



*Spreading Legal and
Economic Awareness*

A Social Initiative by
Charanjeet Chanderpal
Edited by Harjot Kaur

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Inside this issue:

When law of copyright is not applicable	1
What includes Forgery	2
Parents can remove harassing children from home	2
What to do in case of theft	2
About Family arrangements	3
What to do if your cheque gets bounced	3
Which insurance you should buy	4

Special points of interest:

- Power of attorney can be general or specific
- Works recognized for over 55 years become materials of public use
- Steps to take in case of theft
- What is forgery
- Is cheque bouncing serious?
- Which insurance you should buy and why

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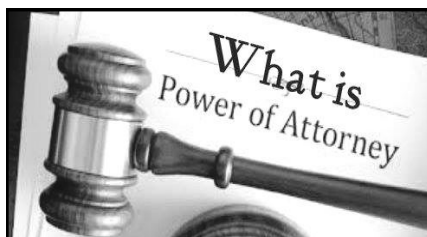
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What is Power of Attorney

Power of Attorney, POA, includes any instrument empowering a specified person to act for and in the name of the person executing it. The person giving the power to another is known as the 'donor' and the person in whose favor the authority is given is known as the 'donee'. We may also use 'principal' and 'agent'. Agent is authorised to sign and use the seal of the person where he is authorised to, on behalf of the principal. The holder can also

receive or make payments on behalf of the principal, but shall not be responsible for making payment or doing any act in good faith at any point of time when he had no knowledge that the donor had died, had become of unsound mind, insolvent, or had revoked the instrument. In some cases, specific laws may allow the use of POA even after

death of the donor. Death of the donor does not take away the donee's right to receive payments of behalf of the donor. In order to make the power of attorney more valid, law provides that a copy of the same should be deposited in the high court or the district court within the limits of



whose jurisdiction the instrument is, or else, to register it. A copy of the instrument must necessarily be made on a stamp paper or a franked paper with necessary stamp of the amount as per the respective state law. It should be made and declared before an authority authorised to take oath- an officer of a district court, high court or a notary

public having jurisdiction. A power of attorney can be general in nature; taking care of general activities-principal being abroad, not available, old or in jail. POA can also be specific, for doing specific acts such as appearing in courts, signing on sale deeds, renewal of licenses, etc. In

cases where mutation/transfer is not possible immediately, the power of attorney of the seller in favour of a buyer can be stamped at market value and can be used as 'a power of attorney in the nature of a conveyance'. Except this kind of a power of attorney, no power of attorney can be irrevocable.

A power of attorney can always be revoked. It gets automatically revoked with death or lunacy of the principal.

Are you violating copyright?

Work which is recognised for a period of 55 years or more and is not copyrighted becomes a matter which can be reproduced or adopted or used by anyone. This is not infringement. Court judgments, law statutes and circulars and

national anthems are naturally exempted from such infringements. The case of R.G.Anand vs Deluxe Films (1978 (4) SCC118) can be safely referred to as a bible for reference as to which kind of reproduction would be re-

garded as an infringement of copyright law. Infringement of copy rights is both a civil as well as a criminal offence. Judgment reproduction is not an infringement but one cannot copy the head notes and explanations inserted by au-

Forgery is not ONLY Copying of Signatures

Forgery of a document does not mean only copying a signatures of a person or copying the handwriting of a person. It means generating a false document. In such cases, even if the signature of a person are genuine, it still may amount to forgery. For example: in the case of signatures obtained on a blank paper on which material is written later, using a dead person's signed cheques in a bank, generation of contracts that have never occurred, police officers filing reports other than those signed in police station in the court,

making fake certificates etc. In police investigations, documents are sent for forensic opinion, if necessary. For instance, when money is withdrawn after a person dies, when transactions which take place in other people's names (benami transactions), backdating documents or transactions and

many such cases. Even if a document is registered, it may still be forged and is liable to get cancelled. In such cases there is less purpose solved in sending documents to an expert. An expert opinion is only a secondary opinion under Evidence Law. The best opinion is that person's who sees the signatures daily in regular transaction, for example a banker. Finally it is for court to decide if a document is forged or not. Forgery is an offence under section 463 to 471 under Indian Penal Code usually read with other offences like cheating, breach of trust etc.

FORGERY
is not ONLY
copying of signatures

Forgery means creating a false document

Removing harassing children from home

Under law relating to protection of civil rights, parents can remove a quarrelsome or harassing son or daughter from their house, except if he is a minor or mentally or physically disabled. The house should be in the name of either of the parents. The son or daughter does not have any right to stay if the parent does not want him to enter. As an extreme, step in certain cases of serious harassment, the parent can even restrain the entry of such a

child in the house. In such cases the only problem would be the police who must act with care and restrain themselves from over interference and ask the parents to give the belongings of the son or daughter back.

Children may complain of wrongful restraint or theft to the police and harass parents further.

The best remedy in such cases is to institute a suit for eviction to remove such

harassing sons and daughters because as per law they are only 'gratuitous' licensees. Gratuitous means those who are at the mercy of the owners and not under any contractual obligation to continue to stay or get any benefit. In this suit the court fee is hardly a thousand rupees or so and in Mumbai the small causes court also has the jurisdiction to entertain this suit. Every year many parents get relief under this remedy.

What to do in Case of Theft

The first thing one has to do is to see that a first information report (FIR) is registered under section 379 or 380 or as per crime, under the Indian Penal Code with the local police station. In such cases police HAS TO register a first information report. Thereafter one must give as much evidence to the police as one can-the bills of purchase of the articles or such other evidence, if available. Eye witnesses are a source of great help in such investigations. Another illustration would be house

breaking, where the police usually draws an 'on the spot panchnama', takes photos, finger prints & witnesses. The police has to investigate and recover the articles and the criminal also. The best way to ensure recovery is to make written applications to the police with copy to all senior authorities mainly the Deputy Commissioner of Police, Assistant Commissioner of Police and the Senior Inspector as well as the investigation officer with all particulars and names of suspects.

In places where there is no commissionerate, the power is with the Deputy Superintendent. If police is not investigating the case properly and not finding the articles, a complaint can be made to the magistrate of that area, who has implied powers to give such directions. Alternately a person can invoke writ jurisdiction of high court. After property is found a person is supposed to make an application for return of property with sufficient proof to show that he is the owner.

About Family Settlement and Family Arrangements

The Constitution of India recognises customs and traditions, to the extent not codified by any law, as binding law, under Article 13. If it is customary in any religion or caste to get matters settled by way of a family mediator or a panchayat/community mukhi, then it is accepted legally and can be given as evidence in court.

Though law recognises even oral settlements, family settlements should preferably be written. A Family 'arrangement' is a set of terms and conditions accepted by the family and is a set up wherein particular members of the family, by passage of time or oral arrangement, are either owners of a part, or of the entire property or some business or receive some money from the family. This does not depend on who the owner of the property is. To save on legal expenses, family settlement and arrangement deed **NEED NOT BE REGISTERED**. It can be done before coming to court to avoid a dispute, while a dispute is on or even after a court orders a settlement. In case you wish to avoid lawyers, you can enter into the settlement and tender it to court, which encourages family settlement.

Although a family settlement need not be registered, there is an anomaly or selfishness on the part of various state governments to make it necessary that in case of transfer of immovable property there should be a registered and stamp duty paid agreement.

Though some good lawyers may support this view, it would demean the very purpose of the settlement. In order to overcome this, it is recommended that at the time of family deed being signed, release deeds signed before a notary must be attached to these family deeds and a one-time registration of the family deed is done at a reduced cost.

The law provides for reduced stamp duty in such cases but registration authorities try to bring this under the ambit of transfer of property for higher fees to the government.

Another way to avoid higher stamp duty is by not mentioning the amount involved, to keep it out of purview of reg-



istration act. If a person expires and one legal heir wishes to release his share in favour of the other, the law in Maharashtra specifically provides that it can be done by registration of a release deed on payment of a fee of Rs 200 only.

This law is applicable to all religions, castes and communities, it is popular in Hindus because Hindu law has the concept of Hindu undivided family and thereby the community has larger family disputes.

Supreme court has held that criminal cases within family members can also be quashed if family disputes are settled (Gian singh vs State of Punjab 12-9-2012)

When your Cheque gets Bounced...

Under Section 138 of the Negotiable Instruments Act 1881, bouncing of cheques is a crime under the code of criminal procedure and faces a trial like a criminal trial because it involves cheating as well, covered under Section 420 of the IPC. Even stop payments of cheques are liable to meet with the same consequences, unless the reason for stop payment is theft or misplacement of cheques, for which there should be some kind of communication to the police or to the bank. A mere dispute in liability does not save a stop payment cheque from the consequences of this law. However sometimes it may so happen that the transaction itself has not materialized. In such cases the magistrate has to consider whether the case is fit for a full trial or a summary trial.

When a cheque is dishonored one is supposed to collect the notice of dishonor from the bank and send a notice to the drawer/payer within 15 days, to pay the amount within a month or else face consequences under this law. And within one month of the receipt of this notice, if the payment is not made then a case must be filed with the magistrate. This time compliance is strict as any delay can prove fatal, though magistrate has the power to condone delay. If the transaction is judged genuine then under this law the magistrate can grant imprisonment as well as payment of the amount with penalty as high as double the amount.

Chanderlawpal's

300/1&2
Rishabh Apartments
Off SK Bole Road
Dadar West

Phone: 022 2432 8949

Mobile: 9819 657 780

E-mail:

charanchander74@rediffmail.com

*A law and economics knowledge
sharing initiative*

Edited by Harjot Kaur

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Chanderlawpal.com is an online legal advisory portal, for people from all over the world, seeking legal advice on Indian or/and international laws.

This newsletter is an initiative by Advocate Charanjeet Chanderpal for making public aware about the laws that exist in India for protection of common man. Legal jargons and financial language are seldom understood by laymen and this causes public to lose faith in legal and economic (financial) systems.

-An attempt to restore this faith and to help people use the existing machinery to become self reliant.

Types of Insurance Plans in India Which one you Should Buy

There are essentially five types of insurance plans:

In **Term Plans**, your life is insured for a certain number of years and you need to pay premium for this period only. In case of your death, your family gets the sum insured and if nothing happens to the you during this period, nothing is returned to you when the plan ends when the time period gets over.

Endowment Plans pay your family the insured sum if you die during a certain period and in case of survival, the insuring company returns the sum insured or your premiums to you, depending on the type of plan.

Moneyback Plans return you a certain percentage of sum insured at fixed intervals of time and the full sum insured in case of death. In case of survival till the plan ends, a fixed percentage of sum insured is returned to you.

Whole Life Plans insure you for life. Whenever you die, your family gets the sum insured. While in terms plans, the family gets a sum insured only if the in-

sured person dies WITHIN a pre-defined period, as long as 30 years.

Unit Linked Insurance Plans or ULIPS, are a combination of investment and insurance. When you pay your premium, a certain amount is invested in various investment schemes, depending in the type of ULIP it is, and the remaining amount is reserved to build your sum insured. In case of your death, your family gets the sum insured. In case of survival you get the benefit of the investment part.

A comparison of the plans undertaken by a large number of personal finance experts shows that plans which return you money even in case of your survival charge you a premium that is much higher than Term Plans. This is because insurance companies need to invest the premium that you pay, in various investment schemes, to earn their profits as well as to return the promised amount to you. *You can undertake online comparison yourself from various comparison websites available.*

In term plans, for example you get a 30 year life cover of Rs 1 crore for as low as Rs 8000 to Rs 10000 a year, according to research done on the internet. This means that you pay Rs 8000 every year for 30 years and if you die within 30 years, your family gets Rs 1 crore as sum insured and if you do not die within 30 years, you do not get anything. As compared to this, if you opt for endowment or moneyback or whole-life plans, you will have to pay three to four lakhs per year, for a cover of Rs 1 crore, which does not make sense because the amount returned under these plans is equal to a fixed deposit paying you an interest of 8-10% pa.

Instead of blocking lakhs of rupees in such plans, you should prefer buying a term plan for security of your family. And with the investable surplus from your income, you should invest in combination of fixed deposits, gold, property, equity etc, earmarking each investment for a specific use and milestone; educating your children, getting them married or for your retirement.
