

CHAPTER 10

LAW RELATING TO STAMPS (INDIAN STAMP ACT, 1899)

1. BASIC

<p>Objective of Act</p>	<ul style="list-style-type: none"> ▪ The purpose of enacting such an Act is to raise revenue for the Local Governments ▪ Additionally, payment of stamp duty imparts legality to the document and this can be submitted as an authentic document in courts
<p>Power of Government</p>	<ul style="list-style-type: none"> ▪ Parliament can make law in respect of Stamp Duty ▪ It can prescribe rates of stamp duty ▪ The stamp duty rates prescribed by Parliament in respect of bill of exchange, transfer of shares etc. will prevail all over India. ▪ However, other stamp duty rates prescribed by Parliament in Indian Stamp Act, 1899 (e.g. stamp duty on agreements, affidavit, articles of association of a company, partnership deed, lease deed, mortgage, power of attorney, security bond etc.) are valid only for Union territories. ▪ In case of States, the rates prescribed by individual States will prevail in those States.
<p>Power to reduce duty – Section 9</p>	<ul style="list-style-type: none"> ▪ Government can reduce or remit whole or part of duties payable ▪ Such reduction or remission can be in respect o whole or part o territories and also can be for particular class of persons. ▪ Government can also compound or consolidate duties in case of issue of shares or debentures by companies ▪ ‘Government’ means Central Government in respect of stamp duties on bills of exchange, cheque, receipts etc. and ‘State Government’ in case o stamp duties on other documents.

2. DEFINITIONS

<p>Bill of Lading – Section 2(4)</p>	<ul style="list-style-type: none"> ▪ A bill of lading is a receipt by the master of a ship for goods delivered to him for delivery to specific party. ▪ In abbreviated form, it is known as B/L or BoL ▪ Three copies of bill of lading are made, each signed by the master. ▪ One copy is kept by the consignor of the goods, one by the master of the ship and one is forwarded to the consignee. ▪ Bill of lading is a written evidence of a contract for the carriage and delivery of goods by sea, for certain freight. ▪ When gods are delivered on board of ship, the receipt is given by the person in-charge at that time. This receipt is known as the mate’s receipt. The shipper of the goods returns this receipt to the master before the ship leaves and receives from him bill of lading for the goods, signed by the master.
---	--

<p>Conveyance – Section 2(10)</p>	<ul style="list-style-type: none"> ▪ The term “conveyance” includes a conveyance on sale and every instrument by which property (whether movable or immovable) is transferred inter vivos and which is not otherwise specifically provided for by Schedule ▪ It does not include a will
<p>Instrument Section 2(14)</p>	<ul style="list-style-type: none"> ▪ It includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded. ▪ The definition of an instrument is an inclusive definition. Examples : ▪ An instrument includes conveyances, leases, mortgages, promissory notes and wills ▪ Ordinary letters are not instrument ▪ Accounts are not instrument ▪ Draft document which is not executed is not instrument ▪ Photocopy of an agreement is not instrument
<p>Bills of exchange – Section 2(2)</p>	<ul style="list-style-type: none"> ▪ “Bill of exchange” means a bill o exchange as defined in the Negotiable Instruments Act, 1881. It also includes a Hundi. ▪ As per Negotiable Instruments Act, defines a “Bill of Exchange” 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 .
<p>Bills of exchange payable on demand – Section 2(3)</p>	<ul style="list-style-type: none"> ▪ Bill of exchange on demand includes : <ul style="list-style-type: none"> ➤ An order for the payment of any sum of money by a bill o exchange or promissory note or for the delivery of any bill o exchange or promissory note in satisfaction of any sum of money, or in the payment of any sum of money out o any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen; ➤ An order or the payment of any sum of money weekly, monthly or at any other said period; ➤ A letter of credit
<p>Settlement – Section 2(24)</p>	<ul style="list-style-type: none"> ▪ “Settlement” means any non-testamentary, disposition, in writing, of movable or immovable property made : <ul style="list-style-type: none"> ➤ In consideration o marriage; ➤ 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 dependent on him; or ➤ For any religious or charitable purpose ▪ Will is not included within meaning of settlement
<p>Stamp</p>	<ul style="list-style-type: none"> ▪ “stamp” means any mark, seal or endorsement by any agency or person duly authorized by the State Government ▪ It includes an adhesive or impressed stamp for the purposes of duty chargeable under this Act.

3. INSTRUMENT CHARGEABLE TO STAMP DUTY

<p>Instrument Chargeable With Duty</p>	<ul style="list-style-type: none"> ▪ Instrument includes every document by which any right or liability, is, or purported to be created, transferred, limited, extended, extinguished or recorded – Section 2(17) ▪ Any instrument mentioned in Schedule I to Indian Stamp Act is chargeable to duty as prescribed in the schedule – Section 3 ▪ Schedule I includes all usual instruments like affidavit, lease, memorandum and articles of company, bill of exchange, bond, mortgage, conveyance, receipt, debenture, share, insurance, policy, partnership deed, proxy, Mortgage deed, share warrants, trust deeds, certificate of sale, power o attorney, lease deed, protest of bill or note etc. ▪ Thus, if an instrument is not listed in the schedule, no stamp duty is payable. ▪ ‘Instrument’ does not include ordinary letters. Similarly an unsigned draft of an agreement is not an ‘instrument’ ▪ Every bill of exchange payable otherwise than on demand or promissory note drawn or made out of India on or after the date an accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated in India is chargeable to duty. <p>Example :</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 60%;">Nature of document or instrument</th> <th>Stamp duty payable?</th> </tr> </thead> <tbody> <tr> <td>Court order sanctioning amalgamation scheme</td> <td>Yes</td> </tr> <tr> <td>An instrument transferring either movable or immovable property</td> <td>Yes. It is conveyance</td> </tr> <tr> <td>Sale of right to catch fish in lake</td> <td>Yes. It is benefit arising out of the land and as such is impossible property.</td> </tr> </tbody> </table>	Nature of document or instrument	Stamp duty payable?	Court order sanctioning amalgamation scheme	Yes	An instrument transferring either movable or immovable property	Yes. It is conveyance	Sale of right to catch fish in lake	Yes. It is benefit arising out of the land and as such is impossible property.
Nature of document or instrument	Stamp duty payable?								
Court order sanctioning amalgamation scheme	Yes								
An instrument transferring either movable or immovable property	Yes. It is conveyance								
Sale of right to catch fish in lake	Yes. It is benefit arising out of the land and as such is impossible property.								
<p>Documents exempted from stamp duty</p>	<ul style="list-style-type: none"> ▪ No stamp duty is payable in respect of any instrument executed by or on behalf of Government. ▪ Sale or disposition of ships or vessel registered under Merchant Shipping Act are also exempt from stamp duty. 								
<p>Payment of stamp duty where one transaction with several instruments – Sections 4,5,6</p>	<ul style="list-style-type: none"> ▪ In case of sale, mortgage or settlement, if there are several instruments for one transaction, stamp duty is payable only on one instrument. On other instruments, nominal stamp duty of Re. 1 is payable ▪ If one instrument relates to several distinct matters, stamp duty payable is aggregate amount of stamp duties payable on separate instruments. “District Matters’ means the matters of different kinds. <p>Examples of matters of distinct matters :</p> <ul style="list-style-type: none"> ➤ An agreement for service and a lease ➤ A document containing both an agreement for the dissolution of a partnership and bond. 								

	<ul style="list-style-type: none"> ▪ However, it may happen that one instrument covering only one matter can come under more than one description given in Schedule to Stamp Act. In such case, highest rate specified among the different heads will prevail.
<p>Payment of stamp duty when conveyances are executed in parts – Section 28</p>	<ul style="list-style-type: none"> ▪ Where property has been contracted to be sold for one consideration as a whole, but conveyed to purchaser (i.e. documents executed) in separate parts, the total consideration agreed shall be apportioned in different conveyances as the parties think fit and stamp duty should be paid accordingly on each conveyance. ▪ However, distinct consideration for each part should be shown in the conveyance of that part of and duty should be paid on that part. ▪ Similar provisions is applicable, if two or more persons agree to purchase one property, and property is conveyed in parts by separate instrument to different persons.

4. PAYMENT OF STAMP DUTY OR MODE OF PAYMENT OF STAMP DUTY

<p>Method of payment of Stamp Duty – Section 10</p>	<ul style="list-style-type: none"> ▪ The payment of stamp duty can be made by : <ul style="list-style-type: none"> ➢ Adhesive stamps or ➢ Impressed stamps
<p>Payment by Adhesive stamps – Sections 11 - 12</p>	<p>Which instrument?</p> <ul style="list-style-type: none"> ▪ Following instruments can be stamped with adhesive stamps : <ul style="list-style-type: none"> ➢ Bill of exchange and promissory notes ➢ Instrument relating to entry as advocate or attorney in High Court ➢ Transfer of shares of company
	<p>Cancellation of Adhesive Stamp</p> <ul style="list-style-type: none"> ▪ The adhesive stamps affixed to an instrument must be cancelled by the person affixing the stamp, so that these cannot be used again. ▪ If the person affixing the stamp does not cancel them, it can be cancelled at the time of execution by person executing the instrument. ▪ Such cancellation may be by writing name or initials of person cancelling by the same or name or initials of his firm with true date of writing. ▪ It can also be cancelled by any other effectual manner. ▪ Cancellation can be done by drawing lines across the adhesive stamp by pen etc. ▪ Any such cancellation must be such that the stamp cannot be used again, but value of stamp affixed must be visible.
	<p>Consequences of non – cancellation</p> <ul style="list-style-type: none"> ▪ If the stamp is not cancelled so that it cannot be used again, the instrument is deemed to be un-stamped ▪ Penalty of Rs.100 can be imposed.

<p>Impressed stamps – Sections 13 - 15</p>	<ul style="list-style-type: none"> ▪ ‘Impressed Stamp’ means stamp is impressed on the paper by mechanical means (these are the stamp papers we purchase from stamp vendor) ▪ As per section 2(13), “impressed stamp” includes : <ul style="list-style-type: none"> ➤ Labels affixed and impressed by the proper officer and ➤ Stamps embossed or engraved on stamp paper ▪ Instrument should be written on the stamp paper such that the stamp may appear on the face of instrument and cannot be used or applied to any other instrument. ▪ Only one instrument chargeable to duty shall be written on a stamp paper ▪ However, endorsement of a duly stamped instrument is permitted. Such endorsement may be : <ul style="list-style-type: none"> ➤ For transferring any right created or evidenced by endorsement or ➤ Acknowledge receipt of any money or goods which is secured by the instrument ▪ If an instrument on stamp paper is not written as per aforesaid provisions, it is treated as un-stamped ▪ Endorsement of a promissory note does not require stamp duty. 	
<p>Time of stamping – Sections 17 - 19</p>	<ul style="list-style-type: none"> ▪ Instrument executed in India must be stamped before or at the time of execution ▪ Instrument executed out of India can be stamped within three months after it is first received in India. ▪ However, in case of bill of exchange or promissory note made out of India, it should be stamped by first holder in India before he presents for payment or endorses or negotiates in India 	
<p>Who is liable to pay stamp duty? – Section 29</p>	<p>In case of bonds, bill of exchange, debentures, promissory note, mortgage deed and settlement</p>	<ul style="list-style-type: none"> ▪ Stamp duty is payable by the person drawing, making or executing the instrument.
	<p>In case of insurance</p>	<ul style="list-style-type: none"> ▪ Stamp duty is payable by person issuing the insurance policy, i.e. by insurance company
	<p>In case of conveyance</p>	<ul style="list-style-type: none"> ▪ Stamp duty is payable by grantee – who may be purchaser or beneficiary
	<p>In case of lease</p>	<ul style="list-style-type: none"> ▪ Stamp duty is payable by lessee (i.e. person receiving the lease property)
	<p>In case of partition deed</p>	<ul style="list-style-type: none"> ▪ Stamp duty is payable by parties to partition have to pay in proportion to their respective shares in property

5. VALUATION OF STAMP DUTY

<p>Base</p>	<ul style="list-style-type: none"> ▪ In some cases, stamp duty is payable on <i>ad valorem</i> basis i.e. on basis of value of property etc. in such cases, value is decided on following basis.
<p>Value if amount is expressed in foreign currency – Section 20</p>	<ul style="list-style-type: none"> ▪ If amount is expressed in foreign currency, rate of exchange on the date of instrument will be considered for finding value in indian rupees for stamp duty proposes – Section 20(1) ▪ Central Government may prescribe such rates from time to time for calculating stamp duty – Section 20(2) ▪ Such rate will be considered for valuation and not the actual rate prevailing in the market. If the instrument indicates the current exchange rate and stamped according to exchange rate mentioned, it will be presumed (unless contrary is proved) that the instrument is duly stamped – Section 22
<p>Valuation of stock and marketable securities – Sections 21 - 22</p>	<ul style="list-style-type: none"> ▪ Value of stock or security will be calculated on the basis of average price thereof on date of instrument – Section 21 ▪ Thus, in case of share transfer deed, stamp duty is payable on basis of market value of the shares as on date of instrument. ▪ If the instrument indicates the current market rate and the instrument is stamped according to that rate, it will be presumed (unless contrary is proved) that the instrument is duly stamped – Section 22
<p>No duty on penal interest portion mentioned in the instrument – Section 23</p>	<ul style="list-style-type: none"> ▪ Even if a document mentions penal interest to be charged, valuation will be done without considering the penal interest portion – Section 23
<p>Valuation in case of transfer in consideration of debt- Section 24</p>	<ul style="list-style-type: none"> ▪ Where any property is transferred to any person in satisfaction (consideration) of any debt due to that person, such debt will be treated as ‘consideration’ for valuation of ad valorem duty. ▪ Similarly, if property is transferred subject to payment or transfer of any money or stock, such money or stock will be considered as consideration for valuation purposes. ▪ Further provisions are : <ul style="list-style-type: none"> ➤ If the sale of property is subject to a mortgage any unpaid mortgage together with interest due if any, will be treated as part of consideration. ➤ Where property transferred is subject to mortgage, duty already paid in respect of mortgage will be deducted – Section 24 <p>Example : A owes B Rs.1,000. A sells property to B, the consideration being Rs.500 and release of previous debt of Rs.1,000. <i>The stamp duty is payable on Rs.1500</i></p>

	<p>Example : A sells property to B for Rs.500, which is subject to a mortgage to C for Rs.1,000 and unpaid interest of Rs.200. the stamp duty is payable on Rs.1,700.</p> <p>Example : A mortgages a house of the value of Rs.10,000 to B for Rs.5,000. B afterwards buys the house from A. the stamp duty on sale deed is payable on Rs.10,000, less than the amount of stamp duty paid on mortgage deed of Rs.5,000. i.e. stamp duty paid on mortgage deed will be allowed as deduction while paying duty calculated on the basis of Rs.10,000.</p>
<p>Valuation in case of annuity – Section 25</p>	<ul style="list-style-type: none"> ▪ Some agreements provide for payment of annuity or periodic payments and not lump sum payment. In such case, valuation is done as follows : <ul style="list-style-type: none"> ➤ If period of annuity is definite, total amount of annuity to be paid during that period will be considered. ➤ If annuity is payable perpetually or for indefinite time, total amount payable within 20 years from date of first payment due will be considered for valuation. However, such indefinite period should not be based on life of a person i.e. the payment of annuity should not be subject to condition of living or death of any person. ➤ If payment of annuity is subject to living or death of a person, the valuation will be done on basis of annuity payable for 12 years from first payment becomes due – Section 25
<p>Valuation in case of lease of mine</p>	<ul style="list-style-type: none"> ▪ In case of lease of mine where royalty or share of the produce is received as rent or part of rent, exact amount receivable annually cannot be determined. ▪ In such cases, where the lease has been granted on behalf of Government, the amount of royalty or value of share as estimated by Collector of District will be considered for valuation. ▪ If lease has been granted by any other person, the amount will be considered as Rs.20,000 per year.
<p>Provision when value is indeterminable – Section 26</p>	<ul style="list-style-type: none"> ▪ When value of subject matter cannot be ascertained precisely on date of execution, stamp should be fixed on estimated basis of valuation. ▪ However, in such case, the maximum amount that can be claimed on such instrument will be only the value on which stamp duty has actually been paid, and nothing more – Section 26.

6. INSTRUMENT NOT DULY STAMPED

<p>Meaning of duly stamped – Section 2(11)</p>	<ul style="list-style-type: none"> ▪ ‘Duly stamped’ means that the instrument bears an adhesive or impressed stamp not less than proper amount and that such stamp has been affixed or used on accordance with the law in force in India. ▪ In case of adhesive stamps, the stamps have to be effectively cancelled so that they cannot be used again. ▪ Similarly, impressed stamps have to be written in such a way that it cannot be used for other instrument and stamp appears on face of instrument. ▪ If stamp is not so used, the instrument is treated as ‘un-stamped’ ▪ Similarly, when stamp duty paid is not adequate, the document is treated as ‘not duly stamped’ ▪ If the stamps are affixed but are not cancelled, they are deemed to be un-stamped – Muniamma vs. Arthi Cine Enterprises (P.) Ltd., - (1992) ▪ Normally, such cancellation is done by drawing lines (at least two) across the stamps, so that they extend to both sides of stamp, so that the same cannot be used again or they can be cancelled by signing or putting data etc.
<p>Impounding of instrument – Section 33</p>	<ul style="list-style-type: none"> ▪ If instrument which is not duly stamped is produced as evidence before any authority holding public office, he shall impound the same. ▪ Such impounding is not necessary in case the document is produced in criminal case. ▪ If the document is sought to be used as evidence beyond 3 months, document can be impounded under section 33 and stamp duty and penalty can be levied. After payment of penalty, document can be used as evidence. ▪ As per the provisions of impounding, the same can be done only when the ‘instrument’ is produced as evidence. Thus, if copy of an instrument is produced as evidence, it cannot be impounded under this section. ▪ After impounding the instrument, the original has to be sent to Collector with report of the impounding authority – Section 38. ▪ Collector can impose penalty up to 10 times the differential duty payable – Section 40. ▪ If the person pays penalty (as explained below) to the authority, only certified copy with certificate regarding difference of stamp duty payable and penalty paid should be sent to Collector – Section 38. ▪ Collector has powers to refund penalty paid – Section 39.
<p>Instrument not duly stamped</p>	<ul style="list-style-type: none"> ▪ An instrument not ‘duly stamped’ cannot be accepted as evidence by civil court, an arbitrator or any other authority authorized to receive evidence. ▪ However, the document can be accepted as evidence in criminal court.

	<ul style="list-style-type: none"> ▪ A receipt which is not duly stamped can be accepted as evidence on payment of penalty of Re.1 ▪ An instrument insufficiently stamped can be accepted as evidence on payment of penalty of ten times the difference in duty. ▪ If contract or agreement is effected by more than one letters, the contract will be treated as 'duly stamped' if any one of the letters bears proper stamp. ▪ These provisions regarding non-admissibility of evidence are not applicable to instruments executed by or on behalf of Government. ▪ Similarly, a document certified by Collector as properly stamped cannot be disallowed as evidence – Section 35 ▪ State Government can also make provisions for payment of differential duty with penalty. Once differentially duty and penalty as per rules is paid, the document will be deemed to be 'duly stamped' as on date of execution, for purpose of evidence – Section 37.
<p>Instrument unduly stamped by accident or mistake – Section 41</p>	<ul style="list-style-type: none"> ▪ If non-payment or short payment of stamp duty is by accident, mistake or urgent necessity, the person can himself produce the document to collector within one year. ▪ In such case, Collector may receive the amount and endorse the document that proper duty has been paid.

7. ALLOWANCE FOR STAMPS

<p>What is allowance for stamps?</p>	<ul style="list-style-type: none"> ▪ In some cases, the stamp papers purchased cannot be used or they are spoiled or wrongly used. In such cases, allowance for stamps (i.e. refund) can be obtained from Collector, subject to rules made by State Government.
<p>Allowances for impressed spoiled but unsigned stamps – Section 49</p>	<ul style="list-style-type: none"> ▪ Collector can make allowance for impressed and spoiled stamp paper or stamps on document which are not signed if stamp paper is spoiled, obliterated or rendered unfit due to error in writing. ▪ Application for refund has to be made within 6 months from the date when instrument is spoiled.
<p>Bill of exchange and promissory note signed but not used</p>	<ul style="list-style-type: none"> ▪ If Bill of exchange (not payable on demand) or promissory note is signed but has not been accepted or made use in any manner and have not been delivered to any person, allowance for impressed stamps can be claimed.
<p>Allowance for impressed stamp on document executed</p>	<ul style="list-style-type: none"> ▪ Normally, once document is executed, refund cannot be granted. However, in following cases, allowance can be made, if any legal proceeding has not been commenced where the instrument could be offered as evidence. <ul style="list-style-type: none"> ➤ Document was found to be void in law from beginning

	<ul style="list-style-type: none"> ➤ Document found unfit for purpose originally intended due to error in document ➤ Document incomplete as one of the material parties is unable or refuses to sign the instrument – thus document is incomplete ➤ Intended purpose totally fails as one of the parties refuses to act on the same ➤ Becomes useless as other instrument with same or higher stamp duty executed ➤ The document was with insufficient stamp duty and other instrument with proper duty executed ➤ Instrument is spoiled and another instrument between same parties for same purpose executed ▪ Application for allowance (refund) must be made within 2 months from date of instrument. ▪ In case of allowance claimed on account of substituted instrument, application can be made within 6 months from the date of substituted instrument, if the original document could not be submitted for cancellation within two months due to unavoidable reasons.
<p>Allowance for printed forms – Section 51</p>	<ul style="list-style-type: none"> ▪ Some companies, banks or incorporated bodies purchase stamp papers and print their forms on such paper. If they are unable to use the same for any reason, they can claim refund, without any time limit.
<p>Allowance for misused stamps – Section 52</p>	<ul style="list-style-type: none"> ▪ If wrong type of stamps are inadvertently used or inadvertently higher duty stamps are used, allowance can be obtained if application is made within 6 months from date of execution.
<p>Allowance for stamps not required for use – Section 54</p>	<ul style="list-style-type: none"> ▪ If a person does not need stamps bought by him for immediate use, he can claim allowance even if the stamps are not spoiled or become unfit or useless. ▪ Application must be made within 6 months from date of purchase.
<p>Allowance on renewal of certain debentures – Section 55</p>	<ul style="list-style-type: none"> ▪ When any duly stamped, debenture is renewed by issue of new debenture on same terms, stamp duty paid on old debentures is refundable if new debentures duly stamped are issued. ▪ Original debentures should be produced before Collector for cancellation. ▪ The provision is applicable even if new debentures are with different rate of interest and date of payment has changed. ▪ Similarly, issue of two or more debentures in place of one old debenture or issue of one new debenture in place of two or more old debentures or substitution of name of the holder is no bar, i.e. even in such cases, refund can be obtained.
<p>How to make allowance – Section 53</p>	<ul style="list-style-type: none"> ▪ The Collector can make allowance either by issuing fresh stamps of same amount or refund the amount. ▪ If amount is refunded, 10% amount will be deducted.

8. MISCELLANEOUS

<p>Adjudication as to stamp duty payable</p>	<ul style="list-style-type: none"> ▪ Adjudication means determining the duty payable ▪ Normally, the person paying the duty himself may decide the stamp duty payable and pay accordingly. ▪ However, in cases of complex documents, the person paying the duty may not be sure of the stamp duty payable. ▪ In such case, he can apply for opinion of Collector. He has to apply with draft document and prescribed fees. ▪ Collector will determine the stamp duty payable as per his judgment – Section 31. ▪ For this purpose Collector may ask for details of all facts and circumstances and evidences ▪ The evidence produced cannot be used for any purpose any other than in enquiry about the duty with which the instrument is chargeable ▪ Once duty as determined by Collector is paid, penalty cannot be imposed on a person for not stating all facts and circumstances on the instrument in respect of stamp duty chargeable.
<p>Certificate regarding fully duty paid</p>	<ul style="list-style-type: none"> ▪ A person who has paid stamp duty and has executed an instrument can apply to Collector to certify that stamp duty has been correctly paid. ▪ The Collector shall certify by endorsement on the instrument that full duty chargeable has been paid. ▪ He can also certify that no stamp duty is payable on the instrument – Section 32 ▪ Application for such endorsement has to be made within one month from execution of document in India ▪ If the instrument was executed out of India, it can be brought to him within three months after it is received in India. ▪ Once Collector has made endorsement regarding duty, the instrument can be produced as evidence and acted upon. It can be registered as 'duly stamped'

CASE BASED QUESTIONS

Q – 1	What is purpose of Indian Stamp Act?
Ans.	Refer paragraph no.1
Q – 2	Stamp Duty is paid on ad valorem basis. What does this imply?
Ans.	It means that – Stamp Duty is paid on basis of value of property
Q – 3	How is stamp duty paid in transactions where more than one instrument is required?
Ans.	Refer paragraph no.3
Q – 4	How should one sign an instrument affixed with adhesive stamp?
Ans.	Refer paragraph no.4
Q – 5	How should instruments stamped with impressed stamp be written?
Ans.	Refer paragraph no.4
Q – 6	How are stock and marketable securities valued under Indian Stamp Act?
Ans.	Refer paragraph no.5
Q – 7	How is a property subject to mortgage, when transferred to the mortgagee, charged under Indian Stamp Act?
Ans.	Refer paragraph no.5
Q – 8	When can one ask for refund of stamp duty?
Ans.	Refer paragraph no.7
Q – 9	Is there any stamp duty on merger, demerger, hive off, slump sale of a business by an Indian Company?
Ans.	The Indian Stamp Act, 1899 do not specifically provide for any specific entry in Schedule I with regard to merger, demerger, hive off, slump sale of a business by an Indian company. however, this does not mean that no stamp duty is payable on instruments which are used to implement such transactions. The issue is subject to several litigation and the revenue authorities take different views in difference cases. In states like Maharashtra and Gujarat, the matter is resolved to some extent by providing specific entries for levying stamp duty on merger and demerger which are implemented under the Companies Act, 1956 or 2013.
Q – 10	Is endorsement of promissory note require payment of stamp duty?
Ans.	No

Q – 11	A sells property to B for Rs.500, which is subject to a mortgage to C for Rs.1,000 and unpaid interest of Rs.200. state stamp duty payable.
Ans.	The stamp duty is payable on Rs.1700
Q – 12	A mortgages a house of the value of Rs.10,000 to B for Rs.5,000. B afterwards buys the house from A. state stamp duty payable.
Ans.	The stamp duty on sale deed is payable on Rs.10,000, less the amount of stamp duty paid on mortgage deed of Rs.5,000. i.e. stamp duty paid on mortgage deed will be allowed as deduction while paying duty calculated on the basis of Rs.10,000
Q – 13	Amit owes Bhanu Rs.1000. he sells a property to Bhanu, the consideration being Rs.500 and the release of the previous debt of Rs.1000. state the stamp duty payable.
Ans.	Stamp duty is payable on Rs.1,500
Q – 14	In the case of sale deed, conveyance deed, exchange deed, lease / rent deed, partition deeds, who is liable to pay stamp duty?
Ans.	Purchaser has to pay stamp duty on sale / conveyance deeds. In the case of exchange deeds, both the parties have to pay stamp duty in equal shares. In lease / rent deed, it is payable by the lessee. In partition deeds it is payable by the parties in proportion to their respective shares. In all other cases, the stamp duty is generally payable by the executants of the documents.

PAST EXAMINATION QUESTIONS

Q – 1	<p>State the instruments which are chargeable with duty under the Indian Stamp Act, 1899 (CS December 2011)</p> <p style="text-align: center;">Or</p> <p>List any ten instruments which are chargeable with duty under the Indian Stamp act, 1899 (CS December 2010)</p>
Ans.	Refer Paragraph No.3
Q – 2	<p>Explain the methods of stamping under the Indian Stamp Act, 1899 (CS December 2007)</p> <p style="text-align: center;">Or</p> <p>What are the mode of cancellation of adhesive stamps? (CS June 2012, 2015)</p>
Ans.	Refer Paragraph No.4
Q – 3	<p>Who are liable to pay the stamp duty under the Indian Stamp Act, 1899 in the following instances; (i) Mortgage deed (ii) policy of insurance other than five insurance? (iii) Transfer of shares in a company (iv) conveyancing and conveyancing of a mortgaged property. (CS June 2001)</p>
Ans.	Refer Paragraph No.4
Q – 4	<p>How is ad valorem duty calculated in respect of marketable security under the Indian Stamp Act, 1899? (CS December 2001)</p>
Ans.	Refer Paragraph No.5
Q – 5	<p>Discuss the evidentiary value of an instrument not duly stamped under the Indian Stamp Act, 1899 (CS June 2006, 2013)</p> <p style="text-align: center;">Or</p> <p>Explain the consequences of the instruments which are not duly stamped under the Indian Stamp Act, 1899 (CS June 2010)</p> <p style="text-align: center;">Or</p> <p>State the law of inadmissibility in evidence of an instrument not duly stamped. (CS December 2013)</p> <p style="text-align: center;">Or</p> <p>Comment – An instrument admitted in evidence is not to be questioned. (CS June 2007)</p>
Ans.	Refer Paragraph No.6
Q – 6	<p>An instrument bears a stamp of sufficient amount, but for improper description. Can it be certified as duly stamped? How the instrument can be rectified and what would be the date of its execution? (CS June 2013)</p>
Ans.	Refer Paragraph No.6
Q – 7	<p>A document, which is apparently an agreement granting a franchise, is produced in the court, but is riot stamped. Examine, citing relevant provision of the Indian Stamp Act, 1899 whether –</p> <p>i) The document is void; or</p> <p>ii) The document can be admitted on payment of penalty; or</p> <p>iii) The parties are liable to prosecuted? (CS June 2007)</p> <p style="text-align: center;">Or</p>

	<p>Achal gives an instrument to Basu which is unstamped. This instrument is also not registered :</p> <p>i) Will the instrument be admitted in evidence?</p> <p>ii) Will the situation change if the instrument is stamped but not registered before passing to Basu and Basu gets it registered subsequently? (CS June 2013)</p>
Ans.	<p>i) Document is not void but inadmissible in evidence</p> <p>ii) Any instrument which is not duly stamped can't be admitted as evidence as per Section 35. However, it may be admitted as evidence in special cases after imposing and payment of penalty.</p> <p>iii) If penalty is paid, parties are not liable to be prosecuted in view of provision of Section 43.</p>
Q – 8	<p>Abhay's agriculture land was purchased by the government for the purpose of construction of a factory but no duty was paid for this transfer by the government. Abhay wanted to take back his land on the ground that government has not paid the duty and, therefore, no sale deed was executed. Will Abhay succeed? Give reasons. (CS December 2008)</p>
Ans.	<p>Abhay will not succeed. Sale deed is effective.</p> <p>Generally instrument is charged with stamp duty but no duty is chargeable in respect of instrument executed by government or for instrument executed in favour of the Government, where government would liable to pay duty chargeable.</p>
Q – 9	<p>Four adhesive stamps were used on an instrument. First adhesive stamp had a single line drawn across the face of the stamp. On the second stamp, there were two parallel lines. The third stamp had three parallel lines, and the fourth stamp had two lines crossing each other. What are the provisions for cancellation of adhesive stamps and which adhesive stamps referred to above will be considered to have been properly cancelled? (CS December 2009)</p>
Ans.	<p>In the matter of coronation Tea Company Ltd., the Calcutta High Court held that the transfer deed is not duly stamped in case the adhesive stamp affixed on the deed has not been cancelled.</p> <p>As per Section 12 of the Indian Stamp Act, 1899, the person required to cancel an adhesive stamp may cancel it by writing on across the stamp his name or initials or the name or initials of his firm with the true date of his so writing, or in any other effectual manner.</p> <p>A stamp may be treated as cancelled by drawing a line across it. Stamp may be treated as effectively cancelled by drawing diagonal lines across the stamp extending on the paper on which the stamp is affixed.</p> <p>Here the 1st and fourth line will be considered to have been properly cancelled.</p>