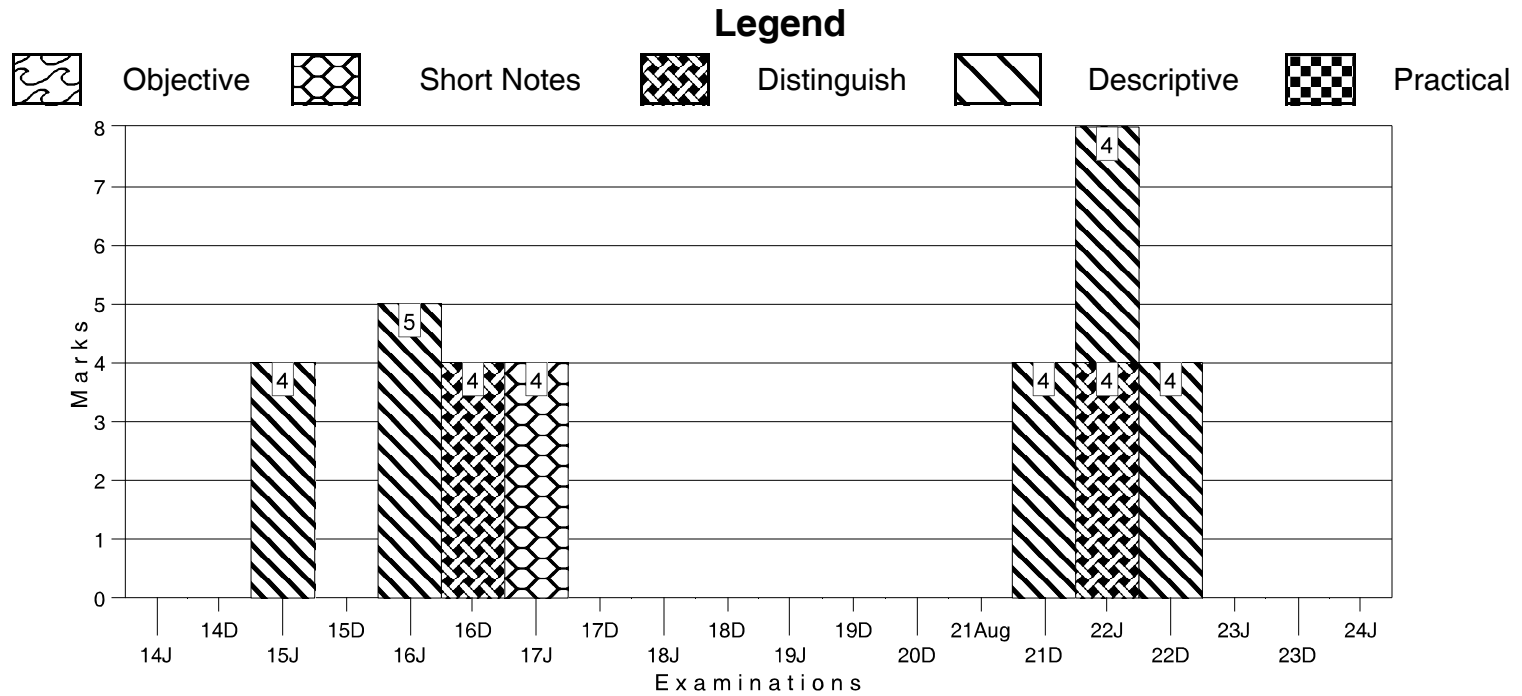


Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions



1

TYPES OF DOCUMENTS

THIS CHAPTER INCLUDES

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| 1. Deeds | 7. Standard bids and Tenders |
| 2. Agreements | 8. Letter of Credit, Bank Guarantee, and Performance Guarantee |
| 3. Contracts | 9. Bye laws |
| 4. Difference between deeds, agreements and contracts | 10. Show Cause Notice (SCN) |
| 5. Circulars | 11. Standing Orders |
| 6. Public notices | 12. Bonds |

CHAPTER AT A GLANCE

Deeds

Deed is the term normally used to describe all the instruments by which two or more persons agree to effect any right or liability. To take for example Gift Deed, Sale Deed, Deed of Partition, Partnership Deed, Deed of Family Settlement, Lease Deed, Mortgage Deed and so on.

A deed is a writing –

- (a) on paper, vellum or parchment,
- (b) sealed, and
- (c) 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.

Agreements

An agreement which is enforceable at law is called a contract. Generally, when a contract is reduced to writing, the document itself is called an agreement. Accordingly, there cannot be an agreement unless there are two or more parties that agree to perform certain acts or refrain from doing something.

Types of Agreements
<ol style="list-style-type: none"> 1. Sale/Purchase Agreements 2. Commercial Agency Agreements 3. Collaboration Agreements 4. Arbitration Agreements 5. Hypothecation Agreement 6. Outsourcing Agreements 7. Agreement for Assignment 8. Shareholders' Agreements 9. Employment Agreements
Contracts
<p>An agreement gives birth to a contract.</p> <p>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. It is apparent from the definition that an agreement is based on a promise.</p> <p>Therefore, every contract is an agreement but not vice versa. Agreements in which the idea of bargain is absent and there is no intention to create legal relations are not contracts.</p>
Circulars
<p>According to Cambridge dictionary, a circular is a letter or notice sent to a large number of people. The purpose of circulars is to disseminate the information to large number of individuals.</p> <p>Generally, circulars are in written form so as to create a permanent record of the information and the same may be accessed to by the individuals in present as well as in future.</p>
Important Points for drafting a circular
<ol style="list-style-type: none"> 1. Issuing Authority 2. Details of Addressee 3. Subject

<ol style="list-style-type: none"> 4. Reference to Preceding information 5. Main Information 6. Source of Authority 7. Signature
<p>Public notices</p>
<p>Public notices are issued to convey information to large number of receivers that may called public. These are announcements made on a happening of a certain event of public interest. These may be issued by a Government Agency or by an individual including organisations. These are effective mode by which Public are informed about an important event.</p>
<p>How to draft a Public Notice?</p>
<p>Drafting of Public notice</p> <ol style="list-style-type: none"> 1. Name of the Issuer 2. Details of the Issuer 3. Title Heading 4. Comprehensive Details 5. Statutory/Regulatory Requirement 6. Date and Place 7. Designation of the issuer
<p>Standard Bids and Tenders</p>
<p>As per the Cambridge dictionary, tender is a written or formal offer to supply goods or do a job for an agreed price. It refers to an invitation to offer (bid) for a purpose. The process of inviting bids for tenders have been initiated frequently by the organisations for large projects. Tendering processes encourage the availability of goods or services on competitive prices.</p>
<p>Letter of Credit</p>
<p>Letter of Credit ('LC'), also known as a documentary credit is a payment mechanism used specially in international trade. In an LC, buyer's bank</p>

<p>undertakes to make payment to seller on production of documents stipulated in the document of LC. LC play an important role in the trade of a country, especially in its international trade.</p>
<p>Parties to Letter of Credit (LC)</p>
<ol style="list-style-type: none"> 1. Applicant Bank 2. Issuing Bank 3. Beneficiary 4. Advising Bank
<p>Types of Letter of Credits</p>
<ol style="list-style-type: none"> 1. Documentary LC and Clean LC 2. Fixed Credit and Revolving Credit 3. Revocable and Irrevocable LC 4. Confirmed and Unconfirmed Lcs 5. 'With' and 'Without Recourse' Credit 6. Transferable Lcs 7. Back to Back LC 8. LC with Red Clause / Green Clause 9. Instalment Credit
<p>Bank Guarantee</p>
<p>It is a non-fund-based facility required by the borrowers. Banks are often required to issue guarantees on behalf of their customers. A bank guarantee ensures that the liabilities of the debtor will be met in the event he fails to fulfil his contractual obligations. It is an agreement between three parties – the bank, the beneficiary and the applicant who seeks the guarantee from the bank.</p>
<p>Bye Laws</p>
<p>According to Collins' Dictionary, A bye law is a law which is made by a local authority and which applies only in their area. So, certain organisations frame their Bye Laws for effective functioning. Bye-Laws are legal tools used to regulate a particular subject or area so as to achieve orderly development of that subject.</p>

The nature of the Bye-Laws i.e. Mandatory or directory depends upon the subject matter for which they were made and the language used by the draftsmen in drafting the legislature empowering the making of Bye Laws.

Show Cause Notice (SCN)

A show cause notice is a document delivered to other party to represent the matter. It summaries the alleged matter and grants the other party an occasion to explain themselves.

SCN may be issued for varied reasons by various authorities such as by Courts, Government, Quasi-judicial Authorities, Employers, other authorities etc.

The issuance of SCN is preferred by authorities due to the observance of the principle of Natural Justice.

It is based on the principle audi alteram partem (hear the other side) i.e. no one should be condemned unheard.

SHORT NOTES

2017 - June [2A] (Or) Write notes on the following:

- (i) Fidelity Guarantee

(4 marks)

Answer:

Fidelity Guarantee:

A surety's liability for the faithful discharge by another of his duties depends in each case on the exact terms of that guarantee. The surety is not discharged from the liability for the principal debtor's default because the default would not have happened if the creditor had used all the powers of superintending the performance of the debtor's duty which he could have exercised, because the employer of the servant whose due performance of work is guaranteed does not contract with the surety that he will use the utmost diligence in checking the servant's work.

If the employer of a servant whose fidelity has been guaranteed continues to employ him even after a proved act of dishonesty without notice to the guarantor, the surety is discharged. That is a basic principle implicit in the

very nature of a fidelity guarantee. The guarantor in such a case guarantees the fidelity and ensures the loss against the risk of infidelity and not the fact of infidelity. If the employer wants to continue a dishonest servant after his dishonesty has been proved then he must give the guarantor notice of the fact of infidelity so that the guarantor may get an opportunity to say whether he would continue his guarantee or not for a man whose infidelity has been proved.

DISTINGUISH BETWEEN

2012 - June [7] (b) Distinguish between the following:

- (i) 'Performance guarantee' and 'fidelity guarantee'. **(3 marks)**

Answer:

Performance Guarantee: A guarantee which ensures the contracted performance of another person and under which the surety undertakes to compensate the person in whose favour the guarantee is given in the event of failure on the part of person on whose behalf the guarantee is given is called "performance guarantee".

Fidelity guarantee:

Counter Guarantee and Fidelity Guarantee: A guarantee, guaranteeing an employer against the misconduct of an employee or to answer for the debt or default of another, is called a "fidelity guarantee".

A guarantee given by the principal debtor to the surety providing him continuing indemnity against any loss or damage that the surety may suffer on account of default on the part of the principal debtor, is called "counter-guarantee".

2016 - Dec [2] Distinguish between the following:

- (b) 'Continuing guarantee' and 'counter guarantee'. **(4 marks)**

Answer:

Continuing Guarantee and Counter Guarantee:

A guarantee which extends to a series of transactions is called a continuing guarantee. Whereas a guarantee given by the principal debtor to the surety providing him continuing indemnity against any loss or damage that the

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surety may suffer on account of default on the part of the principal debtor, is called counter guarantee. As per **Section 130**, a continuing guarantee may be revoked by the surety at any time as to future transactions, by notice to the creditor.

2022 - June [4] Distinguish between the following:

(c) Continuing guarantee and Counter guarantee.

(4 marks)

Answer:

Please refer 2016 - Dec [2] (b) on page no. 19

DESCRIPTIVE QUESTIONS

2015 - June [2] Explain the following:

(c) A contract of counter guarantee is different from a contract of fidelity guarantee or performance guarantee.

(4 marks)

Answer:

Counter Guarantee and Fidelity Guarantee: A guarantee, guaranteeing an employer against the misconduct of an employee or to answer for the debt or default of another, is called a "fidelity guarantee".

A guarantee given by the principal debtor to the surety providing him continuing indemnity against any loss or damage that the surety may suffer on account of default on the part of the principal debtor, is called "counter-guarantee".

2016 - June [1] Comment on the following:

(b) A contract of guarantee is a contract to perform the promise.

(5 marks)

Answer:

A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principle debtor"; and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written. (**Section 126 of the Indian Contract Act, 1872**).

The guarantee contract is an undertaking to make good the creditors in case the principle debtor does not fulfil his promise. Hence, the creditor is assured that the promise will be performed by the guarantor in case the principle debtor fails.

2021 - Dec [3] (b) Is attestation, registration and stamping is necessary for an Agreement? **(4 marks)**

Answer:

Attestation: It is not necessary for an agreement to be attested by any witness. But agreements are usually attested by one witness. Where registration is desired the agreement should be attested by two witnesses.

Registration: Agreements not relating to immovable property and agreements not creating an interest in immovable property are not compulsorily registerable. Only agreements creating an interest in immovable property worth more than ₹100 are required by law to be registered.

Stamp Duty: For the purpose of stamp duty, agreements are covered by Article 5 of schedule I to the Indian Stamp Act, 1899. The stamp duty for different kinds of agreements varies from State to State. While drafting an agreement draftsman should ascertain the proper stamp duty having regard to the changes made in the Stamp Act in the State where the agreement is executed.

2022 - June [2A] (Or) Draft the following as per the instructions (Assume facts, if required):

(i) Specimen Deed of Guarantee for the Performance of a Contract.

(4 marks)

Answer:

Specimen Deed of Guarantee for the Performance of a Contract

THIS DEED OF GUARANTEE made this day of between Shri, son of Shri..... resident of... (hereinafter called "the Guarantor"), which expression shall, unless repugnant to the context, include his heirs, legal representatives, assigns etc of the one part and Shri, son of resident of (hereinafter called "the Principal), which expression shall, unless repugnant to the context, include his heirs, legal representatives, assigns etc., of the other part.

WHEREAS BY AN AGREEMENT DATED..... made between Shri son of Shri..... resident of... etc., therein referred to as “the Contractor”, of the one part and the said..... Shri..... herein referred to as “the Principal”, of the other part, it was *inter alia* agreed by and between the parties as follows: (Mention nature of Work to be done by the contractor with assumed facts);

AND WHEREAS the said work was entrusted to the Contractor upon the Guarantor having agreed with the Principal as to its guarantee of performance by the Contractor and to indemnify and keep indemnified the Principal against all losses, damages, costs, charges and expenses arising out of performance or non-performance thereof. Now it is agreed and declared by and between the parties as follows:

1. The Guarantor will see that the Contractor (unless relieved from the performance by operation of any clause of the contract or by statute or by virtue of the decision of any tribunal or court of competent jurisdiction, shall carry out, execute and perform the contract without any exception or reservation and in case he commits any breach thereof, the Guarantor will indemnify and keep indemnified the Principal and his estate against all losses, damages, costs, expenses or otherwise which he may suffer or otherwise incur by reason of any act, negligence, default or error in judgement on the part of the Contractor in performing or non-performing the contract.
2. In case of any dispute or difference as regards the quantum of such losses, damages, costs, charges or expenses, the same shall be decided by reference to arbitration of one architect or engineer if the parties so agree or otherwise to two architects or engineers, one to be appointed by each, whose decision shall be final and binding on all parties.

IN WITNESS WHEREOF, the parties hereto have hereunto set and subscribed their respective hands and seals the day....., month..... and the year first above-written. Signed, Sealed and delivered in the presence of

- 1.
- 2.

Guarantor
Principal

2022 - Dec [2] (c) Elucidate the fidelity guarantee.

(4 marks)

Answer:

Fidelity guarantee:

1. A guarantee, guaranteeing an employer against the misconduct of an employee or to answer for the debt or default of another, is called a "fidelity guarantee"
2. This policy broadly covers pecuniary loss sustained as a result of act of fraud or dishonesty in respect of monies or goods of the employer committed by the employees in the course of performance of their duties.
3. This policy is suitable for employees occupying positions of trust such as cashier and storekeeper.

FOR NOTES

A large rectangular box designed for taking notes. It features a solid black border at the top and bottom, and a dashed black line running horizontally across the middle of the box, creating two distinct sections for writing.