

FOR USE IN INDIAN AUDIT AND ACCOUNTS DEPARTMENT ONLY

**STATE REVENUE AUDIT
MANUAL
STAMPS & REGISTRATION
(SECOND EDITION)**

**Issued by:
The Accountant General (Works, Forest & Receipt Audit), Kerala,
Thiruvananthapuram.**

PREFACE

This Manual has been prepared for the guidance of those entrusted with the audit of receipts in Registration Department. In this Manual the basic provisions of the different enactments governing the levy, assessment and collection of duties in Registration Department have been set out. The audit instructions in this Manual are supplementary to the general instructions contained in the Manuals/circulars issued by the Comptroller and Auditor General of India.

The provisions of this Manual shall not be quoted as authority in any correspondence outside this office.

Omissions or errors, if any, in this compilation, may be pointed out to SRA(HQ) Section which is responsible for keeping this manual up to date.

Suggestions for improvement are also welcome.

SD/-

Thiruvananthapuram
Dated 6 January 2011

K.S. SUBRAMANIAN
ACCOUNTANT GENERAL (WF&RA), KERALA

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CHAPTER I

INTRODUCTION

1.1 Audit of the receipts of the Registration Department was taken up from 1st October 1971 in accordance with the provisions of Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 (Central Act 6 of 1971).

1.2 General Principles governing the audit of receipts are contained in Chapter III of Section II of the Comptroller and Auditor General's Manual of Standing Orders (Audit). The instructions in this manual are meant only to supplement the provisions in the Manual of Standing Orders (Audit).

1.3 The receipts of the Registration Department are mostly based on Acts passed by the Parliament and the State Legislature. These are supplemented by Rules, Notifications, Executive Orders, Circulars and Directions issued by Government and the Inspector General of Registration under the provisions of the Acts concerned. The following Acts/Rules are administered (either in part or whole) by the Registration Department:

- (1) The Indian Stamp Act, 1899.
- (2) The Kerala Stamp Act, 1959.
- (3) The Indian Registration Act, 1908.
- (4) The Kerala Chitties Act, 1975.
- (5) The Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955.
- (6) The Societies Registration Act, 1860.
- (7) The Kerala Document Writers Licencing Rules, 1960
- (8) The Special Marriage Act, 1954.
- (9) The Prize chits and money circulation Schemes (Banning) Act, 1978.

1.4 The Inspector General of Registration functions also as the Registrar of firms under the Indian Partnership Act, 1932 and as the Registrar of non-trading Companies under the Kerala State Non-trading Companies Act 1961.

1.5 In addition to the above functions, the Registration Department collects surcharge in the form of stamp duty on certain transfers of immovable property under the following Acts:

- 1) The Kerala Panchayat Raj Act, 1994.
- 2) The Kerala Municipalities Act, 1994.

1.6 The Registration Department started functioning from 1st Dhanu 1043 (ME) in the former Travancore area under Act I of 1042 of the erstwhile Travancore State and from 1st Edavam, 1050 (ME) in the former Cochin area under Act I of 1049 of the erstwhile Cochin State and from 1st January 1865 A.D. in the former Malabar area under Act XVI of 1865 A.D. (Madras). The three units were integrated to form the present Registration Department with the formation of the Kerala State with effect from 1st November 1956 and the Indian Registration Act, 1908 is now in force throughout the State.

1.7 The laws under which revenue is collected provide for judicial remedy or judicial interpretation. Audit has no authority to interpret laws, but has to follow the judicial interpretations. Thus in the audit of statutory receipts an exhaustive study of judicial interpretations is essential.

1.8 This manual containing broad principles is intended primarily to lay down certain guidelines for the revenue audit parties auditing the receipts pertaining to the offices under the control of the Inspector General of Registration, forming part of the Registration Department. No portion of this manual should be quoted as authority in any audit enquiry, inspection report or any correspondence intended to be seen by an authority/person outside the Indian Audit and Accounts Department. It should not be treated as exhaustive or conclusive with regard to matters dealt with therein. The judicial decisions referred to in the manual are intended merely to give a clue and should not be quoted without reference to the full text of the decision so as to ensure its correct application.

1.9 Except when repugnant to the subject or context and where specific orders are issued on the subject, the instructions contained in the Outside Audit Department Manual apply *mutatis mutandis* to the audit of receipts and the Revenue Audit Parties.

CHAPTER II

BASIC FEATURES OF THE STAMP ACTS

A – The Kerala Stamp Act, 1959 (Act XVII of 1959)

(a) *General*

2.1 The Kerala Stamp Act, 1959, is an Act to consolidate and amend the law relating to Stamps in the state of Kerala. In addition, it sought to unify the Acts previously existed and revised the rates of Stamp duty. The Act came into force from 1st September 1960.

(b) *Definitions*

2.2 In the definition clauses under Section 2, eighteen words and usages in the Act are defined. An exhaustive definition is given for the following eleven words and usages.

1. Chargeable
2. Collector
3. Duly stamped
4. Executed and execution
5. Government Security
6. India
7. Instrument of partition
8. Lease
9. Marketable security
10. Settlement
11. Vessel

For the remaining seven words and usages stated below only an inclusive definition is given in the Act.

1. Bond
2. Conveyance
3. Impressed Stamp
4. Instrument
5. Mortgage Deed
6. Paper
7. Power of Attorney

2.3. The definitions given are subject to the context in which the words and usages are used in the Act. The interpretations of terms contained in Section 2 are useful only for the purpose of the Act for ascertaining the stamp duty with which an instrument is chargeable. In applying the definitions great caution has to be exercised.

(c) Levy of Duty

2.4. Stamp duty is levied only on the instruments specified in the schedule to the Act. It is payable when such instruments are executed within the territory of the States on or after 1st September 1960 ie. the date on which the Act came into force. Even in cases it is executed outside the State, duty is payable when such instrument is received in the State and if the same related to any property situated or to any matter or any thing done or to be done in the State. Instruments executed by or on behalf of the Central or any State Government (Including Kerala State) are exempt from stamp duty when duty is payable by such Government but for this exemption. Certain instruments concerning any ship or vessel are also exempt from stamp duty (**Section 3**).

(d) Liability of instruments to duty

2.5. Where in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only is charged with duty prescribed in the schedule for this conveyance, mortgage or settlement and each other instrument are chargeable with a duty of Rs 100 from 29.7.1996 instead of the duty, if any, prescribed for it in the schedule (**Section 4**).

But when any instrument comprises or relates to several distinct matters, separate duty for each instrument contained in the distinct matters is payable at the rates prescribed in the schedule (**Section 5**).

Where an instrument comes within the ambit of two or more descriptions in the Schedule (ie. when it is doubtful whether the instrument should be classified under one article or the other) it is to be charged as per the description requiring the highest of such duties (**Section 6**). In the case of counterpart, duplicate or copy of any instrument, the original/principal of which was executed outside the State, the duty payable when first received in

the State will be the duty payable for the principal/original instrument if executed in the State less the amount of duty already paid on such instrument in any other State in India (*Section 7 read with Section 19*).

When local authorities raise loan issuing bonds or other security, other than debentures, such deeds are not chargeable with Stamp duty, but only with a centage duty (*Section 8*).

By order published in the Gazette, Government may in public interest reduce or remit whether prospectively or retrospectively stamp duty in respect of any instrument or class of instruments (*Section 9*).

(e) Stamps and mode of using them

2.6. Payment of duty is to be indicated on instruments by means of stamps. Government have power to frame rules for the purpose of regulating the description and the number of stamps to be used (*Section 10*). For certain instruments adhesive stamps may be used (*Section 11*). Unless the adhesive stamps used are cancelled at the time of affixing or execution of the instrument it is to be treated as unstamped (*Section 12*). Except in certain cases of endorsement, receipt etc., no instrument chargeable with duty is to be written on a stamp paper upon which an instrument chargeable with duty has already been written (*Section 14*). If the stamp duty for one instrument depends in any manner upon the duty actually paid on another instrument, the duty so paid on the other instrument is to be mentioned in the instrument for which stamp duty is to be so worked out (*Section 16*).

(f) The time of stamping Instruments

2.7. When executed by any person in the State of Kerala, every instrument is required to be stamped before or at the time of execution (*Section 17*); when executed out of India, instrument is to be stamped within three months after first receipt within the State of Kerala (*Section 18*); when executed in India but outside the State of Kerala the difference between the duty payable had the document been executed in the State less the amount of duty already paid, is payable at the time of receipt of the instrument in the State (*Section 19*).

(g) Valuation for duty

2.8. If the value of the instrument based on which stamp duty is to be determined is expressed in any foreign currency, then that value is to be converted into Indian Currency at the rate of exchange as on the date of the instrument, for determining the stamp duty payable (**Section 20**). Valuation of stock or any marketable or other security for purpose of stamp duty is to be done according to the average price or the value on the date of the instrument (**Section 21**). When the rate of exchange or average price is stated in the instrument, it is to be presumed to be correct unless otherwise proved (**Section 22**). Where interest is expressly made payable by the terms of an instrument, duty is payable as if no mention of interest is made therein (**Section 23**). Certain instruments connected with mortgages of marketable securities are to be charged as agreements only (**Section 24**), where the consideration in respect of a transfer is wholly or in part a debt due to the transferee and where the transfer is made subject to the payment by transferee of the debt due to another, whether constituting a charge or not on the property transferred, duty is also to be paid on the amount of the debt forming the consideration. (**Section 25**). In the case of instruments executed to secure the payment of annuity or other sum payable periodically, duty payable is to be based on the sum payable during a definite period or in perpetuity (**Section 26**). Generally value/amount claimable under an instrument chargeable with advalorem duty is limited to the value for which stamp duty has been paid at the time of execution (**Section 27**). Every fact which affects the duty payable on the instrument is to be fully and truly set forth in the instrument (**Section 28**). Every Revenue Divisional Officer shall subject to such rules as may be prescribed by Government, fix the fair value of lands situated within the area of his jurisdiction, for the purpose of determining the duty chargeable at the time of registration of instruments involving lands (**Section 28 A**), (**Authority: Act 19 of 1994**). In case of instruments of conveyance subject to certain contracts concerning such conveyance special provisions exist in the Act, to ascertain the duty payable on such instruments according to their connection with the contract (**Section 29**).

(h) Duty by whom payable

2.9. Stamp duty is payable either by the executant or the claimant as agreed to between them. The Act prescribes certain obligations to pay stamp duty by a specified party in the case of certain instruments, when an agreement on this among the parties is not subsisting (*Section 30*).

(i) Adjudication

2.10. Collector or any other person authorized for the purpose is to determine the duty chargeable on any instrument, when instruments are brought to him to have his opinion. For this, the person so bringing has to pay the prescribed fee. If the Collector determines that the instrument is not chargeable with duty or that the instrument is already fully stamped, he has to certify to that effect by endorsement on the instrument. If it is determined that the instrument is not duly stamped, the person would have to pay the deficiency, and when such payment is made a certificate to the effect of full payment of duty has to be recorded on the instrument by endorsements (*Sections 31 and 32*).

(j) Procedure regarding instruments not duly stamped

2.11. The Act entrusts duties on certain officers including the registering officer to impound instruments not duly stamped, when produced before them (*Section 33*). Instruments not duly stamped are to have evidentiary value only when deficiency is made good and penalty paid (*Section 34*). Except in certain specified cases, all impounded instruments are to be sent to the Collector (*Section 37*). Power to refund penalty is vested in the Collector (*Section 38*). The Collector shall require payment of deficiency in stamp duty and penalty in the case of impounded documents. He may exempt or reduce penalty in certain cases (*Section 39*). When the Collector is satisfied that the omission to duty stamp an instrument is occasioned by accident, mistake, or urgent necessity, he may receive the duty due and give proper endorsement on the instrument (*Section 40*). When deficiency in stamp duty is paid to the Collector, he has to certify by endorsement that proper duty and penalty (if any) has been levied (*Section 41*). There is provision to refund penalty if

applied for within one year. In the case of excess stamp duty paid refund is permissible if applied for by the party within three months of the order charging stamp duty (*Section 44*).

2.12. If the registering officer, while registering a document has reason to believe that the value of the property or consideration has not been truly set forth in the instrument he may after registering such instrument refer the matter to the District Collector for determination of the value or consideration, as the case may be, and the proper duty payable thereon. The District Collector in such cases has to determine the value or consideration and the duty payable on the document. On payment of the duty so fixed the District Collector shall endorse a certificate of payment on the document. District Registrar may also take *suo motu* action within two years from the date of registration of the document (*Section 45B*).

(G.O. (MS) No. 132/86/TD dated 13-10-86 and Act 14 of 1988).

Purchase of land by Government

(1) Notwithstanding anything contained in Section 45 A or Section 45 B, where a registering officer while registering any instrument, other than an instrument of partition, settlement or gift, among the members of a family, transferring any property, has reason to believe that the value of the land or the consideration set forth in the instrument is less by fifteen percent or more of the fair value of the land fixed under Section 28A, he may refer the same to the Collector for an order for purchase of the land by the Government.

(2) On receipt of a reference under Sub-Section (1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in the manner as may be prescribed by rules made under this Act, by order, determine the duty based on the fair value of the land and direct the person liable to pay the duty to pay the deficit amount of duty together with such penalty not exceeding twenty five *per cent* of the fair value of the land within such time as he may fix, which shall not be less than twenty one days and on payment of such duty, the Collector shall endorse a certificate of such payment on the instrument under his seal and signature and thereupon the instrument shall be duly registered by the registering officer.

(3) Where the person fails to comply with the direction under Sub-Section (2), the Collector shall order for the purchase of the land by the Government by paying the value of land or consideration set forth in the instrument together with an amount equal to 25 *per cent* of such value or consideration.

(4) Where an order for the purchase of any land by the Government is made under Sub-Section (3), the Government shall pay by way of consideration for such purchase an amount equal to the amount specified in the said Sub-Section and on payment of such amount, the land shall vest in the Government free from all encumbrances.

(5) Any person aggrieved by an action under Sub-Section (4) may within thirty days of the date of purchase by the Government, appeal to the District Court within whose jurisdiction the property purchased is situated (*Section 45C*).

Recovery of duties and penalties

2.13. All duties, penalties and other sums required to be paid under this Chapter may be recovered by the Collector by distress and sale of the movable property of the person from whom the same are due, or by any other process for the time being in force for the recovery of arrears of land revenue (*Section 46*).

(k) Allowances for stamps in certain cases

2.14. In certain cases Collector may make allowance for impressed stamps spoiled on application made by the party (*Section 47*). Similar allowance can be granted by Government or such other authority for stamped papers used for printed forms of instruments, by any banker or by any incorporated company or other body corporate when such forms ceased to be in use (*Section 49*). Collector may give allowance for stamps spoiled or misused inadvertently, by issue of other stamps of equal value or by payment of the value after deducting 6 *per cent* (*Section 51*). Similar allowances are permissible in the case of stamps not required for use (*Section 52*).

(l) Penalty

2.15. Any person executing or signing otherwise than as a witness any instrument chargeable with duty, but not duly stamped is punishable with fine

not exceeding five hundred rupees. For issue of a share warrant without being duly stamped, the Company or Managing Director or Secretary or other principal officer of the company is liable for punishment which may extend to five hundred rupees (*Section 60*). Failure to cancel an adhesive stamp is punishable with fine not exceeding one hundred rupees (*Section 61*). Penalty for omission to state all the facts affecting duty, in the instrument may extend to five thousand rupees (*Section 62*). A fine which may extend to one thousand rupees is fixed as penalty for devices to defraud revenue (*Section 63*). Penalty for breach of rule relating to rule of stamps and for unauthorized sale may extend to five hundred rupees (*Section 64*).

(m) Power to make rules

2.16. Power to make rules to carry out the purposes of the Act is vested in the Government. Rules are to be made by issue of notification in the Gazette (*Section 69*).

B – The Indian Stamp Act, 1899 (Act II of 1899)

2.17. The Kerala Stamp Act, 1959 is enacted on the basis of the Stamp law as contained in the Indian Stamp Act, 1899 and the laws dealt with in both the statutes are substantially the same. Minor changes to suit local requirements alone have been made in the State enactment. Thus the basic features of the two enactments are identical subject to matters dealt with below:

2.18. The application of the Indian Stamp Act, 1899, within the territories of the Kerala State is limited to eight types of instruments. As registration of instruments dealt with by both the Stamp Acts is done by the same officer under the authority of a single Act, viz., The Indian Registration Act, 1908 (Act 16 of 1908) in matters regarding procedure to be followed in the registering offices only one common law rule is applied.

2.19. Indian Stamp Act contains definitions of certain words and phrases used in the Act and certain instruments included in Schedule I to the Act. These are not defined in the Kerala Stamp Act. These include ‘Banker’ (Section 2(1)), ‘Bill of exchange’ (Section 2(2)); ‘Bill of exchange payable on demand’ (Section 2(3)), ‘Bill of lading’ (Section 2(4)), ‘Cheque’ (Section 2(7)), Policy of Insurance (Section 2(19)), Policy of insurance or Sea Policy

(Section 2(20)). Promissory Note (Section 2(22)). Receipt (Section 2(23)), 'Soldier' (Section 2(25)) and stamp (Section 2(26)). The word vessel is defined in Kerala Stamp Act but not included in the definitions in the Indian Stamp Act.

2.20. In the case of unstamped receipts not exceeding ten paise, Section 34 of the Indian Stamp Act, contains a special provision to the effect that any officer before whom an unstamped receipt is produced in the course of audit, of any public accounts may in his discretion, require a duly stamped receipt to be substituted thereof instead of impounding the instrument.

2.21. Under Section 47 a person to whom a bill of exchange or promissory note chargeable with duty not exceeding 10 paise is presented unstamped he may himself affix the stamp required and claim reimbursement or recovery from sums due to such persons who ought to have paid it.

2.22. When a duly stamped debenture is renewed by the issue of a new debenture on the same terms, the Collector shall (upon the application made within one month) repay the value of the stamp on the original or on the new debenture whichever is less (*Section 55*).

2.23. Any person who being required under Section 30 to give a receipt, refuses or neglects to give the same or with intents to defraud Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount not exceeding Rs 20 on separates or divides the money or so that the receipts might be for amounts less than Rs 20 is punishable with fine not exceeding Rs 100 (*Section 65*). Similarly a person who having received premium does not make out duly stamped policy of insurance within one month from the dates of receipts of money, or makes one not duly stamped as punishable with fine which may extend to Rs 200 (*Section 66*). Penalty for not drawing full number of bills or marine policies purporting to be drawn in sets may extend to Rs 1,000 (*Section 67*). Fine up to Rs 1,000 may be imposed for post-dating bills and for other devices to defraud the revenue (*Section 68*).

2.24. The State Government, may by notification in the Official Gazette, delegate –

(a) all or any of the powers conferred on it by Section 2(9), 33(3) (b), 70(1), 74 and 78 to the Chief Controlling Revenue Authority; and

(b) all or any of the powers conferred on the Chief Controlling Revenue Authority by Sections 45(1) (2), 56(1) and 70 (2) to such subordinate Revenue Authority as may be specified in the notification.

2.25 The following powers conferred on the Chief Controlling Revenue Authority by the Act may be delegated to any subordinate Revenue authority of the State Government, by issue of notification (*Section 76 A*).

(a) all or any of the powers conferred on it by Section 2(9), 33(3)(b), 70(1), 74 and 78 to the Chief Controlling Revenue Authority; and

(b) all or any of the powers conferred on the Chief Controlling Revenue Authority by Sections 45(1) (2), 56(1) and 70 (2) to such subordinate Revenue Authority as may be specified in the notification.

CHAPTER III

LEVY, ASSESSMENT AND COLLECTION OF STAMP DUTY

A – The Kerala Stamp Act, 1959

a) Liability of Instruments to Duty

3.1. Subject to the exemptions provided for in sections or in the schedule, the liability of instruments to stamp duty is specified in Section 3. Under Section 3 only the instruments mentioned in the Schedule to the Act are chargeable with the duty at the rates specified therein. Wills are not subject to stamp duty because there is no mention of them in the schedule. A decree of a court in the nature of an award, petitions and compromises are not instruments chargeable with duty under the Stamp Act. The Stamp Act applies to instruments executed within the territories of the State of Kerala even if it does not relate to any property or any matter or thing done or to be done in the State of Kerala. The words ‘any matter or thing done or to be done in the territories of the State of Kerala’ do not, however, apply to the mere production of an instrument in evidence, eg. A contract relating to property abroad and executed abroad need not be stamped under the Act, if produced in any court of Law in Kerala, whereas an instrument executed in a foreign country relating to property in that country provides for payment of consideration in the State of Kerala, it would be liable to the Kerala Stamp Duty.

3.2. The Act applies to instruments executed out of the State when such instruments are received in the State and the instruments relate to any property situate or to any matter or thing done or to be done in the territories of the State. Instruments executed in another State and stamped according to the law in force there at the time of execution, would attract a further differential duty, if higher duty was payable had the instrument been executed in the State of Kerala. Thus in such cases the stamp duty already paid can be set off against duty payable and deficiency alone is to be realized. Crucial date which determines the rate of duty is the date of execution of instruments and not the date of registration or any other date. The duty chargeable on an insufficiently stamped document is to be decided with reference to the Act in force or the

date of execution of the document. Similarly property situated in the State is to mean property situated in the State at the time of execution of the instrument. Transfer of property subsequent to execution of the instrument will not by itself affect the duty.

3.3. Any material alteration (that which changes the legal effect of the instrument) made with the consent of the parties in an instrument after it is completely renders a new stamp necessary as its effect is to make it in substance a new instrument. An alteration which merely expresses what would otherwise have been implied is immaterial. Addition of descriptive words after the name of one of the parties does not require a fresh stamp. Any alteration made in an instrument to supply certain point left open does not require a fresh stamp, when the defect of mis-description in a deed arises not from intention but from mistake and the mistake is rectified or discovery by consent of parties, the alteration merely makes the contract what it was originally intended to have been and no new stamp is necessary. If an instrument is signed on different dates by the principal and his surety, it requires additional stamp, unless the surety's signature is in virtue of a previous agreement. An endorsement made on a previous agreement enlarging the time for its performance by a few days will amount to a fresh agreement.

3.4. Only the instruments mentioned in the Schedule are chargeable with the duty at the rates specified therein. The word 'instrument' is not exhaustively defined in the Act. Only an inclusive definition is given in Section (2)(j), as to include every document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished or recorded, but does not include a bill of exchange, promissory note, bill of lading, letter of credit, policy of insurance, transfer of share, debenture, proxy and receipt. Documents not covered by the definition such as copies (Article 23) affidavits (Article 4) etc. are also subjected to stamp duty, by inclusion in the schedule.

3.5. An instrument becomes chargeable with stamp duty only on being executed. Under Section 2(f) the word execution means signature. Generally signature is the writing or otherwise affixing a person's name, or a mark to represent his name, by himself or by his authority with the intention of

authenticating a document as being that of or as binding on, the person whose name or mark is so written or affixed. In the circumstances of a particular instrument a signature affixed to a document may relate only to a part of the given instrument. The remaining portion of the document will be consequently, taken as not executed.

3.6. Apart from the rates of stamp duty prescribed in the schedule to the Act, duty, fee and penalty are fixed by the main sections of the Act in certain cases.

b) Assessment of stamp duty

3.7. Compulsory assessment of stamp duty by any authority, at the time of execution of instruments, is not contemplated in the Act. Under the Act, it has to be presumed that every instrument is ‘duly stamped’ unless proved to the contrary. ‘Duly stamped’ means that the instrument bears an adhesive or impressed stamps of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in the State of Kerala (*Section 2(e)*).

3.8. A large number of documents executed are brought before the registering authorities as registration further authenticates the legal status of the documents and also because certain deeds are compulsorily registrable under the law of registration. Thus the registering officer is the main officer before whom instruments are produced, and he is required to satisfy that stamp duty has been paid correctly and properly. The Act disqualifies every instrument chargeable with duty, but not duly stamped, from admission in evidence for any purpose by any person having by law or consent of parties authority to receive evidence. Similarly, no person or public officer is to act upon, register or authenticate any instrument not duly stamped.

c) Distinctive feature – Sections 4, 5 and 6 of the Stamp Act

3.9. The object and scope of Sections 4 to 6 are not the same. Section 4 deals with a single transaction completed in several instruments and section 6 with a single transaction which might be viewed as falling under more than one category in the schedule whereas Section 5 applies only when the

instrument comprises more than one transaction, and it is immaterial for the purpose whether those transactions are of the same category or of different categories.

3.10. In other words, Section 5 concerns the duty payable in cases where one instrument embodies several distinct transactions. Section 4 on the other hand, deals with complementary instruments employed to complete a transaction. Section 6 deals with instruments which are so framed as to come within the description of two or more instruments mentioned in the schedule.

d) Employment of several instruments to complete the transaction

3.11. A single transaction of sale, mortgage or settlement may some time be carried out or completed by means of several instruments. When several instruments are thus used for completing transaction of sale, mortgage or settlement, the principal instrument only is chargeable with the duty at the prescribed rate in the schedule for the conveyance, mortgage or settlement. Each of the other instruments is chargeable with a duty of one hundred rupees only instead of the rates specified in the schedule. The party may themselves decide as to which of the several instruments is to be treated as the principal instrument, but the instrument so chosen is to be the one chargeable with the highest duty among the instruments employed. The duty paid on the principal instrument is to be noted on all the subsidiary instruments. Section 4 has no application where a fresh instrument is executed to vary the contract contained in an earlier one which had been already completed.

(e) Instruments relating to several distinct matters

3.12. Section 5 deals with multi-purpose or multifarious instruments. Under this section instrument comprising or relating to several distinct matters is chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under the Act.

3.13. In order to apply Section 5 it is essential that the instrument contains or relates to more than one distinct matter. Where distinct matters are present each distinct matter is to be treated as to constitute a separate instrument chargeable with duty, as if a separate document is executed with that matter

only. What is a distinct matter has not been defined in the Act. There are large numbers of judicial pronouncements as to the meaning of these words, still not precise and conclusive test as to the line of division between an instrument containing a single matter, and one containing several distinct matters, has been evolved. Thus, in order to determine the presence or absence of several distinct matters in an instrument, a very thorough and careful study of the document in the light of the judicial interpretations is called for.

3.14. The expression 'distinct matters' is equivalent to distinct transactions. Even if there is identity of parties in respect of several transactions embodied in one instrument, the test of distinct matters can be applied. The section applies when the instrument comprises more than one transaction even where the matters are of same description. 'Distinct matter' is not identical with 'distinct categories'. Two transactions might be of the same description but they might be distinct or separate. By 'distinct matters' are meant, matters of different kinds such as one agreement for service and a lease. The 'distinct matter' should be such as to be capable of being carried out by two or more instruments instead of one. The section does not apply to a document which embodies different covenants relating to the same transaction. In 'distinct matters' one should not be incidental to the other.

3.15. The following are some examples of matters that have been considered distinct:

- (i) the provision in a deed of lease effecting an agreement for sale of certain properties pertaining to the land leased.
- (ii) the provisions of an agreement of security in a deed of lease.
- (iii) provisions purporting to lease out one house and also effecting an agreement to sell other houses,
- (iv) clauses in an order appointing new trustees and vesting in them the property belonging to a charity;
- (v) a deed of conveyance and a deed of release endorsed on it.
- (vi) clauses of an agreement and also of a declaration of trust.
- (vii) In a deed of separation between husband and wife, the covenants requiring the husband to pay the wife for her maintenance a certain

- sum at specified rates;
- (viii) the provisions purporting to effect an obligation or a bond in a deed of lease;
- (ix) provisions of conveyance and agreement that the property was to be held as security for the debts as per another deed of mortgage;
- (x) provisions of an instrument effecting a deed of settlement and also one of an appointment.
- (xi) provisions of an acknowledgement of a debt and of a release.
- (xii) provisions effecting independent mortgages of a distinct part of an entire property in favour of each of the several mortgagees.
- (xiii) the respective provisions of an agreement of service and of security.
- (xiv) In a deed of sale, three different provisions one purporting to sell the property in satisfaction of a part of vendor's debts to the vendee, other undertaking to pay the balance within a certain period, and the third being an agreement on the part of the vendee-creditor not to sue during that period, the vendor-debtor for the balance of the debts;
- (xv) the provision of mortgage or of agreements in a power of attorney.

3.16 The following are examples of provisions treated as accessory or ancillary to the principal object of respective instruments and therefore considered as not constituting a distinct matter.

- (i) penal clauses in an instrument;
- (ii) a provision to return the things deposited;
- (iii) documents purporting to be mere acknowledgements of other transactions;
- (iv) provisions in a deed of apprenticeship requiring the apprentice to serve for four years with one person and two years with another to learn two different trades;
- (v) covenants giving an option to the lessee to purchase the property leased;
- (vi) stipulations in a deed of mortgage that mortgager will pay to the mortgagee in defending the mortgager's title in suits, in paying the debts charged on the property mortgaged and also on other

- accounts benefiting the property;
- (vii) covenants in a mortgage of land that the mortgager will pay taxes, rates and assessments on the land.
 - (viii) a provision in a deed of transfer of the shares in a company that the transferee will hold the shares subject to the rules and regulations of the company;
 - (ix) the stipulation in a mortgage of leasehold property that cost, etc. if a renewal of the lease will be charged on the property mortgaged;
 - (x) the provisions recurring the purchase money in an agreement for purchase of an estate;
 - (xi) the provision in an agreement of a policy of assurance that the assignee will pay the premium and recover the money thus paid as part of principal;
 - (xii) the provisions in an agreement that the promissory notes deposited as security for the due performance of the contract should be returned to the contractor when it is duly performed;
 - (xiii) the provision in an agreement of sale of goods relating to the payment of godown rents and fire insurance rates;
 - (xiv) a provision in a joint and several promissory notes executed by two persons to the effect that any arrangement for time to be given or security taken or scheme of composition etc. entered into with either of the two parties will not prejudice the rights of the holder against the remaining party;
 - (xv) covenants recording the concurrence of several parties;
 - (xvi) provisions of conveyance of a particular property to two mortgages as tenants-in-common and not as joint tenants with separate provisions of redemption;
 - (xvii) a provision in the deed of sale of mortgage of outside properties as security by the vendor for the due performance of his covenants;
 - (xviii) the different provisions in a vakkalathnamah;
 - (xix) an averment in a deed of sale that a part of the consideration for a sale was foregone as a present;
 - (xx) a surety clause in a rental deed and the deed itself.

(f) Distinct matters in instruments executed by or in favour of several persons

3.17 The fact that several persons join in an instrument does not make their shares in the transaction separate and distinct matters, provided that there is a community of the same subject matter, either as to property or interests in all the parties. If the interest of the parties relates to one thing which is the subject matter of the instrument, or in other words, if the instrument affects the separate interests in several subject matters, there ought to be a separate stamp for each party. Similarly where the parties have no common interest with regard to the subject matter, there ought to be a separate stamp for each.

3.18 The following are illustrative examples

- (i) A grant of an annuity by several persons requires only one stamp.
- (ii) A conveyance by several firms jointly of their separate interests in certain changes in an incorporated company requires only one stamp.
- (iii) A lease to joint tenants requires only one stamp.
- (iv) A deed in which several persons combine to effect a common purpose requires only a single stamp.
- (v) An agreement of several persons for a subscription to one common fund requires only one stamp.
- (vi) One stamp is sufficient on a bond by several obligors with separate covenants if they all relate to the same transaction.
- (vii) A power of attorney executed by several persons in favour of a person in none of which the executants are jointly interested, the power is an assemblage of powers to be treated as distinct matters.
- (viii) One deed incorporating several individual transfers and several individual releases requires stamp duty under Section 5 for distinct matters.

(g) Distinct matters in Instruments executed by a single person but holding different capacities

3.19. Where two or more persons join to execute an instrument, whether it comprises distinct matters or not, depends on whether the interests of the

instrument are separate or joint. Conversely, if one person holding properties in two different capacities, each unconnected with the other, executes an instrument in respect of both of them, the instrument is to be held to comprise distinct matters. The question of distinct matters in such cases may not arise, if there is community of interests between the different subject-matters contained in the same instrument.

(h) Provisions implied by law would not amount to distinct matters

3.20 A provision in an instrument is such that even if it had not been expressed it would have been implied by law, such a provision is not a distinct matter and no duty is chargeable in respect of it.

(i) Subsidiary and incidental covenants do not amount to distinct matter

3.21 If an instrument is properly stamped or does not require stamp in respect of its leading characteristic, it is not chargeable with any further duty by reason of inclusion of provisions which are merely auxiliary or ancillary to the leading object. An instrument has to be read as a whole to find out its dominant object. Section 5 does not apply to a document which embodies different covenants relating to the same transaction. 'Distinct matters' in Section 5 means matter which are separate transactions. *The main test to find out whether a document comprised two distinct matters is to ascertain the leading object of the instrument and to see whether the second matter is only incidental or ancillary to the main object or is independent of it.* It is not enough if the two matters are capable of being carried out by several instruments.

3.22 (i) A provision in an agreement for payment of compensation on the happening of one of the events specified, is not to be treated as a separate contract of indemnity, when there is no separate consideration for it.

(ii) An agreement for sale of goods is not further chargeable for a contract of guarantee or indemnity or covenant to refer to arbitration contained in the main contract.

(iii) A covenant in a conveyance to pay the consideration in instalments does not require additional duty.

(iv) A covenant by the principal to indemnify the surety against all loss by reason of his becoming surety, in a bond executed by a surety does not require a second stamp on account of the principal's obligation to indemnify the surety.

(v) A lease containing a guarantee by a third party for payment of rent and the performance of other conditions of the lease does not require to be separately stamped as a security bond.

(vi) The fact that the contract of the principal appears on the instrument separately from the contract of the surety does not render two stamps necessary.

(vii) An instrument of lease for a specified term containing a covenant on the part of the lessor to renew the lease at the option of the lessee for a further term is chargeable only as for the original period excluding the renewal period. No duty on an instrument of agreement of lease for the further period mentioned in the instrument is payable in such cases.

(viii) Where the consideration for a lease consists partly of rent to be paid each month and partly of a sum equal to a month's rent paid in advance and repayable at the end of the lease, the instrument relates to only one matter viz, the lease, the agreement of deposit being subsidiary.

(ix) A conveyance containing penalty clause to ensure performance of vendor's stipulations does not require separate duty for the penalty clause.

(x) A mortgage containing an acknowledgement by the mortgagor to the mortgagee does not come within the purview of section.

(xi) A policy of assurance against accident and provision therein as the return of part of the premium upon death in certain events are not distinct matters.

(xii) An adoption deed and provision in the deed for allotment of portion of property to the adopted son on disagreement between him and adoptive mother are not distinct matters coming under Section 5.

(j) Multifarious instruments containing distinct matters

3.23 When an instrument operates also as another distinct matter besides that which is incidental to the instrument, the duty payable for such a separate instrument containing the other matter alone would also be chargeable on the

instrument where several properties are conveyed to several persons by one instrument several stamps are required. Where a document contains a transfer of mortgage and an agreement to lend money, it is liable to duty as a transfer of mortgage and as an agreement. An agreement in a lease to pay a certain sum on account of balance of previous year is chargeable also as a bond. An option to purchase property not included in the lease required an additional stamps as an agreement. A lease reserving rent for house, and distinct rent for furniture and fixtures is to be charged with separate duties as regards the two provisions. The following are certain other instances of multifarious instruments:

- (i) A deed of family agreement containing an indemnity bond and a release;
- (ii) An instrument of release relating to five distinct items of property acquired at different points of time;
- (iii) A partition deed between members of a family in which the mother of the parties having a life interest in the properties joins and gives up that interest is chargeable as a partition and as a release.

(k) Instruments falling within more than one item prescribed in the schedule.

3.24 According to Section 6 when an instrument is capable of being classified as one or the other of the two or more categories of instruments as given in the schedule to the Act, and yet contains only one transaction it will be taxed as belonging to the category which fetches the highest revenue for the State. But this provision is subject to rule, that the rate of duty in respect of a specific well defined class of instrument should be altered even if such an instrument falls under another wider category of instruments.

3.25 Section 6 applies only when the instrument does not contain distinct matters but falls within two or more items in the schedule. The section is based on the principle that where an instrument is liable to duty under two or more categories in the schedule the State has an option to decide under which category it is to be assessed. According to this section instruments covered by exemption under one category of the schedule are not necessarily exempted if

they fall within another category also.

3.26 Where an instrument is executed by a lessee whereby he agrees to take a lease of the property, make repairs pay certain rent and binds himself not to quit the premises for a fixed period, it is a lease as well as an agreement and chargeable under Section 6 with the higher duty. Where an attested instrument containing an obligation to pay money evidences also a pledge of movable property as security for the money due, the higher of the stamp duties payable on its character as a bond and on its character as a pledge is leviable. A document whereby the executant hypothecated immovable property for a certain sum of money and agreed to perform agricultural labour in lieu of interest and in consideration of certain fees to be paid, should be considered as a deed of mortgage and as an agreement for service and charged with the higher duty under Section 6. An instrument which can be treated both as a dissolution of partnership and as an instrument of partition has to be charged with the higher duty prescribed for the instrument of partition. When a document might be construed as a deed of dissolution of partnership and as a deed of release, it has to be stamped with the higher duty prescribed for dissolution of partnership.

(I) Mode of using stamps

3.27 Under Section 10 of the Act, stamp duty on instruments is to be paid as provided in the Act and Rules and such payment is to be indicated in the instruments, by means of stamps issued by Government for the purpose. Stamps appropriated to a particular kind of instrument are not to be used for any other category. Stamps purchased in Kerala State alone is to be used for instruments executed in the State and the Government of India stamps issued from the Treasuries of the State are to be sealed with the word “Kerala” before issue.

(Rule 4 (c) of the Kerala Stamp Rules 1960)

3.28 Stamp duty is payable either by way of impressed stamps or adhesive stamps. Generally impressed stamps are to be used but in the following cases, instruments may be stamped with adhesive stamps.

(Section 11 of the Act and Rule 13 of the Rules)

- (i) Instruments chargeable with the duty of twenty paise and less;

- (ii) Certificate for enrolment in the roll of the Advocates maintained by the State Bar Council (Art 28);
- (iii) Instrument chargeable under Article 5(a) and (b) and 40 of the schedule.
- (iv) Copies of maps, plans etc. are chargeable under Art 23;
- (v) Agreements relating to sale of (a) bill of exchange (b) Government Security (c) Share in a corporate body (d) certificate or other document dealt within Article 17;
- (vi) Lease (Art 33) and
- (vii) Instrument chargeable under Article 25 of the schedule.

3.29 In the case of certain instruments specified in Appendix I & II of the Kerala Stamp Rules 1960, and certain other instruments executed out of Kerala and received in the State (*vide Rules 10, 11 & 12 of the Stamp Rules*) labels may be affixed and impressed or perforated by the proper officer. By proper officer is meant the Superintendents of Stamps, District Treasury Officers or any other officer appointed for the purpose (*Rule 9 of Kerala Stamp Rules, 1960*). Adhesive stamps are to be cancelled at the time of affixing the stamps or execution of the instruments. Every instrument will be deemed to be not stamped to the extent to which adhesive stamps were affixed but not cancelled (*Section 12*). An instrument bearing stamp of proper amount, but of improper description is to be treated as not duly stamped.

3.30 Only one instrument chargeable with duty is to be written on stamp paper, except endorsements. Endorsements can be made for the following purposes –

- a. transferring any right created or evidenced by the original instrument;
- b. acknowledging receipt of any money or goods the payment or delivery of which is secured by the original instrument (*Section 14*)

3.31 Instruments which are chargeable with duty are to be duly stamped when executed by endorsement as and when executed on a separate stamp paper. Every instrument written on an impressed stamp paper should be written on the obverse side of it and written in such a way that the stamp paper cannot be used for or applied to any other instrument. Any contravention of

this provision will render the instrument unstamped under Section 15. Under Section 10(b) several stamp paper may be used for completing an instrument. But the number has to be restricted to minimum under Rule 7 of the Kerala Stamp Rules 1960 and a portion of the instrument is to be written on all the stamped papers used. Particulars of payment of stamp duty are to be indicated on the instruments themselves. Counterfeiting and using stamps already used are offences under Indian Penal Code.

3.32 Where the duty with which an instrument is chargeable or its exemption from duty, depends upon the duty actually paid in respect of another instrument, the registering officer has to make an endorsement upon the subsequent instrument as to the stamp duty which has been paid on the prior instrument.

(m) Time of stamping instruments.

3.33 In the case of documents executed in the State of Kerala instruments are to be stamped before or at the time of execution. Where instruments are executed out of India Stamp duty under the act is payable within three months of the first receipt of the document in the State of Kerala. For this purpose instrument is to be taken to the Collector and the Collector is to send the same to the proper officer for stamping, after receiving the amount of duty. The proper officer thereupon is to affix labels of the required value and impress or perforate the labels and write on the face the date of impressing or perforating the labels (*Section 18 and Rules 11& 12*).

3.34 The duty chargeable on an instrument relating to properties situated in Kerala and/ or things to be done in the State of Kerala, executed outside the State, when received in the State is the excess amount of duty payable over and above what had been paid, had the instrument been executed in the State of Kerala. Thus no stamp duty is payable if the rates of stamp duty payable in the State of Kerala at the time of execution is less than or equal to what has already been paid. Under Section 32 of the Act the Collector is authorized to make endorsements on such instrument regarding the adequacy or otherwise of stamp duty, when brought to him before the expiry of three months after the instrument has been first received in the State.

(n) Persons liable to pay stamp duty

3.35 In all cases primary duty of stamping instruments is that of the person executing the instrument. Any person executing an instrument without the same being duly stamped is liable to a penalty under Section 62. If there are more than one executant in the case of an instrument the liability extends to all of them. The parties to a partition deed are liable to pay stamp duty in proportion to their respective shares in the whole property partitioned, unless there is an agreement to the contrary.

3.36 Section 30 specifies the person who should pay for the stamp in the case of certain instruments. Thus for the purpose of stamp duty, the liability is fixed on a particular party by Section 30. But this section is not exhaustive and makes no reference to several other instruments. Moreover where there is an agreement between the parties to a document as to who should bear the stamp duty, the agreement will prevail over the liability cast upon certain parties under Section 30. The persons liable to bear the stamp duty under Section 30 in respect of certain instruments are noted against each.

Sl. No	Article No.	Nature of the instrument	Party liable to bear stamp duty
1	2	Administration Bonds	By the person drawing, making or executing such instrument.
2	6	Agreement relating to deposit of the title deeds, pawn or pledge	-do-
3	13	Bond	By the person drawing, making of executing such instrument
4	14	Bottomry Bond	-do-
5	25	Customs bond or Central Excise Bond	-do-
6	30	Further charge	-do-
7	32	Indemnity Bond	-do-
8	37	Mortgage deed	-do-
9	48	Release	-do-
10	49	Respondentia Bond	-do-
11	50	Security Bond or Mortgage deed	-do-
12	51	Settlement	-do-
13	55(c)	Transfer of any interest secured by a bond or mortgage deed	-do-

Sl. No	Article No.	Nature of the instrument	Party liable to bear stamp duty
14	21 22 & 47	A conveyance (including reconveyance of mortgaged property)	The grantee.
15	33	A lease or agreement to lease	The lessee or intended lessee
16	24	A counterpart of lease	The lessor
17	28	A certificate of enrolment in the roll of Advocate maintained by the State Bar Council	The advocate enrolled.
18	29	An instrument of exchange	The parties in equal shares
19	16	A certificate of sale	The purchaser of the property to which such certificates relates.
20	42	Instrument of partition	By the parties thereto in proportion to their respective shares in the whole property partitioned, or when the partition is made in execution of an order passed by Revenue Authority or Civil court or Arbitrator in such proportion as such authority, Court or Arbitrator directs

3.37 Generally duty is payable in the form of stamps. Duty is payable in cash when instruments are brought to the Collector for adjudication as to proper stamp under Section 31. Cash is payable also in respect of documents produced before the Collector under Section 40. Duties are payable in cash in respect of impounded documents of which excess duty and penalty are to be levied under provisions of Chapter IV of the Stamp Act.

(o) Reduction and remission of stamp duty

3.38 The power to reduce or remit stamp duty is vested with the Government under Section 9. The reduction or remission may be prospective or retrospective. It may be for whole of Kerala or any part of the State. It may be with respect to any particular class of instruments or any instrument belonging to such class or to instruments executed by or in favour of any

particular class of persons or in favour of any member of such class. This power is to be exercised by issuing executive orders of the Government published in the Gazette. A list of more important reductions and remissions ordered by Government is given in the Annexure to this Manual.

3.39 The following instruments are exempted from stamp duty under section 3 of the Act.

(i) Any instrument executed by or on behalf of or in favour of, the Central, or any State Governments (including Kerala State).

Note: This exemption is applicable only to cases where duty is payable by the Central or State Government concerned, but for the exemption.

(ii) Any instrument for sale, transfer or other disposition of any ship or vessel. The disposition may be absolute or of the category of mortgage or of any other nature. The interest involved in the disposition of may be the whole of or any part of the vessel/ship, or any other interest, share or property of or in any ship/vessel.

Note: Vessel is defined in Section 2 (r) of the Act as to mean anything made for the conveyance by water, of human beings or property.

(p) Principles of valuation where value is the basis for stamp duty.

3.40 Section 20 to 29 of the Act, deal with the method of computation in order to ascertain the value of instruments in respect of which stamp duty is payable based on value of instruments.

3.41 In a majority of instruments specified in the schedule to the Act, the stamp duty is based on the value or consideration of the instrument. Under Section 28 parties to an instrument are bound to set forth truly and fully all facts and circumstances affecting the chargeability of an instrument. Failure to do this with intent to defraud the Government and evade stamp duty will render the person punishable with fine up to Rs 1,000 (*Section 63*). The liability of fine extends not only to the executant but also to any person who being employed or concerned in or about the preparation of any instrument. Thus where the sale of a property is subject to some mortgage, the mortgage

debt or charge outstanding forms a part of the consideration for the purpose of stamp duty and therefore it has to be stated in the instruments of sale itself.

3.42 Where an instrument is chargeable with duty based on value specified in a non Indian currency in the instrument, duty is to be charged on the value of the foreign money as calculated in the terms of the Indian currency according to the rates of exchange current on the day of the date of the instrument (*Section 20*). The rate of exchange notified by the Government of India under the Indian Stamp Act, 1899 is to be adopted for this purpose.

3.43. In respect of any stock or any marketable or other security duty is to be calculated with reference to the average value of the security on the day of the date of the instrument (*Section 21*). In the case of Sections 20 and 21 an instrument containing in it a statement as to the current rate of exchange on average price relevant to the date of the instrument and stamped accordingly is to be presumed to be duly stamped until the contrary is provided (*Section 22*).

3.44 Provisions regarding the payment of interest (whether simple or compound) on the principal do not affect the valuation of the instrument for purpose of duty. Where, however, the consideration of the instrument is a lump sum made of two constituents, namely the principal and the interest that might accumulate during a given period; the instrument is to be held chargeable for the lump sum. Similarly if interest is expressly made payable by the terms of the instrument, the mere mention of the interest as a lump sum will not render the instrument liable to stamp duty for the total sum of principal and interest (*Section 23*).

3.45 Instruments evidencing mortgage by deposit of marketable securities are chargeable only as agreement or memorandum of agreement under Article 5 and not under Article 6. A release or discharge of such a mortgage is also taxable under Article 5 only (*Section 24*). In subsection 2(m) of the Act 'Marketable Security' is defined as security of such a description as to be capable of being sold in any stock market in India. Instruments whereby Government promissory notes are deposited as security for the due performance of the contract by a building contractor in accordance with the

terms of an agreement entered into between him and a local body are to be treated as agreements referred to in Article 5, under Section 24.

3.46 Special provisions have been made under Section 25 in the case of instruments of sale of property subject to a mortgage or charge. This section applies to transfer where the consideration is wholly or in part a debt due to the transferee, and where the transfer is made subject to the payment of a debt due to another whether constituting a charge or not on the property transferred. In such cases any unpaid mortgage money or money charged together with interest if any, due on the same, is to be deemed to be part of the consideration for the sale. Where the property sold is subject to a mortgage and the mortgagee himself is the purchaser he will be entitled to deduct from the duty payable (on the consideration including the mortgage amount) the amount of duty already paid in respect of mortgage. This benefit will accrue to the original mortgagee and his assignee or successor, who purchases the property mortgaged as a whole. But where the seller agrees to pay off the debt/mortgage amount the value of the debt need not be taken as part of the consideration. Where a property is subject to mortgage or charge and only a part of it is sold, the whole of the mortgage money or charge standing due to the entire property is to be deemed as a part of the consideration for the part sold. Thus if a right to redeem a property is sold in parts, the sale of each part thereof would necessitate stamping on the basis of its own consideration plus the whole of the mortgage debt.

Note: Certificate of sale mentioned in Article 16 is not covered by Section 25 and is chargeable like a conveyance for a consideration equal to the amount of the purchase money only.

3.47 Valuation of instruments executed to secure the payment of an annuity or other sums payable periodically or where the consideration for a conveyance is an annuity or other sum payable periodically is dealt within Section 26. Where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained, the total sum to be paid is to be treated as the consideration for the purpose of stamp valuation. It is immaterial if the instrument contains a stipulation for optional termination before the specified period. Where the sum is payable in perpetuity, the total

amount payable during the period of 20 years calculated from the date on which the first payment becomes due, is to be taken for valuation. Similar valuation is to be done where annuity is payable for an indefinite time not terminable with any life in being at the date of the instrument. But in cases where the annuity is payable for an indefinite time terminable with any life being at the date of the instrument, the maximum amount which may be payable under the instrument during a period of twelve years calculated from the date on which the first payment becomes due is to be treated as the consideration.

(q) Adjudication of stamp duty

3.48 Sections 31 and 32 provide for securing the adjudication by the Collector in the cases of doubts regarding adequacy of stamp duty paid. An application is to be given by the party for this purpose and the original deed produced along with the application. The benefit of adjudication is not limited to the executant/claimant of a document. A fee fixed by the Collector not exceeding ten rupees and not less than one rupee is payable by the person who produces the document for adjudication. Instruments executed or in stages of execution can be presented for adjudication.

In the case of instruments already executed the party gets the benefit of getting the instrument certified as duly stamped on payment of the duty if any determined by the Collector. No penalty is payable in such cases. Certificate by the Collector regarding the adequacy or otherwise of the stamp duty paid applies to only instruments produced before the Collector for adjudication within one month from the date of its execution if executed in India and within three months from the date of its first receipt in the State if executed outside India. Other documents are not certified. Documents for adjudication may be presented in a District different from that in which they were executed or the properties concerned lay. If the Collector cannot form his judgement he may refer the matter to the government under Section 54(2). When an instrument is certified as fully stamped (stating the amount) or as not chargeable with duty, it is to be acted upon and registered as if it had been originally duly stamped. The Collector is not authorized to determine the duty in respect of instruments chargeable with duty of twenty paise or less. Personal Assistants to Collectors,

Revenue Divisional Officers, and District Registrars have been appointed by Government to exercise the powers of the Collector regarding adjudication with effect from 1st September 1960.

(r) Prevention of undervaluation of Instruments

3.49 In a large number of Instruments scheduled to the Act, duty is based on the value of the instrument or consideration specified therein. Under Section 28, consideration and facts affecting chargeability of duty are to be fully and truly set forth in the instrument. Failure to comply with the requirement of Section 28 is punishable under Section 62, with fine which may extend to five thousand rupees.

3.50 If the registering authority while registering a document has reason to believe that the value or consideration has not been truly set-forth in the instrument, he may after registering the instrument refer the matter to the District Collector for determination of the value, or consideration and the proper duty payable in respect of such instrument. On receipt of such a reference the Collector is to determine the defaulted amount of duty if any, is payable by the person liable to pay duty on the instrument. On payment of such duty the Collector is to endorse a certificate of such payment on the instrument under his seal and signature (*Section 45B(2) of Act 14 of 1988*).

3.51 Where no reference has been made by the registering officer, the Collector may on his own initiative within two years from the date of registration of an instrument call for and examine the same and satisfy himself as to the correctness of value, consideration, and the duty payable on the instrument. Such an instrument is to be dealt with in the same way as one referred to him by a Registering officer (*Section 45B(3)*). All duties and penalties payable under the Act (*Section 45B*) are recoverable as arrears of land revenue under the provisions of Revenue Recovery Act for the time being in force.

3.52 In order to prevent under valuation of instruments, the following rules have been made under the Kerala Stamp (Prevention of under valuation of instruments) Rules, 1968.

i. In the case of instruments of Gift, Settlement, Partition, transfer of lease, conveyance, transfer of Kanam or mortgage with possession, or any other instrument effecting transfer of property between persons, which is subjected to advalorem duty without any maximum limit and where such instruments relate to a number of items of property, the party executing such documents is to furnish a separate statement in Form I prescribed under the Rules. Value of each item of property involved under an instrument as assessed by the executant is to be separately specified in the statement. In addition value of each item of property is to be specified in the instrument also.

ii. If an instrument covers lands comprising several survey numbers or sub division numbers, the value is to be specified in the statement in Form I, separately for the land covered by each survey number or subdivision number.

iii. The Registering Officer has to satisfy himself before registering instruments that a proper and complete statement in Form I is furnished with all instruments for which the form has been prescribed.

iv. For purpose of finding out whether the value or consideration has been correctly furnished in the instrument the registering officer may make such enquiries as considered necessary by him. He may call for and examine any records kept by any public officer or authority and elicit any information from parties concerned in order to ascertain the true value or consideration of any instrument. **[Rule 3]**

(s) Impounding of Documents not ‘Duly Stamped’

3.53 Under Section 33 every Sub-Registrar or any person in charge of a public office is required to impound instruments produced before him when it appears to him that such instruments are not duly stamped. A register (in Form I under order 384 in the case of Registrar and Form No 2 under order 385 of the Registration Manual in the case of Sub-Registrars) is to be maintained regarding documents impounded by them. In the case of instruments impounded by the Sub Registrar he is to make entries concerning the impounded document in the Register. If the party agrees to pay the duty and penalty due as thereon decided by him and pays the same within seven days of

such decision, the Sub Registrar has to send an authenticated copy of such instrument together with a certificate regarding payment of duty and penalty levied by him, to the Registrar to whom he is a subordinate. If the deficit duty and penalty are not paid within seven days, the Sub Registrar has to send the original instrument to the Registrar with a statement in duplicate in Form 2 (*order 386*).

3.54 If the Registrar is of opinion that the instrument is duly stamped he is to furnish a certificate to that effect on the instrument and return the same to the Sub Registrar. If he thinks otherwise the duty and penalty due are to be decided by the Registrar and the fact intimated to the Sub Registrar who should collect the same by issue of notice. In case of default by the party, the duty and penalty due can be recovered under the provisions of the Revenue Recovery Act for the time being in force.

B - The Indian Stamp Act, 1899

3.55 Under Section 72 of the Kerala Stamp Act, 1959 (Act 17 of 1959) the Indian Stamp Act, 1899 (Central Act 2 of 1899) is made applicable to whole of the State of Kerala in so far as it relates to matters specified in Entry 44 of List III of the Seventh Schedule to the Constitution in respect of documents specified in entry 91 of list I of the said schedule. Thus provisions of Indian Stamp Act alone are applicable in respect of stamp duty levied on the following instruments executed within the territory of the State of Kerala.

1. Bills of exchange.
2. Bills of lading.
3. Debentures.
4. Letters of credit.
5. Policy of insurance.
6. Promissory notes.
7. Proxies.
8. Receipts.

Bills of Exchange

3.56 Bills of exchange means a bill of exchange as defined by the Negotiable Instruments Act, 1881, and includes also a hundi or any other

document entitling or purporting to entitle any person, whether named therein or not, to payment by any other person or to draw upon any other person for any sum of money. In the Negotiable Instruments Act, 1881 a bill of exchange is defined as an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

Bills of Lading

3.57 Bill of lading is not exhaustively defined in the Act. Under section 2(4) Bill of lading includes a 'through Bill of lading' but does not include a mate's receipt. A bill of lading is a document signed by the owner, or the master of a ship or by any other agent of the owner, which states that certain goods have been shipped on a particular ship and setting out the terms on which those goods have been received by and delivered to the ship owner. It is drawn out in triplicate Mate's receipt, a receipt usually given when goods are delivered to the ship. It is not a document of title but its possession entitles the holder to receive a bill of lading in the absence of evidence to the contrary.

Cheque

3.58 Under Section 2(7) 'Cheque' means a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. Though cheque is an item specified in Entry 91 of List I (Union list) in the seventh schedule to the Constitution, stamp duty on cheques was abolished with effect from 1-7-1927 by omitting Article 21 of schedule I by the Indian Finance Act, 1927.

Policy of Insurance

3.59 Policy of insurance includes-

- a) any instrument by which one person in consideration of a premium engages to indemnify another against loss, damage or liability arising from an unknown or contingent event;
- b) a life policy, and policy insuring any person against accident or sickness and any other personal insurance (*Section 2 (19)*).

The definition seeks to be comprehensive of all possible cases of insurance. A policy of insurance is the formal document embodying a contract of insurance. “Policy of Group Insurance” and “Policy of sea insurance or sea policy” have been defined under Sections 2 (19A) and 2 (20) respectively.

Debenture

3.60 Debenture is not defined in the Act. It is a document issued by a Company for money borrowed on the security of its property having a fixed rate of interest and usually fixed redemption rates. Various matters concerning debentures are dealt with in Sections 108 to 123 of the Companies Act, 1956. The value of stamp on the original or the new debenture whichever is less is repayable to the person issuing a debenture, when a debenture is renewed by the issue of a fresh debenture. This is subject to certain conditions prescribed in Section 55 of the Indian Stamp Act 1899.

Letter of credit

3.61 An instrument by which one person authorizes another to give credit to the person in whose favour it is drawn, is termed as a letter of credit vide Section 2(3)(c) of the Act. A letter of credit is a bill of exchange payable on demand. It is a letter of request, whereby one person (usually a banker) requests some other person to advance money or give credit to a third person, named therein for a certain amount and promises that he will repay such sum to the person advancing the same or accept bills drawn upon himself for the like amount. A letter of credit is not a negotiable instrument.

Promissory Note

3.62 Under the Act ‘Promissory note’ is to have the same meaning as given to it under the Negotiable Instruments Act, 1881, but also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be available or upon any condition or contingency which may or may not be performed or may or may not happen. The definition in the Stamp Act is wider than that given in the Negotiable Instruments Act. Under section 4 of the Negotiable Instruments Act, a promissory note is an instrument in

writing (not being a bank note or currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to or to the order of, a certain person, or to the bearer of the instrument.

Proxy

3.63 Proxy is in the nature of a power of attorney taxed separately. It is an instrument in writing authorizing a person to vote on behalf of another. A proxy means also lawfully constituted agent. A proxy is given on the implied condition that it is only to be used if the principal is unable or finds it inconvenient to attend the meeting.

Receipt

3.64 (i) Receipt is defined in Section 2(23) as follows:-

“**Receipt**” includes any note, memorandum or writing –

- (a) whereby any money, or any bill of exchange, cheque or promissory note is acknowledged to have been received, or
- (b) whereby any other movable property is acknowledged to have been received in satisfaction of a debt, or
- (c) whereby any debt or demand or any part of debt or demand is acknowledged to have been satisfied or discharged, or
- (d) which signifies or imports any such acknowledgement and whether, the same is or is not signed with the name of any person.

(ii) To constitute a receipt, it is not sufficient that there should be a statement as to receipt of money. There must be an acknowledgement either expressed or signified or imported. The definition is applicable only to instruments executed by the payee in favour of the payer and not to acknowledgements of payment made to third party. The definition “receipt” relates only to movable property. An acknowledgement in writing of the receipt of immovable property will not be a receipt. It must appear on the face of the instrument that the receipt of movable property is in satisfaction of a debt. No particular form of words is necessary to constitute a receipt. The word ‘settled’ or ‘paid’ or any other word purporting to give a discharge

together with the signature of the creditors, or his mere signature on a document specifying the amount due without any other words indicating payment is sufficient.

(iii) The following have been held to be receipts.

(1) A letter acknowledging the receipt of money or cheque. (Reference 8 Mad 11: Emperor Vs Muhuturulandi 11 Mad 324)

(2) A document merely saying that the signatory has received a sum of Rs 1,000 is a receipt and not an acknowledgement.

(A Mohemmed Rasheed V.A Mohammed Rasheed (1996)1 M.L.J 304, 79 Mad L.M 125.AIR 1966 Mad 359.)

Duty by whom payable

3.65. In the absence of an agreement to the contrary, the expenses of providing the proper stamp in the case of instruments of bill of exchange (Art 13), debenture (Art 27) promissory note (Art 49) and transfer of shares (Art 62 (a)) are to be borne by the person drawing, making or executing such instrument. In the case of a policy of insurance other than fire insurance the expenses are to be borne by the person effecting the insurance and in the case of a policy of fire insurance by the person issuing the policy (*Section 29*).

CHAPTER IV

INSTRUMENTS UNDER THE KERALA STAMP ACT

4.1. Stamp duty is payable on instruments mentioned in the schedule to the Kerala Stamp Act, 1959. Certain instruments included therein have been defined under section 2 of the Act. In the case of the certain other instruments their meaning and extent of application are given in the schedule itself. Descriptive notes are available against certain instruments. These form the guidelines to classify a document therein and decide the duty payable thereon. As regards the extent and scope of each Article dealt within the schedule, there has been a large number of judicial decisions. In the following paragraphs the more important instruments under the Kerala Stamp Act and judicial interpretations thereon are discussed.

Administration Bond (Article 2)

4.2. Administration bond is a bond executed by an administrator or executor to whom letters of administration or probate has been granted Administration Bond is executed and given by the administrator to the judge of district upon the grant of letters of administration. But probate (proof) of a will and letters of administration with or without a will are chargeable under the Court Fees and Suits Valuation Act.

Adoption deed (Article 3)

4.3. Whether an instrument is an adoption deed is to be decided based on the object of the instrument. Any instrument (other than a will) recording an adoption or conferring or purporting to confer an authority to adopt is an adoption deed.

The word recording includes not merely the recital of what happens contemporaneously but the recapitulation and placing on record of what has happened in the past. A deed record in parent's consent to the adoption of his child by another person is not a deed of adoption. An incidental mention of an adoption already made, in an instrument is not an adoption deed under Article 3.

Agreement or memorandum of an agreement (Article 5)

4.4. In order to be taxed, the agreement must be a promise, that is, a proposal accepted by the promisee. Only when the offer is accepted in writing the instrument becomes taxable. What will constitute an agreement depends upon the nature of the document in question. The document by itself is to amount to an agreement or to a memorandum of an agreement already made.

The term 'agreement' refers to a complete agreement. Bare offers and proposals not acceded to and accepted in writing and not amounting to evidence of a consolidated contract do not require stamp. A document which is not intended to operate as a binding contract but is only used as evidence of previous contract does not fall within this Article. A written or printed offer not accepted in writing does not require a stamp.

Agreement to lease (*Article 33*), agreement to divide property in severality (*Article 42*) or agreement to settle property (*Article 51*) are not chargeable under this Article as they are otherwise provided for. So also instruments falling under the category of promissory notes, bonds etc. though they are also agreements in a sense.

An acknowledgement of fact, or admission of the existence of a previous contract is not itself an agreement or memorandum of an agreement.

Promise to pay time barred debt, agreement of service, agreement to refer to arbitration, contract of guarantee, contract of equitable mortgage, agreement to lend money, agreement to deliver certain goods, agreement for sale, agreements endorsed on promissory notes, agreement for hire purchase etc. are chargeable to duty under this article.

Agreement relating to deposit of title Deeds etc. (Article 6)

4.5 In order to apply this Article the document should merely contain the bargain between the parties with regard to the deposit of title deeds and conditions subsidiary or ancillary to the deposit of title deeds. A distinction between a pledge and a mortgage is that while under a pledge delivery of possession is essential whereas in a mortgage there need only be a bailment. Delivery of possession may be either actual or constructive. Handing over the key of the godown amounts to the handing over constructive possession in

respect of properties stored therein. In the case of mortgage the right of property is transferred by way of security and transfer of possession is not essential.

As regards immovable property this Article applies to mortgage by deposit of title deeds and Article 37 to regular mortgage.

Where the document evidencing deposit of the title deeds contains also a condition enabling the lender to sell the property on default in payment on the agreed date, the power of sale creates an interest not only in the title deeds but also in the properties themselves and the document is chargeable as a regular mortgage deed.

Appointment in execution of a power (Article 7)

4.6 Where a person is invested with power to determine the disposition of power of which he is not the owner he is said to have 'Power to appoint' such property (Indian Succession Act). Thus if 'A' executes a will appointing 'B' as his executor and vesting in 'B' the power to nominate someone as the owner of the property and 'B' the executor, executes a document nominating 'C' as the owner of the property the document is an 'appointment in execution of powers'. But an instrument by which the executant makes over his house to his sister in law for occupation during her life is not an appointment under this Article (as the transfer is not made by the executant in the exercise or execution of power of appointment, but as owner of the property) and is a settlement under Article 51. Appointment of a new trustee is chargeable under this Article only when made in execution of a power.

Note: This power is generally conferred by a trust deed, or the will of the founder of trust to secure appointment of new trustees.

Apprenticeship deed (Article 9)

4.7. The Article on apprenticeship deed applies only to contracts of apprenticeship relating to the learning of a profession etc. and not one of hiring and service, which should be stamped only as an agreement. Where it is the intension of the parties the one to teach and the other to learn, it must be considered as a contract of apprenticeship.

Article of Association of a company (Article 10)

4.8. The Companies Act 1956 requires that articles of association of a company should be registered under the Indian Registration Act, 1908. This document contains Rules, Regulation and bye-laws for the general management of the company. Schedule I to Companies Act, 1956 contains various model forms of articles of association. Everything stated in an article of association is subject to the Companies Act.

Note: A resolution passed by a company purporting to amend the original Articles of association does not require to be stamped under this article, as the Companies Act does not contemplate any such thing as new Articles of association.

Award (Article 12)

4.9. Only private awards are chargeable with duty. Awards made or a reference by order of Court does not fall within this Article. A document not signed by the Arbitrator but by parties themselves is not an award. If it is signed by the arbitrator and its wording shows that it is an award it is liable to be stamped as an award although it bears the signature of the parties also. A decree of a court in terms of an award is not chargeable under this Article.

Award securing annuity has to be stamped with reference to value computed in accordance with Section 26.

An award directing a partition is an instrument of partition and is chargeable as such. It is excluded from the purview of this Article.

As for distinction between an award and an appraisalment, it would appear that it was only left to the persons (to whom the matter was referred to) to put a value upon the articles which the parties had already agreed to be paid for, the decision of such persons would more properly be a valuation or appraisalment rather than an award.

Stamp duty on Awards is only to be imposed on those instruments which on their face purport to be awards.

Where under an award, two of the four partners in a firm relinquished all their rights in the partnership for a specified consideration, the award

cannot be held to be one directing partition. It has to be stamped as for an award only.

(Erramma V Thimmiah (1965) 2 An W.R. 276)

Bond (General)

4.10. The definition is not exhaustive and does not limit the meaning of the term to the substance of the definition. Under Section 2(a) 'bond' includes-

1. any instrument whereby a person obliges himself to pay money to another on condition that the obligation shall be void if a specified act is performed, or is not performed as the case may be;
2. any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and
3. any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another.

An essential feature of a bond is that it creates an obligation to pay money or deliver any agricultural produce. The obligation must be express and not one which can be implied by law. Bonds may be simple or conditional. Section 2(a) (i) deals with conditional bonds and Section 2(a) (ii) & (iii) deals with simple bonds. Without attestation of witness, there can be no bond.

In order to distinguish bond from other instruments, the intention of the parties has to be looked into. An instrument intended to keep alive certain old promissory notes providing for the method of payment and for reduction of interest in certain contingencies, is not a bond. The obligation in the case of a bond must not be a pre-existing one.

An agreement to repay debt is not a bond, though a breach of it may give rise to a claim for damages. An agreement to lend money is also not a bond. For a bond, an express mention of obligation to pay money is essential. The word "bond" in section 7 of the Abkari Act was not liable to be stamped as bond, but as agreement (State of Kerala Vs. Mc Dowell Co. Ltd-1994).

Bond (Article 13)

4.11. Article 13 is a residuary article relating to bonds. It applies only where the bond is not provided elsewhere in the schedule to the Stamp Act or the

Court-fees Act. The application of this article will be excluded if the instrument falls more appropriately under some other special provision such as Article 50 (Security Bond or Mortgage Deed). Bonds executed in pursuance of the code of Civil Procedure and the rules made thereunder are chargeable under the Court-fees and Suits valuation Act 1959 and not under Article 13. But in the case of bonds other than those covered by Article 13, stamp duty under both the Stamp Act and the Court Fees Act are payable if the instrument is subjected to separate duty under the two Acts. A mortgage bond executed by a guardian appointed under the Guardian and Wards Act would be subjected to duty under the Court-fees Act as well as the Stamp Act.

Bottomry Bond (Article 14)

4.12 Bottomry bond is in the nature of a mortgage of a ship for borrowing money in the circumstances of unforeseen necessity for repair of the ship etc. and does not involve personal liability. Where money was advanced on personal security of the owner who also executed a hypothecation bond in respect of the ship, it was held that there was no bottomry bond.

Under proviso 2 to Section 3 of the Act, any instrument for sale transfer or other disposition either absolutely or by way of mortgage or otherwise of any ship or vessel or any part, interest share or property of or in any ship or vessel is exempt from stamp duty.

Certificate of Sale (Article 16)

4.13 As specified in this article certificate of sale in respect of any property sold by public auction, by a Civil or Revenue Court, or Collector, or other Revenue Officer, alone is chargeable under this Article.

Where property is sold in lots, duty is payable separately on the purchase money for each lot.

A sale by receiver under direction of Court is not a sale by Court and the Court does not grant a sale certificate nor does it confirm the sale.

Composition Deeds (Article 20)

4.14 Composition is an agreement to which a debtor and his creditors are parties whereby the creditors agree to accept in full satisfaction of their debts

something less than or something different from that which may be claimed by them as of right. The Article covers assignment for the benefit of creditors, agreement whereby payment of a composition or dividend is secured to the creditors, and inspectorships deed and letter of licence.

A person finding himself unable to carry on the family business further and settle its claims and debts made over by a deed, to certain trustees, the whole of the goods and properties and assets belonging to the family, for the benefit of his creditors. The deed executed also provided on behalf of the creditors, that after all the goods and properties were made over to the trustees, the whole of their claims should be understood to have been written off and the document might be used as a release passed by them on their behalf. The trustees were to devote the proceeds of the trust properties to the payment of the creditors in proportion to their respective claims such an instrument is a Composition-deed.

A deed of Inspectorship is an instrument entered into between an insolvent debtor and his creditors appointing one or more person or persons to inspect and supervise the winding up of such insolvent affairs on behalf of the creditors.

A letter of licence is an instrument in writing whereby the creditors of a person who had failed to meet his engagements gave him time for the payment of his debts.

Under a composition deed all the property of the debtor must be conveyed. Otherwise the deed becomes a conveyance only.

Conveyance (Article 21 and Article 22)

4.15 In sub clause (d) of Section 2 “Conveyance” has been defined to include to (a) conveyance on sale, and (b) every instrument by which property, whether movable or immovable, is transferred intervivos and which is not otherwise specifically provided by the schedule.

Instruments of (1) Agreement relating to deposit of title deeds, (2) Certificate of sale (3) Composition deed (4) Exchange of property (5) Gift, (6) Lease, (7) Mortgage-deed, (8) Mortgage of a crop, (9) Re-conveyance of mortgaged property, (10) Release, (11) Settlement, (12) Transfer of shares, (13) Transfer of lease and (14) Trust are not conveyances because they have

been specifically provided for by the schedule. All transfer of property not otherwise specifically provided for by the schedule are chargeable as “Conveyances”.

The word Property is not defined in the Act. It is either movable or immovable. Movable property has been defined by Section 3(36) of the General Clauses Act 1897, as meaning property of every description, except immovable property. Immovable property has been defined by Section 3(26) of the General Clauses Act, 1897, as including land benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth. The word ‘intervivos’ means transfer from one living person to another.

An actual transfer of property is deemed to be an essential ingredient of an instrument of Conveyance. What is a conveyance on sale is not defined in the Act. Under the English Stamp Act, “Every instrument, and every decree or order of any Court or any Commissioners, whereby any property, or any estate or interest in any property, upon the sale thereof is transferred to or vested in a purchaser, or any other person on his behalf or by his direction is a conveyance”.

The transfer of a decree by sale, an assignment or reassignment of a debt, a transfer of a book-debt, a transfer of the goodwill of a business, of a trade mark and patent and an assignment of the benefit of a Contract are instances of conveyances.

The subject matter of the conveyance must be property, property is that which belongs to a person exclusive of others, and can be a subject of bargain and sale to another.

Article 21 and 22 dealing with Conveyance exclude transfers charged or exempted under Article 55 and are in the nature of residuary provision applicable to transfers of property intervivos. But consideration is essential for these Articles to apply.

Stamp duty is to be paid on the consideration mentioned in the deed. If it is understated the parties are liable to prosecution under Section 62 read with Section 28, According to the language of the Article duty is to be assessed upon the amount of consideration for transfer as disclosed upon an

examination of the terms of the instrument as a whole and not merely by a reference to the statement made by parties as to consideration. Where a property is transferred in discharge of a debt due to transferee, the entire amount of the debt would be the amount on which stamp duty is to be paid, though the consideration mentioned in the instrument is a smaller amount, the balance of the debt being stated as waived. It is also incumbent upon the Registering Officer to refer the matter to the District Registrar if he has reason to believe that the consideration has not been truly set forth in the instrument (*Section 45 B*).

Conveyance duty is charged upon the agreed price even though part of the consideration might be payable only on a contingency which may or may not happen.

Incidental covenants relating to title etc. in a sale deed do not require any separate duty.

Where land is sold, and the vendee takes from the vendor the growing crops the crops pass as an interest in the land by conveyance. Where fixtures, standing timber or any other of the inheritance are taken at a valuation, the amount of the valuation must be included in the consideration and duty paid thereon.

Conveyance

(1) A hire purchase agreement, being merely an agreement to hire the machinery etc. in question with an option on the part of the hirer to purchase does not amount to conveyance, but is only an agreement coming under an 'Agreement or memorandum' of an agreement not otherwise provided for (*Article 5*).

(Linotype and Machinery Limited, and the Windsor Bose of Calcutta, In re 44, Cal 2; 37 I.C. 175)

(2) A licence granted by a Company giving to the licensee the sale and exclusive right to carry on the asphalt business with the asphalt supplied by the Company, within certain limits, in consideration of a sum of money, cannot be regarded as property conveyed by the document. But an assignment

of the right under the licence would be liable to conveyance duty as assignment of a benefit of Contract.

(Limmer Asphalt Paving Company Vs. Commissioner of Land Revenue (1972) L.R. 7 Ex.211)

(3) The fact that for want of registration the document purporting to effect a transfer of property is ineffective and cannot operate to transfer the property cannot affect the question of stamp duty.

(Chief Controlling Revenue Authority Vs. Vanara Industrial and Banking Syndicate Limited; (1963) I.L.R. 3 Mad 1; A.I.R. 1969 Mad. 1)

(4) Documents transferring assets and liabilities of Company in liquidation to another Company in accordance with a scheme of arrangement approved by the Court cannot be regarded as mere vouchers passed by parties in token of their having carried out the terms of the Court's order, and are to be stamped as conveyances.

(Sahayanidhi Limited Vs. Subramanya Nadar, (1950) AIR 1951 Mad. 209(FB)).

(5) No stamp duty is payable where transfer takes place as a result of a scheme of arrangement sanctioned by order of Court. The vesting in such cases is by order of Court and there is no instrument of transfer.

(Sum Alliance Insurance Limited V In Land Revenue Commissioners, 1971. 1 All. Eng Land Reports, Page 135)

(6) A conveyance may be executed also on the conversion of a partnership into a limited Company. A transfer of the property belonging to a partnership to a Company the shareholders of which consisted exclusively of the members of the partnership, who executed the transfer was held chargeable as conveyance.

(In re The Kandoli Tea Company, 13 Cal. 43)

(7) A release deed for consideration in respect of specific properties owned by them as co-owners, would be chargeable only as a release.

(Board of Revenue V Murugesu Mudliar I.L.R. (1955 ad. 1133-AIR 1955 M.641 (F.B.))

(8) A document styled a release by which the executant entitled to a share in a going Pressing Factory transfers absolutely the whole of that share to the other person interested in the factory on receiving a specific sum of money is a conveyance.

(In re Hiralal Narairam, 32 Bom. 505)

(9) An agreement to transfer property in the future cannot be treated as a conveyance though possession also is delivered.

Counterpart or Duplicate (Article 24)

4.16 When several parts of an instrument are interchangeably executed by the several parties, that part or copy which is executed by the grantor is usually called the original and the rest are called counterparts. Under proviso to Section 6, duty as prescribed therein alone is chargeable on such counterparts or duplicates.

A duplicate is a document which is essentially the same as some other document, having precisely the like operation and effect.

The duty payable for a counterpart or duplicate under the Article is restricted to the maximum payable, under proviso to Section 6 viz. Rs 100.

A duplicate receipt is chargeable with stamp duty required for receipt.
(Government of India Notification No. 153, Fin. & Comm. (S.R.) dt. 20-7-1983).

Customs Bond or Central Excise Bond (Art 25)

4.17 Bonds executed under the Customs Act, 1962 and the Central Excise and Salt Act, are categorized separately and included under this Article. Stamp duty on Bonds executed under the Customs Act is calculated on the amount mentioned in the bond and not on the portion of it representing the customs duty chargeable.

Exchange of Property (Article 29)

4.18 The Article applies to exchange of property both movable and immovable. Exchange of property is not defined in the Stamp Act. Under Section 118 of the Transfer of Property Act, 1882, when two persons mutually

transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an 'exchange'.

If there be no mutual sale and one property whether movable or immovable is exchanged for another or another property together with some money and the transaction is effected by means of an instrument, whether executed by one party or both, it will be taxable under this Article.

Where one property is given in exchange for another property and nothing more is said about the consideration proceeding from one to the other of the two parties, the transaction is an exchange. Similarly where one article is transferred in consideration of another Article plus money, there being no indication of the elements of mutual sale, the transaction would be an exchange.

Two instruments, one executed by the purchaser of a new Motor lorry in exchange of an old one reciting payment of a portion of the difference in prices in cash and agreeing to pay the balance in instalments, and the other instrument by the seller affirming the transaction and acknowledging receipt of the part of the consideration paid in cash and mentioning the balance to be payable in instalments, have been held not to be an exchange under this Article but only an agreement falling under Article 5.

This Article does not cover a transfer between more than two persons.

Further Charge (Article 30)

4.19. This article contemplates instruments imposing a further charge on mortgaged property.

Further charge includes cases where the parties to the original deed increase the liability as per the original deed. In case of a further charge the subsequent deed of mortgage does not cancel the earlier one, and the parties are the same.

When a deed of mortgage falls both under Article 30 and Article 37 (Mortgage deed other than agreement relating to deposit of title deeds etc.) higher duty will be leviable under Section 6.

If a land mortgaged by A to B is subsequently re-mortgaged by A to C, the mortgage to B, still subsisting, the mortgage by A to C is a fresh mortgage and not a further charge.

If an old mortgage is not merged in the new mortgage, but the parties only agree to extend the period of redemption, it will be a further charge under this Article.

Gift (Article 31)

4.20. Gift is the transfer of a certain existing property (movable or immovable) 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 transfer of Property Act 1882-Section 122).

Gift is not defined in the Stamp Act. However instruments of settlement (Article 51) Transfer (Article 55) and will have been excluded from the purview of this Article.

A gift may be made subject to some conditions. The donor may for example stipulate that the donee will maintain the former out of the profits of the property given [12 Mad.89]

Where the deed contains a provision of the re-transfer of the property given on the happening of some event, it will not be a deed of gift. Similarly deeds of relinquishment and surrender will not be gifts

(Reference (1898) 21 Mad. 422 and A.I.R. 1947. All. 104).

An instrument purporting to be a will does not become a deed of gift merely because some past acts of disposition are recited in it.

(Haribai Vs. Krishna Rao, 22 Bom. 632 at P. 635)

A transfer of land in pursuance of a compromise of a widow's suit for maintenance is a conveyance and not a settlement or gift, as there is consideration.

Indemnity Bond (Article 32)

4.21. Except for the general definition of bond, Indemnity bond is not separately defined in the Stamp Act. Under Section 124 of the Indian Contract Act, a contract of indemnity is a contract by which one party promises to save the other from loss caused to him by the conduct of the promiser himself or by the conduct of any other person.

A contract of indemnity contained in an instrument which is implied by law or is ancillary to the main purpose of it is not separately chargeable with duty under this Article. Thus a covenant for indemnifying title included in a conveyance deed is not chargeable separately for indemnity bond in addition to conveyance. Similarly stipulations contained in a mortgage to repay the mortgagee any cost he may incur suits brought against him and also for payment of any debt charged on the property are not distinct matters chargeable under Section 5.

This Article applies only when the contract of indemnity is in the form of a bond. An indemnity note passed by a consignee to the Railway Company in respect for which the railway receipt was lost, was held to be chargeable only as an agreement and not as an indemnity bond.

Where the executant undertook to pay the sales tax dues under the Sales Tax Act, it is not a bond as the liability is a pre-existing liability and not one created by it. It is an indemnity bond as saving Government from loss occasioned to them by his conduct.

(Hindustan Sugar Mill Limited Vs. State of U.P. A.I.R. 1972, All.9)

Bond executed by an Official Receiver was held to be an indemnity bond by the Allahabad High Court.

A contract of indemnity contained in a lease related to losses which might be incurred after the termination of the lease and it was held to be separately chargeable as an indemnity bond in addition to as in instrument of lease.

(Ramakrishna Gopal Vs. Vathu Shivaj 10 Bom. H.C.R. (A.C.) 441)

A provision in an agreement by a company for compensation to be paid to the Managing Agent on the happening of one of the events specified therein is a term of the managing agency agreement. It cannot be treated as a separate contract of indemnity when there is no separate consideration for it. The provision for compensation is not a distinct matter but is part and parcel of the agreement as a whole, and it is not therefore, liable to duty as an indemnity bond.

(Reference 1955. All. W.R. (H.C.) 564; A.I.R. 1956 All. 25 S.B.).

Lease (Article 33)

4.22. Under Section 2(b) lease means a lease of immovable property and includes also:

1. Marayapattom;
2. Kanapattom;
3. An agreement or other undertaking in writing not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for immovable property;
4. An agreement or other undertaking in writing executed by the renters of abkari and opium farms;
5. any instrument by which tolls of any description are let;
6. any writing on an application for lease intended to signify that the application is granted; and
7. a patta.

The definition in the Act is not self-sufficient. Things which would not strictly be styled a lease of immovable property are also included in the definition. The word lease signifies the transfer by one (the landlord) to another (the tenant) an interest in immovable property, the interest transferred being the right to exclusive enjoyment.

Lease is defined directly in the Transfer of Property Act, 1882 in the following words:

“A lease of immovable property is 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 any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

The transferor is called the lessor the transferee is called the lessee; the price is called the premium and the money, share, service or other thing to be so rendered is called the rent”.

The definition of lease given in the Stamp Act is wider than the one given in the Transfer of Property Act. The term immovable property is used in the Transfer of Property Act in a restricted sense than that given in Section 3(26) of the General Clauses Act, 1897. The definition in the General Clauses Act which includes standing timber and growing crops as immovable property is to be adopted for purposes of the Stamp Act. Under the General Clauses Act immovable property include land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth.

Marayapattom and Kanapattom are different kinds of leases that prevailed in Kerala. Patta is an instrument given by the Collector of a district or other receiver of revenue to cultivator or tenant specifying the conditions upon which the lands are to be held and the value or proportion of the produce to be paid therefore.

When the lessor executes a deed of lease and the lessee executes a counterpart of the lease undertaking to cultivate, occupy and pay rent, only the deed of lease and not the counterpart of the lease would be taxable. Under this article, lease includes under-lease and sub-lease.

Whether an instrument is a lease or licence will depend on the substance of the transaction effected. A lease creates an interest in the property whereas a licence creates a mere personal right to possession. The test for determining whether a document is a lease or licence is to see whether sole and exclusive occupation is given to the grantee, so as to amount to a transfer of an interest in immovable property to the grantee. Ordinarily a lease is a grant of property for a time by one who has a greater interest in property, the consideration being usually the payment of rent. A licence on the other hand is permission to do some act, which without such permission, would be unlawful to do.

An agreement modifying the terms of a lease is not by itself a lease. But an agreement extending the period of an existing lease would be a lease for the period by which the original period is extended.

Toll is an imposition of tax for the privilege of using a bridge, road, ferry, market, or may be for catching fish, cutting and appropriating trees for fuel etc. Such privileges are not regarded in law as an interest in immovable

property, still any instrument by which such privileges are let would be a lease for purposes of stamp duty.

In order that a document may fall under Article 33(a) it is necessary that the annual rent must be reserved. Rent is money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the lessor by the lessee as consideration of the lease. "Rent reserved" means rent in respect of which there is a liability of which there is a covenant on the part of the lessee to pay the amount mentioned and stated in the document.

Clause (b) of Article 33 provides for leases granted for a fine or premium or for money advanced and where no rent is reserved, and clause (c) for such leases where fine or premium etc., is in addition to rent. The word 'fine' refers to money paid at the time of entry of the tenant on the land or for the renewal of a lease. It is almost the same as premium.

Premium is price paid or promised by the lessee in consideration of the lease. Where the lease is granted for a lumpsum consideration as a premium, conveyance duty is payable on the amount even though payment of the whole or part of the premium may be deferred or specified as payable on a contingency.

Rent is distinguished from premium as rent is payable as and when it accrues whereas liability of premium arises at the time of contract of lease. Premium is paid in consideration of the element of conveyance implied in lease and quantified in lump. Rent is related to enjoyment of property.

An agreement to lease is chargeable as a lease even though it made mention of the execution of a formal lease deed later.

(Reference, 17 Mad, 280; 4 M.L.S. 104 (S.B.))

A formal lease deed executed later according to the agreement stamped as a lease is chargeable as an ordinary agreement.

(Boyd. V. Kreig. 17 Cal. 548).

By a rent-note, a person agreed to take for five months from the executee a certain pasture/ground attached to a military cantonment on which he was to graze certain buffaloes at a certain sum for head. It was held that the

rent-note was not a lease, as possession of land was not parted with and was chargeable as an agreement.

(Reference, 2 All. 654).

On an agreement extending the period of an existing lease, duty should be calculated with reference to the period beyond the period of the original lease and to the rent payable for that period.

(Sree Standard Coal Company Limited V. Chief Controlling Revenue Authority, Bengal (1948)).

A lease of properties relating to a touring cinema is not chargeable to stamp duty under this Article because the equipment of the touring Cinema being collapsible and capable of being removed does not fall within the category of immovable property.

(Board of Revenue Vs. K. Venkataswami Naidu, I.L.R. (1955) Mad. 1032; A.I.R. 1955 Mad. 620).

By a document the executants entered into a Contract for five years for cutting timber and burning charcoal on certain hills in consideration of the payment of Rs 10,000 in ten equal half-yearly instalments. The Madras Revenue Board held that duty should be paid as for a lease for annual rent of Rs 2,000. If in such a case the consideration were payable initially, part on the date of execution of the document and the balance within six months, the whole consideration should be treated as a premium and the document treated as a lease for a premium or money advanced and where no rent is reserved (Article 33(b)).

An agreement for a lease whereby no rent is reserved and no premium paid or money advanced is not covered by Article 33 and therefore does not require a stamp as for lease, but is to be stamped as for agreements.

(In re. Narayandas, 3 Bom. L.R. 401)

A lease for 99 years where the lessee is given an option to terminate the lease at any time during the term by giving proper notice or in the event of the mines (subject of lease) getting exhausted before the expiry of the term is not a lease for an indefinite term, but a lease for 99 years.

(Dewarland Cement Company V. Secretary of State I.L.R. (1939) Bom. 320; AIR, 1939 Bom. 215)

A conveyance of Kudikani rights in lands for a certain sum and also providing for payment of annual rent was held chargeable as a perpetual lease under Articles 33 (c) and 33(a) (v).

(Mad. B.P. 673 Mis. 15th June 1914, cited at Page 112 of Mad. Stamp Manual. (1958)).

A release of a debt in consideration of the grant of lease is a consideration in the nature of premium, and the instrument should be stamped as for conveyance for the value of the debt released.

(Gingell V. Purkins, 4 Ex. 720; 19 L.J. Ex. 129)

Lease renewed by the lessee after the expiry of the term of the original lease by paying an additional sum of money to the lessor should be treated as a lease granted for a premium.

Where the lease made mention of the previous payment of a lumpsum as consideration it was held to be premium though it was expressed in the instrument as worked out at a particular rate *per annum*.

Mortgage deed (Article 37)

4.23. Under Section 2(n) “Mortgage deed” is defined as to include every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to or in favour of, another a right over or in respect of specified property.

The definition of a mortgage deed given in the Stamp Act is wider than its definition under Section 58 of the Transfer of Property Act, 1882, ‘Charges’ defined in Section 100 of the Transfer of Property Act are also included in the definition of mortgage deed in the Stamp Act.

According to Section 58 of the Transfer of Property Act, 1882, a mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, on existing or future debt or the performance of an engagement which may give rise to a pecuniary liability. “Where immovable property of one person is by act of parties or operation of law made Security for the payment of money to another, and the transaction does not amount to a

“mortgage”, (as defined in Section 58 of the Transfer of Property Act) the latter person is said to have a charge on the property; (Sn. 100 of the Transfer of Property Act.)

Thus the ingredients of a mortgage deed for purposes of the Stamp Act are:-

- (1) The purpose is securing money advanced or to be advanced;
- (2) The consideration is a loan, or an existing or future debt or the performance of an engagement;
- (3) A transfer or creation of a right by the mortgagor in favour of the mortgagee; and
- (4) The right transferred or created must be in respect of a specified property movable or immovable.

A mere agreement to execute a mortgage deed is not a mortgage deed.

Article 36 deals with mortgage deeds with certain exceptions. Agreement relating to deposit of title deeds pawn or pledge (Art 6) Bottomry Bonds (Article 14), Mortgage of a crop (Article 38), Respondentia Bond (Art 49) and Security Bond (Article 50) are dealt with separately.

Mortgages by conditional sale and English mortgages are covered by the definition of mortgage deed. Mortgage by conditional sale is one in which the property is mortgaged, for the performance of a contract to sell within the stipulated conditions. In such cases the ostensible sale is conditional and intended as security for the debt. The right of debt subsists as also the right to redeem the property. In an English mortgage no such debtor creditor relationship is retained; the sale is complete and a transfer of all rights in the property passes except a personal right to repurchase within a stipulated time. Though the distinction is clear, it is often a matter of extreme difficulty to decide which of the transactions is disclosed by the document. It is the intention of the partner in such cases that decide the classification of the instrument.

It is not enough to classify an instrument of transfer as mortgage deed, that the document purports to effect a transfer, instead there must be a transfer, where the principle money secured is one hundred rupees and upwards, instruments of mortgage deeds other than a mortgage by deposit of title deeds

can be effected only by registration and attestation by two witnesses (Section 59, Transfer of Property Act). Similarly the property mortgaged must be in existence on the date of execution. There can be no transfer in respect of property not in existence. A film under production cannot be considered as specified property stated in the definition. However a valid mortgage can be created on a property though not in existence on the date of execution if it can be identified.

Where the intention is to hypothecate the property for the purpose of making it a security the deed is one of mortgage.

(Jwahir. Mal. V. Rani Indumati. A.I.R. 1914, All.18)

Where the instrument itself creates a charge though providing for the execution of a more formal deed, it will be a mortgage deed for stamp purposes.

(Dasaundha V. Malhi AIR 1938. Lab. 460)

A mortgage of the right to receive the amounts due under certain contracts at the time it is executed is a mortgage deed; but the mortgage of the amounts that might fall due in future is not a mortgage-deed.

(Miran Bakhsh V. Emperor. AIR 1945 Lab.69)

A bond containing a covenant not to alienate any property until the amount covered by it is paid is only bond. But if the instrument contains further provisions that, if the properties specified in it be alienated, the instrument relating thereto should be deemed invalid, the instrument would operate as a mortgage of the properties comprised therein.

Notarial Act (Article 39)

4.24. Notary means a person appointed under the Notaries Act, 1952 (*Section 2 (d)*). His function is to draw, attest and certify deeds, conveyances and power of attorney usually under his official seal, to note or certify transactions relating to negotiable instruments and to draw up protests relating to occurrences on voyages of ships and their navigation as well as the cargo in the ships. Instruments made or signed by a Notary Public in the discharge of his duties are taxable under this Article, provided such act is not specifically provided elsewhere.

Notarial acts verifying the execution of a power-of-attorney executed out of India are not liable to stamp duty as they do not relate to any property

situate or any matter or thing done or to be done in India, though the power-of-attorney is liable to stamp duty.

Partition (Article 42)

4.25. Instrument of partition is defined as any instrument whereby co-owners of any property divide or agree to divide such property in severality, and includes also a final order for effecting a partition passed by any revenue authority or any Civil Court and an award by an arbitrator directing a partition. (*Section 2(k)*).

A deed by which co-owners divide property in severally is a deed of partition. It is enough that the parties purport to deal with the properties as co-owners, though they may not be co-owners in the eye of law.

A deed of partition necessarily pre-supposes that more than one person has a joint share in the property and that joint share is divided between the parties. Where the father, who is the Karta or Karanavan, exercises the power to divide the joint family property, the document would be an instrument of partition. But if the property belonged to the father, it would be an instrument of settlement.

A document dividing outstandings (eg. Amounts due to be received) is an instrument of partition, as outstandings are property capable of being partitioned. The mere fact that the amounts have not been realised does not take it outside the purview of property and partition.

In determining stamp duty on instruments of partition, the substance of the transaction, as disclosed by the whole of the instrument has to be looked into, and not merely the operative part of it. It is permissible to look behind the form and at the substance of the transaction, by constructing the instrument and without taking into account any collateral or other evidence.

To constitute a partition, there need not be an actual partition by metes and bounds. An agreement to divide is sufficient to constitute partition. Agreement refers to an agreement to divide properties on certain terms definitely arranged by the parties and not to an agreement to divide on some future date which does not operate to create any right in the property.

The words 'final order' in the definition do not mean the order passed by a Revenue Court authorizing a partition to proceed, but an order passed after the partition has been made declaring the various allotments of land. A partition decree passed on an award is itself an instrument of partition. It is not necessary that the final order for partition should be made in a partition suit.

An award by an arbitrator directing a partition is an instrument of partition and duty is payable under Art.42 and not as an award under Article 12.

An instrument between partners dividing the outstandings of the partnership without dissolving the partnership is a partition and not a dissolution of partnership.

Stamp duty on instruments of partition is payable only on the value of the separated share and not the whole amount or value of the property divided. For this purpose it is to be presumed that always it is the smaller shares that are separated from the larger and not vice versa. It is immaterial whether it is the larger or the smaller share holder that initiates partition when one shareholder entitled to two-thirds of a property, obtains separation from the remainder who hold jointly one-third, and also desire to hold their share jointly, duty is levied on one-third of the value of the property only. Four equal share holders each having one hundred rupees share agree to partition. The duty is levied on three hundred rupees only.

Value of the separated share means its market value, and not the one adopted by the executants for purpose of the document. In calculating the stamp duty leviable on instruments of partition, the liabilities specifically charged against the property including principal and interest, should be deducted from its gross value. But debts which do not bind the property and lessen its value are not to be deducted from the market value.

Where of the two daughters who inherited certain property from their mother, one died, and her husband and the surviving daughter purporting to be co-owners divided the property among themselves, and executed two documents styled as 'releases' it was held they were really instruments of partition though styled as releases.

(Reference 12 Mad. 198 (F.B.))

One of the undivided brothers agreed to take from the eldest brother as his share in the family property, a certain amount in cash and certain outstandings due to the family and executed a document in the form of a release in favour of the eldest brother. Subsequently another brother also passed to the eldest brother a document in the form of a release whereby he and the eldest brother divided the remaining family property by the latter handing over to the former securities for money. It was held that the effect of both the documents was to divide the property of the co-owning brother in severality, and they were instruments of partition.

(Govind Pandurang Kanet; In re: 35 Bom 75; 12 Bom L.R. 936)

(3) Where three out of seven brothers constituting an undivided Hindu family executed documents whereby each acknowledged the receipt of certain property, made over to him, “a division of family property having been effected” and acknowledged himself liable for one-seventh of the debts of the family, the documents were held to be instruments of partition.

(Reference 15 Mad. 164 (F.B.))

(4) Where the partners in a partnership business by a deed divide among themselves certain debts of the firm to be collected and appropriated, but remain joint regarding the other items of business, the deed must be construed as partition deed and not as a deed for the dissolution of partnership.

(Choturam V. Ganesh, 3Bom, L.R. 132)

(5) Four undivided brothers made four lists of the family property consisting of money, bonds and lands indicating what portion should go to the share of each. Each list was signed by three brothers and not by the fourth who retained it. It was held that the four documents when read together formed an instrument of partition.

(Chandramouli V. Revenue Divisional Officer, Kurnool, (1963) 1 And W.R. 306, A.I.R. 1964 Andhra Pradesh 107)

(6) A document evidencing past partition is a deed of partition whether all the executants mentioned in the document have signed it or not.

(State of Kerala V. Abdulla Kutty K. 1969 Ker. LR 321; 1969 Ker. L.J. 143)

To effect partition of ancestral property there must be, in the absence of division by metes and bounds, at any rate an agreement that each party interested shall henceforth enjoy the produce of a certain definite share of the joint property.

(Ashabai V. Haji Tyeb Haji Rahimtulla, 9 Bom. 115)

An arbitration agreement containing an agreement among the Co.owners covering both properties not in dispute and those in dispute is an instrument of partition only to the extent of the properties not in dispute. The remaining part will be merely an arbitration agreement.

(Pooram Chand V. Sudarshan Kumar, 1966 All L.J. 894; AIR 1966 All. 539)

In a suit for partition filed by one member of the family against the other members including strangers who owned large sums of money to the family and a decree styled 'a preliminary decree' was passed, containing among others, directions for the payment of separate and specific sums to the individual members of the family by certain defendants, the decree is a final order of a civil court for effecting a partition and falls strictly within the definition of an instrument of partition. That the decree does not finally divide the whole of the joint family property is quite immaterial.

(Pandiri Satyanandam V. Parenkeesaram Nanmayya, 47 L.W. 51; AIR 1938 Mad. 307)

In a partition among four brothers dividing the properties in four equal shares, and specifying the properties allotted to each brother, duty is payable on the value of three shares, and the fact three of the brothers are minors represented by mother as guardian does not affect the question.

(Mad. B.P. 1795 Mis. 18th December, 1915)

Under Art 42 of the Act, the duty payable on the instrument of partition is for the amount of the value of the separated share or shares of the property.

(Mary Simon V. Tressa Xavier – 1998 (1) KLT 2451 1998 (1) KLJ 26)

Partnership (Article 43)

4.26. Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Firms are not partners with reference to partnerships. The essential requirement of partnership is that parties should be persons, that is individuals. Thus if three firms agree to combine their property, labour or skill in some business, they cannot be considered to be partners.

That Stamp Act does not define the word 'partnership' or dissolution and both these have been used in the sense in which they are used in the Indian Partnership Act, 1932 (*Section 4*). Sections 39 to 44 of the partnership Act, provide for dissolution of partnership-Instruments of partnership as well as instruments of dissolution of partnership are taxed under this Article.

Whether a document is a deed of dissolution of partnership is an issue of construction. In the absence of a valid partnership any instrument purporting to effect a dissolution thereof is not dutiable. Where a partnership is not dissolved, but only some of the properties of the partnership divided, the deed will be one of partition. An instrument purporting to arrange for better management of a partnership is not an instrument of partnership.

A conveyance may come into existence on the dissolution of a partnership. Thus an instrument whereby a retiring partner transfer his interest in the assets of the partnership to the continuing partner for the consideration of a certain sum of money is a conveyance.

(In the matter of Hiralal Navalram, 32 Bom. 505; 10 Bom. L.R.750)

On the dissolution of a partnership an assignment by which interest of one partner is transferred to another and consideration is expressed to be allowed in account and appropriate out of the assets of the 'partnership' would be a conveyance.

(Philips V. Commissioners, L.R. 2 Ex. 399)

An instrument by which an outgoing partner declared that he accepted a promissory note executed in his favour by the continuing partner in full satisfaction of all his claims against the latter in respect of his share and interest in the partnership and the assets and properties thereof, is to be charged to advalorem conveyance duty. If the terms of the deed coming into

existence on dissolution of partnership are such that the property actually passes by the deed, then the deed would be liable to conveyance duty even in respect of movables which can be transferred by delivery.

(Somdutt V. Inland Revenue Commissioners, (1899) 81. L.T. 633)

When a partner retires from the partnership and the amount of his share in the assets of the partnership (after deduction of liabilities and prior charges) is determined taking into account the probable sale value of the assets given to him and what he receives is his share in the partnership and not any price for sale of his interest in the partnership. His share in the partnership is worked out by taking into account in the manner prescribed by the relevant provisions of the partnership law and it is this and this only namely, his share in the partnership which he receives in terms of money. There is in this transaction no element of sale; the retiring partner does not sell his interest in partnership to the continuing partners. He in the contrary carves out his interest and takes it away by evaluating it.

(Velo Industries v. Collector Bhavanagar (1971) 70 ITR 291 (1971) 2 I.L.J. 482)

A document containing recitals as to the retirement of a partner and releasing all his rights in the firm is a release deed and not a conveyance or a dissolution of partnership.

(Govind Das V. Board of Revenue, 1971, ALJ 847)

Power of Attorney (Article 44)

4.27. Power of attorney is a design of authority in writing by which one person is empowered to do an act in the name of another. According to the definition given in Section 2(p) it relates only to powers-of-attorney proper and does not include all contracts creating the relationship of principal and agent. Instruments chargeable with a fee under the law relating to court-fees have been excluded from the purview of power-of attorney.

The person authorized to do any lawful act instead of another is called the attorney. A power-of-attorney enables the attorney to use the name of the principal and bind him on the instruments executed by him as the attorney. In the case of an agency the agent himself executes the instrument though the transaction is binding on his principal.

A power-of-attorney may be executed jointly by a number of persons as the principals. It may be executed in favour of one person or a number of persons as the attorney or attorneys. A power-of-attorney is either general or special. A power-of-attorney in regard to a single transaction is known as a special power-of-attorney. Where the power authorizes the attorney to act generally or in more than one transaction it is known as a general power-of-attorney.

The Legislature, in fixing different rates of stamp duty, does not take account of the number of persons executing the power and the stamp duty is determined only by the number of agents appointed and the powers of such agents. Thus where a number of persons having a community of interest in the subject matter of the instrument execute a general power-of-attorney, it is liable to a single stamp duty only. If there is no community of interest, the instrument should be stamped with the aggregate of the duties for as many documents as there are executants.

A power of attorney when given for consideration and authorizing the attorney to sell any immovable property, duty equal to what is payable for the conveyance of the property, is to be paid. This clause will not affect a power given for effecting a sale. An instrument authorizing a person to receive on behalf of the executants such sums as should become due in the course of the execution of a certain work, is not an assignment of the claim but a power-of-attorney.

(Bhagavan Kishor Das V. Abdual Harsam Mohammed Ali, 3 Bom.49)

A document executed in favour of a person by thirty-six persons jointly interested in a certain sum of money authorizing him to appear before a certain officer and receive payment thereof was held to be a power-of-attorney.

(Reference : 9 Mad.358 (F.B.))

A letter empowering another to sell their joint land is not a power-of-attorney, if it does not authorize him to sell the land in the name of the person executing the letter.

(Kala Khan V. Nathu Khan, 27 Punj. L.R.78, 92 I.C 990: A.I.R 1926 Lah.229)

Where a document is not only a power-of-attorney, but also a mortgage deed and an agreement it will be governed by Section 5, as distinct matters.

(Miran Baksh V. Emperor, A.I.R 1945 Lah 69)

Power of attorney are to be construed strictly. That is to say, where an act purporting to be done under a power of attorney is challenged as being in excess of the authority conferred by the power, it is necessary to show that on a fair construction of the whole instrument the authority in question is to be found within the four corners of the instrument, either in express terms or by necessary implication.

(Satyanarayana murthi V.I.T Appellate Tribunal, A.I.R. 1958 Andhra. 143)

A power-of-attorney is revocable except when made for due consideration and forms part of security.

(Frith V Frith (1906) A.C 254, Stroud)

In a case where a borrower under a mortgage by deposit of title deeds subsequently executing a power-of-attorney authorizing the lender to sell the property on behalf of the borrower and appropriate the sale proceeds to the amount due to the lender, the High Court of Madras, held that the power-of-attorney was clearly irrevocable and also purported to be so irrevocable till the loan was repaid or the properties were sold and that on the part of the Bank there was an executed promise in the form of a loan advanced. But the reciprocal consideration proceeding from the company for this promise was executory. As long as the reciprocal promise remained executory the Company could take successive steps towards discharging the liability thereunder and for each successive steps, so taken, the loan advanced earlier by the Bank or such part of it as remained undischarged could operate as consideration. The execution of the irrevocable power of attorney constituted such a step in the discharge of the obligation, and the consideration therefore was relatable to the loan advanced earlier by the Bank. The power-of-attorney therefore fell as a power-of-attorney for consideration under Article 44(e).

(Board of Revenue, Madras V.Annamalai Co. (Pvt.) Limited., 80 Mad.L.W. 474; AIR 1969 Mad. 50)

Consideration in Article 44(e) would mean valuable consideration. In a power-of-attorney executed after a compromise mortgage decree so as to

have a private sale, it was held that the compromise was a good consideration for the contract of agency, but was not a valuable consideration as required under Article 44(e) .

(Chief Inspector of Stamps V. Murlidhar Kanodia – 1970 AIT L.J 464; AIR 1970 All. 599 (S.B))

Release (Article 48)

4.28. A formal renunciation of claim which the party relinquishing is entitled to put forward is a release chargeable to stamp duty as release, whether the claim is legally correct or not.

A release can only feed title and cannot transfer title as such, a release should necessarily be in favour of some one who had already some title to the property and the effect of the release is only to enlarge that right.

In the case of co-owners each co-owner is in theory entitled to enjoy the entire property in part or in whole. It is therefore sufficient that between co-owners instruments of release is executed in order to pass on the right enjoyed by the transferor, instead of conveyance.

An instrument by which a vendor of immovable property who had taken an agreement for reconveyance for the vendee, gives up that right, it is not a conveyance but a release.

A deed of release is a one-sided document and binds the executant alone while a partition is an agreement between two or more persons who are bound by it. A partition deed by which co-owners divide property in severality does not become a release merely because mutual release is an incidence of partition.

It is not necessary that the claim must be a genuine claim or a true claim. If there is a claim, true or false, which could be pressed by a party, and that claim is sought to be given up by visiting, then that would amount to a release, within the meaning of Article 47.

(Husainbhar V Abdullabhai – 1962. M.P.L.J. (Note 111)

Where by a document a person voluntarily renounces for consideration of coparcenary rights of succession to impartible estate, it is a release.

(Rajab Yarlagadha Sivaram Prasad V Bahadue Zamindar Venkata Ramalinganna Prasad (1961) 1 Andh W.R 183).

When a mortgage is redeemed on payment which is enclosed on the deed, there is no release but only a receipt of payment which is exempt from duty under exemptions(s) to Article 53 of the India Stamp Act. But an endorsement on a mortgage deed containing express words of relinquishment of the mortgage right while acknowledging the receipt of money due after excusing a portion of it, was held to require a released stamp.

Article 48 presupposes the existence of a claim on some person or property which claims the person executing the document of release renounces. Where such a foundation is completely lacking, there can be no question of release.

(Takhti Bhai V the State, AIR 1957 Raj. 125)

A deed under which the reversioner relinquishes his claim is a release.

(Krishnaji Narayan Hardikar V Balakrishna 33. Bom. 657; 71 Bom. LR.735)

An instrument of transfer of possession and life time interest by a widow to her sons who would succeed to the transferred property of her deceased husband on her death, was held to be a gift and not release.

(Khetramani Debya In the matter of. 17 Pat. 95 AIR 1938 Pat. 33 (S.B.).

A document executed by father of joint family releasing his interest in part of joint property in favour of his only son has been held to be a gift deed and not a release deed.

(Tulsiramppa V State, 1952 N.L.J. 440)

Where two persons purporting to be co-owners of certain properties executed two documents styled releases whereby they agreed to divide them in severality it was held that the documents amounted to an instrument of partition.

(Hiralal-Nawalram 32 Bom. 505)

Respondentia Bond (Article 49)

4.29. Respondentia is the money which is borrowed not upon a vessel as in bottomry, but upon the goods and merchandise contained in it in cases of extreme urgency, as a last resort and where communication with the owners is impossible in the circumstances. The ship owner must indemnify the owner of the cargo thus hypothecated. Repayment of the loan is subject to the arrival of the cargo at the port of destination.

Security Bond or Mortgage Deed (Art 50)

4.30. All bonds commonly called security bonds will not fall under the Article. Only those executed for the purposes mentioned in the Article are security bonds or mortgage deeds. Otherwise the instruments would be a bond specified in Article 13 or mortgage deed under Article 37 according to their nature and substance. Promissory notes and receipts executed and given by way of security for performance of certain conditions would not be security bonds.

This Article extends to cases where a surety executes a bond to secure the due performance of a contract by the principal. But a security bond executed by a person for the due performance of his own contract is not covered by this Article.

A mortgage deed executed by the cashier of a company as security for the due performance of his duties and as security for the repayment of any sum he may be found liable for as a cashier falls under Article 50.

(Mc Dowell & company Vs. Raghava Chetty, 27 Mad. 71)

A security bond executed by a receiver or a guardian appointed under the Guardians and Ward Act, and his sureties for the due execution of his office of receiver, or guardian, is chargeable under Article 50.

(Dhirendra Nath Poldar V. Hemangini Dasi. 63 Cal. 173 1581 C. 406; W.N 1046 AIR 1935 Cal 610)

A mortgage deed executed by judgement debtor as security for the due performance of decree has been held to be chargeable under Article 37(b) (Mortgage deed) and not under this Article.

(Gouri Shankar V. Baldeo Sabuji, 37 Pat. 705; AIR 1955 Pat 210)

Settlement (Article 51)

4.31. Settlement is defined in Section 2(q) to mean any non testamentary disposition in writing of movable or immovable property made –

- (i) In consideration of marriage :
- (ii) for the purpose of distributing property of the settler among his family or those for whom he desires to provide or for the purpose of providing for some person dependant on him; or
- (iii) for any religious or charitable purpose; and includes an agreement in writing to make such a disposition and where any such disposition has not been made in writing any instrument recording whether by way of declaration of trust or otherwise the terms of any such disposition.

An instrument to be classified as settlement has to be executed for one or the other of the purposes specified in the definition. The nomenclature of settlement given by parties to an instrument is not relevant for purpose of stamp duty. Testamentary dispositions such as will are excluded from the definition of a settlement. A settlement purports to effect an arrangement of rights and interest in property which may or may not include a provision for the life of the donee with reversion to the settler or his heirs. A settlement includes not only a documents which has for its object the distribution of the property of the settler but of providing, whether by distribution or otherwise, for some person dependant on him.

A settlement is distinguished from a will, by its intention to have immediate operation though there might be provisions contemplating extension of operation beyond the lifetime of the owner. One of the tests in determining whether an instrument is testamentary (will) is to see whether it is revocable. If it is not revocable it is not a will.

Settlement deed is not taken outside the scope of its definition by the mere fact of its including an agreement by the beneficiary to act in a particular way in consideration of the settlement.

‘Wakf’ created by Musalmans is to be treated as settlement.

A settlement purports to effect an arrangement of rights and interests in property as opposed to the conveyance or transfer of such property. A conveyance or a gift of property though to achieve any of the purposes envisaged in the definition of settlement will not be a settlement. The disposition referred to in the definition does not mean an absolute and unqualified disposition of property. A settlement may effect a provision for the life of the donee with reversion to the settler or his heirs. It may be in the nature of a trust though the creation of a trust as such may not always be necessary.

The creation of successive interests in property is not necessary in order to constitute a settlement. The provision for single individual may constitute a settlement. The beneficiaries, where more than one, need not be conferred with separate interests either. In settlements under sub-clause (b) of the definition the purpose should be the distribution of property of the settler. Where such distribution is lacking, the instrument will not be a settlement.

Instruments recording terms of prior oral settlements are also settlements.

In the case of instruments of settlement duty is payable on the value of the property settled as set forth in such settlement. The settler is bound to give the true value of the property and cannot give any notional value he pleases and if he omits to do so he contravenes Section 28 and incurs the penalty prescribed by Section 62. Although there is no provision in the Stamp Act for ascertaining the true value of the property for calculation of duty, and the Register cannot embark on an independent enquiry, he has power under the Registration Act to require the person seeking registration of settlement deeds to furnish particulars required for the calculation of the duty. If the value is understated he can refuse to accept the settler's evasive statement as to a particular amount being the value for purposes of stamp and registration and insist upon a valuation being given which purports to be the market value.

In order to be eligible for exemption under Article 51 A "deeds of dower" are to be executed at the time of marriage, and not any time before or after marriage.

If an instrument making a disposition of property does not fall within the definition of settlement it will have to be charged with the higher duty prescribed for gift. Disposition is a word of much wider connotation than transfer. A transaction may amount to a disposition of property though it may not amount to a transfer of property. The expression disposition includes any and every property of the settler.

In classifying documents as settlements or not settlements the following decisions merit attention.

(1) An instrument by which a life interest in a certain land was created in favour of the settler's sister with reversion to the settler and his heirs after her life time was held a settlement and not a gift.

(reference 21 Mad. 422)

(2) A mere reservation of a life estate by the settlement (retention of right to enjoy the property during one's life time) would not alter the instrument of settlement.

(Mallappa V Kogara Venkatappa. 1958 An L.T 570)

(3) A transfer of land absolutely in pursuance of a compromise of a widow's suit for maintenance, is neither a gift nor a settlement. But must be stamped as a conveyance.

(reference 21 Mad. 422)

(4) Where there is a transfer of property to certain trustees who are to manage it on behalf of the owner during his life time and in the event of his death to make certain arrangements and certain directions as to disposal of the income are also given and a right of revocation is also reserved in the owner, the document is not a settlement.

(Niranjan Singh Jeedas V Junior Secretary, Board of Revenues, I.L.R (1946)AIR1947 All. 141 (F.B))

(5) A settlement in addition to its ingredients as a settlement may contain any further agreement. Where in an agreement the mother transferred her rights in a property to her sons who also in their turn undertook to give her some annuity and grain for her maintenance the instrument was deemed to be a settlement.

(Md. Rashid Ahmad V Emperor, AIR 1937 Lab. 684)

(6) Where by terms of an instrument future rental income of two houses were to be utilized by trustee for benefit of minor children of donor, it was a settlement falling under Article 51 (Settlement) and stamp under Article 57 (trust) was not sufficient.

(Board of Revenue V P.V Sridhar Advocate (1964) I.L.R All 857; AIR 1964. All 537 (S.B))

(7) Where in a partition deed between four brothers, their father also joined with a view to confirm the oral gift of the property made previously by him in favour of his sons who divided the properties, it was held that it should be stamped also as a settlement deed being an instrument recording the disposition. Though the document is not a settlement in the sense that the owner of the property settled under the document upon certain other persons, yet it becomes a settlement by reason of the artificial definition created by Section 2(q), that is to say it is a record of an earlier oral settlement. If the person settling the interest does not joins the instrument then the reference to the settlement may be merely a narrative of the origin of the title and the document could not operate as a gift.

(Chief Controlling Revenue Authority V Mohan Yoonus Sait (1966) 1 MLJ 387; AIR 1966 MAD 315 (F.B))

Share warrants (Article 52)

4.32. A public company limited by shares if so authorised by its articles may under Section 114 of the Companies Act, 1956 with the previous approval of the Central Government, with respect to any fully paid up shares, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares therein specified. A share warrant entitles the bearer thereof to the shares therein specified and the shares may be transferred by delivery of the warrant.

Transfer of lease (Article 56)

4.33. Transfer of lease by way of assignment and not by way of underlease is chargeable under this Article. Assignment is a transfer of an estate or interest in property. An assignment of lease must be for the whole of the term

for which the person assigning has obtained the lease. Transfer of a lease for any lesser term would be an underlease. But an underlease for the whole term is in effect an assignment.

Under-lease is not a transfer of lease for the purpose of the Article 55. Under-lease is a grant by a lessee to another, called under-lessee or under-tenant, or sub-lessee or sub-tenant of a part of his whole interest under the original lease reserving to himself a reversion. It differs from an assignment, which conveys the lessee's whole interest, and passes to the assignee the right and liability to sue and be sued upon the contracts in the original lease. For purpose of stamp duty under-lease is governed by Article 33, lease.

Duty is chargeable under the Article only on the actual amount of consideration for the transfer and not also on the rent reserved under the lease for which the transfer under the lease for which the transferee undertake liability.

(Shri Puranchand Lollubhai Doshi, 32 Bom L.R 1447, AIR 1931 Bom)

Trust (Article 57)

4.34. Declaration of trust is not defined. Trust is defined in Section 3 of the Indian Trusts Act as 'an obligation annexed to the ownership of property' and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another or of another and the owner.

The person who reposes or declares the confidence is called the 'author of the trust', the person who accepts the confidence is called the 'trustee'; the person for whose benefit the confidence is accepted is called the 'beneficiary'.

When declarations and revocations of trust are affected by means of will, they are not taxable.

Unless the author of the trust is himself the trustee, the specific property given in trust has to be transferred to the trustee.

What will be a deed of settlement and what an instrument of trust, will be an issue of construction. An instrument effecting a declaration of trust as well as a conveyance to the trustees of the specified trust property is an instrument comprising two distinct matters attracting the provision of Section 5 of the Act and is to be taxed both by Articles 21/22 and 57.

However if the author of the trust is himself the trustee, the question of conveyance of the trust property to the trustee does not arise. An instrument may be partly a declaration of trust and partly an agreement under Section 5. An instrument though reading like a declaration of trust may be in its essence a gift, a mortgage, or any other transaction referred to in the schedule to the Stamp Act and taxable accordingly.

The Article applies only when the executant of the instrument makes himself a trustee and not where he conveys property to others as trustees.

Where the donee under an instrument of gift was to maintain the donor out of the profits of the land gifted, it was held that the instrument was liable to stamp duty as a gift and not as a mere declaration of trust.

(Reference, 12 Mad. 89)

CHAPTER V

LAW OF REGISTRATION

GENERAL

5.1. Constitutional provisions – Article 246 (2) of the Constitution and items 6 and 47 of List III of the seventh schedule confer upon the State Legislatures /Parliament the power to make laws for the registration of deeds and documents and for the levy and collections of fees in respect of the registration of such deeds and documents. The Indian Registration Act 1908, the Kerala Registration Rules and the table of fees prescribed by the Kerala Government broadly outline the system of registration of documents and the assessment and collection of fees under the Act.

5.2. Historical and Legislative Background – The first Act which provided for the registration of deeds and documents in India was the Act 16 of 1864 which came into force on 1st January 1865. Before the enactment there were local rules and regulations in different parts of India. (Bengal Regulation 26 of 1793, Madras Regulation 17 of 1802, Bombay Regulation 4 of 1802, 9 of 1802 etc.). Act 16 of 1864 were followed by Act 20 of 1866, 8 of 1871, 3 of 1877, 12 of 1879, 7 of 1886, 17 of 1899 and finally by Act 16 of 1908.

5.3. Object of Registration - The main objects of registration are :

- (1) to provide a conclusive proof of the genuineness of the documents,
- (2) to afford publicity of transactions,
- (3) to prevent fraud.
- (4) to afford facility for ascertaining whether a particular property has been dealt with and
- (5) to afford security of title deeds and facility of providing titles in case the original deeds are lost or destroyed.

5.4. Effects of non-registration – Any document required to be registered under Section 17 of the Registration Act or under the provisions of the

Transfer of property Act, 1882 shall not, unless it has been so registered, affect any immovable property comprised therein, or confer any power to adopt, or be received as evidence of any transaction affecting such property or conferring such power.

5.5. Registration Rules – Section 69 (i) of the Indian Registration Act empowers the Inspector General of Registration to make rules with the approval of the State Government consistent with the Act. Accordingly, the Kerala Registration Rules have been prescribed by the Inspector General of Registration with the approval of Government and published in notification dated 27.12.1958.

The State Government is empowered to make local amendments to the Indian Registration Act in its application to the State.

CHAPTER VI

CLASSIFICATION OF PROPERTIES

6.1. Transfer of Property Act and Registration Act – The Transfer of Property Act 1882 defines this law governing the transfer of property Acts of Parties. The Indian Registration Act, 1908 governs *inter alia*, the procedure to be followed when instruments executed for the purpose of transfer of property are to be registered. Unlike the Transfer of Property Act, the Registration Act strikes only at the documents and not at the transactions. The Act does not require that a transaction affecting immovable property should be carried out by a registered document. All that it enacts is that when a document is employed to effectuate a transaction specified in Section 17 of the Act, such documents should be registered. Non-registration in certain cases has the effect of rendering the documents ineffective even as between the grantor and the grantee and excludes it from evidence.

6.2. Transfer of properties – Transfer of property has been defined in Section 5 of the Transfer of Property Act, as to mean an act by which a living person conveys property in present or in future, to one or more other living persons, or to himself and one or more other living persons. A transfer of property is defined in this section does not necessarily involve the execution of an instrument of transfer or conveyance. In the case of movables and generally in the case of immovable property of a value of less than Rs 100 a transfer may be effected by delivery of possession.

“Living person” in the above definition includes a company, an association or body of individuals, whether incorporated or not.

6.3. Classification of properties – The term “Property” has not been defined either in the Transfer or Property Act or in the Indian Registration Act or in the General clauses Act. The word ‘Property’ is used in these Acts in its widest and most generic legal sense. Section 6 of the Transfer of property Act says that property of any kind ‘may be transferred. The Acts however distinguish property into movables and immovables.

6.4. Immovable property – Neither the General clauses Act, the Transfer of Property Act nor the Registration Act gives a comprehensive definition of the term “immovable property”. These Acts give a list of certain items which should be included or which should not be included in the definition of immovable property. As per Section 2(6) of the Indian Registration Act, “immovable property includes land, buildings, hereditary allowances, rights to ways, ferries, fisheries or any other, benefits to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber growing crops nor grass”. The inconclusive verb “includes” shows that the definition is not intended to be exhaustive. The concept of the terms ‘immovable property’ has to be deduced from various judicial pronouncements on the subject.

6.5. Benefits to arise out of land. – A benefit to arise out of land is immovable property. The following items have been held to be benefits arising out of land.

- (a) The right to recover assessments from tenants.
- (b) The right to recover market dues upon a piece of land.
- (c) A licence to quarry a mine coupled with a grant of minerals.
- (d) A transfer of future rents payable in respect of land is a transfer or benefits to arise out of land but not a transfer of rent which has already accrued.
- (e) When a licence allows a licensee to prospect manganese ore on the licensor’s property and to win ore at certain rates per ten acres, the licence involves a transfer of benefits to arise out of land and things attached to the earth.
- (f) A partnership setup for the purpose of extraction of mica from mines and for purchasing and selling mica extracted from mines falls within the meaning of the phrase. “Benefits to arise out of land”. Such a partnership is a partnership relating to immovable property.

(g) A right to enter upon land and to carry away fish from a lake is a right to “Profits a pendre’ and that it amounts to immovable property as benefit arising from land (*Page 17 of Transfer of Property Act by Mulla*)

The following instruments have been held to be instruments not relating to immovable property as benefit arising from land. (*Page 6 of India Registration Act by Mulla*)

(a) The right of a Government under an Act to levy tolls and to lease it or to lease market dues is neither a benefit arising out of, nor an incident of, ownership of land.

(b) The right of a mortgagee of a mill to receive a salary out of the income of the mill in consideration of his managing and financing the mill is not a benefit arising out of land.

(c) The right of the manager of a Hindu temple though involving the holding of immovable property forming part of endowment of the temple is not a benefit arising out of land.

(d) A royalty is not an immovable property.

(Krishna Vs. Kesunda Colliever, (1922) 65-1.C 673, (22) A.P 36 page 17 of Transfer of Property Act by Mulla)

6.6. Things attached to the earth – The words “things attached to the earth” are not defined in the Registration Act. Section 3 of the transfer of Property Act defines the words “attached to earth” as to include.

(i) rooted in the earth as in the case of trees and shrubs.

(ii) imbedded in the earth as in the case of walls or buildings or

(iii) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

6.7. Rooted in the earth – (a) Trees and shrubs are immovable property according to the definition of immovable property in the General clauses Act, but this definition is subject to the exception made in the Transfer of Property Act and in the Registration Act as to standing timber, growing crops and grass.

(b) Where trees and shrubs are sold apart from the land to be cut and removed as wood they are movable properties.

(Page 25 of Transfer of Property Act by Mulla).

(c) If the transfer includes the right to fell the trees for a term of years so that the transferee derives a benefit from further growth. The transfer is treated as one of immovable property

(Page 25 of Transfer of Property Act by Mulla).

(d) The fact that a permit to fell trees extends over a period of several years does not necessarily imply that the transferee is to enjoy the benefit or further growths and a permit to fell and remove trees for four years has been held to be a grant of movable property.

(Page 25 of Transfer of Property Act by Mulla).

(e) A right to collect lac from trees has been held to be an immovable property

(Page 25 of Transfer of Property by Mulla).

(f) When bamboos are sold while attached to earth it is a sale of interest in land and hence a sale of immovable property. When they are sold after detachments from earth it is a sale of chattels. *(A.I.R. 1965 NGC 5612).*

6.8. Imbedded in the earth – In the case of things imbedded in the earth or attached to earth the amount or degree and nature of annexation of this thing to the land as well as the object of annexation is to be considered to judge whether a property is immovable or not. In English law the general maxim of law is that what is annexed to the land becomes part of the land, but it is very difficult, if not impossible, to say with precision what constitutes an annexation sufficient for this purpose. It is a question which must depend on the circumstances of each case viz. degree of annexation and object of annexation. When the article in question is not further attached to the land than by its own weight it is generally to be considered a mere chattel (movable). But even in such cases if the intention is apparent to make the article part of the land, they do form part of land. Thus block of stone placed

one on the top of another without any mortar or cement for the purpose of forming a dry stone wall would become part of the land, though the same stone if deposited in a builder's yard and for convenience sake stacked on the top of each other in the form of a wall would remain chattels. On the other hand an article may be very firmly fixed to the ground, and yet the circumstances may be such as to show it was never intended to be part of the land, and then it does not become part of the land.

(Blackbam, J in Holland V. Hodgson)

The same principles are applicable in Indian Law also.

The following items have been held to be immovable property as imbedded in the earth/attached to earth.

(Page 25-27 of Transfer of Property Act by Mulla)

(a) A house being imbedded in the earth is an immovable property and this is so even if it is sold for enjoyment as a house with an option to pull it down.

(Punnayya V. Venkatappa (1926) 91. IC 754 ('26) A.M 343)

(b) A mortgage of a superstructure of a house, though expressed to be "exclusive of the land beneath" creates an interest in immovable property, for it is permanently attached to the ground on which it is built.

(Narayana Pillai V. Ramaswamy (1875) 8 Mad. H.C 100)

The following have been held to be not immovable properties.

(Page 7 of I.R.A and Page 27 of Transfer of Property Act by Mulla)

(a) When an oil engine was attached to earth it was held that such attachment was only for the purpose of beneficial use of the oil engine, the attachment would last only so long as the engine was put to use, who when not so used, the engine could be detached and shifted to some other place and therefore the engine was not immovable property.

(Perumal V Ramaswami (1968) 2 M.L.J 498 (69) A Mad 346)

(b) If a tenant of a premise attaches machinery therein for a factory, it must be presumed that he attached the same with the intention of removing it.

(Achia V Custodian (53) A. Hyd.14 Chetty & Co V. Collector Ananthapur (1965) A Andhre P-457)

(c) If the lease contemplates the removal of machinery it cannot be regarded as having been permanently fixed.

6.9. Interest in immovable property – An interest in immovable property would itself be an immovable property. The following are thus immovable property.

- (i) The interest of a lessee or tenant on land.
- (ii) The equity of redemption of the mortgagor in the mortgaged property.
- (iii) An easement right.
- (iv) A mortgage or charge on immovable property.
- (v) A redemption right in immovable property.
- (vi) A right to earth and sand forming part of the soil of the land.
- (vii) A right to hold market on one's land. It is an incidence to the ownership of the land.

Note : The following are not interest in immovable property.

- (i) A turn of worship.
- (ii) The right of management of a Hindu temple.
- (iii) The status of a Karanavan of a Malabar Tarwad.

6.10. Movable Property – Section 2 (9) of the Registration Act defines movable property as to include property of every description excluding immovable property but including standing timber, growing crops and grass fruit upon and juice in trees.

6.11. Standing timber growing crops and grass – Standing timber, growing crops and grass are specifically excluded from the definition of immovable property and included in the definition of movable property. The term 'timber' means property such as trees that are fit to be used in building and repairing houses. This is an exception to the general rule that growing

trees are immovable property. In order that trees may be considered to be standing timber, they must first be trees whose wood is suitable for use for building houses, bridges, ships etc. A tree which is primarily a fruit tree are immovable property. In order that trees may be considered to be standing timber, they must first be tree whose wood is suitable for use for building houses, bridges, ships etc. A tree which is primarily a fruit tree eg: a mango tree may be classified as a timber tree if according to the customs of the locality its wood is used in building and repairing houses. Though standing timber, growing crops and grass are movable property, they are so only if the agreement provides for their immediate severance and removal from the soil and delivery as chattels to the transferee, but if no immediate severance and removal is intended, eg. where a transfer is made of a right to cut and remove standing timber and growing grass on the transferor's land for a period of four years, the transfer is one of an interest in immovable property, the reason given being that in such a case it is contemplated that the transferee should derive a benefit from the further growth of the thing sold and from nutrients to be afforded by the land. In the former case the land is to be considered as a mere warehouse for the thing sold, and the contract is for goods. A lease of trees for the extraction of lac is a lease of immovable property as the trees are not to be cut down or removed. The test for judging whether a tree is movable or immovable is not the nature of the tree, but the way in which it is intended to be dealt with. The reason for exclusion of standing timber, growing crops and grass both in the Transfer of Property Act and in the Registration Act is that they are only useful as timber, corn and fodder after they have been severed from the land.

(Page 19 of Transfer of Property Act and Page 8 of I.R.A by Mulla).

CHAPTER VII

BASIC FEATURES OF THE INDIAN REGISTRATION ACT 1908

7.1. Registrable documents – Sections 17 and 18 of the Registration Act cover the whole field as to the direction regarding the registration of instruments under the provisions of the Act, certain instruments are to be registered compulsorily (*Section 17*) and certain others at the option of the executants (*Section 18*) except as otherwise provided in the Act, all instruments effecting transactions relating immovable property have to be registered compulsorily.

7.2. Documents of which registration is compulsory (Section 17) – The following instruments require compulsory registration if the property to which they relate is situate in a district in which the Act is in force.

(a) Instruments of gifts of immovable property (Section 17 (a))

Note 1 : All instruments of gifts of immovable property irrespective of the value have to be registered.

Note 2 : a gift of immovable property by a Mohamedan husband to his wife in lieu of dowry is not a gift proper but a sale.

Note 3 : Gift of a mortgage deed. – A gift of a debt secured by a mortgage of immovable property, in cases to which the Transfer of Property Act 1882 applies can only be made by a registered instrument as provide by Section 123 of the Act. It is in effect a gift of immovable property.

(b) Other non-testamentary instruments which purport or operate to create, declare assign limit or extinguish whether in the present or in future any right, title or interest, whether vested or contingent of the value of one hundred rupees and upwards or in immovable property. (Section 17.1 (b))

Note 1 : “Non-testamentary” – A document which is plainly intended to be operative immediately is non-testamentary A question whether an instrument is testamentary or non-testamentary is a fact depending on the

construction of the particular instrument and the fact that it is described as a will does not make any difference.

Note 2 : “Purport or operate” – A document ‘purports if it professes expressly on its face and it ‘operates’ if in law, it produces the result or has the effect.

Note 3 : The words “which purport or operates to create, declare, assign etc” refer to the immediate intention of the document and not to ultimate consequences or its collateral effects and imply a declaration of a will and not a statement of fact. Thus a document which amounts merely to an “admission” of past oral transaction such as a partition lease or transfer of equity does not require registration.

Note 4 : A document which amounts merely to an admission of a past transaction recorded in a registered document does not require registration .

Note 5 : A mere list of properties allotted at a partition is not an instrument of partition and does not require registration (Page 56 of Indian Registration Act by Mulla). Section 17(1) (b) lays down that a document for which registration is compulsory, should be its own force, “operate or purport to operate to create or declare” some right in immovable property. Therefore a mere recital of what has already been taken place cannot be held to declare any right and there would be no necessity for registering such a document.

Note 6 : An agreement to partition property in future which does not effect or provide separation of shares by metes and bounds does not require registration.

Note 7 : An instrument of partition may sometimes, be in the form of receipt or a regular deed or in any other form. But whatever be the form, it requires registration (if the value of properties is Rs 100 or more as it declares an interest in immovable property.

Note 8 : The crucial test for determining whether a document is registrable under this sub-section is whether it purports or operates to bring about a change of legal relation in respect of some property and if the relationship remains the same after the document as it was before its

execution, then no right title or interest in the property can be said to be created.

Note 9 : “Create” – The word “create” means to bring into being ; to cause it to exist.

Note 10 : “Declare” – The word “declare” is placed along with “Create”, or “limit” or extinguish a right title or interest and implies a definite change of legal relation to the property by an expression of the will embodied in the document. It is not a mere statement of fact, but contains a declaration of will.

Note 11 : “Assign” – The term “assign” meant to transfer or make over (property) to another.

Note 12 : “Limit”– The term limit means to ‘restrict’. The right to hold a market is an incidence of the ownership of the land and an agreement restricting this right to particular days requires registration.

Note 13 : “Extinguish” – Extinction can be effected by relinquishment, release, surrender and the like. A deed by which a right of the value of rupees one hundred or above is extinguished requires registration irrespective of the fact whether the right relinquished is legally correct or not.

Note 14 : “Vested interest” – A vested interest has been defined in Section 19 of the Transfer of Property Act as follows. Where on a transfer property an interest therein is created in favour of a person without specifying time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested unless a contrary intention appears from the terms of the transfer.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation : Interest is vested even if the enjoyment of property is postponed or a prior interest in the same property is given or reserved to some other person, or income arising from the property is directed to be accumulated until the time of enjoyment arrives or even if the instrument containing a provision that if a particular event happens the interest shall pass on to another person.

Note 15 : Contingent Interest – Section 21 of the Transfer of Property Act defines contingent interest as follows :

Where on a transfer of property an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such contingent interest becomes a vested interest, in the former case on the happening of the event and in the latter case when the event becomes impossible.

Exception : Where under a transfer of property a person becomes entitled to an interest therein upon attaining a particular age, and the transferer also gives him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

When the interest is vested the transfer is complete, but when the interest is contingent, the transfer depends upon the conditions precedent. When that condition is fulfilled, the transfer takes effect and the interest becomes vested. If the condition refers to an event, which is certain to occur, the interest depends upon it and is not contingent but vested. If it is an uncertain event, it is contingent for the condition may never be fulfilled and the transfer may never take effect. Thus a gift to 'A' on the death of 'B' creates a vested interest in 'A' even during 'B's life-time, for there is nothing more certain than death. But a gift to 'A' on the marriage of 'B' creates only a contingent interest, for B may never marry, but that contingent interest becomes vested if and when 'B' marries.

Note 16 : Test of value of registration – When it is necessary to determine whether an instrument other than a deed of gift purports or operates to create an interest of the value of Rs 100 or upwards in immovable property within the meaning of Section 17(1) (b) the test of value is the consideration stated in the instrument (Nane Vs. Anant (1877) 2353,354). This in the case of a sale the price stated in the deed and not the actual value must be regarded as the value for registration.

Note 17 : The value referred to above is the value of the right title or interest in immovable property on the date of execution of the document.

Note 18 : For the purpose of determining whether a document is compulsorily or optionally registrable, the value of the immovable property alone affected by the deed shall be taken into account.

(c) Non-testamentary instrument 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 as mentioned in Section 17 (1) (b).

Note 1 : A receipt to be compulsorily registrable under this clause must satisfy the following conditions-

- (i) it must be the receipt of a consideration; and
- (ii) it must be on the face of it an acknowledgement for the receipt of some consideration on account of the creation declaration, assignment, limitation and extinction of an interest of the value of Rs 100 or upwards in immovable property.

Note 2 : the term “consideration” used is a technical term and it implies that the person to whom the money is paid, himself declares, limits or extinguishes his interest in immovable property in consideration of such payment. A mere receipt does not acknowledge the receipt or payment of “ a consideration”.

Note 3 : Even when the amount acknowledged as received is less than Rs 100 the document is compulsorily registrable if the consideration is of value of one hundred rupees and upwards. But when the amount acknowledged as paid amounts to one hundred rupees and upwards by reason of interest having been charged on deferred payments or otherwise, the document is optionally registrable. Thus a receipt for Rs 50 being a portion of the consideration for a rate of Rs 200 is compulsorily registerable under this section and a receipt for Rs 100 due on account of the consideration for the sale for Rs 90 the sum of Rs 100 being made up of Rs 90 plus interest up to the date of payment is optionally registrable under Section 18 (b) of the Act.

Note 4 : Sub Section (c) should be read with sub section (b) of Section 17 (1), sub-section 9(b) applies to instruments which themselves purport for operate to create etc. any right, title or interest in immovable property of the value of Rs 100 or more. Sub-section (c) applies to documents which, though not purporting or operating themselves to create any such right etc. but acknowledge the receipt of payment of consideration on amount of the creation etc. of any such title, right or interest. In other words, this class of documents is compulsorily registrable if the original documents to which they relate to were compulsorily registrable if the original documents were optionally registrable, the subsequent receipts are also optionally registrable. Thus 'A' executes a sale deed in favour of 'B' for Rs 75 'B' pays the amount at a later date with some interest, the total exceeding Rs 100. The receipt is not compulsorily registrable. If the sale price was Rs 100 or more, and 'B' pays the amount in whole or in part to A and grants receipts for the amount, such receipts, eventhough for less than Rs 100 are registrable.

(d) Lease of immovable property from year to year or for any term exceeding one year or reserving a yearly rent.

“Lease” is defined in the Transfer of Property Act as to mean 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 to be paid or of money, a share of crops, service or any other thing of value to be rendered periodically or on specified occasions to the transferor by the transferee, who accept the transfer on such terms. There are thus five essentials of a lease, viz.

(i) the parties that is lessor (land lord) and lessee (tenant)

(ii) the subject matter or immovable property.

(iii) the demise or partial transfer. The words “transfer of right to enjoy such property” indicate that all the rights of the ownership are not transferred. The estate transferred to the lessee is called leasehold and the estate remaining in the lessor is called the ‘reversion’.

(iv) the term or period that is the duration of the tenancy. There are three types of leases recognized under this category.

(a) leases for a certain time, (b) periodic leases or leases of uncertain duration and (c) lease in perpetuity.

(v) the consideration; the consideration is either the rent or the premium. The premium is the price paid or promised to be paid in consideration of the demise. The consideration may be rent plus premium or rent alone or premium alone. The premium or price may sometime be an outstanding debt.

(Benic Prasad V. Mulchand 1910 (6) Nag. L.R 65, 61. C.817)

If payment is in consideration of being let in possession, it is a premium even if it is to be paid in instalments, and not advance rent.

Note : The State Government may by an order published in the official Gazette, exempt from the necessity for compulsory registration any lease executed in any district or part of a district, the period of which does not exceed five years and the annual rent reserved does not exceed fifty rupees. The two conditions must be fulfilled before a lease can be exempted under this clause. It is not necessary that the annual rent should be reserved, what is necessary is that if an annual rent is reserved it should not exceed Rs 50.

(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 immovable property.

This clause provides that the following instruments require registration.

- (i) Instruments transferring the decree or order of a court
- (ii) Instruments assigning the decree or order of a court.
- (iii) Any award by a court.

Provided that such decree, order or award operates to create, declare etc, any interest in immovable property of the value of Rs 100 or more.

It is because the right of transfer is incidental to and inseparable from the beneficial ownership of the property.

(Section 10 of the Transfer of Property Act).

(f) Written authorities to adopt a son executed after 1st January 1872 and not conferred by a will shall also be registered. Wills are not compulsorily registrable. Authority to adopt conferred by a will need not necessarily be registered.

(Section 17 (3) of Regn. Act).

This sub-section is confined only to authorities conferred by an individual upon his wife to adopt someone after the husband's death.

7.3. Exemption from compulsory registration – Under the provisions of Section 17 (1) (b) and (c) non testamentary documents mentioned therein must be registered compulsorily. But sub-section 2 of section 17 provides certain exceptions to this rule. Instruments exempted from compulsory registration are :

- (i) any composition deed,
- (ii) any instrument relating to shares in a joint stock company, notwithstanding that the assets of such company consist in whole or in part of immovable property,
- (iii) any debenture issued by any such company and not creating, declaring assigning, limiting or extinguishing any right, title or interest to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the company has mortgaged, conveyed, or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures,
- (iv) any endorsement upon or transfer of any debenture issued by any such company,
- (v) any document other than the documents specified in sub-section (1A) not itself creating declaring, assigning limiting or extinguishing any right title or interest of the value of one hundred rupees and upwards to or in immovable property. But merely creating a right to obtain another document which will

when executed, create, declare, assign, limit or extinguish any such right, title or interest, or

- (vi) any decree or order of a court except a decree or order expressed to be made on a compromise and comprising immovable property other than which is the subject matter of the suit or proceedings,
- (vii) any grant of immovable property by the Government,
- (viii) any instrument of partition made by a Revenue officer,
- (ix) any order granted under the charitable Endowments Act, 1890 (Act, VI of 1890) vesting any property in the Treasurer of charitable endowments or divesting any such treasurer of any property,
- (x) any endorsement on a mortgage deed acknowledging the payment of the whole or any part of the mortgage money and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage,
- (xi) any certificate of sale granted to the purchaser of any property sold by public auction by civil or Revenue officer.

Note 1 : A document purporting or operating to affect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of payment of any earnest money or of the whole or any part of the purchase money. (*Explanation to Section 17 (2)*).

7.4. Document of which registration is optional. – Section 18 of the Act enumerates the instruments which are considered as optionally registrable. They are :

- (i) Instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest.
- (ii) All documents which affect any right, title or interest of a value less than one hundred rupees over immovable properties,

- (iii) All leases of immovable property for any term not exceeding one year and leases exempted under Section 17.
- (iv) Wills.
- (v) All other documents not required to be registered by Section 17 of the Act.
- (vi) Instruments concerning movable properties.

7.5. Place for registering documents and authority to register – (a) Documents relating to immovable property shall be registered in the office of the Sub Registrar within whose jurisdiction the whole or any part of such immovable property is situate. Copies of decrees or orders relating to immovable properties shall be registered only in the office of the Sub Registrar in whose sub district the original decree or order was made. Other types of copies of decree or orders may be registered in the office of any sub registrar at which all the persons claiming under the decree or order desire them to be registered.

Other documents may be presented for registration either in the office of the Sub Registrar in whose sub district the document was executed or in the office of any other Sub Registrar under the State Government at which the parties to the document desire to have it registered. (*Sections 28 and 29 of the Act*).

(b) Section 30 of the Act empowers the Registrar of any district to register any document, in his discretion, which might be registered by any Sub Registrar subordinate to him.

(c) In ordinary cases, acceptance for registration of documents or deposit of wills can be made only at the office of registering authority. But in certain cases mentioned in the proviso to Section 31, 33(1) and 38, the registering authority may attend at a private residence for the purpose of accepting or recording the admission of execution of a document or for accepting for deposit a sealed cover containing a will or for attesting a power

of attorney or accepting an application for cancellation of a power of attorney.
(Section 31).

7.6. Procedure where immovable property covered by the documents is situated in several sub districts/districts. (Section 64, 65, 66) - Where a document relate to immovable property situated in several registration sub districts, a memorandum of the document registered is prepared by the registering officer in the prescribed form showing the value of the properties, stamp duty and registration fees collected etc. and sent to every other Sub Registrar in whose sub district any part of the property is situate where the document relates to immovable property situated in several districts the memorandum is sent to the Registrar of the respective districts. The memoranda thus received by the Sub Registrars and District Registrars will be filed in their Book I. The Registrar who received the memorandum will forward one copy of the memorandum to the Sub Registrar concerned in whose jurisdiction the property is situated, who will also file it in his Book I.

7.7. Time of presenting documents for Registration (Sections 23, 26 & 27) - (a) All documents other than wills shall be presented for registration within four months from the date of their execution. Wills may be presented for registration or deposited at any time.

Note : In computing the period of four months the day on which the document is executed should be excluded (Section 9(1) of the General clauses Act 1897).

(b) Where a document executed outside India by all or any of the parties is not presented for registration in India within four months from the date of its execution, the registering officer may in his discretion accept the document for registration on payment of proper registration fee if he is satisfied that the instrument was so executed and that it has been presented for registration within four months after its arrival in India.

7.8. Registration of documents presented after the expiry of four months from its execution – Section 25 of the Registration Act give discretionary powers to the Registrar to direct to refuse or to direct to accept a

document for registration where it is presented after four months from the date of its execution and the delay in presenting does not exceed four months subject to the payment of fine not exceeding ten times of the registration fees.

Section 34 of the Act provides that no document shall be registered unless the persons executing the documents appear before the registering officer within the time allowed for presentation of the document under Section 23 of the Act. The time allowed for presentation of the document is four months from the date of execution and this may be enlarged under Section 25 so as not to exceed eight months from the date of execution. The proviso to section 34 provides that in case where the persons fail to appear in time and where the delay in appearing does not exceed four months, the Registrar may direct that on payment of a fine not exceeding ten times the amount of registration fees in addition to the fine payable under Section 25 the document may be registered. Thus the proviso provides for a further delay of four months over and above the delay condoned under Section 25. The result is that while the maximum period for presentation of documents is eight months, that for appearance by the executants is twelve months.

Note: If the last date allowed for the presentation of documents and appearance of parties with reference to the foregoing provisions, happens to be a holiday they shall be considered as done in due time if the documents is duly presented or appearance made on the next working day.

7.9. Fine for the delay of presentation and appearance – The levy of fines for delay in presentation and appearance under Section 25 and 34 is regulated according to the rates prescribed in Rule 44 of the Kerala Registration Rules. The rate of fine leviable is given below :

When the delay does not exceed one week after the expiration of the time allowed for presentation or appearance.	-	A fine equal to the Registration fee.
When the delay exceeds one week but does not exceed one calendar month.	-	A fine equal to twice the Registration fee.
When the delay exceeds one month but does not exceed two months.	-	A fine equal to five times the Registration fee.
When the delay exceeds two months but does not exceed four months.	-	A fine equal to ten times the Registration fee.

Notes

- (1) The fine leviable is in addition to the proper registration fee.
- (2) The term registration fee used above does not include the fee payable for registration under Section 30 or for filing a translation under Section 19 of the Act or fee for copies and memoranda or attendance at a private residence or extra copying fee.
- (3) The date of execution is the date on which the document is signed by the parties and the date which the document bears at its head need not be the date of its execution though it is prima facie.
- (4) An alteration in the date of execution of a document made ostensibly for the purpose of evading the payment of penalty leviable under Sections 25 and 34 of the Act should not be recognised and the document shall be treated as having been executed on the date originally entered therein.
- (5) When a document is presented in duplicate or triplicate the fine leviable shall be calculated as for one document only.
- (6) Whenever a fine for delay in appearance is levied on more occasions than one in respect of one and the same document the amount of fine leviable on the second and subsequent occasions shall be the difference, if any, between the total amount leviable up to the 2nd or subsequent occasion and the fine or fines previously levied in respect of each document (**Rule 46**).

7.10. Powers of Inspector General of Registration to remit fines – Under Section 70 of the Act, the Inspector General of Registration is competent to remit either wholly or in part the difference between any fine levied under Section 25 or Section 34 and the amount of the proper registration fee.

7.11. Examination of documents by the registering authority and procedure of registration – On presentation of a document for registration before the registering officer he shall see that the document is presented in accordance with the provisions of the Act and the rules made thereunder.

Some of the points to be looked into by the registering authority are given below :

- (1) Whether the property involved is situated within his jurisdiction in the case of documents relating to land. (*Section 28*)
- (2) In case the document is in a language not understood by the registering authority and not commonly used in the district whether a true translation of the document in the language commonly used in the district is attached (*Section 19*)
- (3) The documents do not contain interlineations, blanks, erasures or alterations etc. (*Section 20*)
- (4) The documents relating to immovable property contain descriptions of such property sufficient to identify it.

The following particulars have to be furnished by the parties in such documents as per rule 23 of Registration Rules :

- (a) Registration District.
 - (b) Registration Sub-district.
 - (c) Taluk, Firka or proprietary estate.
 - (d) Amsom, Village or Pakuthy – Desom, Muri, Kara or chery, Hamlet or suburban in which the property is situated.
 - (e) The survey and sub-division number or numbers.
 - (f) The full description of land, its boundary, nature and tenure and the extent of each survey of sub-division number of which the property is comprised of.
- (5) If the property consists of houses in town it should be described by its number and as situate on the north or other side of the street or road to which they face. Other houses shall be described by its lane (*Section 21*)
 - (6) The documents are presented for registration within the period prescribed. (*Sections 23, 24, 25 & 26*)

- (7) The name of the purchaser of the stamp paper or paper used for it tally with the name and address of any of the parties to it (**Rule 30 (ii)**).
- (8) That the document has been attested by the document writer and the scribe (**Rule 30(i)**).
- (9) If the document involving a gift, settlement, partition, transfer of lease, conveyance, transfer of kanom or transfer of lease with possession or any other transfer of property inter vivos (among living persons) which is subject to 'ad valorem' duty relates to a number of items of property, the value thereof has been specified separately in respect of each item in the statement in form I prescribed in the Kerala Stamp (Prevention of undervaluation) Rules, 1968.
- (10) In the case of transfer of immovable property valued at more than Rs 5,00,000 a certificate from the Income Tax Officer to the effect that the transferer of such property has paid or made satisfactory provisions for the payment of all existing liabilities under certain direct tax enactments or that the registration will not prejudicially affect the recovery of such liabilities has been produced before the registering authority (**Section 230 A of the Income Tax Act, 1961**).
- (11) No Registering officer shall register any document which purports to transfer immovable property which lies within the area comprised in the "Trivandrum Development Authority" or the "Greater Cochin Development Authority" of such value exceeding 10 lakh rupees unless a certificate from the appropriate authority constituted by the Central Government under Section 269 UB of the Income Tax Act, 1961 to the effect that it has no objection to the transfer of such property by such document is obtained and filed. (**Rule 30 (iii-A)**).
- (12) The date of execution is given in the document.
- (13) The date of execution is not prior to the date of purchase of the stamp paper (**Rule 31**).

Note: When a document consists of two or more stamp papers purchased on different dates and the date of execution is found to be prior to

the date of purchase of any one of the stamp paper the document shall be treated as antedated.

(14) The survey numbers and sub-divisions shown in the document tally with the survey number and sub-divisions in the subsidiary indices and settlement register (**Rule 36**).

As soon as a document is admitted for registration the registering authority will note in the document, the day, hour and the place of presentation and the total amount of fees realized such as registration fee, memoranda fee, copying fee, fee for endorsement under Section 58 (i) etc. The signature of the person presenting the document will also be endorsed by the registering authority. The particulars of the document will be entered in Account 'A' giving it a general serial number and a serial number in consecutive order according to the Register Book in which it is to be filed. This number will be allotted to the document also. The particulars such as classification of document, value or consideration, value of stamp duty, registration and other fees realised. Reference to Book number and volume, date of presentation etc will be noted in Account A. A receipt for the fee for registration and other service will be issued in form No. 18.

A duplicate of the document in the prescribed form will also be presented along with the document for filing in the Book Volumes concerned. Where the amount of consideration mentioned in the document presented for registration is paid before the Registering officer, the signatures of the payer and the payee will be obtained before the endorsement of payment by the registering officer. He will also obtain and endorse a signature of all persons admitting the execution of the documents or of their representative if the execution has been admitted by such representative, and the signature of all persons examined in reference to such documents. The registering officer will then endorse on the document a certificate containing the word 'registered' together with the number and page of the book in which the document is filed, the hour and date of presentation and the amount of registration fee realized after registering the document the original will be returned to the claimants.

A registered document operates from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration.

7.12. Registration of wills and authorities to adopt – A will or authority to adopt presented for registration by the testator or donor is registered in the same manner as any other document. But a will or authority to adopt presented for registration by any other person entitled to present it can be registered only if the registering officer is satisfied that it was executed by the testator or donor and that the testator or donor is dead that the persons presenting the documents is entitled to present it. These documents are filed in Book 3.

7.13. Deposit and withdrawals of wills - On receipt of the sealed cover containing the will the Registrar will first satisfy himself that the person presenting it is the testator or his agent. Then he will proceed to transcribe the name of the testator and that of his agent and the nature of transaction superscribed on the cover into Register Book No. 5 and note the year, month, day and hour of such presentation on the cover and in the Book after the necessary fee has been paid by the testator or his agent.

For withdrawing a sealed cover deposited the testator shall apply to the Registrar with the required fee either directly or through his agent and Registrar after verification of the identity of the person will deliver the cover.

7.14. Rectification and cancellation of deeds – Rectification or cancellation deeds are registered in the same class of Book as that in which the original documents were filed.

7.15. Refusal of registration – When a document is refused to be registered due to the non compliance of the provisions of the Act and the rules made there under except on the ground that the document has been presented in the wrong office or in an office where the acceptance of the document is left to the discretions of the Registering officer, the registering officer will make an order of refusal in Book No. 2 and endorse the work ‘Registration Refused’ on the document.

7.16. Responsibility of the Registering authority – A registering officer will be held liable for any loss to Government which may arise from neglect on his part in the registration of a document, the making of a search or the grant of a copy of a document or in any other case. The registration of a deed not duly stamped under the provision of the stamp Act for the time being in force shall for this purpose be deemed to cause loss to Government to the extent of the deficit duty.

When an insufficiently stamped document is registered by a registering officer, he is liable to make good the stamp duty lost to Government. Such recoveries will be recorded in the Register of special recoveries.

7.17. Impounding of documents - When any document presented for registration is not duly stamped as per the Kerala Stamp Act 1959, the Sub Registrar under Rules 38(ii) and 38 (iii) of the Registration Rules (Kerala) is required to impound the document and forward it to the District Registrar for determination of the correct amount of duty chargeable on that document.

CHAPTER VIII

LEVY AND COLLECTION OF FEES

8.1 Nature of fees – The revenue under the Registration Act consists mainly of fees collected for various services rendered by the department under the provisions of the Act and Notification issued under Section 78(1) *ibid* by the Government of Kerala from time to time. Fees are leviable for the following services.

- 1) the registration of documents.
- 2) searching the registers.
- 3) making or granting copies or reasons entries or documents before, on or after registration.
- 4) registration under Section 30.
- 5) issue of commission.
- 6) filing translations.
- 7) attending at private residences.
- 8) Endorsement of the payment/receipt of consideration under Section 58(i) (c). Deposit and withdrawal of wills.
- 9) attesting a power of attorney and
- 10) such other matters as appear to the State Government necessary for effecting the purpose of the Act.

Section 78(1) of the Act also empowers the State Government to prescribe a table of fees leviable for the various services rendered as aforesaid. Accordingly the State Government have prescribed a table of fees effective from 1st January 1978.

8.2. Powers to remit fees – Under the provisions of Section 78(2) introduced with effect from 1.1.1968 as per Act 7 of 1968, the State Government is empowered in public interest to remit fees payable in respect of any of the matters mentioned in Section 78(1).

A few remissions and reductions of registration fee are also provided for under the table of fees prescribed by Government.

8.3. Basis for the levy of fee for Registration – The levy of registration fee in respect of a document to be registered in Book 1 and 4 is based on the value of the document unless otherwise specified in the table of fee. No fee is charged for registration of a document in Book 2. Fees for registration of documents in Books 3 and 5 are specified in the table of fees prescribed by Government.

8.4. Principles for the determination of the nature and value of documents for purposes of levy of registration fee – The principles adopted for determining the nature and value of documents for purpose of stamp duty shall, unless otherwise directed be adopted for the levy of registration fee also. Thus in the case of a sale, the price stated in the deed and not the actual value must be regarded as the value for registration.

Note 1: A document so framed as to come within two or more description shall, when the fees leviable are different, be chargeable only with the highest of such fees.

Note 2: When the value of petty transactions can not be determined precisely the parties will be asked to enter the approximate value, failing which they will be liable to be charged a maximum fee of Rs. 50.

Note 3: In assessing a document to registration fee penal clauses are left out of accounts.

8.5 Fees for searches - Under the provisions of section 57 any person on payment of the required fee can inspect the entries in Book 1 and 2 and can obtain copies of entries in those books. Book 3 and 4 can be inspected only by the sub registrar for granting copies of entries therein in payment of the required fee by the persons requiring such copies.

There are two types of searches namely single search that is search or inspection of a single entry of a particular year and general search that is inspection of any number of documents or entries relating to one and the same property or executed by or in favour of one and the same individual.

8.6 Search fee shall not be realized for the grant of copy of documents in the following cases -

- a. admitted to registration, but not filed

- b. presented but not yet admitted or
- c. the registration of which has been refused.

8.7. Fees for searches are payable in advance. The fee for search shall entitle the applicant to read the entry for the finding of which the fees has been paid or to have it read to him, but, it shall not entitle him to take a copy of the entry. If a search proves fruitless, the fees shall not be refunded, but the applicant may, if he so desires, be granted a certificate stating that the entry sought for has not been found in the book.

8.8. Only one search fee shall be levied in the following cases -

(i) For making search in respect of a single document or in respect of acts and encumbrances on one and the same property in two or more offices because of the transfer of a village from one registration sub district to another.

(ii) for making a general search in respect of one and the same property in the records of an office which was once in existence, was abolished and then revived.

(iii) For making a search for acts and encumbrances in respect of one and the same property when, owing to the splitting up or grouping together of villages, as the result of survey and settlement operations, the search has to be made in the indices pertaining to more than one village.

8.9. When a search is made in respect of more than one entry or more than one document executed by or in favour of one and the same individual, search fee shall be levied in respect of each office in which the nominal indices have to be searched.

8.10. When the property is situated in more registration sub-districts than one or in a village which has been transferred from one sub-district to another, application for search may be presented to any of the Sub-Registrars in whose jurisdiction the property or any portion of it is situated or to which the village is or has been attached. Such an application shall be accompanied by a deposit of money sufficient to cover the prescribed search fee. The Sub Registrar to whom the application was made will make the search in the records of his office and prepare the certificate. Then he will send a copy of the application

to other Sub Registrar(s) concerned who after making necessary search will furnish to the former a certificate. The certificates prepared in different offices will then be delivered to the party after refunding to or collecting from him any surplus or deficit fee. The amount collected under this will be brought to account in the office of the Sub Registrar to whom the application was made.

8.11. Where search is to be conducted in respect of any entry in a book which has been transferred to the office of the District Registrar, application may be presented to the District Registrar or Sub Registrar. Application for such search made to the sub registrar should be accompanied by the requisite stamps and other papers and by a deposit of money sufficient to cover the prescribed search fee and the estimated cost of copying charges and postage. The Sub Registrar will endorse on the application the number and year of the document, particulars of volume etc. and forward it with the stamp and other papers to the District Registrar. The latter will prepare a copy and send it to the Sub Registrar with a bill for copying, on receipt of which the Sub Registrar will deliver the copy to the party after refunding to or collecting from him any surplus or deficiency of the amount deposited. Amount collected will be brought to account in the office of the Sub Registrar to whom the original applications were made.

8.12. No fee is leviable in respect of searches conducted by or copies granted to officers of the state Government for bonafide public purposes.

8.13. Fees for certificate of encumbrances - Certificate of encumbrances is a statement certified by the registering officer, containing a complete list of all acts and encumbrances affecting the property in question. A copy of each certificate issued is retained in the registering office in a separate file book in which the various certificates are numbered consecutively in a separate series for each calendar year.

For the purpose of fee, the determination of one and the same property shall be with reference to the ownership at the time of application for a certificate of encumbrances, but the following may in each case be treated as one and the same property.

- (a) A single survey field or a house owned by more than one person.

(b) Lands used for wet and dry cultivation situated in the same village and owned by a person or jointly by two or more persons, whether the parcels are contiguous to one another or not and whether any buildings are situated on such land or not.

(c) A field or garden and the house situated on it.

(d) Buildings or houses described as being situated within the same boundaries and forming together one property.

Note: Joint ownership shall be distinguished from ownership of the same property by two or more individuals with distinct interest. In the former case the property shall be treated as one and the same property and in the latter as several properties.

8.14 Fees for private attendance - In the case of attendance at private residence separate receipts are issued for (1) attendance fee (2) registration fees. Receipts for private attendance fee are issued before proceeding to the residence. Besides attendance fees, travelling allowance for officers and batta for Peons if any, realized are also included in the receipt. For document registration fee realized at residence, provisional receipts are issued. For this purpose, loose sheets of a receipt book kept apart for this purpose are utilized both for counterfoils and receipts. After return of the registering officer, counterfoils of the receipt are pasted on to the appropriate blank counterfoils in the receipt books. The remaining receipts in the detached receipt books will be kept in the personal custody of the Registering officer and accounted for by him.

Receipts for documents are granted in the serial order of the number assigned to the document.

8.15 Fees for enquiry before registration of wills and authorities to adopt under Section 41 (2) - When a will or authority to adopt is presented for registration after the death of the testator or the donor, the registering officer shall conduct an enquiry contemplated by Rule 31 and the cost of the services of notice of enquiry and its publication in Government Gazette shall be levied in advance from the person who presents the document for

registration. The cost of publication in the Gazette shall be remitted into the treasury by the presentent.

8.16. Fee for revocation of a power of attorney - Under the provisions of Rule 64 of the Registration Rules, a party desirous of revoking a power of attorney granted by him for registration purposes being unable to obtain its surrender from its grantee may apply to the registering officer in whose jurisdiction such power was originally attested or registered to get it revoked. A fee of one rupee is charged on such an application.

8.17. Collection of fees - A receipt in the prescribed form is given for every fee or fine realized by a registering officer. Where the fees consist of several items, each item shall be separately entered both in the receipt issued to the party and in the carbon duplicate retained so as to admit of any overcharge being traced. In the case of copying fees the number of pages or words for which fee was levied and in the case of mileage the number of miles to be travelled shall be entered.

The form of receipt used in the registration department is usually form 18. The requisite entries shall be made and receipt prepared in duplicate. The original receipt is issued to the party and the carbon duplicate retained.

8.18 Miscellaneous Receipts – Apart from the fees levied under the foregoing provisions, the department also collect revenue through sale of copying sheets, printed forms etc. These forms and papers are priced forms and along with their cost, sales tax at the rate in force will be collected. For the sale of priced forms receipts in TR 5 are issued. For the sale of copying sheets receipts are issued in form I (invoice).

8.19 Refunds – (a) It is for the registering officer, who is responsible for levying the fee to determine in the first instance, the amount of fees to be realized. After it has been paid, the presenting party may, if he thinks that he has been over charged apply to the Inspector General of Registration. Inspector General of Registration will order refund if, in his opinion there has been an excess levy. If such application for refund is presented six months after the date of levy of fee it will not be considered by the Inspector General of Registration.

In the event of registration being refused any fee or fine which may have been levied shall be refunded except fees for commissions, summons, attendances and travelling allowances where such fees and allowances have been earned. Undisbursed process fees, batta and traveling allowances levied in connection with documents presented for registration shall also be refunded.

(b) Authority to refund. – Registrars and Sub Registrars are authorized to refund.

- (i) Fees and fines levied on documents refused registration or returned unregistered and
- (ii) Unearned fees for commissions, summons, attendances and traveling allowances levied in connection with appeals, deposits of wills, powers of attorney presented for authentication or documents presented for registration.

The previous sanction of the Inspector General of Registration is to be obtained for the refund of any collection other than those referred to above.

(c) Procedure of refund – On receipt of orders of sanction for refund from the Inspector General of Registration and also where the Registrar/Sub Registrar himself is competent to make the refund, the Registrar/Sub Registrar prepares the refund order and forward it to the Treasury officer concerned for verification of credit in the treasury accounts. At the same time the particulars are noted against the original entry of receipt of the amount in the departmental accounts and in the counterfoil of the receipt issued to the party so that a refund of the same amount may not be made again. A note of the refund is also made at the foot of the entry concerned in the Registrar Book in all case.

On receipt of the refund order from the treasury with the certificate of verification, the Sub Registrar shall submit the same to the District Registrar for counter signature, if necessary. The refund order shall then be handed over to the applicant after obtaining proper acknowledgement.

(d) Amount refundable not claimed – Fees not refunded on documents refused registration or returned unregistered for a period of two years from the date on which they become refundable are held to have lapsed to Government. Six months prior to the expiry of the period, a notice will be

sent by registered post to the party concerned, wherever possible and also will be published in the Government Gazette, stating that no claim for refund will be entertained unless preferred within six months from the date of notice.

(e) Undisbursed process fees, batta or traveling allowance will be credited to Government, if they are not claimed by the parties concerned within six months from the date on which they became claimable. One month prior to the expiry of the period a notice will be issued by registered post to the party concerned. Wherever possible the notice will also be published in the Government Gazette, intimating the amount due to the claimants and the date on which it should be claimed with the further intimation that if the amount is not claimed within the specified date it will be credited to Government.

8.20 Remittance into Treasury – At stations where there is a treasury, daily collections should be remitted into the treasury the next day. In other cases, collections should be remitted to the treasury usually four times a month, that is on the first, ninth, nineteenth and the last remittance for the month being made two days before the last working day of the month, provided that if any such day happens to be a holiday, collections including those if any of the preceding holidays should be remitted on the next working day. Whenever the collections in an office exceeds Rs 500, remittance should be made the next day irrespective of the above time limit and without in any way postponing the due dates of instalments of remittance even if it happens to fall on the very next day. (Order 304(a) of Kerala Registration Manual Part I Volume II). A special remittance of the collection up to the closing date of the financial year should be made on the closing date over and above the remittances prescribed above as laid down in Article 11 of Kerala Financial Code Vol. I Where owing to unavoidable reasons, a remittance is not made on the due date, a report should be made by the Sub Registrar to the District Registrar explaining the reason for such non remittance. The amount should be remitted on the next working day.

8.21 Reconciliation – A monthly list of remittances is prepared and forwarded by the Sub Registrar at non treasury stations to the Sub Registrar at the treasury stations for verification of remittance with the treasury figures

immediately after the last remittance of the month. The Sub Registrar at the Treasury stations verifies these statements as well as the remittances made by his office with treasury records and forwards the statements to the District Registrar who checks the 'statements of receipts and remittances' already submitted to him by each Sub Registrar.

CHAPTER IX

REGISTERS AND RECORDS MAINTAINED IN THE REGISTRATION OFFICES

9.1 Important Registers – The important registers maintained in the Registration offices are :-

- (i) Register Books containing documents registered
- (ii) Current indices

9.2 Register Books - (a) Register Books kept in the Registration offices are 1,2,3,4 and 5. Books 1 to 4 are kept in all Registration offices and Book 5 is kept in the office of the District Registrars only

(i) Book 1 (“Register of non-testamentary documents relating to immovable property”)

The documents and memoranda relating to non-testamentary dispositions of immovable property registered under Section 17, 18 and 89 of the Act are filed in this book.

(ii) Book 2 (“Records of reasons for refusal to register”)

In this book, the reasons for refusal to register a document under Section 71 of the Act are recorded.

(iii) Book 3 (“Register of wills and authorities to adopt”)

In this book wills and authorities to adopt alone are filed.

(iv) Book 4 (“Miscellaneous Register”)

All documents registered under clause (d) and (f) of Section 18 which do not relate to immovable properties are filed in this volume.

(v) Book 5 (“Register of deposits of wills”)

In this Book the names of the testators or their agents, statement regarding the nature of document etc, in respect of a will deposited under Section 43 of the Act are recorded.

(b) A file book corresponding to Book 1 is also maintained in each registering office. The following records are filed in this file book.

- (i) Copies of memoranda of registered documents received under section 64 to 67 of the Act.

- (ii) Copies of certificates and orders and instruments received under section 89 of the Act and also under the Civil Procedure Code and copies of final decree under the Civil Rules of practice.
- (iii) Returns of land acquired under the Land Acquisition Act.
- (iv) File.
- (c) A separate file is kept for filing translations of power of attorney.

9.3 Current indices – Current indices are of much importance since they form the only guide for tracing previous documents and encumbrances affecting title to property. They contain the contents of every documents filed in the Register Books. These indices are prepared immediately after the registration of documents. There are four types of current indices as explained below.

(i) **Index No. I**

Contains the names and additions of all persons executing and of all persons claiming under every document of which a true copy, or memorandum is filed in Book 1. This is maintained in alphabetical order.

(ii) **Index No. II**

Contains the particulars mentioned in Section 21 of the Act, namely registration sub-district, Village, Survey and Sub-division number and addresses of executants and claimants, extent of property etc. and other particulars such as nature and value of transactions, date of execution, presentation and registration. Stamp duty and registration fee collected, registration number of document, reference to page No. and Volume of Book I in which it is filed etc, in respect of documents filed in Book I. In addition to these particulars, a note of previous transactions if any, on the property is also given in red ink below the entry of the above particulars. The index is maintained separately for each revenue village. Where the property to which the document relates is situated in several villages in the same or different sub-district, the entry in column provided for noting village will contain a reference to other villages and sub-districts, if any.

(iii) **Index No. III**

Contains the names and additions of all persons executing every will and authority of which a true copy is filed in book 3 and executors and persons respectively appointed thereunder and after the death of the testator or donor (but not before) and the names and additions of all persons claiming under the same.

(iv) **Index No. IV**

Contains the names and additions of all persons executing and of all persons claiming every document of which a true copy is filed in Book 4.

9.4 Subsidiary Index - The Registering officers have to maintain a subsidiary index to index II in the prescribed form in order to show at a glance all transactions affecting each survey number and sub division number. These indices also are maintained villagewar as in the case of index No. II. As and when documents are registered, the number and year of the documents are entered against the survey number and sub division number using district alphabet for different categories of transactions. For examples S 198/74 noted against a survey number represents sale due No. 198 of 1974 in respect of the property included in that survey number.

9.5 Maintenance of indices – The registering officers are responsible for the proper maintenance and accuracy of index register. He should initial each entry of the document, each correction and also each page as and when it is completed.

9.6 Miscellaneous Registers – The following registers are also maintained in the registration offices: -

- (1) Minute Book (Rule 41(i))
- (2) Register of impounded documents. (order No. 369 of Kerala Registration Manual Part I Volume II).
- (3) Alphabetical index to Book 5 (in the office of the Dist. Registrar only) (Rule 153)
- (4) Register of preparation and examination of Index, (Rule 152).
- (5) Register of revocation of power of attorney. (Rule 64 (ii))

- (6) Register of Thumb impression. (Rule 73)
- (7) Register of sealed covers. (Rules 93 (v))
- (8) File of Search applications.
- (9) Register of appeal on refusal of registration (Rule 197)
- (10) File of translation (Rule 17)
- (11) Deposition Book (Rule 179 (k) (ii))
- (12) File of encumbrance certificate. (Rule 174)
- (13) Register of unclaimed documents (Rule 221)
- (14) Register of records maintained. (Rule 218)
- (15) Register of receipts and disposal of copies and memoranda (Section 64 to 67) and documents files under Section 89 of the Indian Registration Act. (In Registrars offices only) Order 199(b) of Registration Manual Part I Vol II.)
- (16) File of power of attorney. (Order No. 369 of Kerala Registration Manual Part I Vol. II)
- (17) Register of persons exempted from appearance in Civil Courts and Offices.
- (18) Register of documents discredited by Civil Courts.
- (19) Register of power of attorney.
- (20) Register of records sent to courts.
- (21) Register of receipts and collections.
- (22) Register of petitions.
- (23) Stock book of printed forms.
- (24) Register of surcharge duty.
- (25) Register of liabilities and recoveries.
- (26) Office copy of private attendance reports.
- (27) Register of fines.
- (28) Register of documents presented and admitted after the prescribed time.
- (29) Memo and patta transfer application book.
- (30) Register of documents undervalued and action taken thereon.
- (31) Audit objection settlement Register.

9.7 Accounts relating to fee collections – The following accounts and registers in respect of collection, accounting and remittance and reconciliation of fees are maintained in the registering offices.

- (1) T.R. 5 Receipt Books.
- (2) Receipts Books in form No. 18.
- (3) Invoice form. (for sale of copying sheets)
- (4) Stock register of receipt books.
- (5) Account A
- (6) Account B
- (7) Account C
- (8) Account D
- (9) Account E
- (10) Account F
- (11) Account G
- (12) Account H
- (13) Challan files
- (14) Cash Book.
- (15) Statement of monthly reconciliation etc.
- (16) Register of remittances. (Order 303)
- (17) Refund register.
- (18) Register of special recoveries
- (19) Register showing fees realized. (Order No. 344 of Kerala Registration Manual Part I Volume II)
- (20) Register showing stamp duty realized. (Order no. 345 of Kerala Registration Manual Part I Volume II)

9.8 Account 'A' shows the daily registration of documents in Book 1, 3 and 4 and the fees realized thereon for such registration thereon. Account 'B' shows miscellaneous fees realized other than fees for searches and copies and amounts entered in Accounts 'C'. Account C shows receipts and disbursements of fees received for private attendance, deficit stamp duty and penalty, subsistence allowances and batta allowances for witness etc. Account 'D' shows the number of applications for searches and copies received and fees realized therefore. Account 'E' shows the number of documents etc. returned by post. Account 'F' is a classified gist of various transactions

conducted in each day in the Sub Registry. Account 'G' is a daily account showing the numbers of documents admitted to registration, returned, unclaimed, application for copies and encumbrance certificates accepted and complied with etc. Account 'H' is the daily account showing the total collection under each account and the total cash balance at the close of the day.

CHAPTER X

THE KERALA CHITTIES ACT, 1975

10.1 Introduction – “Chitty” is a transaction by which one or more persons called the foreman or foremen enter into an agreement with a number of persons called subscribers, that every one of the contracting parties shall subscribe a certain amount of money or quantity of grains or other commodity by periodical instalments for a certain definite period and that each in his turn, as determined by lot or by auction or by both shall be entitled to the prize amount, whether payable in cash, kind or any other article of value or in such other manner as may be provided for in the agreement.

10.2 Registrars of Chitties – The Sub Registrar of the Registration Department are appointed ex-officio registrars of Chitties under Rule 3 of the Kerala Chitty Rules, 1975. for registration of the chitties proposed to be conducted within the limits of their jurisdiction.

10.3 Chitty amount, prize amount and discount - Chitty amount is the sum total of the contributions payable by all the subscribers for any instalment without any deduction for discount. The prize amount at which the chitty is bid is the chitty amount less the discount. In the case of a fraction of a ticket it includes the difference between the proportionate chitty amount and the discount on the particular fraction of the ticket. When the prize is payable in movables it means the value thereof at the time it becomes payable. The money or quantity of grain which a prize winner has, to forgo for the payment of veethapalisa, foreman’s commission or other expenses is called the discount.

10.4 Variola – Variola of a chitty is the document which contains the agreement between the subscribers and the foreman. Every variola filed by the foreman with the Sub Registrar shall bear the stamp as required by the Kerala Stamp Act.

10.5 Registration of chitties – (i) Conducting a chitty without registration is illegal. Conducting a chitty without registration will entail a fine upto Rs 2,000 (*Section 3(6)*)

(ii) However, if the chitty amount or the value of chitty is less than Rs. 100 such chitty need not be registered and the provision of the chitty Act are not applicable to such chitties. A licence shall however be obtained from the Sub-Registrar concerned for conducting such chitties after paying the required fees under Rule 20 of the chitties Act. In case the application for licence is rejected the licence fee will be refunded.

(iii) For the registration of chitty the foreman shall file with the Sub-Registrar in whose jurisdiction the chitty is proposed to be conducted with variola in duplicate. The Sub-Registrar will register and return it with an endorsement that it has been registered. The duplicate with the certificate that the chitty has been registered and recorded therein will be retained by the sub registrar.

10.6 Foreman to give adequate security – For the proper conduct of the chitty, the foreman shall execute a bond in favour of or in trust for the other subscribers charging property sufficient to the satisfaction of the Registrar for the realization of twice the amount of chitty. In the case of chitties the foreman may, instead of charging property for the realization of twice the amount of chitty, execute a bond depositing cash not less than the chitty amount in any approved bank.

10.7 Cash security – In the case of a chitty if cash is offered as security by the foreman, deposit in an approved bank an amount equal to the chitty amount or invest in Government Securities of the value of not less than one and half times the chitty amount and transfer the amount so deposited or the Government securities in favour of the Registrar to be held in trust by him as security for the due conduct of the chitty.

10.8 Immovable property offered as security – When immovable property is offered as security, the following procedure has been prescribed :-

(i) The foreman shall apply to the Sub Registrar in the prescribed form along with the encumbrance certificate for 24 years relating to the property and the documents of title to the property

(ii) The Sub Registrar shall conduct an inspection of the property, examine the records produced and satisfy himself as to the sufficiency of security for the realization of twice the amount.

(iii) Where the property offered as security is situated outside the jurisdiction of the Sub Registrar having jurisdiction over the chitty, the inspection of the property shall under the order of Inspector General of Registration be conducted by the Sub Registrar having jurisdiction over the property and he shall forward a report to the Sub Registrar concerned.

(iv) If the security offered is accepted as sufficient, the Sub Registrar shall record in writing on the application a certificate of sufficiency of value. If it is not accepted an endorsement to that effect will be given to the applicant.

(v) the Sub Registrar inspecting the property offered in security under Rule 57 is entitled to Travelling Allowance /Daily Allowance as per the Travelling Allowance Rules which shall be met by the foreman.

10.9 Prized subscribers to furnish necessary security - Under Section 27 of the chitties Act each prized subscriber before drawing the prize amount shall furnish sufficient security for the due payment of future subscriptions. If the foreman of a chitty is the prized subscriber, he shall furnish the security to the satisfaction of the Registrar.

10.10 Returns/Records to be filed by the foreman with Sub Registrar - The following returns/records are to be filed by the foreman of the Chitty with Sub registrar

(1) Variola (Section 8 of Chitties Act)

(2) Minutes of proceedings of every draw (Rule 51 of Kerala Chitty Rules, 1975)

(3) Report on the withdrawal of foreman where there are more than one (Section 22 of Kerala Chitties Act 1975)

(4) Annual balance sheet (Section 20) of the Chitties Act 1975)

(5) Copy of entry in the Chitty Register regarding the removal of non-priced defaulted subscribers (Section 24(3) of Chitties Act

(6) Report as the transfer of non-priced subscribers (Section 33(2) of Chitties Act.

(7) Copy of special resolutions/agreements (Section 34(2) of Chitties Act.

10.11 Time limit for filing returns/deposit of amounts etc. - The time limit prescribed under the provisions of the Act for filing returns, statements, copies etc and for deposits of security, prize amount etc. in respect of chitties and the maximum fine the foreman shall be liable to pay for contravening these provisions are indicated below.

		Time limit prescribed under the Act/Rules	Maximum fine leviable
Chitties			
1	Copy of minutes of each draw (Section 14)	Within 14 days from the date of instalment.	Rs 100 for every day during which he continues default.
2	Deposit of the 2 nd half of security by the foreman (Section 17(i)).	Within 7 days after the receipts of the prize amount.	Rs 500
3	Deposit of prize amount of unpaid subscribers in approved bank (Section 19(2)).	Before the next succeeding draw.	Rs. 500
4	Copy of the entry in the chitty book regarding removal of defaulting subscribers (Section 26(2)).	Within 14 days from the date of such removal	Rs. 50
5	Deposit of consolidated payment of future subscriptions realized by the foreman from a defaulted prized subscriber in approved bank (Section 32 (4)).	Before the date of next instalment.	Rs. 100
6	Deposit of amount due to a defaulter subscriber who has been substituted by another person when the substituted subscriber draws the prize amount (Section 28(i)).	Before the next succeeding instalment.	Rs. 100

		Time limit prescribed under the Act/Rules	Maximum fine leviable
7	Copy of entry in the chitty books in respect of transfer of rights of foreman to receive subscriptions from a prized subscriber (Section 34 and 36)	Within 14 days from the date of such entry	Rs. 100
8	Copy of entry in the chitty books in respect of transfer by a non-prized subscriber of his rights in the chitty (Section 34 and 36).	Within 14 days from the date of such entry.	Rs. 100
9	Copy of special resolution in respect of a chitty where there are more than one foreman, and where any one of them was disqualified or dead authorizing the remaining foremen to continue the chitty.	Within 14 days from the date of resolution	Rs. 100

10.12 Fines and penalties for offences under the Act - In addition to the fines prescribed above for contravening the provisions of the Acts for filing returns, depositing amounts etc the foreman is liable to pay the following fines/penalties not exceeding the maximum amount shown in respect of offences under the Chitties Act.

Chitties Act

- 1 Conducting chitty without registration (Section 6(2)) - Rs. 2,000
- 2 Non-supply of copies of variola to subscribers (Section 10) - Rs. 50
- 3 Conducting chitty without executing proper security bond (Section 15) - Rs. 500
- 4 Failure to keep books and amounts (Section 19) - Rs. 100
- 5 Default in the preparation of annual balance sheet (Section 20 (2)) - Rs 25 for every day during which the default continues.
- 6 Refusal to call for meeting of the general body of members (Section 37(2) & (3)) - Rs. 100

10.13 Compounding of offences – Under the provision of Rule 104 of the Chitties Act, Asst. Inspector General of Registration (Chit Schemes) is empowered to compound any offence.

10.14 Audit of chitty balance sheets by chitty Auditors - Under section 20 of the Chitties Act, foreman are required to prepare annual balance sheets of chitties containing a summary of assets and liabilities of the chitties and file the same to the Registrar. The Chitty Auditors are empowered to audit such balance sheets on filing the balance sheets by the foremen and on payment of required fees.

Balance sheets are also required for chitties with less than one year's duration.

10.15 Rate of Audit Fees

- (a) Where the chitty amount does not exceed Rs 500 - Rs 10
- (b) Where the chitty amount exceed Rs 500 but does not exceed Rs 1,000 - Rs. 20
- (c) Where the chitty amount exceed Rs 1,000 for every Rs 500 or part thereof (subject to maximum of Rs 250) - Rs. 10

10.16 Registers maintained in the Registration offices – The following registers are maintained in Registration offices in respect of the registration and conduct of chitties.

- (1) Register of Chitties showing the register number of the chitty, name of foreman, chitty amount, date of filing of returns by the foreman, date of each instalment etc.
- (2) File regarding each chitty containing an index of receipt of documents relating to the chitty.
- (3) Account of fees collected for registration and other services.
- (4) File containing application for licences to conduct chitties of value less than Rs 100.
- (5) Register showing the names of permit holder of chitties.

- (6) Register showing offences compounded under the Chitties Act.
- (7) Register showing prosecutions launched under the Act.
- (8) File regarding general correspondence.

10.17 Levy and collection of fees – (a) Fees leviable under the Chitties Act in respect of the following services.

- (i) Issue of permit under Section 5 of the Chitties Act.
- (ii) Registration of variola under Section 8 of Chitties Act.
- (iii) Filing with the Sub Registrar copies of documents required under Sections 11(3), 14(1), 24(3), 33(2) and 37 of the chitties Act.
- (iv) Inspection of documents in the Sub Registrar's office under Section 58 of Chitties Act
- (v) Issue of any certificate, copy or extract under section 58 of the Chitties Act.
- (vi) The audit of balance sheet and issue of audit certificate.
- (vii) Such other purpose as may be necessary to effect the purposes of the Act.

(b) In respect of fees collected under the Chitties Act, receipts in TR5 are issued by the Sub Registrar. An account of fees collected will be maintained by each Sub Registrar showing the particulars such as from whom, on what account, the date of realization, the amount realized and the particulars of remittance into the treasury. The daily total of the account is brought forward to the cash book.

CHAPTER XI

REGISTRATION OF MARRIAGES UNDER THE SPECIAL MARRIAGE ACT, 1954 (Act 43 of 1954)

11.1 Introduction - The Special Marriage Act, 1954 provides for the Solemnization and Registration of Marriages between any two intending persons subject to the conditions specified in the Act. All the Sub Registrars and District Registrars have been appointed as 'Marriage Officers' under the Act with in their respective jurisdictions. The Inspector General of Registration has been appointed as the Registrar-General of births, Deaths and Marriages.

11.2 Duties and powers of Marriage Officers – The duties and powers of marriage officers under the special marriage act pertain to solemnization and registration of marriages.

11.3 Solemnization of marriages – The parties who wish to solemnize marriage under the Act have to give notice of their intention to the marriage officer in the prescribed form along with the required fee. If the notice is in conformity with the Act and the rules made thereunder the same is copied to the Notice Book by the marriage officer. If there is any defect in the notice it is returned to the party for rectification. A true copy of the notice is exhibited in a conspicuous place in the office of the marriage officer, under Section 7 of the Act, any person may on payment of the prescribed fee and before the expiry of thirty days from the date of publication of notice, object to the solemnization of the marriage on the ground that it would contravene one or more of the conditions specified in Section 4 of the Act. If any enquiry is necessary the marriage officer is authorized to issue summons to the witnesses. Notice of enquiry will be issued to the parties to the intended marriage also. The objector has to pay fee for issue of notice and summons to the witness, for the traveling expenses and subsistence of the witnesses, and for enquiry into the objection. The nature of objection will be recorded in the Marriage Notice Book. The enquiry should be completed within 30 days from the date of objection.

In case there is no objection to the marriage, the marriage may be solemnized at any time after the expiry of thirty days from the date on which notice of an intended marriage has been published. The marriage cannot be solemnized if there is an objection under Section 7 of the Act unless it is withdrawn or is rejected by the marriage officer after necessary enquiry.

The marriage may be solemnized at the office of the marriage officer or at such other places within a reasonable distance there from as the parties may desire on payment of such additional fees as may be prescribed. When a marriage is solemnized, marriage officer will record a certificate thereof in the marriage certificate book signed by the parties to the marriage and three witnesses.

11.4 Registration of Marriages - A marriage solemnized other than a marriage solemnized under the Special Marriage Act 1954 or the Special Marriage Act 1872 can be registered subject to the condition prescribed under Section 15 of the Act. For this, an application signed by both parties to the marriage has to be presented to the Marriage Officer in the prescribed form along with the required fee. The marriage officer will then publish a notice of such application by exhibiting a true copy thereof under his seal and signature in a conspicuous place outside his office. A period of thirty days is allowed for objections and after hearing objection if any, received within that period, he will, if he is satisfied that the condition under Section 15 of the Act are fulfilled, enter a certificate of the marriage in the marriage certificate book signed by the parties to the marriage and three witnesses. The objection filed under the above provision should also be accompanied by the required fee.

11.5 Levy and collection of fees – The fees realizable under this Act consist of fees for notice of marriage, recording of objection, enquiry into objection, issue of summons, solemnization, registration of marriages etc. The State Government have prescribed the fees leviable under the different sections of the Act (Rule 10 of the Kerala Special Marriage Rules 1958).

A receipt duly signed by the Marriage Officer is issued for all fees received by him under the Act. All moneys received by the Marriage Officer except for solemnizing a marriage at any place outside his office in addition to

the fee for solemnizing or registering a marriage (to be paid by the parties to the marriage) are remitted into the Treasury.

11.6 Registrars and Records maintained – The important registers maintained are:

- (1) Marriage Notice Book.
- (2) Marriage certificate Book.
- (3) Fee receipt books etc.

CHAPTER XII

KERALA DOCUMENT WRITERS' LICENCE RULES, 1960

12.1 Introduction - Clause (bb) of Sub-section (i) of section 69 of the Indian Registration Act (as amended by Indian Registration Kerala Amendment Act 1958) (Act II of 1959) confers upon the Inspector General of Registration, the power to make rules with the approval of the State Government providing for the grant of licences to document writers, the revocation of such licences, the terms and conditions subject to which and the authority by whom such licences shall be granted and generally for all purposes connected with the writing of documents to be presented for registration. Accordingly the “Kerala Document writers’ Licence Rules, 1960” prescribing the terms and conditions for the grant, renewal and revocation of licence, licensing authority, fee for issue and renewal of licences etc. were issued in notification No. L 2103/57 dt. 16.5.1960 with the approval of State Government.

12.2 Necessity of Licences – Under rule 4 of the Rules *ibid*, all persons engaged in the profession of a document writer or scribe are required to obtain licences from the proper authorities. This provision is not applicable to advocates or pleaders practicing before any court in the State (Rule 4)

12.3 Licensing Authority – The Deputy Director of Registration (Licencing) attached to the office of the Director of Registration shall be the licensing authority (Rule 21). The licences granted by the licensing authority are issued through the sub registers through whom the applications were sent.

12.4 Duties and powers of Licensing Authority (Rule 22) - The Licensing Authority has powers to

- (i) grant licences to document writers and scribes.
- (ii) renew licences.
- (iii) Cancel, revoke or suspend licences granted.
- (iv) issue to the document writers and scribes such directions as may be necessary for effectively carrying out the purposes of the rules.

12.5 Issue of Licences (Rule 10) – Application for document writers’ licences and scribes’ licences shall be presented by the applicants to the Sub Registrar to whose office he will be primarily attached along with the prescribed fee. The applications will be forwarded by the Sub Registrar with his remarks to the District Registrar. The District Registrar will forward them with his recommendations to the Inspector of Registration or the Licensing Authority, as the case may be, who will issue the licence and send the same through the sub registrar.

12.6 Period of validity and renewal of licences (Rule 10) – Licence issued to a document writer or scribe is valid till the 1st day of June every year. The licence may be renewed before that date on application by licensee. Renewals are made by endorsement as the back of the licence.

If for any reason a licence has not been renewed on or before the due date, the licensee shall not be eligible to apply for a renewal in the succeeding year, unless the default to renew the licence has been condoned by the Licensing authority. The licensing authority may on sufficient reasons condone such defaults on payment, over and above the usual fee, of a fine equal to double the renewal fee.

(i) The Deputy Director of Registration (Licensing) attached to the office of the Director of Registration, Trivandrum shall be competent to renew the State licences.

(ii) A District Registrar shall be competent to renew the licence for his District and also the licence for two or more sub districts within his district.

(iii) A sub registrar shall be competent to renew the licence for his sub-district (**Rule 23**).

12.7 Duplicate of licence (Rule 10) – If a licence is lost or destroyed, a duplicate may be issued on adequate proof of such loss or destruction on payment of a fine of rupees five each.

12.8 Levy and collection of fee – (a) Fees at the following rates are levied on the applications for document writers’ and scribes’ licences and for their triennial renewals.

		Document writers’ Licence (Rs)	Scribes Licence (Rs)
1	Fees for one sub-district	50	20
2	Fees for one District	100	30
3	Fees for whole state	200	50
		Document writers’ Licence renewal (Rs)	Scribes Licence renewal (Rs)
(i)	for one sub-district	75	30
(ii)	for one District	120	45
(iii)	for whole state	150	75

Note : The term sub-district will include all the registration offices whether principal, additional, joint or temporary situated in the same town, municipality, corporation or locality.

(b) The licence and other fees shall be paid in cash to the Sub Registrar concerned and receipt obtained from him. The Sub Registrar shall credit the fees so collected in his Account ‘B’ and issue receipt to the remitter and remit the amount into the treasury.

12.9 Refund of fees – If application for licence or renewal thereof is refused, the fee remitted shall be refunded to the applicant (**Rule 12(2)**).

12.10 Document writer as Scribe – A document writer may obtain a licence of a scribe also on payment of the required fee (**Rule 15**).

12.11 Accounts and Registers – The following books are kept in the office of the Licensing authority.

- (i) Register of document writers (Form G)
- (ii) Register of scribes (Form M) (**Rule 24**)

CHAPTER XIII

REGISTRATION OF FIRMS

13.1 Introduction - Under the Indian Partnership Act, 1932 persons who have entered into partnership with one another are individually called partners and collectively 'a firm'. It is left to the discretion of the firm to get itself registered or not, but any firms which is not registered will be unable to enforce its claims against third parties through courts of laws. Chapter VII of the Indian Partnership Act, 1932 (Sections 56 to 71) prescribes the procedure for registration of firms.

13.2 Registrar of Firms – In exercise of powers conferred by Section 57 of the Indian Partnership Act 1932 the Inspector General of Registration, Trivandrum has been appointed, as the Registrar of Firms in Kerala by the Government of Kerala.

13.3 Rules for registration of firms – Section 71(i) and 2 of the Act empowers the State Government to make necessary rules prescribing the fees leviable for registration, inspection of documents, grant of copies etc. the registers and accounts to be maintained and such other related matters. Accordingly the Government framed the necessary rules viz. "The Kerala Partnership (Registration of Firms) Rules 1959" (Notification No. 18102/58/IA 4 dt. 22.04.1959).

13.4 Registration (Section 59) – On receipt of the application for registering a firm in the form prescribed under section 58 of the Act along with the requisite fee for registration, the Registrar will make an entry for the application in the Register of Firms and file the application. Registration can be said to have been made only when this entry is made in the Register of firms.

13.5 Recording of alterations in the name of firm, place of business, names and address of partners or dissolution of firms or rectifications of mistakes (Sections 60, 61, 62, 63 & 64) – When alteration is to be made in the name of the firm, the location of its principal place of business, in the

name or permanent address of any partner or when it is necessary to rectify any mistake in the entries in the Register of firms, or when a change in the constitution of the Registered firm is to be made, or when a minor admitted to the benefits of partnership becomes major and elects to become or not to become a partner, or when a registered firm discontinues its business at any place, or begins to carry on business at any place other than its principal place of business, intimation in this regard to such matters may be sent to the Registrar within 15 days from the date of occurrence of such entries along with the prescribed fees. The Registrar will make necessary entries in the Register of firms.

13.6 Inspection of Records and grant of copies (Sections 66 & 67) – Any person may inspect the Register of firms on payment of the prescribed fee. The statements, notices and intimations filed by a firm may also be inspected on payment of the prescribed fee by any person on his satisfying the Registrar that he is interested in the firm. Certified copies of any entry or portion thereof from the Register of Firms may be granted to any person on payment of the prescribed fee.

13.7 Registers and Accounts – The following registers and returns are maintained in the Inspector General's office.

- (i) Register of Firms.
- (ii) Index to Register of Firms.
- (iii) Files of documents.
- (iv) Receipt book in form E of the Rule.

13.8 Levy and collection of Fees (Section 71) – Section 71 of the Indian Partnership Act empowers the state Government to prescribe the fees leviable under the Act. The rates of fees leviable have been prescribed by Government in notification No. 18102/58/IA 4 dated 22.4.1959. These rates were revised with effect from 1st May 1974 as per GO.MS 66/74/ID Dt. 27.3.1974. The rates are given below.

		Fees leviable with effect from 1.5.1974
1	Filing statement under Section 58	Rs. 15
2	Filing statement under Section 60	Rs. 5
3	Filing intimation under Section 61	Rs. 5
4	Filing intimation under Section 62	Rs. 5
5	Filing notice under Section 63	Rs. 5
6	Filing application under Section 64	Rs. 5
7	Inspection of Register of firms under sub section (i) of Section 66.	Rs 2 for each volume of the register
8	Inspection of documents relating to a firm under sub-section (2) of Section 66	Rs 2 for the inspection of all documents relating to one firm
9	Copies from the Register of firms	50 ps per each 100 words or part there of with effect from 1.5.74 (Rule 14(iii))
10	For searching index for any one year for entries relating to a single firm (Rule 13(a))	Rs. 4
11	For searching index for every other year for entries relating to the same firm (Rule 13(b)).	Rs. 2
12	For granting a certified copy of an acknowledgement of the registration of firm (Rule 14(ii) (a)	Rs 5
13	For granting certified copies of or extracts –from any document other than the Register of firm (Rule 14(i) (b)).	50 ps for each 100 words or part thereof

A receipt in form B of the Rules is granted for all fees received by the Registrar.

CHAPTER XIV

REGISTRATION OF LITERARY, SCIENTIFIC AND CHARITABLE SOCIETIES

14.1 Introduction - The registration of literary, scientific and charitable societies is governed by the Travancore – Cochin literary, Scientific and charitable societies Registration Act, 1955 in the Travancore, Cochin area and by the societies Registration Act, 1860 (Central Act XXI of 1800) in the Malabar Districts. The main purpose of the Acts is to make provision for improving the legal conditions of the societies established for the promotion of literature, science, fine arts or for the diffusion of useful knowledge or for charitable purposes.

14.2 Registrars under the Act – Under Section 1 of the Societies Registration Act 1860 and Section 2 (c) of the Travancore – Cochin Act, 1955 the Inspector General of Registration of the State Government has been appointed as the Registrar of societies. His powers have been delegated to the District Registrars.

14.3 Registration of Societies – The governing body of the society shall file with the registrar a certified copy of the rules and regulations of the society and the memorandum of the association along with the required form under Section 3 of the Societies Regulation Act 1860 or Section 5 of the Act 1955 as the case may be. The registrar will then certify on the memorandum and the certified copies that the society is registered.

14.4 Returns to be filed by the societies – The following returns have to be filed by the societies within the prescribed time limit with the Registrar. Under the Travancore – Cochin Act, delay in filing the returns will entail the societies to pay fines not exceeding the maximum amount shown below. No fines have been prescribed under the societies Registration Act, 1860 in respect of such delay.

(i)	Notice of the situation of the registered office of the society and any change thereof (Section 6 of the Act, 1955)	Within 21 days from the date of registration of the society or of the change as the case may be.	Rs. 5 for every day of delay.
(ii)	(a) Filing of list of members of first governing body (Section 7 of the Act, 1955)	Within 14 days from the date of registration.	Rs. 100
	(b) Filing of list of members of other Governing body (Section 7 of the Act, 1955)	Within 14 days from the annual General body meeting.	Rs. 100
(iii)	Certified copy of balance sheet (Section 13 of the Act, 1955)	Within 21 days from the date of General Body meeting.	Rs. 100
(iv)	Amendments to Rules or Memorandum of Association – Certified copy of resolutions (Section 22 of the Act 1955)	Within 14 days from the date of the General Body meeting at which the resolution was passed.	Rs. 10 for every day of default

Note: The penalty is leviable on the Society and every member of the Governing Body who knowingly and willfully authorizes or permits the default.

14.5 Inspection of Accounts by the Registrar – Under section 19 of the Travancore- Cochin Act, the registrars of the Travancore-Cochin area shall periodically examine the accounts and other books of the society within their respective jurisdictions and submit to the Government a report on the results of such examinations. The Government will review the report and pass such orders as they deem fit for the efficient and better management of the Society.

14.6 Statutory duties of the governing body under the Travancore – Cochin Act – The following are some of the important statutory functions of the governing body of the societies registered under the Act, non-observance of which will make (them) liable to pay fine as under.

		Maximum fine leviable
(i)	to convene the first general body meeting of the society within 18 months of its registration and thereafter once at least in every calendar year and not more than 15 months after holding the last preceding meeting (<i>Section 7</i>)	Rs. 100

		Maximum fine leviable
(ii)	to keep proper books of accounts for the money received and expended and the assets and liabilities of the society (<i>Section 12</i>)	Rs. 100
(iii)	to keep the registers of members (<i>Section 15</i>)	Rs.10 for every day during which the register has not been maintained.

Note : The fine as stated above shall be levied on the society and every member of the governing body who knowingly and willfully authorizes or permits the default.

14.7 Levy and collection of fees and fines. – The fees leviable under the Acts are

- (i) Fee for the registration of societies (*Section 2 of the Act, 1860 and Section 5 of the Act 1955*) : Rs. 100
- (ii) Fee for inspection of documents (*Section 19 of the Act 1860 & Section 31 of the Act 1955*) : Re 1 for each inspection
- (iii) Fee for copy of documents (*Section 19 of the Act 1860 & 31 of the Act 1955*) : 15 ps for every 100 words.

CHAPTER XV

DUTY ON TRANSFERS OF PROPERTY

15.1 Introduction - Duty on transfers of property is a surcharge on Stamp Duty imposed by the Kerala Stamp Act, 1959 levied for the Local Bodies under the provisions of Municipality Act 1994 and Panchayat Raj Act 1994 in the shape of additional stamp duty on certain classes of transfers of immovable property situated within their limits. The collection and allocation of duties to the local bodies are governed by the rules framed by Government.

15.2 Local Bodies – ‘Local bodies’ mentioned above are corporations of Thiruvananthapuram, Kochi & Kozhikode, Thrissur & Kollam and all Municipalities and Panchayats in the State. The charging provisions for the levy of transfer duty are contained in Section 270 of Kerala Municipality Act 1944, and Section 206 of the Kerala Panchayat Raj Act 1944. Government have framed necessary rules for the collection and allocation of the transfer duty.

15.3 Instruments liable to the levy of surcharge – Duty on Transfer are leviable on the instruments noted below at the rates prescribed by Government from time to time on the amounts specified against them.

Descriptions of the instrument		Amount on which duty should be levied
(i)	Sale of immovable property	The amount or value of the consideration for sale as set forth in the instrument.
(ii)	Exchange of immovable property	The value of the property of the greater value, as set forth in the instrument.
(iii)	Gift of immovable property	The value of the property as set forth in the instrument.
(iv)	Mortgage with possession of immovable property	The amount secured by the mortgage as set forth in the instrument.
(v)	(a) Assignment on lease of immovable property for less than one year.	On the amount which may be remitted or payable as per the lease deed.
	(b) Assignment on lease of immovable property for not less than one year but not more than 5 years.	An amount equal to one year's average lease amount or the price fixed.

Descriptions of the instrument		Amount on which duty should be levied
	(c) Assignment on lease of immovable property for more than five years but not exceeding ten years.	An amount equal to average lease amount fixed for an year.
	(d) Assignment on lease of immovable property exceeding ten years but not being a perpetual lease.	An amount equal to three times the average yearly lease amount or price remitted or paid for the first ten years
	(e) Perpetual lease of immovable property	An amount equal to one sixth of the total amount of lease remitted or paid for the first fifty years as shown in the instrument.
(vi)	Release, that is to say, any instrument whereby a person renounces a claim upon another person or against any specified property when such release does not operate in favour of his or her spouse or children.	For such amount or value as set forth in the release.

(vide Notifications Nos. 10815/Leg/C1/95/Law dt: 5.8.95 and No. 10816/Leg.C1/95/Law dt: 5.8.95 published in the extra ordinary gazette dt: 5.8.95)

Note : (i) In the case of exchange, if the values of properties exchanged are unequal, duty is levied on the value of the property of greater value and if the values are equal, the higher amount of duty (i.e depending on the local body requiring a higher rate of duty) is levied.

(ii) Transfer of mortgages with possession and transfer of kanam right (in Malabar area) also are liable to transfer duty at the prescribed rate (GO MS 581/65/HLD dated 3.7.1965 and Board of Revenue Proceedings No. LR (A)-4-60359/65 dated 7.2.1966). In these cases transfer duty is on the present consideration in respect of the transfer and not on the original value though stamp duty is leviable on the original amount in the case of transfer of mortgage with possession (K Dis. Ins. 524419/66 dated 10.3.66 of Inspector General).

15.4 Rate of Surcharge – The rate of surcharge now levied are 5% on transfers of immovable property within the limits of Thiruvananthapuram, Kochi, Kozhikode, Kollam and Thrissur corporations and 4% on transfers of

immovable property within the limits of Municipalities and Panchayats in the State.

15.5 Collection of Surcharge – The surcharge is collected in the form of stamps duty leviable in addition to that as per the Kerala Stamp Act, 1959. While registering the document, the registering authority has to ensure that the true consideration or value and description of the properties as to the Municipality/Panchayat/Corporation in which the property is situated, as required under Section 28 of the Stamp Act are furnished in the Documents.

When the transfer duty or any portion thereof is less than 10 Ps such duty or portion is not collected.

15.6 Collection charge – The Registration Department is entitled to a collection charge of 3% of the transfer duty collected.

15.7 Allocation of Surcharge to local bodies – The registering officer maintains an account of the duty paid in respect of each document registered by him showing separately the duty imposed by the Stamp Act and the transfer duty. Separate accounts are maintained for the corporations of Thiruvananthapuram, Kochi, Kozhikode, Thrissur and Kollam and for each Municipality. In respect of Panchayats only consolidated account is maintained for the Panchayats affected.

CHAPTER XVI

IMPORTANT CHECKS TO BE EXERCISED UNDER VARIOUS ACTS/RULES

16.1. The auditing standards of the International Organisation of Supreme Audit Institutions (INTOSAI) have been suitably adapted with due consideration of the Constitution of India, relevant statutes and rules for the auditing standards for the Supreme Audit Institution of India (SAI).

Auditing standards prescribe the norms of principles and practices, which the Auditors are expected to follow in the conduct of audit.

(Refer: Manual of Auditing Standards for the Supreme Audit Institution of India)

16.2. Important checks to be exercised in respect of receipts under Stamp Act

In the scrutiny of individual documents with reference to the schedule to the Stamp Act in the offices of the Registration Department it should be ensured in audit that :-

- (i) In the case of instruments the stamp duty of which is based on the amount of value secured such as Bottomry Bond, Indemnity Bond, Security Bond etc. the duty collected is correct with reference to the amount or value actually secured by such deeds :
- (ii) Where fixed rate of duty has been specified as in the case of instruments of Charter Party (Art 18) Composition Deed (Art. 20), Delivery order (Art. 26), Divorce (Art. 27) Certificate of Enrolment (Art. 28) Letter of Allotment (Art. 34), Letter of Licence (Art. 35), Note of Protest (Art. 41) Protest of Bill (Art 45), Shipping Order (Art. 53) etc. the instrument correctly pertained to that Article and only to that Article and the duty collected is correct;
- (iii) In case where duty is chargeable based on value or duty paid in respect of an original or earlier deed such as those specified in Articles 30 (Further charge), 23 (copy or extract) 24 , (Counterpart) 54 (Surrender of lease) etc. stamp duty has been correctly worked out with reference to such earlier instruments.

- (iv) In the case of instruments of certificate of sale (Article 15, Reconveyance (Article 47), Conveyance (Article 21 & 22), etc. where consideration is the criteria for payment of duty, the consideration has been fully and truly set forth as disclosed from the deed or deeds executed.
- (v) In the case of instruments the stamp duty of which is computed based on a rate per cent of the value of the instruments, or on a slab rate based on the amount or value of the instrument (as in the case of instruments of award (Article 12). Custom Bond (Article 25), Chitty (Article 19), Exchange (Article 29), Gift (Article 31) Conveyance (Article 21 & 22), Release (Article 48) etc, the calculation of duty is correct with reference to the rates fixed.
- (vi) Value of stamp duty on agreement relating to deposit of title deeds etc. has been correctly computed with reference to the amount secured and the period of repayment stipulated.
- (vii) In the case of memorandum of association of a company, stamp duty is computed correctly considering the presence or absence of the article of association.
- (viii) (a) In the case of leases, under-leases, sub-leases and agreements to leases, they have been correctly classified under Article 33 and that the classification among the item 33 (a) (i) to (viii) and 33 (b) and 33 (c) have been correctly made and tax computed with reference to the period covered by the lease, presence of fine or premium and reservation of rent;
- (ix) In the case of deeds of partition the value of the separated share or shares is calculated correctly.
- (x) Where duty fixed is subject to any condition, such conditions have been satisfied as evidenced by the instrument.
- (xi) The duty chargeable on instruments of divorce has also been realized in the case of instruments classified under other Article, through which any person effects the dissolution of his marriage and

- (xii) Every document has been correctly assessed to stamp duty with reference to section 4, 5 and 6 of the Stamp Act and the computation of duty is correct and in accordance with the provisions contained in Section 4 to 6 of the Act.
- (xiii) In the case of instruments of power of attorney, duty is correctly assessed and realized with reference to the purpose of the power, number of persons authorized, the extent of power to be exercised by the holder either jointly or severally, number of transactions covered by the power, and the value of power whether given for consideration or not.
- (xiv) (a) In the case of deeds of conveyance the rates under Articles 21 or 22 have been applied correctly in all cases with reference to the locality in which immovable property is situated, as disclosed by the revenue records and survey number pertaining to the property conveyed;
 - (b) the total value/consideration is correct with reference to the whole area of the property at the rates specified in the deed; and
 - (c) the additional duty leviable under other statutes has been correctly assessed and collected.

16.3. Important checks to be exercised in respect of receipt under the Registration Act

During the audit of registration fees it should be seen

- (i) that the fees realisable for various services rendered by the Registration Department, have been correctly determined in accordance with the table of fees prescribed.
- (ii) that there are adequate procedure and regulations prescribed by the Department to secure an effective check on the levy and collection of fees and
- (iii) that the fees determined as determined above has been realized and credited to Government.

- (iv) that the documents are correctly classified as per the provision of the Stamp Act so that there is no evasion of fee on account of misclassification.
- (v) that proper receipts have been granted for fees realized.
- (vi) that where fines for delay in presentation, appearance of parties etc. are leviable, they have been levied at the rates prescribed and have been accounted for correctly.
- (vii) that the main cash book and connected accounts of all moneys received are checked in detail to ensure their correctness and completeness.
- (viii) that all remittances are duly supported by Treasury Chalangans.
- (ix) that monthly reconciliation is done between departmental and treasury figures of receipts.
- (x) that the remission or reduction of fees is duly authorized.
- (xi) that the remission of fines is authorized by competent authority.
- (xii) that the refunds are allowed only under proper authority.
- (xiii) that the departmental inspection reports do not reveal major irregularities.
- (xiv) that proper account is kept for the receipt books (TR 5 form no. 18 and invoices).
- (xv) Index No. II and subsidiary indexes are prepared and maintained properly by the registering officer.
- (xvi) that all the documents registered in the months selected for detailed audit have been recorded in Account A on that particular date and the correct amount of fees has been realized on them.
- (xvii) that all the fees levied in respect of searches and grant of copies have been accounted for in Account D.
- (xviii) that all the deficit stamp duty and penalty, undisbursed pay and allowances, charges for sending documents etc. by post, batta, TA

for attending at private residences, subsistence allowances and batta and traveling allowances for witnesses etc. collected have been accounted for in Account C.

- (xix) that all collections other than those mentioned above viz. fines under Section 25 and 34, fee for safe custody, fee for attestation of power of attorney, private attendances fee, all fees and fines in connection with chitties and sale proceeds of priced forms etc. other than registration fees have been accounted for in Account B.
- (xx) that proper receipts have been issued for all fees and fines collected.
- (xxi) that the daily totals of each account have been carried forward into Account H and into the main cash book.
- (xxii) that the remittance shown in Account 'H' are duly supported by treasury chalans.
- (xxiii) that the arithmetical accuracy of the registers in respect of the selected month(s) has been ensured.

16.4. Important checks to be exercised in respect of receipts under Chitties Act

As in the case of receipts under the Registration Act, the receipts under the Chitties Acts are mainly in the nature of fees for services rendered by the Department viz, issue of permits, registration of variola/filing of returns etc. Audit of receipts under the chitty transactions mainly consists in seeing that -

- (i) the foreman has taken necessary licence under Section 7 of the Chitties Act in case the chitty amount is less than Rs 100.
- (ii) the foreman has executed necessary security bonds; and in case the security is immovable property, whether the property has been valued correctly by the Sub-Registrar and value is sufficient to cover twice the amount of chitty.
- (iii) all the returns have been filed by the foreman in time ?
- (iv) audit fees have been recovered from the foreman for the audit of balance sheets ?

- (v) the fees for services rendered viz. issue of permits, registration of variola and statement of subscribers, filling of documents and returns, issue of encumbrance certificates etc. have been collected at the rates prescribed by Government and necessary receipts issued by the Sub-Registrar.
- (vi) fees and penalties leviable in respect of delay in filing returns/offences under the provisions of the Acts and Rules have been levied at the prescribed rates.
- (vii) all the fees and fines levied have been collected, properly accounted for and remitted in time.
- (viii) Where immovable property is offered as security, all the encumbrances and liabilities charged previously as the property have been fully discharged. If the property was offered as security in a previous chitty or subjected to any mortgages etc. it should also be seen that such charges were released by properly executed release deeds. In case such charges were discharged by means of “endorsement”, Audit should point out the loss of revenue under stamp duty due to the non-execution of proper release deeds also in addition to the non-observance of the rules/instructions.

Where the property has been acquired by the foreman by virtue of a sale/partition/ settlement/gift/transfer deed executed immediately before the execution of the security bond the value shown in the previous deed and the actual market value as determined by the Sub-Registrar for the purpose of security should be compared.

In case where the value shown in the previous deed was too low when compared to the actual market value assessed by the Sub-Registrar, Audit can challenge the valuation in the previous deed if there were no substantial improvements made in the property after its acquisition by the foreman justifying a higher market value. Similarly the same procedure can be followed in respect of any sale/settlement/partition/gift/transfer deeds effected after the execution of such security bonds also.

16.5. Checks to be exercised in respect of receipts under the Special Marriage Act, 1954

The audit checks to be exercised in respect of receipts under the Special Marriage Act, 1954 consist in seeing that all the fees leviable for services rendered by the marriage officers (Registrars and Sub Registrars) were levied according to the rates prescribed under the rules, proper receipts were issued for the fees collected, brought to account and remitted to Government in time.

16.6. Checks to be exercised in respect of receipts under the Kerala Document writers' Licence Rules, 1960

It should be seen whether the licence and other fees are paid in cash to the Sub Registrar and the fees so collected are accounted in his Account 'B' and issue proper receipt to the remitter and the amount collected has been remitted into the treasury under the proper Budget Head. In audit, the genuineness of these receipts, the correctness of the rate of fee remitted etc. should be verified. In addition it may also be seen whether the licencees have renewed their licences before the expiry of the validity period of licences.

16.7. Receipts under the Indian Partnership Act 1932

During the audit of receipts under the Indian Partnership Act, 1932 relating to registration of firms it should be seen that -

(i) fees at prescribed rates have been levied and collected for the services rendered by the Department.

(ii) Proper receipts have been issued for each amount collected and the amounts collected have been accounted properly and remitted to Government in time.

16.8. Important checks to be exercised in respect of receipts under the Societies Registration Acts

(1) During the audit of receipts under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 and the Societies Registration Act, 1860 (Central Act XXI of 1860), the following points may be seen ; viz. –

- (i) prescribed fees have been levied for the services rendered by the Department.
- (ii) fines as per the provisions in the Act have been levied for delay in filing the returns prescribed.
- (iii) proper receipts have been issued for the amounts collected as fees and fines.
- (iv) the amounts collected as fees and fines have been properly accounted for and credited to Government in time.

(2) The amount of fines leviable for delay offences is left to the discretion of the District Registrars. In case where fine/penalty has not been levied, the omission may be pointed out.

16.9. Important checks to be exercised in the audit of duty on transfers of property

During the audit of duty on transfers of property it may be seen that -

- (i) transfer duty is levied in respect of all the instruments attracting the levy of such duty at the prescribed rates.
- (ii) the account of transfer duty is maintained properly and the allocation of stamp duty collected as instruments into stamp duty under the stamp act and transfer duty is done correctly.
- (iii) collection charges at the prescribed rate have been realized.
- (iv) Arithmetical accuracy is verified.

Annexure
REDUCTIONS AND REMISSIONS UNDER SECTION 9 OF
THE KERALA STAMP ACT, 1959

(Referred to in Para 3.38)

Stamp Duty for Mortgages executed by Officers of Government in favour of Government

(i) Duty with which mortgage deeds to be executed by any officer of the Government of Kerala or the Central Government or by any such Officer and his/her wife/husband jointly, or by such officer and other members of his/her family jointly, as security for the repayment of advance drawn by such officer for house construction purposes, are chargeable remitted.

(S.R.O No. 305/65 – G.O (MS) 645/65/RD dated 31.7.1965 – Gazette dated 3.8.1965 amended in G.O MS 186/73/TD dated 20.10.1973)

(ii) Duty chargeable in respect of mortgage deeds to be executed by the officers of the Government of Kerala as well as the officers of the Central Government for securing repayment of advances received by them from the Government concerned for the purpose of purchasing motor cars, motor boats, or motor cycles remitted.

(S.R.O No. 314/75 – G.O (M.S) 646/65/RD dated 31.7.1965 – Gazette dated 10.8.65)

Stamp Duty on Bonds

Indemnity bonds executed by the heirs of soldiers

Duty with which indemnity bonds executed by the heirs of soldiers who died in harness in respect of property left by such soldiers are chargeable remitted.

(S.R.O No. 304/67 – G.O (MS) no. 456/67/RD dated 30.9.1967 – Gazette dated 17.10.1967)

AFFIDAVIT

(i) Affidavits to be filed by Scheduled Castes and Tribes

Duties with which affidavits to be filed by persons belonging to the Scheduled Castes and the Scheduled Tribes before the Village Officers for the purpose of obtaining solvency certificates, are chargeable remitted.

(S.R.O No. 565/72 – G.O (P) 87/72/TD dated 23.10.1972)

Instruments executed by certain Specified Persons or Institutions

(i) **Instruments executed by Kerala State Khadi and Village Industries Board**

Duty chargeable in respect of instruments to be executed by Kerala State Khadi and Village Industries Board in respect of loan advanced by the Khadi and Village Industries Commission.

G.O (MS) no. 960/62/Rev dated 19.11.1962 – Gazette dated 4.12.1962 – SRO no. 369/62)

(ii) **Agreements in favour of Kerala State Khadi and Village Industries Commission and Kerala State Khadi and Village Industries Board.**

Duty chargeable in respect of loan agreement executed in favour of Khadi and Village Industries Commission and the Kerala Khadi and Village Industries Board by registered institutions (institutions registered under the Societies Registration Act, 1860 as in force in the Malabar area of the State and the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 as in force in the Travancore-Cochin area of the State) implementing the Khadi and Village Industries Commission programme for the development of Khadi and Village Industries in the State of Kerala

(G.O. (MS) 796/63/Rev/dated 1.10.1963 – Gazette dated 15.10.1963 – S.R.O 713/63)

(iii) **Refinance agreements executed by the Kerala Financial Corporations.**

Duty with which the refinance agreements to be executed by the Kerala Financial Corporation in favour of the Industrial Development bank of India are chargeable remitted with effect from 1.4.1969.

(S.R.O no. 392/70 – G.O (MS) 151/70/RD dated 15.10.1970)

(iv) Duty payable by the ‘United Nations Children’s Fund’

Duties with which the instruments to be executed by the United Nations Children’s Fund in the course of their official transactions are chargeable remitted.

(S.R.O. No. 215/67/ - G.O (MS) No. 245/67/RD dted 20.7.1967 – Gazette dated 1.8.1967).

(v) Instrument executed on behalf of the Central or the Kerala State Warehousing Corporation

Stamp duty with which warrant for goods (item 57 of the schedule) executed by or on behalf of the Central Warehousing Corporation or the Kerala State Warehousing Corporation as chargeable remitted with effect from 1.9.1960. (in supersession of previous orders)

(SRO no. 194/68-GO, (MS) 281/68/RD dt: 14.5.68) Gazette dated 28.5.68) Also G.O M.S 280/64/Rev/dt: 24.4.1964.

Instruments relating to transfer

(i) Transfer of Treasury Savings Deposit Certificates

Duty on instruments relating to transfer of Treasury Savings Deposit Certificates which are securities of the Central Government, remitted.

(G.O MS No. 198/68/Rev. D/5.4.1963) (Gazette dt: 19.3.1963)

(ii) Transfer of the “4³/₄% Kerala State Electricity Bonds, 1975”

Duty chargeable in respect of all transfer by endorsement of the “4³/₄% Kerala State Electricity Bonds, 1975” remitted.

(G.O (MS) 880/63/Rev dated 19.11.63. SRO No. 756/63)

(iii) Transfer of securities of the Central or State Government

Duties chargeable on instruments relating to transfer of securities of the Central Government or the Government of Kerala remitted.

(G.O (MS) 302/64/Rev. dated 2.5.1964) (Gazette dated 12.5.1964)

Stamp duty on gifts

Instrument of gifts in favour of the Government

Duty with which instruments of gifts in favour of the Government are chargeable remitted.

(SRO No. 248/65-GO (MS) No. 510/65/RD dt: 4.6.65) (Gazette dt: 15.6.65).

Stamp Duty on Mortgage deeds

(i) Mortgage deeds executed by Joint Stock Companies

Stamp duty chargeable under the said Act in respect of mortgage deeds when executed by Joint Stock Companies as collateral or auxiliary or additional or substituted security or by way of further assurance for the above mentioned purpose reduced, to Rs 38/- provided that the duty paid on the principal or primary security exceeds the amount specified.

(SRO No. 76/65 G.O (RT) 285/65 dated 15.2.1965) (Gazette dt: 2.3.1965)

Note : This notification has been rescinded by G.O (MS) 65/74/TD Taxes (E) Department dt: 24.5.74

(ii) Mortgage deeds to be executed in favour of the Kerala Teachers and non-teaching Staff Welfare Corporation Limited.

The duties with which the mortgage deed to be executed in favour of the Kerala School teachers and non-teaching Staff Welfare Corporation Limited by the member beneficiaries of the Corporation for securing loan for the purpose of housing , are chargeable are remitted.

(G.O (P) No. 110/85/TD dated 22.8.1985)

(iii) Mortgage deed to be executed by the Tribals and Scheduled Caste for getting financial assistance for starting industries

The duties with which mortgage deed to be executed by the Tribals and Scheduled Castes in favour of Government for getting financial assistance for starting industries and for getting interest free loans for young entrepreneurs, are chargeable are remitted.

OTHER ITEMS

(i) Duty on agreement hypothecating movable property

Duty chargeable on unattested instruments evidencing an agreement relating to hypothecation of movable property, where such hypothecation has been made by way of security for the repayment of money advanced or to be advanced by way of loan or of an existing or future debt remitted.

(G.O MS No. 813/RD dt: 2.9.1961) (1971 KLT 177/F.B) (Gazette dt: 12.9.61)

(ii) Gifts or settlements for charitable purposes

Duties with which all instruments of gifts or settlements for charitable or religious purposes are chargeable, remitted to one half.

(G.O (MS) 265/64/Rev. dated 15.4.64 SRO No. 111/64)

(iii) Contracts of apprenticeship

Duties with which instruments relating to the execution of contracts of apprenticeship under Section 4(1) (a) of the Apprentices Act 1961 (Central Act 52 of 1961) are chargeable are remitted.

(SRO No. 257/64 – G.O(P) 499/64/Rev dated 4.8.64)

(iv) Instrument cancelling a will

The duty chargeable in respect of the execution of an instrument cancelling a will, remitted.

(SRO No. 309/64-G.O (RT) 1730/64/RD dt: 29.9.64)

(v) Instruments to be executed by the Defence Service personnel

Stamp duty chargeable in respect of instruments to be executed by serving Defence Personnel for securing repayment of advance received from the Government for home construction purposes.

(G.O RT 1891/64/Rev dated 30.10.64)

(vi) Instrument for securing loans from the Animal Husbandry Department

Stamp duties chargeable in respect of instruments to be executed for securing loans from the Animal Husbandry Department for livestock and poultry production activities are remitted.

(SRO No. 129/65 G.O (MS) No. 215/65/RD dt: 22.3.65)

(vii) Issue of extracts of mark lists to Harijan students

Duty chargeable for the issue of extracts of mark lists of the annual examinations of standards I to IX in the case of Harijan Students, is remitted.

(SRO No. 253/65-GO (MS) 516/65/RD dt: 7.6.1965)

(viii) Assignment of Fixed Deposit receipts issued by the Kerala Financial Corporation

Duty with which the instruments in respect of the assignments of fixed deposit receipts issued by the Kerala Financial Corporation are chargeable is remitted.

(SRO No. 260/66 – GO(MS) No. 355/66/Rev dt: 25.6.66)

(ix) Instruments of gift executed in favour of any person certified by a Tahsildar to be a Kudikidappukaran

The duty with which any instrument of gift executed in favour of any person who is certified by the Tahsildar to be a Kudikidappukaran as defined in the Kerala Land Reforms Act, 1963, for the transfer to him of his Kudikidappu as defined in the Act is chargeable is remitted.

(SRO 187/71 G.O (P) 8/71/TD dt: 6.5.1971)

(x) Instruments to be executed under the Kerala State Agricultural Loans Rules

Duty with which the instruments to be executed under the Kerala State Agricultural Loans Rules and the Rules for the supply of Agricultural Machinery and Pumpsets on hire-purchase are chargeable remitted.

(SRO No. 149/66-GO (MS) 155/66/RD dt: 10.3.66) (Kerala Gazette dt: 5.4.1966)

Instruments relating to Transfer

(i) Transfer of debentures floated by KCCLMB

Duty with which instruments evidencing transfer of debentures floated by the Kerala Co-operative Central Land Mortgage Bank Limited, Trivandrum are chargeable remitted.

(G.O (MS) 944/63/Rev Dated 26.12.1963)

Certificate of enrolment of advocates

(Article 28) Duty with which certificate of enrolment in the roll of advocates prepared and maintained by the State Bar Council under the Advocates Act 1961 (Central Act 25 of 1961) is chargeable remitted.

(SRO. No. 150/71-GO (P) 6/71/TD dt: 29.4.1971)

Agreements

(i) Agreements to be executed by landless workers in rural areas

The duties with which the agreements to be executed by the allottees of house-sites and houses as per rule 14 of the Kerala Panchayats (providing house-sites and houses to families of landless workers in rural areas) Rules 1972 issued under G.O (MS) 110/72/LA & SW dated the 6th April 1972 and published in Kerala Gazette extra-ordinary (NO.209 dated the 6th April 1972) are chargeable remitted.

(SRO. No.314/72-G.O. N.O. 8428/C.3/72/TD dt. 9-6-72)

(ii) Agreements executed by the subscriber, nominee

Duty with which the agreement to be executed by the subscriber/nominee/family member/legal heir as the case may be, in pursuance of G.O. MS. 350/72/Fin dated the 10th August, 1972 is chargeable, is remitted.

(SRO. No. 566/72-G.O.(P)88/72/TD dt 23-10-72)

(iii) (a) Attested instruments evidencing an agreement

For attested instruments evidencing an agreement relating to the hypothecation of movable property where such hypothecation has been made by way of security for the repayment of money advanced or to be advanced by way of loan or of an existing or future debt, the duty is reduced to the amount chargeable on agreement relating to deposit of title deeds, pawn or pledge under clause (a) of Article 6 of the schedule to the Kerala Stamp Act, 1959, for the amount secured if such loan or debt is repayable on demand or more than three months from the date of the instrument, and to half that amount if such loan or debt is repayable not more than three months from the date of the instrument.

(b) Unattested instrument evidencing an agreement relating to the hypothecation of movable property, where such hypothecation has been made

by way of security for the repayment of money advanced or to be advanced by way of loan or of an existing or future debt.

(G.O (MS) 813/TD dt: 2.9.1961)

(iv) Agreement to be executed by the Fishermen/Artisans in favour of the Kerala State Co-operative Federation for Fisheries Department Limited

Duties with which the agreement to be executed by the Fishermen/Artisans in favour of the Kerala State Co-operative Federation for Fisheries Development Corporation Limited for getting financial aid under the Scheme implemented by the Federation/Corporation as security for the repayment of the amount advanced to them for the purchase of implements are chargeable, are remitted.

(G.O (P) 15/89/TD dated 23.1.1989)