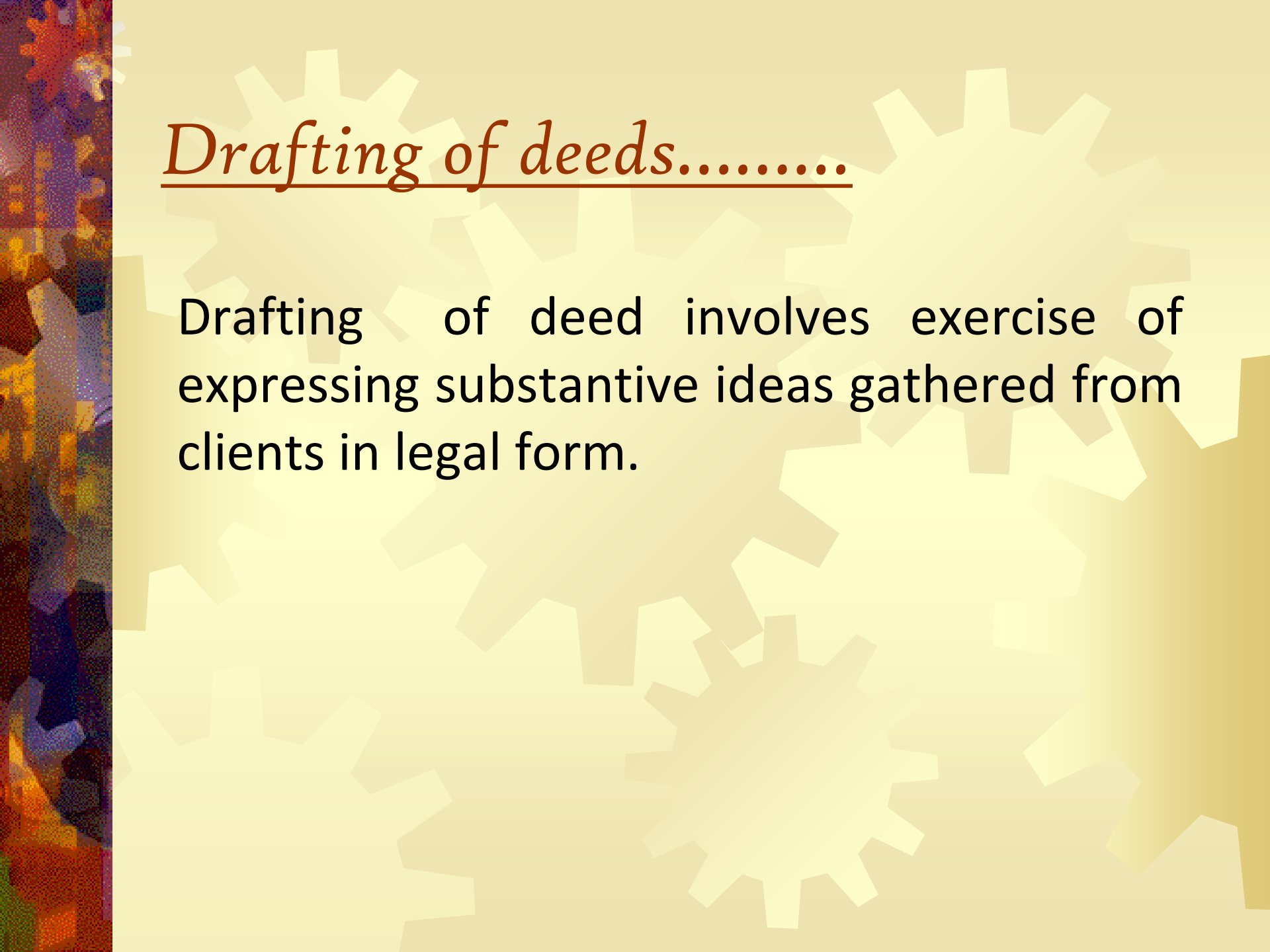


# *Drafting of Deeds*

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## *Drafting of deeds.....*

Drafting of deed involves exercise of expressing substantive ideas gathered from clients in legal form.



# *Principles.....*

# *Essentials of deed drafting.....*

## ❖ Clarity

- ❖ Clarity of thought & expressions
- ❖ Reflecting the real intention of the parties
- ❖ Understood even by illiterate parties (not well versed in legal sophistry)

## ❖ Design

- ❖ In conformity with the requirements of law exhibiting the intention of the parties.

## ❖ Precision

- ❖ It should be precisely to the point

## *Preliminary Framework.....*

- Ascertainment of purposes/intention
- Discussions with both the parties & gather the input
- Appreciation, understanding of governing law/statute

# Working Principles.....

- ✱ Always bear the reader & his experience in mind
- ✱ Choose short familiar words
- ✱ Avoid long-winded & round about expressions
- ✱ Avoid double negatives
- ✱ Clauses should be framed such that the meaning should not intermingle.
- ✱ Prefer the active to the passive
- ✱ Use adjectives & adverbs sparingly
- ✱ Try always be specific & precise
- ✱ Write to inform not to impress

# *Essential of Drafting.....*

- Consistency of expression
- Coherent arrangement of related covenants
- Simplicity of language & precision
- Proper Punctuations
- Communicability to parties
- Acquaintance with governing/relevant law.

## *Expressions.....*

- ✱ Writing is an Art
- ✱ Technical writing is highly disciplined
- ✱ One must stick to its facts
- ✱ His liberty is bounded by the subject matter
- ✱ His imagination is reserved for a consideration of his readers needs
- ✱ His literary flourishes are sacrificed for clarity & conciseness.



## *Technical writing requires.....*

- ☀ The Facts
- ☀ The ordering of the facts & arguments in logical fashion & sequence
- ☀ The statement of the facts with adequate information & illustration

“A WELL WRITTEN SUMMARY MAKES THE REST OF THE REPORT EASIER TO FOLLOW”.



## Language – Plain English

*“ Foundation of legal drafting is law, facts are the structure and the language is the Architecture”.*

# *Words Legal – Plain English.....*

- ☀ Allege – Claim
- ☀ Annex – Attach
- ☀ Ascertain
- ☀ Aver
- ☀ Construe
- ☀ Deliver
- ☀ Demise
- ☀ Expire
- ☀ Disclose
- ☀ Determine
- ☀ Same

- ☀ Forthwith
- ☀ Furnish
- ☀ Pecuniary
- ☀ Procure
- ☀ Rescind
- ☀ Reside
- ☀ Submit
- ☀ Transpire
- ☀ At least
- ☀ affix

## *Compound Expression – Simple Expressions (I)*

- ☀ By means of – by, using
- ☀ By virtue of – because
- ☀ As a consequence of
- ☀ For the reason that
- ☀ For the purpose of
- ☀ In as much as
- ☀ In connection with
- ☀ In favor of

## Compound Expression – Simple Expressions (2)

- ✱ In order to
- ✱ In relation to
- ✱ In the event that
- ✱ In the nature of
- ✱ Due to the fact that
- ✱ Notwithstanding the fact that
- ✱ Prior to
- ✱ Subsequent to
- ✱ With a view to

## *Do not use archaic words.....*

- ☀ Here to fore, hereinafter, hereby, herewith.
- ☀ Thereof, therein before, thenceforth
- ☀ Said, aforesaid, abovementioned.
- ☀ Herein, hereon, hereto, hereof, hereunder.
- ☀ Whatsoever, howsoever, wheresoever.
- ☀ Notwithstanding— whereas, whereupon.

## *Use of 'Modals'.....*

- ☀ Obligation – Use Must.
- ☀ Permission or discretion – use 'May' – do not use 'can'.
- ☀ In the future – use 'will'.

## *Latin Words.....*

- ☀ De-facto – existing but not official
- ☀ Bonafide – in good faith
- ☀ inter alia – among other things
- ☀ Pari passu – equally, without preference.
- ☀ Per se – by itself.
- ☀ Per annum – each year
- ☀ Prime facie – on its face
- ☀ Pro rata – proportional.



# *Non Discriminatory Language.....*

- ☀ Do not use gender specific language where gender is unclear.
- ☀ Use gender specific pronouns only to identify a specific person or gender.
- ☀ If the document refers to an office, rather than the incumbent of the office, use gender neutral references.
- ☀ If it does not change the meaning of the sentence, use plural nouns and pronouns to remove gender distinctions.

# Techniques for avoiding gender specific language ..... Contd.

- ✻ Write the sentence without pronouns.
- ✻ Try to avoid conditional structures, generally introduced by 'if' or 'when', as these often requires the use of pronouns.
- ✻ Write from a first person or second person perspective. Only the third person singular is gender specific.

# Rules for Paragraphing.....

- ☀ Paragraphing is only be used when a sentence can be divided in to two or more parts.
- ☀ if the provisions in a set of paragraphs or sub paragraphs are to be cumulative in effect, **‘and’** should be inserted between each paragraph or subparagraph; if they are to be alternative, **‘or’** should be inserted between each provision.

# *Drafting of Clauses.....*

- ☀ A clause is a single grammatical sentence :
- ☀ Each Substance is also a single separate sentence;
- ☀ A clause should deal with only one obligation or right;
- ☀ Sub clauses should be used rather than separate clause when they deal with different aspects of the same right or obligation, or very closely related rights or obligations.



# *Content.....*

## *Components of a draft.....*

1. Description/Title
2. Date & Place
3. Description of parties( Name, age, father's name, residence etc.)
4. Recitals (Narration of subject matter)

Continued...

## *Components of a draft (Con...d).....*

5. Testatum
6. Consideration (Pecuniary, otherwise)
7. Receipt & discharge of consideration
8. Parcel (Description of the subject matter being transferred)
9. Exclusions & Reservations

## *Components of a draft (Con...d)*

10. Testimony i.e signatures
11. Witnesses
12. Errors & Omissions
13. Registration & Stamp duty thereon.



## 1. Description/Title.....

- ❖ The title of deed is not conclusive but is a guiding factor for reader, drafter & user
- ❖ Normally in Capital letters

“e.g. THIS DEED OF PARTNERSHIP; THIS DEED OF SALE”

## 2. *Date & Place.....*

- ❖ Date is important for Law of Limitation
- ❖ As per Indian registration Act, 1908 Deed is to be registered within four month of execution.

### 3. Description of parties( Name, age, father's name, residence etc.).....

- ☀ Parties to the deed should be described with sufficient accuracy with full particulars
- ☀ Where consent of third party is reqd. that party should be added as party to the deed
- ☀ Whether the deed is binding to the successor of parties or not should be prescribed
- ☀ Transfer should be placed first where after the transferee should be described
- ☀ Parentage, occupation, & full address of the parties should be given for their correct identification
- ☀ Reference of the act

#### 4. Recitals (Narration of subject matter).....

- ❖ Narrative : It relates history of property , title , or nature of interest & relations of the parties to the deed
- ❖ Introductory : Explain motive or intention of property
- ❖ Recitals control operative part of the deed & operate as estoppel & may be good evidence of facts

## 5. Testatum

Operative part of the deed begins with testatum .

e.g. “NOW THIS DEED; WITNESSETH/  
WITNESSES AS UNDER; etc.”

## 6. Consideration (Pecuniary, otherwise)

- ❖ Section 27 of Indian Stamps Act, requires the consideration to be fully & truly disclosed in the deed.
- ❖ Inclusion or exclusion of statutory levies from the consideration amount should be stated clearly.
- ❖ Consideration should have value in the eyes of law
- ❖ Statement of consideration is necessary particularly where stamp duty is payable.

## 7. Receipt & discharge of consideration.....

- ❖ “ Also referred as operative words”
- ❖ It should be acknowledge in the deed itself.

e.g. lessee covenant for the peaceful possession of the property in return of consideration.

## 8. Parcel (Description of the subject matter being transferred)

- ❖ Section 21 of Indian Registration Act : - Description of the subject matter be identified

*e.g. in the case of houses etc. the house no., road no., boundaries such as East, South, West, North*

- ❖ can be given in schedule
  - ❖ Can be given in the form of map
  - ❖ Annexed to the deed
- ❖ Purpose – for appropriate identification thereof.



## 9. Exclusions (exceptions) & Reservations.....

- ❖ Where property in question is subject to any expansions
- ❖ Reservation of certain rights should also be clearly stated
- ❖ “The deeds containing the exclusions & reservation should be signed by the transferee or grantee also”

## *Testimonium.....*

- ✱ Concluding part of the deed  
e.g. In witnesses of the parties hereto have  
put their hands on the date & year  
aforementioned etc.

## *Witnesses.....*

- ✱ Signatory proof of the witness
- ✱ They act as evidence in case of litigations with  
regard to any components of deed

## *Errors & Omissions.....*

Correction should be made in the form of memorandum & for that purpose a new covenant may be added as post script after the testimonium

## Registration & stamp duty thereon...

- Where the document are required to be registered compulsorily, they must be get registered according to law .
- Sec. 17 of the Registration act innumerate the documents which are required to be compulsorily registered

# Abbreviations

It is necessary to equip with the some of the phrase, which are often used in legal drafting

Ab initio	: From the beginning
Ad hoc	: For the purpose
Ad interim	: For the time being
Ad valorem	: According to value
Amicus curiae	: Disinterested adviser
De jure	: Rightfully
De novo	: Afresh
Ex post facto	: By retrospective action
Inter alia	: Among other things



# Thank You!!

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