciliation Act, 1996 has been taken from that given in Section 2(11) of the Code of Civil Procedure.

As per that definition, the following are the persons who shall be deemed to be legal representatives:

- (a) A person who in law represents the estate of a deceased person.
- (b) A person who intermeddles with the estate of the deceased.
- (c) A person on whom the estate of a deceased person devolves on the death of the party acting in a representative’s capacity.

The following persons are also generally included in the list of legal representatives as mentioned above:

- (i) Executors and administrators duly appointed.
- (ii) Person who has taken on himself duties and responsibilities which belong to the executor or administrator though only in respect of a part of the estate.
- (iii) Heirs-at-law gaining rights either by succession or by survivorship.
- (iv) Revisioners at law, when the action has been brought by or against the widow representing her husband's estate.
- (v) Universal legatee, i.e. a person who has been named in a legacy as the beneficiary of all the effects of the testator.

2014 - Dec [2A] (Or) (i)

Alternative Dispute Resolution (ADR) is a dispute resolution technique used to resolve disagreements and disputes between parties by coming to an agreeable settlement through discussion and negotiation. Conciliation and arbitration are two such forms of ADR that are used as an alternative to going to courts to resolve conflicts. Both reduce the time and cost involved.

The differences between the two are as follows:

- Conciliation is attempted earlier on in the resolution process. When it appears not to be working out, a switch is made to arbitration.
- The conciliation process is handled by an impartial individual known as a conciliator, who meets with the parties involved and works with the parties involved to arrive at a settlement or resolution. Arbitration is much like a mini court in which the parties need to present their case to a panel of arbitrators, along with supporting evidence.
- The “conciliator” is an impartial person that assists the parties by driving their negotiations and directing them towards a satisfactory agreement. It is unlike arbitration in that conciliation is a much less adversarial proceeding; it seeks to identify a right that has been violated and searches to find the optimal solution. Arbitration is one step ahead; it seeks to come to a settlement acceptable to both the parties. In this the arbitrator has a greater say.

- Conciliation is used almost preventively, as soon as a dispute or misunderstanding surfaces: a conciliator pushes to stop a substantial conflict from developing. Arbitration tries to intervene in a substantial dispute that has already occurred that is difficult to resolve without external assistance.

Chapter - 6: Law Relating to Transfer of Property

2014 - Dec [2A] (Or) (iii)

Distinctive aspects between lease and licence

A lease is defined in Section 105 of the Transfer of Property Act as a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised or of money, a share of crops, service or of any other thing of value to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer of such terms. Whereas, Section 52 of the Indian Easements Act defines a licence as a rights to do in or upon the immovable property of the guarantor, something, which in the absence of such rights is unlawful and such rights does not amount to an easement or interest in the property.

1. A lease transfers an interest in land, whereas a licence does not create any interest in land in favour of the licensee.
2. A lease can be assigned but a licence cannot be assigned.
3. A lessee can sue a trespasser in his own name but a licensee cannot do so.
4. Death of either party does not affect a lease while death of licensee terminates the licence.
5. A lease cannot be revoked until the expiry of the term but a licence can be revoked subject to certain exceptions.

2014 - Dec [3] (b)

Clog on equity of redemption is a hurdle, a provision deliberately put in a mortgage agreement to prevent redemption on payment of debt or performance of the obligation for which the security was given. Such a provision is void, as it mitigates the rights of the mortgagor. If the mortgagee introduces such a condition in the contract that hampers redemption of the property, the mortgagor can have the clause removed or altered, as it is restrictive in nature.

Moreover, the right of redemption or equity of redemption is the essence of a mortgage and any provision inserted in the mortgage deed to prevent, evade or hamper redemption is void. Any condition which prevents the mortgagor from redeeming the property is called a "clog" on the equity or right of redemption and is void. The rule of equity that once a mortgage always a mortgage prohibits a clog on the rights of redemption. In other words, once a transaction is found to be a mortgage, the Court would not permit any condition in a mortgage deed which would prevent or impede redemption or repayment of the loan for which the security was given.

2014 - Dec [4] (a)

Section 122 of the Transfer of Property Act defines "gift" as follows:

"Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration by one person called the donor, to another called the donee and accepted by or on behalf of the donee. Such acceptance must be made during the life time of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void.

The general rule is that an agreement made without consideration is considered void. But Section 25 of the Indian Contract Act lays down certain exceptions which make a promise without consideration valid and binding on the parties involved.

Thus, an agreement without consideration is valid:

1. If, it is expressed in writing and registered and is made out of natural love and affection between parties standing in a near relation to each other; or
2. It is a compensation for something already done for the promisor by the promisee; or
3. If, it is a promise in writing and signed by the person liable or by his agent, to pay a time-barred debt.
4. Consideration is not required to create an agency.
5. In the case of gift actually made, no consideration is necessary. Nearness of relation and even any natural love and affection between the two parties is not a pre-requisite.

Hence, in the light of the last and fifth point, the transaction would be valid. If, it is not treated as a gift, however, with the adulterous relationship as the consideration, the transaction would not be valid. This is chiefly because of the requirements of Section 10 of the Indian Contract Act, which says that both the object as well as the consideration should be valid and not illegal or immoral.

Chapter - 8: Law Relating to Contract

2014 - Dec [1] (a)

As per the Indian Contract Act, 1872, a Contract may be discharged in any of the following ways:

- (i) Discharge by Performance (either by specific or normal performance)
- (ii) Discharge by Mutual Consent or Agreement
 - Novation – When a new contract is substituted for an existing contract.
 - Alteration – making changes in the same contract, particularly changes in material terms.
 - Rescission – cancellation.
 - Remission – Accepting a lesser amount than that contracted for, giving a waiver for the amount not collected, resulting in total discharge or promisor.
- (iii) Discharge by subsequent illegality or impossibility
 - Destruction of Subject-matter, particularly in case of contracts requiring specific performance.
 - Failure or impossibility of ultimate purpose.
 - Death or personal incapacity of Promisor.
 - Change of Law/laws impacting the contract.
- (iv) Discharge by lapse of time
- (v) Discharge by operation of law
- (vi) Discharge by breach of contract
 - Anticipatory breach – before the due date.
 - Actual breach – as on the due date, when it becomes apparent that performance is no longer feasible.

2014 - Dec [2] (e)

A offer or proposal is revoked in the following ways —

- (1) by a notice of revocation being communicated by the proposer to the other party;
- (2) by the lapse of time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of reasonable time;
- (3) by the failure of the acceptor to fulfil a condition precedent to acceptance; or
- (4) by the death or insanity of the proposer, if the fact of the death or insanity comes to the knowledge of the acceptor before acceptance.

Such revocation, in all these cases, will free the proposer from the conditions set out in the proposal.

Chapter - 9: Prevention of Money Laundering

2014 - Dec [2] (a)

The RBI made the Know Your Customer (KYC) Norms/Anti-Money Laundering (AML) Measures/Combating of Financing of Terrorism (CFT) guidelines to prevent banks from being used, intentionally or unintentionally, by criminal elements for money laundering or terrorist financing activities, or for routing of funds gained from legal means into illegal activities. KYC procedures also enable banks to know/understand their customers and their usual financial needs and patterns of dealings better, which in turn help the banks to better manage their risks.

Key elements of KYC

Banks while framing their KYC policies should take care to incorporate the following four key elements:

- (i) Customer Acceptance Policy;
- (ii) Customer Identification Procedures;
- (iii) Monitoring of Transactions; and
- (iv) Risk Management.

In all of this, banks should keep in mind that the information collected from the customer for the purpose of KYC is to be treated as confidential and details thereof are not to be divulged for other commercial purposes. It

should, therefore, be ensured that the information sought from the customer is relevant to the perceived risk, is not intrusive and is strictly in conformity with the RBI guidelines issued in this context.

Chapter - 10: Law Relating to Essential Commodities, Weights and Measures

2014 - Dec [5] (d)

The law relating to weights and measures which is of scientific, technological and industrial importance is termed as legal metrology in international context.

Legal metrology thus covers in its ambit :

- Method of measurement
- Instruments of measurement
- Units used in measurement etc.

Aim:

It aims at providing public guarantee by giving them an assurance of the accuracy and correctness of measurement.

Scope:

In international context, legal metrology covers the following areas:

- Commercial Transactions
- Industrial measurement
- Ensures public health and human safety.

2014 - Dec [6] (b)

Seizure and Confiscation of Essential Commodities

The Essential Commodities Act, provides for two types of proceedings against a person charged with contravention of the provisions of the Act. These are independent of each other and are as follows –

Under Section 6A, the Collector can order a confiscation of the seized commodities and under Section 7, the contravention would be punishable. As per Section 6A, as soon as commodities are seized, a report of such seizure shall be made, without any unreasonable delay, to the Collector of

the district in which such essential commodity is seized. The Collector may order that the seized commodities be produced before him. On doing so, if he determines that a contravention has indeed taken place, he may pass a subsequent order for confiscation of

- (a) the essential commodity so seized,
- (b) any container, package, covering or receptacle in which such essential commodity is found, and
- (c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity.

Ordinarily it is seen that an essential commodity which has been seized, could be confiscated. Therefore, confiscation is an action subsequent to the seizure of the essential commodity. A commodity that has not been seized cannot be confiscated. Moreover, seizure by itself does not imply confiscation; i.e. it is not automatic.

Chapter - 11: Law Relating to Societies

2014 - Dec [6] (a)

Registrar of Societies - Powers & Duties

Although the Societies Registration Act, 1860 does not directly provide these, they can be alluded from Sections 1, 2, 3, 4, 17, 18 and 19. These are -

1. To allow inspection of documents by any person and to furnish a certified copy thereof on payment of requisite fees,
2. To call for information, explanation, accounts or returns from the societies,
3. To hold inquiries and settle disputes *suo moto* or at the request of the members of the governing body or other members,
4. To investigate into the affairs of the society,
5. To cancel registration on happening of certain events that render the existence of society null and void,
6. To refuse registration, if the society seeks to get registered with an undesirable name or with identical objects as that of another, or with those contrary to any law etc,

7. To order amendment of Memorandum of Association, rules and regulations, bye-laws of society, in case they are deemed to be improper,
8. To seize and take possession of the books, accounts, records, funds and property of the society,
9. To summon and enforce attendance of witnesses and to call for evidence and documents,
10. To order an audit of the accounts of the society,
11. To order compounding of offences,
12. To settle disputes regarding election of the office bearers,
13. To order the restoration of the property, effects or money of the society,
14. To order removal of the defunct society from the register of societies,
15. Allow condonation of delay in filing of documents, returns etc.
16. To appoint a liquidator for getting the society wound up.

Chapter - 12: Law Relating to Trust

2014 - Dec [5] (c)

Duties of Trustee

Sections 11 to 22 of the Indian Trusts Act, 1882, deal with the duties of trustee. They are as under:

- (1) Proper execution of the trust as per the directions given in the instrument of the trust. Any change he makes can only be with the consent of beneficiaries competent to contract.
- (2) Acquaintance with the nature of the trust property, so as to do justice with the trust and its purpose.
- (3) Protect and preserve the trust property.
- (4) Not to set up an adverse title.
- (5) To deal as a man of ordinary prudence would deal with such property as if, it were his own.
- (6) To convert the property of a wasting nature into that of permanent nature.
- (7) To act impartially or in favour of all, where there is more than one beneficiary.

- (8) In case of a trust created for several people in succession, if one person is doing something injurious to the trust property, the trustee needs to take preventive steps.
- (9) To maintain accurate accounts of the trust property and to invest the trust property and funds in the eligible securities.
- (11) To sell the trust property as authorized by the Court.

Chapter - 13: Industries Development and Regulation

2014 - Dec [5] (b)

The Explanation to Section 2(b) (i) of the Micro, Small and Medium Enterprises Development Act, 2006 defines "the day of acceptance" as to mean the following –

- (i) the day of the goods are actually delivered, or the services actually rendered; or
- (ii) where any objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier.

Chapter - 14: Law Relating to Pollution Control and Environmental Protection

2014 - Dec [5] (a), (e)

- (a) As per Section 2(a) of the Public Liability Insurance Act, 1991, the term 'accident' means an accident involving a fortuitous or sudden or unintentional occurrence while handling any hazardous substance resulting in continuous, intermittent or repeated exposure to death of, or injury to, any person or damage to any property but does not include an accident by reason only of war or radio activity.

An interpretation of this definition clarifies that the Act pronounces only those activities as accidents that are involuntary and not intentional. The act of exposure to injury, harm, even death, might be a single act or one continued over a period of time.

- (e) Heads under which Compensation or Relief for Damages may be claimed. The Schedule II to the National Green Tribunal Act, 2010, lists out the following heads under which compensation for damages or relief may be claimed:
- (i) Death;
 - (ii) Permanent, temporary, total or partial disability or other injury or sickness;
 - (iii) Loss of wages due to total or partial disability or permanent or temporary disability;
 - (iv) Medical expenses incurred for treatment of injuries or sickness;
 - (v) Damage to private property;
 - (vi) The amount of relief aid and similar rehabilitation expenses incurred by the Government or any local authority;
 - (vii) The expenditure incurred for restoration of the quality of environment and for paying out any ensuing compensation or for initiating legal action by Government and;
 - (viii) Loss to Government or local authority arising out claims on account of any harm, damage or destruction to the fauna and flora of the place;
 - (ix) The cost of restoration incurred for mitigating or reversing the damage to environment including pollution of soil, air, water, land and eco-system;
 - (x) Loss and destruction of any property other than private property;
 - (xi) Loss of business or employment or both;
 - (xii) Any other claim arising out of any activity involving hazardous substance.

2014 - Dec [6] (c)

Section 4 of the Act empowers the State Government to constitute the State Boards. The composition of a State Board shall be the following, namely:

- (i) a Chairman, who is a person with special knowledge in or practical experience of environmental protection, or a person having knowledge and experience in the administration of institutions dealing with similar matters.

- (ii) officials not exceeding five, who are nominees of the State Government to represent that Government;
- (iii) members not exceeding five to be nominated by the State Government from amongst the members of the local authorities functioning within the State;
- (iv) three non-officials, to be nominated by the State Government to represent the interests of agriculture, fishery or industry or trade or labour or any other interests relevant in the opinion of the Government;
- (v) two persons to represent the companies or corporations owned, controlled or managed by the State Government to be nominated by that State's Government;
- (vi) a full-time member secretary having such qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control.

Chapter - 15: Law Relating to Registration of Documents

2014 - Dec [6A] (Or) (i), (ii), (iii)

- (i) Section 17 of the Indian Registration Act 1908, deals with the documents that are compulsory to be registered. The section runs as follows:

Section 17 - Indian Registration Act, 1908

- (1) The following documents shall be registered, if the properties to which they relate is situate in a district in which, and if they have been executed on or after the date on which Act No. XVI of 1864, of the Indian Registration Act 1866, or the Indian Registration Act 1871, or the Indian Registration Act 1877, or the this Act came or comes into force, namely:
 - (a) instruments of gift of immoveable property;
 - (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property;

- (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and
 - (d) leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent;
 - (e) non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property.
- (ii) The effects of non-registration of documents that require registration are detailed in Section 49 of the Registration Act, 1908. It provides for the following effects –
- The document cannot cause any changes in the rights to or interest in any immovable property.
 - It will not be admitted as evidence of any transaction mentioned in the document, as per the Indian Evidence Act, 1872.
- Any document covered under Section 17, if not registered, will not have the same effect as it would have had if, it had been registered. However, nothing in this section shall affect the inclusion as evidence in a suit for specific performance. Such a document can be subsequently stamped and be treated as an instrument valid *ab initio*. However, under Section 53A of the Transfer of Property Act, 1882, an unregistered document may be admitted as evidence in a case where the document is proof of part performance of a contract and a proof also of the fact that the plaintiff has performed or is willing to perform his part of the deal.
- (iii) Ordinarily, as per the Registration Act, 1908, an unregistered document which comes within Section 17 cannot be used in any legal proceeding to create directly or indirectly the effect which it would have if registered.

However, as provided in the proviso to Section 49, an unregistered document affecting immovable property and required to be registered may be received as evidence of a contract in a suit for specific performance or as evidence of part performance of a contract as per Section 53A of the Transfer of Property Act, 1882 or as evidence of any collateral transaction.

So, the effect of this proviso to Section 49 is that in a suit for specific performance an unregistered document affecting immovable property may be given in evidence. The purpose is that the document which has not conveyed or passed title may still be used as evidence of the terms.

In *K. Narasimha Rao v. Sai Vishnu*, it has been held that although it is a settled legal principle that an unstamped instrument is not at all admissible in evidence even for collateral purpose, still an unregistered instrument originally unstamped, if duly stamped subsequently can be admitted in evidence. This remains true even though it continues to be unregistered for collateral purpose but actual terms of transaction cannot be looked into.

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FOR NOTES