

UNIT – V

Conveyancing II — will, POA, notice, writ skeleton

Will · POA · Partition · Notice · Writ

Explanatory Lecture Slides

Drafting, Pleading and Conveyance · Clinical-III · Semester IX

DRAFTING, PLEADING AND CONVEYANCE

Topics covered in this unit

01

Draft a will that s.63 ISA will recognise

02

Draft a power of attorney that can actually be used

03

Place a partition deed

04

Draft a s.80 CPC notice and a lawyer's notice

05

Skeleton a writ petition under Art. 226

06

Place the vakalatnama

How this unit is organised

01

Will

02

Power of attorney

03

Partition

04

Notices

05

Writ skeleton

06

Vakalat

Will — IS Act ss.59, 63, 69–70

A declaration of intention, to take effect after death, revocable. s.63: signed by the testator, attested by two witnesses who saw the signature. Privileged wills for soldiers/mariners. Revocation by a later will, marriage (careful with religions), destruction.

- A 16-mark specimen: revocation of prior wills, appointment of executor, specific bequests, residuary, guardianship of minors, attestation clause that recites s.63 facts.
- Do not draft a will that gifts immovable with a s.122 ceremony — that is a different instrument. A 'will' of today's sale is Suraj Lamp abuse.

Will — IS Act ss.59, 63, 69–70

S.63

- Sign.
- Two attestors who saw.

DO NOT

- Let a beneficiary attest (it costs him the gift — s.67).

Power of attorney

A delegation. General v special. Registration: if it authorises a conveyance of immovable, register it (and see the State stamp article). Notarisation is not registration. Survives? Death of the principal generally kills it, unless coupled with interest.

- Suraj Lamp again: a POA is not a transfer. Recite the purpose, the property, the power to sign, to receive price, to admit execution before the Sub-Registrar, and a revocation clause.
- Verify the principal. A 10-mark specimen of a special POA to sell one property.

Power of attorney

SPECIAL

- One act / one property — safer.

ALWAYS

- Photo, ID, stamp, register if it conveys.

Partition deed

Divides joint property in severalty. Recite the joint holding, the shares, the allotment (schedule A to A, B to B), owelty if unequal, easements of necessity, a release of further claim. Registration if immovable (s.17).

- Hindu undivided family: a deed v a family arrangement (tax and stamp differ — do not bluff the IT holding; say 'a family arrangement may be differently stamped, I will check').
- Mutation does not confer title; the deed does.

Partition deed

MUST

- Schedules of allotment.
- Registration of immovable.

USEFUL

- Owelty.
- Indemnity.
- How a later dispute is to go (arbitration — careful).

Notices

s.80 CPC: two months to government, a plaint-in-miniature (cause, relief, name). A lawyer's notice before a s.138 NI Act: 15 days, the cheque facts, the debt, the demand. A notice to quit (TP s.106): 15 days for a monthly lease of immovable, unless the contract says more.

- A 10-mark: three notices, three time-tables, one common sin (a notice that does not demand a specific sum, or is sent to the wrong man).
- Keep the postal receipt. O.5 / the BNSS analogue is not a notice under s.80.

Notices

S.80

- Government.
- Two months.
- Cause + relief.

S.138

- 15 days from the bounce-notice.
- A specific sum.

Writ skeleton — Art. 226 / 32

Cause title, the court, the parties (State as respondent), synopsis, list of dates, facts in numbered paragraphs, grounds (each a legal head: violation of Art. 14 / 21 / natural justice / ultra vires / lack of jurisdiction), prayer (certiorari / mandamus / habeas / quo warranto / prohibition), interim prayer, affidavit, annexures.

- A 16-mark of the skeleton. Grounds are law, not adjectives. Prayer is specific. Laches, alternative remedy (a 6-mark of when 226 still lies — Whirlpool).
- Art. 32 is SC and a fundamental right; 226 is HC and wider (legal rights too).

Writ skeleton — Art. 226 / 32

MUST

- Dates.
- Grounds as law.
- A specific prayer.
- Affidavit.

WATCH

- Laches.
- Alternative remedy.
- Disputed facts that want a suit.

Vakalatnama

The authority to appear. Name of court and case, client's signature (and today's identity practice), advocate's acceptance, well-fare stamp where the State Act asks, a date. A clerk's signature is not a vakalat.

- Revocation: the client may; the court is told. Dual vakalat in conflict is ethics Unit II.
- This is the last document of the clinical — small, and the one a court notices when it is wrong.

Vakalatnama

NEED

- Client's sign.
- Your acceptance.
- The file name.
- The stamp.

NEVER

- A blank signed vakalat in a tout's pocket.

Notices

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Cases a KSLU answer should name

CASE

Suraj Lamp

(2012) 1 SCC 656

POA / will is not a conveyance of today's sale.

CASE

Whirlpool Corp'n v Registrar of Trade Marks

(1998) 8 SCC 1

226 despite alternative remedy — three classical doors.

CASE

Kale v Deputy Director of Consolidation

(1976) 3 SCC 119

A family arrangement, fairly arrived at, is a title the courts will not lightly disturb.

Provisions & materials to quote

IS Act ss.63, 67, 70

Execution, attesting beneficiary, revocation.

Registration Act s.17

Partition of immovable; many POAs that convey.

CPC s.80 / O.5

Government notice; service of process is not s.80.

NI Act s.138

The statutory lawyer's notice.

Arts. 226, 32

The writ skeleton.

10 / 16-mark frames from this unit

Q1

What are the essentials of a valid will? Who may attest?

Q2

Draft a special power of attorney to sell a named property.

Q3

Write a s.80 CPC notice / a s.138 NI Act notice.

Q4

Outline a writ petition under Art. 226 with grounds and prayer.

Unit recap

- 1 Will: s.63 two attestors; a beneficiary who attests loses (s.67).
- 2 POA is delegation, not a sale (Suraj Lamp).
- 3 Partition of immovable is registered, with schedules.
- 4 Notices: s.80 two months; s.138 fifteen days; s.106 fifteen days.
- 5 Writ: dates, legal grounds, a specific prayer, an affidavit.