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Lesson 1

TYPES OF DOCUMENTS



1.1 INTRODUCTION

The term document broadly refers to any official piece of written material. According to the **General Clauses Act, 1897 (Section 3(18))**, a document includes anything expressed or described in writing, figures, or marks on any substance, used to record information.

Different laws define document based on their specific context:

- **Companies Act, 2013 (Section 2(36))**: Includes summons, notices, orders, forms, registers, etc., whether on paper or in electronic form.
- **Income-tax Act, 1961 (Section 2(22AA))**: Includes electronic records as defined in the **Information Technology Act, 2000**, covering data or records stored or sent electronically, including microfilms.

In business, documents typically include deeds, contracts, circulars, tenders, and public notices. Most definitions are inclusive and flexible, serving as evidence of transactions or events. They help ensure clarity, minimize disputes, and support smooth business operations.

1.2 DEEDS

In legal terms, a deed is a formal and solemn document used to create or confirm rights and obligations between parties. It typically involves two or more persons agreeing to effect a legal right or liability.

Common types of deeds include:

- Gift Deed
- Partnership Deed
- Sale Deed
- Deed of Family Settlement
- Lease Deed
- Power of Attorney
- Mortgage Deed
- Bonds

A deed is generally defined as a non-testamentary written instrument that creates, declares, confirms, assigns, limits, or extinguishes a legal right, title, or interest. A deed is a writing -

- on paper, vellum or parchment,
- sealed, and
- delivered, whereby an interest, right or property passes, or an obligation binding on some persons is created or which is in affirmance of some act whereby an interest, right or property has been passed.

Note:

- *Due to its broad use, there is no single universal definition; some are narrow, others overly broad.*
- *A deed is a present grant rather than a mere promise to be performed in the future. Deeds are in writing, signed, sealed, and delivered.*
- *Deeds are instruments, but all instruments are not deeds.*

1.3 AGREEMENTS

A **contract** is an agreement enforceable by law. When a contract is put into writing, the document is often referred to as an agreement.

For a valid **agreement**:

- There must be **two or more parties** agreeing voluntarily.
- It may involve **doing or refraining** from doing certain acts.
- It binds the parties to the terms and conditions mutually agreed upon.

In a corporate context, companies regularly enter into various **commercial agreements and contracts**. Therefore, it is crucial for company executives to develop the skill of drafting contracts that are:

- Clear
- Comprehensive
- Free from ambiguity

Key points while drafting agreements:

- The **intention of parties** must be stated clearly.
- **Language** should be simple, precise, and definite.
- **Avoid vague** terms like “proper” or “reasonable” which can lead to disputes.

Note:

- *Effective drafting helps prevent misunderstandings and legal complications in business transactions.*
- *The agreement should, therefore, be drafted as deeds between the parties thereto. The old practice of drafting them as Deeds Poll should be discouraged.*



Case Law

The provisions of the Indian Contract Act, 1872 about the essential incident and legality of agreements (Sections 2 to 30) should be studied and nothing should be introduced or left out, which would make the agreement void. But, if the material terms of an agreement are clear and specific, omission of certain details, which can be worked out by consent of the parties or in its absence be settled by court will not invalidate the agreement (Ramchandra v. Chinnubhai, AIR 1945 Mad. 10).

1.3.1 Types of Agreements

During its operations, a business is required to enter into various agreements and execute documents with different stakeholders such as clients, banks, financial institutions, employees, vendors, and others. Each agreement serves a specific legal and commercial purpose.

1.3.1.1 Sale / Purchase Agreement

These agreements are executed between parties to facilitate the **legal transfer of property** (movable or immovable). They clearly define the terms of sale or purchase to ensure that the **ownership is transferred without disputes** and in accordance with the applicable laws.

Purpose: To legally document the transfer of property, protect the interests of both parties, and avoid future conflicts.

1.3.1.2 Commercial Agency Agreements

These agreements are entered into when a business appoints **independent agents** to operate on its behalf, rather than dealing directly with customers. Such agents:

- Find customers for the principal's goods or services
- May have implied authority to handle goods, offer credit terms, and receive payments

Purpose: To formalize the relationship between the principal and the agent, and to outline the agent's powers, responsibilities, and compensation while ensuring legal protection for both parties.

1.3.1.3 Collaboration Agreements

These agreements are executed when two parties collaborate to share technical knowledge, resources, and expertise for a specific venture.

Such collaboration may involve:

- Exchange of technical know-how, designs, and drawings
- Training of personnel in manufacturing or R&D
- Ongoing technical, administrative, or managerial support

Purpose:

- To define the terms of cooperation and responsibilities of each party, ensuring smooth execution of joint projects or ventures.
- These are **Collaboration Agreements**, not Commercial Agency Contracts (as incorrectly stated at the end of the original text).

1.3.1.4 Arbitration Agreements

An arbitration agreement is an understanding between parties to resolve present or future disputes through arbitration, instead of going to court.

It can be:

- A separate agreement, or
- An **arbitration clause** within a contract

Purpose: To ensure that disputes arising from a defined relationship (contractual or otherwise) are settled privately and efficiently through arbitration.

1.3.1.5 Hypothecation Agreement

A Hypothecation Agreement is a document where the ownership of goods is transferred to the lender as security for a loan, while the borrower retains possession of the goods.

Purpose: To secure a debt without transferring possession, commonly used in vehicle loans, inventory financing, etc.

1.3.1.6 Outsourcing Agreements

An Outsourcing Agreement involves a company contracting out its non-core or support functions (like payroll, IT services, customer support) to specialized external service providers.

Unlike regular contracting, outsourcing is a strategic decision aimed at allowing the business to focus on its core competencies while improving efficiency and reducing costs.

Purpose: To clearly define the scope of outsourced services, responsibilities, service levels, confidentiality, and performance standards.

1.3.1.7 Agreement for Assignment

An assignment refers to the transfer of rights or interests from one party to another. It is commonly used for transferring:

- Actionable claims
- Debts
- Beneficial interest in movable property

In intellectual property, assignment agreements are crucial for transferring rights such as:

- Patents

- Trademarks
- Copyrights
- Business and goodwill

Purpose: To legally transfer ownership or rights from the assignor to the assignee, ensuring clarity and enforceability of the transferred interest.

1.3.1.8 Shareholders' Agreements

A Shareholders' Agreement is a contractual arrangement between the shareholders of a company that outlines:

- How the company will be managed and operated
- The rights, duties, and obligations of shareholders among themselves (inter-se)

Such agreements are common in:

- Family-owned companies
- Joint ventures (JVs)
- Venture capital and private equity investments
- Strategic alliances

Purpose: To ensure clarity, prevent disputes, and safeguard the interests of shareholders, especially in private companies.

1.3.1.9 Employment Agreements

An Employment Agreement is a contract between an employer and an employee that defines the terms of employment.

Purpose:

- To ensure the availability of manpower and clearly outline roles, responsibilities, compensation, work conditions, termination clauses, and other employment-related terms.
- Such agreements help in maintaining a structured employer-employee relationship and minimizing disputes.

1.4 CONTRACTS

As per Section 2(e) of the Indian Contract Act, 1872,

"Every promise and every set of promises forming the consideration for each other is an agreement."

An agreement is based on a promise, which arises when:

- One party makes a proposal (offer)
- The other party accepts it (Section 2(b))
- Upon acceptance, it becomes a promise

Thus, an agreement comes into existence when there is an offer and acceptance.

Every contract is an agreement, but not every agreement is a contract.

Note: Only those agreements that involve a mutual bargain and an intention to create legal relations become enforceable contracts.

1.4.1 DIFFERENCE BETWEEN DEEDS, AGREEMENTS & CONTRACTS

| | Deeds | Agreements | Contracts |
|---------------------|--|--|---|
| Meaning | Deed is the term normally used to describe all the instruments by which two or more persons agree to effect any right or liability | Every promise and every set of promises, forming the consideration for each other, is an agreement | An agreement enforceable by law is a contract |
| Mode | Preferable in writing | It may be oral or in writing | Preferable in writing |
| Purpose | Effecting a Right or Liability | Agreement on certain Act or Omission | Enforceability of agreements according to Law |
| Creation of records | Yes | Not necessary | Yes |
| Relation | Deed may be agreements and contracts | Agreements are not necessarily Deeds or Contracts | It succeeds Agreement |
| Example | Sale Deed, Lease Deed etc | Non-Disclosure Agreements, Joint Venture Agreements | Agreements reduced into writing and enforceable under any law |

1.5 CIRCULARS

As per the Cambridge Dictionary, a circular is a letter or notice sent to a large number of people to disseminate information.

Key Features:

- **Purpose:** To communicate important information to multiple recipients.
- **Form:** Usually in written format to maintain a permanent record.

Modes of Circulation

- **Modern:** Emails, websites, digital portals.
- **Conventional:** Printed or typed hard copies.

1.5.1 Important Points for drafting a circular

Issuing Authority

It is important to clearly mention the name and designation of the issuing authority in any circular. This helps establish the **position and authority** of the person or body issuing the circular.

Clearly stating the issuing authority not only **adds authenticity** to the communication but also ensures that the recipients understand the **source and relevance** of the instructions or information provided. It eliminates any confusion regarding who is addressing them and reinforces the importance of the content.

Moreover, when a circular comes from a recognized authority, it significantly increases the likelihood of compliance and proper observance by the recipients.

Details of Addressee

It is essential to mention the details of addressees by name, designation etc. in circulars. The addressees are required to comply with the information specified a circular. Therefore, mentioning the details of addressees make the circulars effective.

Subject

The mention of subject in a circular ensures that the circular receives the required attention. This will make circular more effective and chances of avoidance gets reduced.

Reference to Preceding information

It is mandatory to mention the reference to the information already provided before the present circulars. It ensures the completeness of information and the addressee may understand the complete matter contained therein.

Main Information

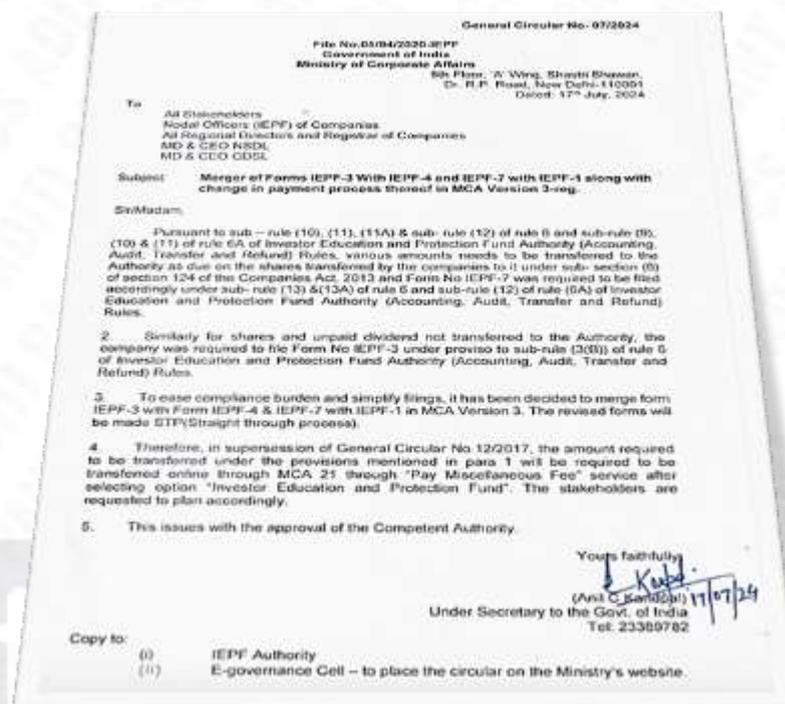
The main purpose of the circular is to disseminate the information to selected group of individuals. The information should be complete and in understandable language leaving no chance of ambiguity.

Source of Authority

It is always preferable to mention the source of authority under which the signatory has issued the circular. This gives emphasis on observance of the circular and increases the chances of amenableness.

Signature

The signature on the circular makes it more reliable.



1.5.2 Advantages of Circular

Circulars are an effective means of mass communication within an organization or to the public. One of the main advantages is that they allow quick and uniform dissemination of information to a large number of people at the same time, ensuring consistency in communication.

Circulars also serve as a permanent written record, which can be referred to later for clarity, compliance, or proof of communication. This is particularly useful in official, legal, or policy-related matters where documentation is important. Additionally, circulars are cost-effective, especially when issued in electronic format such as emails or web postings. They reduce the need for repeated verbal instructions or individual correspondence.

Another significant advantage is that circulars help maintain organizational transparency and accountability, as the information is communicated in a standardized manner by an identified authority. This helps in avoiding misunderstandings and ensures that all concerned parties are equally informed.

1.6 PUBLIC NOTICES

Public notices are formal announcements issued to inform the general public about matters of public interest. These notices aim to reach a wide audience and are typically issued by government authorities, regulatory bodies, or private organizations.

They are used to communicate important events or changes, such as:

- Amendments in laws or regulations
- Striking off company names by the Registrar of Companies
- Updates on complaint status by authorities
- Calls for information (e.g., submission of data on unclaimed non-convertible securities)
- Company-related announcements or disclosures

Public notices are generally published through newspapers, official websites, or other digital platforms, ensuring broader visibility. With increasing public awareness and technological advancement, public notices have become an efficient and transparent mode of communication.

They help keep stakeholders informed, promote accountability, and contribute to better governance and compliance.

1.6.1 How to Draft a Public Notice

Drafting a public notice requires clarity, completeness, and compliance with statutory guidelines. The following key components must be included to make it effective and legally sound:

- **Name of the Issuer:** The notice should begin with the name of the organization or authority issuing it. This helps in establishing authenticity and capturing the attention of readers.

(TO BE PUBLISHED IN THE GAZETTE OF INDIA EXTRAORDINARY (PART-I (SECTION-1))

Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Foreign Trade

Public Notice No. 7 /2025-26
New Delhi, Dated 16th May, 2025

Subject: Amendments in Standard Input Output Norms (SION) A-1303.

In exercise of the powers conferred under paragraph 1.03 and 2.04 of the Foreign Trade Policy-2023 as amended from time to time, the Director General of Foreign Trade makes the following amendments in the description of Export Product and quantity of Import Item at Sl. No. 2 in Standard Input Output Norms (SION) A-1303:-

| Existing Export Product | Amended Export Product | Qty. | Sl. No. | Import Item | Existing quantity allowed | Amended Quantity allowed |
|--------------------------|--|------|---------|--------------------------|---------------------------|--------------------------|
| Di-Octyl Phthalate (DOP) | Di-Octyl Phthalate (DOP) (PVC Plasticizer) | 1 | 1 | Phthalic Anhydride | 0.400 kg. | 0.400 kg. |
| | | 2 | 2 | 2-Ethylhexanol (Octanol) | 0.700 kg. | 0.680 kg. |

Effect of the Public Notice: The description of the export product and the quantity of the import item at Sl. No. 2 under Standard Input Output Norms (SION) A-1303 is being amended with immediate effect.

(Ajay Bhadoo)
Director General of Foreign Trade
Ex-officio Addl. Secretary to the Government of India
e-mail: dgft@nic.in

(Issued from File No. 01/R2/0006/AM-26/DES-III)