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DRAFTING OF PLEADINGS AND CONVINCING

GENERAL PRINCIPLES OF DRAFTING AND RELEVANT RULES

The art of drafting the pleadings has not yet fully developed in spite of the increase in the civil litigation. As a matter of fact, the art of pleading should be the foundation course and great emphasis should be laid on this paper. Because of this absence of rigorous training, the young lawyers often indulge in prolixity rather than clarity and conciseness. Many dead-sure-win cases drag on for years in the courts only because of faulty drafting. Irrelevant matters, unnecessary details are often included and the facts placed before the lawyer by his client are not marshaled. The result is that the martial facts are often mixed up with inessential matter.

According to Lord Halsbury - "Where system of pleading may exist, the sole object of it is that each side may be fully alive to the questions that are about to be argued in order that they have an opportunity of bringing forward such evidence as may be appropriate to the issue"

Pleading is an art, of course, and art which requires not only technical and linguistic skill but also an expert knowledge of the law on the given point brought before a lawyer. Even experienced lawyers and attorneys are not infallible and sometimes they also make mistakes. However, in the matter of pleadings longer experience and a great linguistic acumen are both essential ingredients. What ultimately matters is how clearly and systematically have the facts been presented before the court of law.

It is a matter of common knowledge that when a person comes to seek the assistance of the court of law in any matter, he has to prepare a statement of his claims, and the facts on which such claims are founded. Such statements fully drawn up, setting out all contentions, are called "pleadings". Thus pleadings are the foundation of all sorts of litigation; no judicial system in the world can do justice in any matter unless and until the court of justice is fully aware as to the claims and contentions of the plaintiff and of the counter claims and defences of the defendant.

In the ancient times when the king was the fountainhead of all justice, a petitioner used to appear before the king in person and place all facts pertaining to his case before his majesty. After such oral hearing, the king used to summon the other party and thereafter listen to the defence statements put forward by the person so summoned. There used to be same sort of cross examination or cross questioning of the parties by the king himself. Thereafter, the decision was announced. There was hardly any system of written statements; all the same "pleadings" did exist, although they were oral. The king and his courtiers kept on what may be called a mental record of the proceedings. Perhaps only r. few serious and otherwise significant cases, the decisions were recorded.

With the passage of time, judicial system underwent a change. The administration at justice was separated from the executive and assigned to the court of law. Complexity of resulted in enormous litigation, and oral hearing of the ancient times became almost impossible. Scribes used to keep records of all the proceedings Gradually this procedure was also abandoned and the litigants were allowed to bring their claims and contetions duly drawn up to fie them before the Honb6e courts. When this change exactly happened, it is difficult to say. Experience was a better teacher; and the changes in court procedure took place not only in the light of the past experience but also in the face of expediency. Written proceedings

made the task of the courts of law easier and less complicated than the earlier oral proceedings. By the turn of 19th century the procedure of pleadings has become fairly elaborate and systematized.

When the civil codes came to be drafted, the principles of pleadings were also given statutory form. Vide order VI Rule 1 "pleading". Shall mean plaint or written statement. Mogha has elaborated this definition when he remarked that "pleadings are statements, written, drawn up and filed by each party to a case, stating what his contentions will be at the trial and giving all such details as his opponent needs to know in order to prepare his case in answer".

The document stating the cause of action and other necessary details and particulars in support of the claim of the plaintiff is called the "plaint". The defence statement containing all material facts and other details filed by the defendant is called the "written statement". The written statement is filed by the defendant as an answer to the contentions of the plaintiff and it contains all materials and other objections which the defendant might place before the court to admit or deny the claim of the plaintiff. Pleadings are, therefore, the foundation of any litigation, and must be very carefully drafted. Any material omission in the pleading can entail serious cones quinces, because at the evidence and argument stages, parties are not permitted to depart from the points and issues raised in the pleadings, nor can a party be allowed to raise subsequently, except by way of amendment, any new ground of claim or any allegation of fact inconsistent with the previous pleadings of the party pleading the same. In some cases the court may allow amendment of the plaint or the written statement on the application of a party. This can be done under order VI Rule 17 of Civil Procedure Code. Another case of departure is where a party pleads for set-off.

Pleadings contain material facts, contentions and claim of the plaintiff, and the material facts, contentions, denials or admissions of claims by the defendants. There may also be counter claims by the defendant which may of two categories - (i) a claim to set-off against the plaintiff's demand is covered by order 8 Rule 6, and (ii) and independent counter claims which is not exactly set off but falls under some other statute. While the former is permitted to be pleaded by the courts, the latter is not, but when the .defendant files such counter claims, the written statements is treated as a plaint.

Object of Pleadings

The whole object of pleading is to give a fair notice to each party of what the opponent's case is. Pleadings bring forth the real matters in dispute between the parties. It is necessary for the parties to know each other's stand, what facts are admitted and what denied, so that at the trial they are prepared to meet them. Pleadings also eliminate the element of surprise during the trial, besides eradicating irrelevant matters which are admitted to be true. The facts admitted by any parties need not be pursued or proved. Thus the pleadings save the parties much bother, expense and trouble of adducing evidence in support of matters already admitted by a party, and they can concentrate their evidence to the issue framed by the Court in the light of the facts alleged by one party and denied by the other.

There is another advantage of the pleadings. The parties come to know before hand what points the opposite party will raise at the trial, and thus they are a prepared to meet them and are not taken by surprise, which would certainly be the case if there were no obligatory rules of pleadings whereby the parties are compelled to lay bare there cases before the opposite party prior to the commencement of the actual trial.

On the basis of above discussion we deduce the following fundamental rules of pleading, which also have been incorporated in order VI of the Civil Procedure Code 1908.

Fundamental Rules of Pleadings

1) That a pleading shall contain, only a statement of facts, and not Law;
2) That a pleading shall contain all material facts and material facts only.
3) That a pleading shall state only the facts on which the party pleading relies and not the evidence by which they are to be proved,
4) That a pleading shall state such material facts concisely, but with precision and certainty.

1. **Facts and Not Law:** One of the fundamental rules of pleadings embodied in order VI rule 2 is that a pleading shall contain and contain only a statement of facts and not law. And it is for the judge to draw such inferences from those facts as are permissible under the law of which he is bound to take judicial notice. A judge is bound to apply the correct law and draw correct legal inferences and facts, even if the party has been foolish to make a written statement about the law applicable of those facts. If a plaintiff asserts a right in himself without showing on what facts his claim of right is funded or asserts that defendant is indebted to him or owes him a duty without alleging the facts out of which indebtedness or duty arises, his pleading is bad.

   The parties should not take legal pleas but state the facts on the basis of which such legal conclusions may logically follow and which the court would take a judicial notice of. Thus where a party pleads that the act of the defendant was unlawful, or that the defendant is guilty of negligence, or that the defendant was legally bound to perform specific contract, such a pleading would be bad. In such cases, the plaintiff must state facts which establish the guilt or negligence of the defendant, or how the particular act of the defendant was unlawful, of the fact leading to the contract which thus bound the defendant.

   Thus in a declaratory suit, it is not enough-to plead that the plaintiff is the legal heir of the deceased for this is an inference of law. The plaintiff must show how he was related to the deceased, and also show the relationship of other claimants, and other material facts to show that he was nearer in relation to the deceased than the other claimants.

   Similarly on money suit it is not enough that the plaintiff is entitled to get money from the defendant. He must state the facts showing his title to the money. For example, he should state that the defendant took loan from the plaintiff on such and such date and promised to return the money along with specified interest on a particular date, and that he requested the defendant to return the said amount after the date but that he refused to return the money. If some witnesses were present when the money was lent or when the demand was made or when the refusal by the defendant was made, the fact should be stated specifically, for at the time of the trial the court may order the plaintiff to adduce evidence in support of his statement, and then he can rely on the evidence of the witnesses in whose presence he had lent money or in whose presence he had made a demand for the return of the money.

   In a matrimonial petition, it is not enough to state that the respondent is guilty of cruelty towards the petitioner-wife and that she is entitled to divorce. The petitioner must state all those facts which establish cruelty on the part of the respondent. She may state that her husband is a drunkard and used to come home fully drunk and in a state of intoxication he inflicted physical injuries on her, she should specify dates on which such incidents took place; or that the husband used to abuse her or

beat her in the presence of her friends and relations or that after her marriage she was not allowed to visit her parents or that he was forcing her to part with her dowry, giving threats of physical beating; or that immediately after her marriage till date the respondent did not even talk to her nor he cohabited with her. It is such facts which can establish physical or mental cruelty.

In another example plaintiff files a suit for negligence and damages. It is not enough for him to state negligence. First of all the plaintiff must state those facts which establish the defendant's duty towards the plaintiff. Thereafter, he must state how and in what manner was the defendant guilty of negligence. Thus he must state all the facts on which his plaint is based. The inference of law to the breach of duty should be left to the court because the correct legal principles will be applied by the court and the plaintiff cannot even add any prayer that a particular legal conclusion which follows must be applied. The only prayer that he may add is that the relief may kindly be granted to him.

Omission to state all the fact renders the pleading defective whatever inferences of law might otherwise have been pleaded. Such a plaint may be rejected on the ground that it discloses no cause of action. The plaintiff or the defendant as the case may be, and his counsel must be on their guard not to omit any facts and straight-a-way jump to pleading legal interference without stating such facts.

For example, in a suit for recovery of money for the goods sold, the defendant should not just take the plea that he is not liable. Such a statement is a plea of law, and can hardly stand and in spite of his good defence his case will fail. In such a case the defendant must clearly state that he did not purchase any goods from the plaintiff nor was there an agreement to do so. He may also state that though the goods were sent to him, but he did not take the delivery as he had placed no order therefore or that the goods were sold to him on credit and the money was to be paid to the plaintiff after the sale of such goods and the goods were still lying with him unsold, and that he was willing to return the goods to the plaintiff in accordance with the written or oral understanding that in case of the goods remaining unsold the same shall be taken back by the plaintiff. Such facts would be valid pleas.

In another example of a suit for defamation and damages, it is not sufficient for the plaintiff to state that the defendant defamed him and therefore he was entitled to damages or special damages. The plaintiff must state all the facts of the defendant act or acts such as his public utterances in which he named the plaintiff and made remarks about his character or profession or the publications in which he was painted in a manner as would in the opinion of a common man lower him in the eyes or estimation of society. Wherever possible the plaintiff must give the exact words spoken or used in the entire sentence or statement and also give the general, grammatical or implied meaning of such words spoken or used. Wherever there is any ambiguity, he may take the plea of "inuendo" and state how such a remark was commonly understood by persons known to him. Thus the plaintiff should build his case on facts from which the conclusion would naturally and logically follow.

Examples of Bad Pleading:

A few instances of bad pleading for the benefit of the law students who whish to join the Bar: A lawyer should be careful while drafting a plaint or a written statement. Sometimes, there is slight difference between a statement of fact and a statement of law and a lawyer fails to notice it. The mental computer must constantly be at work marshalling the facts and separating such facts from legal inferences.

I. The respondent has deserted the petitioner for a statutory period of one year and above, and hence the petitioner is entitled to divorce. Here the legal inferences have been pleaded.

II. The defendant has not so far paid back the money and hence the plaintiff is entitled to foreclose. Here only the legal plea has been taken. The plaintiff should have stated all the facts of mortgage and the details of the conditions pertaining to the mortgage.

III. The alienation of property by the father of the plaintiff was not made for legal necessity or it was made for immoral purposes and such alienation is not binding on the plaintiff. Almost the entire statement is a plea of law and does not state the facts. He should state the nature of alienation, the purpose for which, and the circumstances under which, the alienation was made, and whether it was made in the interest of the family. That at the time of the alienation, no particular benefit would have arisen to the family nor was the honour of the family at stake should be stated.

IV. That the plaintiff has lost all his interest in the family property by virtue of his adoption by another family and therefore he is not entitled to any relief. The suit is misconceived. The entire statement contains a proposition of law. The defendant must state all facts relating to the adoption of the plaintiff whether there was actual giving and taking of the plaintiff and by whom and in whose presence.

V. That the defendant is liable to render account of income and expenditure in respect of the mortgaged property. The liability pleaded is a statutory liability which the court will take notice of. The plaintiff should however state all the facts and conditions of mortgage, whether it was a simple mortgage or a usufruct mortgage, and the terms and conditions of the mortgage on the basis of which such a liability on the basis of which such a liability is fixed.

VI. That the defendant has infringed his copyright and therefore he is entitled to damages, in addition to the account of the sales of all books sold so far and to the return of the unsold ones, or that the plaintiff is entitled to an injunction against the defendant directing him not to publish, sell or otherwise pass on the said book. The plaintiff should state the details of the infringement of his copyright, and also give the passage I chapters I materials in fringed by the defendant has stolen the ideas or the material as such. If he states that infringement of ideas, then he should specify how his ideas, have been utilized with similarities in plan and sequences, scenes, settings etc.

VII. That the mortgaged property belonged to a joint Hindu family of which the plaintiff is also a member and that the second defendant could not have legally transferred the same to the first defendant without his consent. A proposition of law has been stated.

Sometimes the strict rule of pleading that legal inferences must not be pleaded and only facts should be stated is followed in a somewhat diluted form and the courts do not normally insist, in such cases, on the strict observance of the above rule. Occasionally, a plea of law is taken more for the sake of clarity and to show inter-connection between various facts which otherwise may appear to be disjoined. Such pleadings, if they do not embarrass the other party, are generally tolerated by the Courts. In a suit for recovery of money, if the guardian of the minor defendant pleads that at the time of the alleged loan the defendant was a minor and hence incompetent to contract, such a plea would be tolerated though strictly speaking the

inference of law stated is unnecessary. It should be remembered that where such inferences of law are tolerated, they should not be pleaded without pleading the facts. Thus when facts are so correlated as to justify the legal inferences which necessarily follow, the pleadings can be tolerated. But when legal inferences are pleaded without setting out the facts the pleading would be bad.

The rule stated above applies to cases which fall within the purview of the law which the courts are bound to take judicial notice of. For ex., Indian Courts are bound to apply the Indian law to the cases in India. But the Indian court is not bound to take judicial notice of the foreign law. Thus where the pleadings make any reference to foreign law, or custom such foreign law or must be stated clearly with proper reference to the statute. Similarly custom may govern the parties to a suit and the Court may not take notice of such custom unless such custom is stated. In matrimonial matters custom has been recognised in certain matters such as marriage between the persons who are spind as or who area within the degrees of prohibited relationship. If a party proves that a custom prevailed in the community which permitted such a marriage, the pleading would be correct and not bad. Similarly in trade and commerce there are many customs which govern the business relations between the parties. Such customs ought to be pleaded along with the facts. At the same time, a custom which has been repeatedly brought to the notice of the courts so that it has acquired the force of law need not be pleaded, as the courts would take judicial notice of such a custom.

The rule also permits the legal pleas denying the legal right of the other party. For example, the defendant can take a plea res-judicata as a valid defence against the plaintiff, or limitation can be pleaded in defence. Where a landlord files a suit against a tenant as a trespasser, the defendant can take the legal plea of estopple under s.116 of the Evidence Act. Such pleas can be taken, and in fact, must be taken at the first instance by either if the parties, because if such pleas are not taken into the first instances the defaulting party will not be allowed to adduce evidence to prove it. Such a defect may not even be removed by an amendment of the pleading as the courts would not permit such an amendment as it takes away a right which has accrued to the party.

(2) Material Facts: when a litigant comes to a legal practitioner, he brings all facts and circumstances pertaining to a case. In fact, he tries to narrate each and every event which may possibly have a remote bearing upon the case. Not all such facts are important. If every thing were to be included in the plaint, then the plaint is likely to become so voluminous that the learned judge is likely miss the essential track and be guided by the inessentials.

What is necessary therefore are the facts which are material; facts which have a direct and immediate bearing on the case, facts which are secondary or incidental may easily be omitted. Of course, the lawyer must weigh each fact and test its significance and relevance in relation to the given case. Marshalling of facts is what a good lawyer would always do before he sets them down in form of a plain.

The second fundamental rule of pleading is therefore, that every pleading shall contain and contain only, a statement of the material fact as on which the party pleading relies for his claim or defence. This rule is embodied in order VI Rule 2 and it requires that -

I. the party pleading must plead all material facts on which he intends to rely for his claim or defence as the case may be; and

II. He must plead material facts only, and that no fact which is not material should be pleaded, nor should the party plead evidence.

The rule is indeed a strict one. The question would naturally arise: what are the material facts? Indeed every fact on which the cause of action or the defence is founded is material fact. The purpose entertained by the rule is that every unnecessary and irrelevant fact need not be brought on record, and the rule acts as a damper to the litigants, habit of stating all details that strike their mind, whether such details are relevant or not, it necessitates the process of elimination on the part of the litigant. All facts which will be required to be proved at the trial in order to establish the existence of a cause of action or defence are material facts. Then there are other facts which do not directly establish the cause of action or defence but which nonetheless ate material facts in that the party pleading them has an inherent right to prove them at the trial.

Whether a particular fact is material or not will depend upon the circumstances of the case. A fact may not appear to be material at the initial stage but it may turn out to be material at the time of the trial. Thus if a party is not able to decide whether a fact is material or not, or it he entertains a reasonable double as to the materiality of a particular fact, it would be better to include than to exclude, be better to include than to exclude, because if a party omits to state or plead any material fact, he will not be permitted to adduce evidence to prove such a fact at the trial unless the pleading is amended under order VI rule 17. The general rule is that a party cannot prove a fact which he has pleaded.

The task of a lawyer is therefore rather difficult. He must observe the rule that only material facts are to be pleaded, and, at the same time, he must not exclude any fact which may seem apparently unnecessary but which may turn out to be material as the trial progresses. Thus he must visualize all the possible directions or dimensions which the pleadings are likely to assume. An experienced lawyer would marshal all the facts placed before him by his client and by correlating them, and after carefully examining the interplay between such facts, decide what facts are material to establish the cause of action or defence. There after he would prepare or rough or a mental outline of the pleading and submit all such facts to a close analysis in order to make sure whether if he is able to prove all such material facts he would succeed. Bya process of elimination he must also see whether by excluding certain seemingly immaterial facts from the outline he has prepared, he would still succeed. If he can return an affirmative answer, he should exclude such irrelevant facts, but if the answer be in the negative, then he must include them Another way of testing the materiality of the facts would be to ask whether by proving a particular fact, he would certainly establish the cause of action or the defence.

The idea is that the pleading should not include any fact which would not assist the party even if such a facts is proved. And why at all waste energy, time and money is establishing the correctness or otherwise of a fact which does not advance the party's case? One of the reasons why the litigation drags on for years is that the litigants do not come to the point, there being much about nothing. In India the courts are filled with all sorts of litigation. The lawyers are taking briefs of all sorts and they are extremely busy. They have hardly any time to examine the materiality of the facts narrated to them by their clients. The pleadings, therefore, become unwidely and voluminous, so much so that at the time of framing the issues, the matter becomes really a hard nut to crack. The litigation drags on withstanding the wishes of the parties to the contrary. It is the duty of the lawyers to ensure that the pleadings. conform to the rules laid down in the code of civil procedure. They should be guided more by their own sense of proportion rather than succumb to every whim or eccentricity of their clients.

Instances of Material Facts: In a petition for judicial divorce on the ground of desertion, the fact that the respondent left the petitioner without his consent and without any justifiable excuse is material. Any other fact directly bearing upon her animus desrendi, such as her declaration before the neighbors or other relations that she is leaving the petitioner and that she would not like to go back to him, is also material.

In a suit for ejectment of a trespasser from the land and for injunction it is material to allege that defendant "threatens and intends to repeat the illegal act" similarly if a party seeks a stay order against any authority's act of demolition his premises, shop or building he must allege that he is owner of the property and the plans or the map thereof was duly sanctioned by the appropriate authority. Or if a government land, he must allege that he has been in undisturbed possession thereof for over twelve years. Such facts are material, because if proved, they will establish the cause of action.

In a suit for defamation, it is material to allege that the words were intended to defame the plaintiff or at least they were so understood by men at large, if the words are ambiguous, then "innuendo" must be pleaded that they were ironically used or were intended so to be understood.

Where a party claims the benefit of a special rule or custom then he must allege all facts which bring the case within the ambit of that special rule or custom. For example where a marriage between two spindas or between two persons within the degrees of prohibited relationship is challenged in some property matter, the party is challenging the validity of the marriage must allege that there was no custom governing the parties which permitted or sanctioned such a marriage between spindas. It is material to allege the existence of a long established family or caste custom governing the parties to the marriage which permitted or sanctioned such a marriage.

In a money suit, it is material to allege part-payment of the loan and also any other fact which gives a new lease of three years' time to the loan in order to save the suit lTom the bar of limitation.

When a plaintiff bases his claim on some document, it is material to state the effect of such a document. For example, where the case is based on a sale-deed, it is material to state that a particular person has sold property to him by a sale-deed dated so and so which was duly registered.

In a suit for specific performance of a contract it is material to allege that the plaintiff has always been willing and is willing to perform his part of the contract.

Examples of Facts not Material

In a suit on a promissory note, it is not material to state that the plaintiff requested the defendant to make the payment and he refused, because no demand is necessary when the promissory note becomes due and it is payable immediately.

Similarly in a suit for recovery of money for the goods sold, it is not material to state that the goods belonged to the plaintiff or that the goods were sold to the defendant on the belief that he would honestly make the payment.

In the case of damages general damages are presumed to be the natural or probable consequence of the defendant's act. Such damages need not be proved. But special damages will not be presumed by law to be the consequence of the defendant's act but will depend on the special circumstances of the case. Therefore, it will have to be proved at the trial that the plaintiff suffered the loss and also that the conduct of the defendant resulted in the loss so suffered by the plaintiff. In such cases the proof of special damages is essential to sustain an action. A person has no right of action in respect of a public nuisance unless he can show some special injury to himself which is over and above what is common to others.

Thus it is clear that whereas general damages may not be pleaded the special damages must be alleged,

and all facts on which such special damages are based are material to the pleading. They are material because they will have to be proved. All such facts must, therefore, be mentioned or state. With necessary particulars to show what special damage the plaintiff suffered. For example in a suit for defamation it will have to mentioned that services of the plaintiff were terminated as a result of a particular article which damaged the professional repetition of the plaintiff so much salary which he might have continued to get but for the publication of the defamatory article

Exception to the General Rules: The general rule as stated above is that only the material facts should be stated. The rule is, however, subject to the following exceptions:

i. The performance of occurrence of any condition precedent need not be pleaded as its averments shall be implied in the pleading. But where a party chooses to contest the performance or occurrence of such condition, he is bound to set-up the plea distinctly in his pleading. However, there are conditions which the law requires that they must be satisfied. For example sec. 80 of civil procedure code, requires a notice to the government where a plaintiff wishes to file a suit against a government official or state. He must clearly allege that such a notice has been given. Similarly that the notice has been given under S.111 of Transfer of Property Act, must be clearly stated, as the law requires such a notice to be given.

ii. Neither party to a suit need allege any matter which the law presumes in his favour or as to the burden of proof of which lies on the other party, for ex. in a suit on a promissory note the plaintiff need not allege consideration as sec.118 of Negotiable instruments Act raises a presumption in his favour. It is also not necessary to state that the defendant executed the bond 'of his own free will, and without any force or fraud because the burden of proving any fact invalidating the bond lies upon the defendant. But the case is different when the defendant is a pardah nashin lady. In that case, the plaintiff must state that the bond was read out and explained to her and that she executed it of her own free will after having independent advice because in this case the burden of proving these facts lies on the plaintiff himself.

Regarding legal presumptions the exception applies to only such facts as the court "shall presume" and not to those facts which the court may presume", and therefore the facts falling under the latter class must be pleaded.

iii. Another exception to the general rule are facts which are merely introductory. Such facts only state the names of the parties, their relationships, their professions and such circumstances as are necessary to inform the court as to how the dispute has arisen. Such facts are hardly necessary or material to the pleading, but they are generally tolerated and are set in the pleadings by both the parties in order to facilitate the court to take a stock of the situation of the parties. It is better if such perfactory remarks are cut down to the minimum.

(3) Facts not Evidence: While drafting a plaint, a lawyer must distinguish between facts which are asserted and which have to be established through evidence whether documentary or oral, and facts which are, by themselves, in the nature of evidence. At the initial stage only the former facts have to be narrated, and when the state of evidence comes, then the other facts will be represented as a part of evidence in order to establish the first set of facts. Thus much before the stage of evidence comes, the opposite party can Marshall himself and be ready to meet all the allegation set forth in the plaint.

The third fundamental rule of pleadings is that only facts must be stated and not the evidence there of there is a tendency among the litigants to mix up the bare facts with the facts which are in realty the evidence. At the stage of pleading, the court and the opposite party should be supplied with the facts and such contentions on which the claim is founded; the plaintiff must keep the facts in evidence for a later stage of evidence.

Now facts are classified under the following two categories:

(a) *Facta probanda,* the facts which are to be proved. These are the facts on which a party relies.
(b) *Facta probantia*, these are the facts which are not to be stated because by their means facta probanda are proved. Thus these facts are the evidence as to the existence of certain facts on which the party relies for his cause of action or defiance as the case may be.

Facta probanda are not facts in issue, but they are relevant in that at the trial their proof will establish the existence of facts in issue. No doubt in certain cases both the facts in issue and there facts in evidence are mixed up and are almost indistinguishable. For ex., A was married to B in accordance with a particular custom governing marriage between A and B. in this case the "custom" is a both fact in issue and a fact in evidence, because once the custom is proved, then the marriage also, stands proved. In the pleading it is sufficient to allege that the marriage was celebrated in accordance with a particular custom. At the evidence stage, it will be sufficient to refer to the manual of customary law which records customs,

The following rules have been enacted under the code of civil procedure and hereunder we elaborate them with the help of suitable illustrations:

(1) Malice, Knowledge etc : Order VI Rule 10 clearly says that wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred. Thus it is sufficient to allege that the defendant has cheated the plaintiff to the extent of Rs. 10,000/-. It is not necessary, nor would it be in order, to plead how the defendant has cheated the plaintiff. The "how" part would be evidentiary and should not be pleaded. In a suit for malicious prosecution the plaintiff should only allege that the defendant was actuated by malice in prosecuting him. t.'4e should not stated the details of any previous hostility of the defendant's previous conduct to wards the plaintiff.

Notice: Order VI Rule 11 deals with notice. It says that wherever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact unless the form or the precise terms of such notice or the circumstances from which such notice is to be inferred, are material. In many cases notice has to be alleged as a material fact. For ex., in a suit to recover trust property from a person to whom a trustee has given it in breach of the trust or in a suit where priority for subsequent transfer is claimed. In such cases, it is sufficient to allege notice as a fact. It is not necessary to state the entire from or precise words of the note, nor any other circumstances from which such a notice could be inferred sometimes, however, the form or the precise words of the notice are material under must be alleged. For ·ex., where the plaintiff claims to have determined the monthly tenancy by 15 days notice to quit the pleading should state "On 14th Jan. dated, the plaintiff served upon the defendant a written notice calling upon him to vacate the house and deliver up possession to him on the expiry of January the 31st In such cases the precise form and words of the notice are material and must therefore be clearly stated in the pleading.

(2) Implied Contract: Order VI Rule 12 states that wherever any contract or any rotation between any persons is to be implied from a series of letter or circumstances, it shall be sufficient to allege such contract

or relation as a fact, and to refer generally to such letters conversations or circumstances without setting them out in detail. And if in such case the person pleading desires to rely in the alternative upon more contracts or relations than one as to be implied form such circumstances he may state the same in the alternative. The reason for this rule is that what is really material is the effect of the letter or conversation etc. which are only a part of evidence. Take the case of carrier's contract. The moment the goods are accepted to be carried to a particular destination and the receipt is issued, there is an implied contract, and the receipt for the goods is an evidence of the contract. In this case, it would be sufficient to plead the implied contract by making a reference to the receipt issued. The evidence of the receipt and other matters will come up later. If any contract is to be inferred from letters, the dates of the letters must be given.

(3) Presumptions of Law: Order VI Rule 13 states that neither party need in any pleading allege any matter of fact which the law presumes in this favour or as to which the burden of proof lies up on the other side unless the same has first been specially denied.

(4) Form of Pleading: And now we come the last fundamental rule of pleading. This rule is that the material rule is that the material facts should be stated in the pleading in a concise form but with precision and certainty the pleading shall be divided into paragraphs, numbered consecutively. Dates, sums and numbers shall be expressed in figure (order VI Rule 2). What this rules means is that the pleading should be brief and to the point. At the same time, there should be precision and clarity. There should be no obscurity or vagueness or ambiguity of any sort otherwise the very perpose of pleading will be defeated. Another point to remember is that no doubt brevity and conciseness are the rule, but brevity should not be at the cost of precision or clarity. Thus where brevity and precision cannot be achieved without clarity, prolixity in pleading would be justified. If the facts stated in the pleading are all material, then they all must be alleged not with standing the prolixity that might cause.

In order to bring precision, conciseness and clarity, a lawyer should have a good command over the language and grammatical structure, and should know the exact meaning of the words. Longer and complex sentence which is likely to become ambiguous should be avoided.

The following points should be kept in mind while drafting a pleading: -

a) The names of persons and places should be accurately given and correctly spelt; spellings adopted at one place should be followed throughout the pleading;

b) Pronouns like "he" "she" or "that" shout be avoided if possible. Anyway such pronouns when used should clearly denote the person or the thing to whom such pronouns refer.

c) The plaintiff and the defendant should be referred not only by their names. It is better to use the word "plaintiff' or "defendant".

d) Things should be mentioned by their correct names and the description of such things should be adhered to throughout. For ex., if a piece of land has been referred to as a "garden with trees" it should not be described later as "a land with trees".

e) Where an action is founded on some statute, the exact language of the statute should be used. For ex., where a policy provides that "it shall become void, if the assured died by his own hand", then in the pleading it should be stated that "the assured died by his own hand", and not such language as "the assured committed suicide" or that "he killed or shot himself'.

f) In any pleading, the use of "if', "but" and "that" should be, as far as possible, avoided. Such words tend to take away the "certainty" and can cause ambiguity.

g) Necessary particulars of all facts should be given in the pleading. If such particulars are quite lengthy, then they can be given in the attached schedule, and a clear reference made in the pleading. For example, in an action for special damages, it may be stated in the body of the pleading that the details of special damages are given in the attached schedule.

h) Pleading should be divided into paragraphs and such paragraphs should be numbered consecutively. The division of the pleading into paragraphs should be so done as to endure that each paragraph deals with one fact. At the same time, the entire pleading should appears a running and willknit matter, must not look like isolated fact placed together. Inter-relations ships of paragraphs must seem to exist.

i) Very often, pleadings are full of repetitions. Such a tendency makes the pleadings not only lengthy, but also results in confusion.

Pleading Must be Signed: Order VI Rule 14 makes it obligatory that the pleading shall be signed by the party and his pleader (if any). Provided that where a party pleading is by reason of absence or for ad cause, unable to sign the pleading, it may be signed by any person duly athorized by him to same or to sue or defend on his behalf.

The main purpose of this rule is to prevent any possible denial by any party that he did not authorize the proceedings. Thus even if pleader produces the vakalat-nama duty authorizing him to fie t or defend the suit, the signature of the pleader alone would not do. The pleading must bear the signature or thumb impression or any other identification mark of the party concerned. The only exception the party is unable to sign by reason of absence or any other good cause. Mere absence would sufficient; "absence" in this context means such as would not enable the party to be present. Where the party is unable to sing the pleading as aforesaid, then a person duly authorised by such a 1st append his signature to the pleading. Such authority to sue or defend must be produced before the court

Verification of Pleading: Order VI Rule 15, states every pleading shall be verified at the foot by the by any of the parties pleading or by some other person proved to the satisfaction of the court to ainted with the facts of the case. The person verifying shall specify, by reference to the numbered paragraphs of the pleading what he verifies of his own knowledge and what he verified upon on received and believed to be true. The verification shall be signed by the person making it and te the date on which and the place at which it was signed. The aim of verification is only to fix :msibility of the statements made in the pleading upon same one before the cant proceeds to adjudicate upon them.
A person making a false verification is liable to be punished under the Indian Penal Code, as making a false statement is by itself an offence. Therefore the responsibility of verifications is very great and its significance and the consequences thereof must be realized.

After the signature to the pleading some space may be left out and them verification should begin.

Verification:
I…….. (Name), son of Shri..... (Father's name) verify that the contents of paragraphs alone to

…… Of the above plaint are true within my personal knowledge and that the contents of paras …….. (mention the paras by their number in the pleading) are believed to be correct upon information received and believed to be true.

Verified at …….(Place) on this …….. (Date) day of month/years.

Sd/- (Party)

Any defective verification is not fatal to the suit, nor can the court dismiss any suit on that ground alone this applies to both the plaint and the written statement. However, any defect in the verification can be cured by way of amendment, and when it is done, the plaint is deemed to have been presented on the same date as the original date of the initial pleading. This does not, and should not, minimize the importance of verification is defective, then not with standing the fact that the defect can be removed at ant stage of defect can cause considerable delay in the adjudication. Therefore it is incumbent upon the parties to pay due care to the verification part in the same manner as they would normally to pay the main pleadings.

In the code of civil procedure, it is laid down that particulars must be stated with respect to fraud, breach willful default or undue influence if pleaded. In other cases, when more particulars than are exemplified in the forms on Appendix A of CPC are necessary, they are to be stated, dates when necessary should always be given. Pleas should be definitely mentioned so that they can be properly identified. Particulars of the property about which a claim is made should be clearly given. In a suit for money, particular of the account by which the amount claimed has been arrived at should be given. Fraud should pleaded with the greatest possible care and party pleading it must fully realise his responsibility for doing so. The proper way of pleading fraud is to set out all the facts and representations alleged to be frivolous in their full details and then to state that whether the representations were in oral or in writing. If oral, the substance of such representations should be given alleging the data and place when and where they were made and the and the person by whom they were made it they were in writing, the document or documents containing them should be clearly identified in the particulars. The changes of fraud must be substantially proved as alleged and when one kind of fraud is changed, another kind of fraud cannot, upon failure of its proof be substituted for it, nor it is proper for an appellate court to entertain a case of fraud other than the one specifically alleged in the pleading.

b) Pleading
CIVIL

PLAINT: Particulars to be contained in plaint provided under order VII, Rule 1. According to this rule the plaint shall contain the following particulars.

a) The name of the court in which the suit is brought; for ex.
   "in the court of District Judge al N. Delhi" when the suit is to be filed before the district judge,
   The number, of the suit has to be noted in the following line titled "suit No- of 2009".
b) Next to the heading the name, description and place of residence of the plaintiff,
c) The name, description and place of residence of the defendant, so far as they can be ascertained;
d) Where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect,
e) The facts constituting the cause of action and when it arose,;

f) The facts showing that the court has jurisdiction;

g) The relief which the plaintiff claims;

h) Where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount 50 allowed or relinquished, and

(i) A statement of the value of the subject matter of the suit for the purpose of jurisdiction and of court-fees, so far as the case admits.

Plaint Structure

Name of the court in which the suit is filed indicated at the top of the first page.

Just below the name of the court, a space should left for the number of the suit.

Therefore the names of the parties to the suit with all necessary particulars should be given. For ex.:

AS s/o CD aged……yrs.

Resident of..... plaintiff

Versus
MN, s/o OP aged …….Yrs.

Resident of …… Defendant

If there are more plaintiff or defendant than the names of all plaintiffs/and defendant should be given in plaint as plaintiff No. 1/defendant NO.1 and so on.

After the names of the parties the title of the suit should be given for ex. **"suit for specific performance and damages".**

Or

"Suit for Recovery of money"

Or

"Suit for damages for malicious prosecution"

Or

"Petition for Judicial Separation 4/s 9 of the Hindu Marriage Act 1955"
Then follows the body of the suit/plaint all paragraphs should be numbered consecutively. The body of the plant consists of two parts (1) substantive part (2) formal part.

(1) Substantive parts of the plaint consist of the portion of the plaint in which a statement of all facts constituting the cause of action for the suit has to be stated. Those facts shall consist of such particulars as are necessary to state to obtain "the relied in the suit. The plaintiff seeking relief for district claims or causes of action founded upon separate and district grounds shall state all of them distinctly and separately as far as possible.

(2) Formal part of the plaint shall state the following essential particulars:

(i) date when the cause of action arose,

(ii) Statement showing that the court has jurisdiction;

(iii) Statement of the value of the suit for the purpose of jurisdiction and court fees and it should be stated that the necessary count fee has been affixed/paid.

(iv) When a suit is filed after the expiry the period of limitation a statement showing the ground or grounds on which he has claimed exemption from limitation.

(v) Every relief sought for by the plaintiff should be accurately worded. The plaintiff can claim more then one relief, in the suit. He can seek reliefs alternatively. If the plaintiff can seek more than one relief on the same cause of action he must seek all. If he omits to seek a relief in the suit his subsequent suit for such relief omitted would be barred under order 2. Rule 2 CPC unless he has obtained leave in the earlier suit to file a fresh suit on the said relief omitted.

Signature of the plaintiff along with the signature of the advocate.

At the foot of the pleading, the plaintiff should /or anyone else, who is acquainted with the facts of the case, should make verification.

Affidavit should also be enclosed with plaint as provided under CPC order 6 Rule 15 (4).

All documents on which the plaintiff relies for his claim should be enclosed with a separate list of documents according to order 7 Rule 14 (1) CPC 1908.

Name, Description and place of Residence of parties in plaint and written statement when the plaintiff or defendant is:

1) **Individual person** - AB, son of…….. Resi of……..

2) **Proprietary concern** -AB, song ……. Resi. of …….proprietor of MIs XYZ and carrying on business at …….

3) **Partnership firm** - MIs XYZ, a partnership firm registered under the Indian partnership Act. with its principal place of business at …….

4) **A company** - MIs XYZ, Pvt. Ltd. A company incorporated under the companies Act having its registered officiate…….

5) **Company in Liquidation** - MIs XYZ Ltd. In liquidation through liquidator Mr. ABC having office at …….

6) **Statutory Corporation** - The life insurance corporation of India established and constituted under the life Insurance Act, having its registered office at …….

7) **Municipality** – Municipal corporation of Delhi through its chairman, town hall, delhi.

8) **Minor** - AB, son of ……., a minor through his father and natural guardian CD son of …….

Resi. of …….

9) **Person, of unsound mind**: AB son of ……. resi of a person of unsound mind through his guardian next friend CD son of ……. Resident of …….

10) **Government of India:** The Union of India, through secy. Ministry of education, New Delhi.

11) **Any Government:** State of Bihar through is Secretary, Patna.

12) **Cooperative Society:** MIs. XYZ Ltd. A cooperative Society registered under the Delhi co- operative societies Act, having its office at …….

(ii) Written Statement (Order VII) C.P.C.

A written statement is required to be filed by the defendant in answer to the claim made by the plaintiff in his plaintiff, which is delivered to the defendant along with the summons to attend at the first hearing of the suit. The number of the suit is noted in the summons.
Before drafting a written statement, one should verify the provisions set out for drafting a plaint under order VI of CPC. Examine whether the suit is barred under order II Rule 2 CPC, carefully study the material facts and the documents referred to in the plaint, check whether the documents are duly stamped, see that the material facts are specifically denied. Study order VIII, CPC, make sure set-off or a counter-claim to be pleaded or not. Verify also whether the claim is barred under principles of *res judicata.*

In the written statement, the defendant should mention at the top the name of the judge or court, trying the suit. Next, the name of the parties first named are mentioned, as it is not necessary to mention the names, description and place of residence of all the parties in the title of the written statement.

The answering defendant thereupon replies to each Para of the plaint, unless there is some preliminary objection, the consideration of which is necessary in the first instance before the suit is tried on the merits of the case. Objections relating to the maintainability of the suit, locus standi of the plaintiff to file the suit, the non-joinder or mis-joinder of parties as to the jurisdiction of the court or as to limitation may: be included in the preliminary objection. Similarly, objections relating to court fees paid or valuation of the suit for process of jurisdiction are taken up in the first instance,

The defendant may have additional facts to be stated which do not find and appropriate place in reply to the assertions made by the plaintiff in his plaint such additional facts or pleas maybe added in the written statement as additional pleas.

The filing of a written statement by any defendant, whether it is a Government or not a Government, whether it is an ordinary person or a statutory body a corporation or any body else, is covered by the same provision, namely, order VIII, Rule 1.there is no other provision dealing with the filing of a written statement.

It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth except damages. Every allegation of fact in this plaint, if not denied specifically of by' necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted.

The pleading 'not know' is not tantamount to the pleading 'not admitted'. So also the plea of no knowledge'

of fact pleaded in the plaint is not tantamount to a 'denial' of the existence of those facts and does not even amount to an implied denial according to order VIII, Rule 3 or Rule 5.

WRITTEN STATEMENTS

Effect of non-filing of the Written Statement: If a defendant did not file his written statement it could not be said that he admitted all the facts pleaded by the plaintiff. The position in law, in cases where the defendant has not filed written statement is that even without filing a written statement; the defendant can take part in the hearing of the suit. He may cross-examine the plaintiff's witness to demolish their version in examination in chief, without written statement. However, he cannot be permitted to crossexamine the witnesses on questions of fact with he himself has not pleaded nor can he be allowed to adduce evidence on question of facts which have not been pleaded by him by filing any written statement (Chunni Lal Chawdhary V. Bank of Baroda, 1981 Sri L. J. 411)

Rules of proceedings are intended to be a hand-maid to the administration of justice and a party cannot be refused just relief merely because of some mistake negligence, inadvertence of even in fraction of the rules of procedure. The court always gives leave to amend the pleading of a party, unless it is satisfied that the party supplying was acting malafied or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. A defendant can be allowed to amend the written statement to enable him to raise an additional ground of defence if the additional grounds not inconsistent with original case setup by him in the written statement and arises out of the case put forward by the plaintiff and does not change the nature of defendant's own sand. If the amendment is likely to resolve the real controversy between the parties it should be allowed and it is not open for court to decide at that stage whether person seeking amendment will ultimately succeed in the plea or not.

Absence of Plea in Written Statement: Where a claim has never been made in the defence, no amount of evidence can be looked into upon a plea which was never put forward.

In the case of Gita Rani Paul V, Dibyendra kumar (AIR 1991 SC 393) The Supreme Court reversed the decision of the Calcutta High court and held that the High Court fell into an error in accepting the appeal on an issue which was neither raised nor ergued before the court below.

(III) Interlocutory applications (IA)

Interlocutory applications or interim application are filed during the pendency or course of litigation. Such applications should be drafted with the same care as pleadings. Like pleading the IA's should be both precise as well as brief and devoid of irrelevant matters.

Drafting of Interlocutory Application: The grounds on which application is moved should to the extent possible be stated in the words of the law under which the application is fitted. For ex., in an application for setting aside an expert decree against the defendant, the defendant should say that "the summons was not duly served" or that "the defendant was prevented by any sufficient cause from appearing when the suit was called on for the hearing". It is not advisable to employ a language different from the law under which the application is made.

Like a plaint every application should have a heading and a title. The name of the Court should be given at the top and thereafter should follow the name of the applicant and the opposite party. When the . application is moved in connection with a suit or proceeding, the number and the cause title of that suit or proceeding

alone should be given after the name of the court.

The body of the application should be either in the form of petition:

"The humble application of the plaintiff in the above mentioned suit, respectfully submits as follows' or it may be written like plaint. "Application for restituting under section 144, CPC by the defendant in the above mentioned suit

The applicant humbly begs to submit as follows:

It is not absolutely necessary that the law under which the application is filed should be given.

Like pleadings facts in the application should be stated in brief and concise language. The application should be divided into paragraphs and one paragraph as far as possible should narrate one allegation except where two or more allegations are so connected with each other that it is better to give them in one paragraph. With some application affidavits are filed and if in such cases the facts are too long things need not be narrated in the application. They should only be narrated in the affidavit and in such cases the application should be worded in some such form:

"For the reasons above in the annexed affidavit, the applicant prays that etc".

The application should end with a prayer. The payer should be in the following form:

"The applicant! Plaintiff! Defendant, therefore prays": etc.

After prayer, should follow the signature of the applicant where law requires the verification, the application should also be verified.

Examples of Interlocutory Applications Provided under CPC

a) Application under order 6 Rule 17 CPC for amendment,
b) Application under section 95 CPC for compensation for arrest or attachment before judgment on insufficient grounds.
c) Application under sec. 144 for restitution.
d) Application under sec. 151.
e) Application under sec. 152 for amendment of judgments, decrees or orders,
f) Application under order IX Rule4 for setting aside an order dismissing a suit for default of the parties,
g) Application under order IX Rule 9 CPC for setting aside and order dismissing a suit for plaintiff's default,
h) Application under order IX Rule I, for leave to deliver interrogatories,
i) Objections under sec. 47 or sec.60.
j) Objections under order XXI Rule 58, or order XXI Rule 89, 90, 91, or order XXI, Rule 98,
k) Substitution applications under order XXII CPC.
l) Application under order XXVIII Rule 1 or Rule 5,

m) Applications under order XXIX. For an interim injunctions, application under order XL, for appointment of receiver,

n) Application under order XLVII for review.

(iv) ORIGINAL PETITION

Petitions. or suits are interchangeable terms. However, in practice, the words 'petitions' and 'suits' are generally used to mean formal applications for seeking legal remedy. Suit of a civil nature is ordinarily tried in civil court. Every person has a right to bring a suit of a civil nature and civil court has jurisdiction to try an the suits 01a civil nature. Due to increasing litigation and delays in civil suits, parliament and state legislative created special courts and Tribunals with special enactments. The reason behind this exercise is for speedy disposal of cases of various types. For ex. Cases of ejectment in respect of urban buildings between the land lord and tenant are now dealt with by special courts created under various state legislations. Railway accidents claims are decided by railway claim Tribunals, claims by Industrial woken for payment of wages are entrusted to prescribed authorities. So is the case with the workman's compensation claims. In some states and in center also service tribunal have been created for adjudication of cases of public servants in disputes arising out of their employment, including dismissal, terminator of service, etc. At many places family courts have been established to deal with matrimonial disputes.

In such cases which are dealt with by special courts under special enactments the party aggrieved expected to approach such special courts or tribunal and the jurisdiction of the civil courts under sec. 9 CPC is barred. These tribunals are given various powers of a civil court while trying a suit under CPC through they are not regular civil courts. Very often the presiding officer of these tribunals courts are also presiding officer, of regular civil courts for ex. In family courts and Motor Vehicle Tribunal.

The provisions of the CPC do not as such necessarily apply to proceedings before these tribunals although proceedings are civil in nature. To what extent provisions of the CPC are applied to a particular civil proceeding depends on the statute under which the tribunal is created.

The fundamental rule of pleadings mentioned in the part I of this study material are broadly applicable even to civil proceedings, though because of the relatively summary nature of those proceedings the same rules may not apply in their full rigors. In may case the proceedings are commenced not through -Plaint" but through "petition".

Even though the fundamental rule should apply to a petition also, yet it is necessary for the pleader to study the statutory provisions carefully so that a blind adherence to the provisions of CPC may not land him in difficultly. For ex., Order 30, Rule I, permits a partnership firm to sue or to be sued in the name of the name of the firm. If the CPC has been applied as a whole to such civil proceedings, then of course, order 30 Rule 1 would also apply, but if the statute is silent on this point, then it would be necessary for all the partners the firm to sue or to be sued jointly in their individual names, instead of in the name of the firm. Like wise in respect of a claim petition before a service tribunal it may be necessary to implied the appointing authority of the public servant. In a suit before the civil court it is the Union of India or the state concerned which is required to be sued vide Art, 300 of the constitution of India. The appointing authority may be an authority subordinate to the Government but in a civil court it is not necessary or proper to impaled such and authority as defendant. These points of difference should be kept in mind while drafting pleading in such civil proceedings.

Special Enactments

(1) Hindu Marriage Act. 1955
(2) Administrative Tribunals Act. 1988
(3) Consumer Projection Act. 1986
(4) Arbitration and Conciliation Act. 1996
(5) Motor Vehicle Act. 1988
(6) Indian Succession Act.
(7) Guardians and Wards Act, 1890
(8) Companies Act. 1956

Form of petitions under special Enactments

SAMPLE FORM

In the Central/Sate Administrative Tribunal…

Between
AB Applicant …….
And

State of …….represented by the concerned officer (depending on whether the applicant is a Central/ Govt. or a State Govt. servant). Respondant

Details of Application

1. Particulars of the applicant:

1) Name of the applicant.
2) Father's name of the applicant.
3) Designation of service and particulars of applicant's office.
4) Office address of the applicant.
5) Address for service of all notices and processes.

2. Particulars of the Respondent :

(i) Designation of the Officer who passed the order challenged.
(ii) Office address of the respondent.
(iii) Address for service of all processes and notice

3. Particulars of the Order Against Which Application is Made:

(i) Disclose all references.
(ii) Date of the order.
(iii) Designation of the Officer who made the order.
(iv) Subject in brief (dismissal).

4. Jurisdiction of the Tribunal: the applicant declares that subject-matter of the order against

which he seeks relief prayed for is within the jurisdiction of the Tribunal.

5. Limitation: The State that the application is filed within time prescribed under Section 21 of the Administrative Tribunals Act, 1985. It is beyond period of limitation set out grounds to condone the delay.

6. Facts of the Case: (set out in brief).

7. Relief Sought: (set out the same)

8. Interim Order: (If necessary, plead for the same)

9. Details of Remedies Exhausted: This requires careful study of service rules (central or State) and State that the venues provided for in the rules has been approached and exhausted.

10. Matter not Pending with any Other Court: The applicant further declares that the subject matter of this application is not pending in any court of law or any other authority or any other bench of the Tribunal.

11. Particulars of Bank Draft: A Bank Draft No ……. or a sum of Rs. 501- in respect of the application fee drawn on State Bank of India is herewith enclosed.

12. Details of India: An index in duplicate containing the details of the documents to be relied on is enclosed as A-1.

13. List of Enclosures: A list of enclosures is annexed as A2.

In the Railway Claims Tribunal- Madras Bench

Application No. O.C. No . of 19…….
... . Applicant.

Versus
Union of India, owning Southern Railway,
Represented by is General Manager ……. Respondent.

PART II

SL. No.	**Description of Documents Attached**	**Page No.**
1.	Application dated	1 & 4
2.	Open Delivery I partial delivery Certificate dated	5
3.	Claim Under Section 106 of Railways Act dated	6
4.	Repudiation letter dated	7
5.	Pattial dated	8

Date……..

Place: Madras Applicant

Date of filing …….
Registration No …….

_____

Before the District Consumer Disputes Redressed

Forum, Madras

O.P. No…… of 1994
Mrs. Rhino Banu *(alias)*

Rahan Banu Complainant.
Versus

N. Pankajavali Opposite-party.

Petition filed under Section 12 & 13 of the Consumer Protection Act

The Complainant above named states as follow:

1. The Complainant is the wife Mohammed Madhinulla Sheriff, Muslim, aged about. years, residing at Plot No. 65 (Door No.4) Thanikachala Nagar, madras-600 110.

   The address for service of all notices and processes on the complainant is hat of her Counsel.

2. The Opposite party is the wife of Late RS. Vishwanathan, Hindu, aged abut …….years, residing at No. 10, Eswaran Koil Street, Erukkancherry, madras-600 051.

3. The Complainant states that at Madras on 28.1.1993, she entered into and agreement of Sale with the Opposite Party I and by which, the Opposite Party agreed to sell a piece of vacant land bearing Plot No. 164 Thankachala Nagar, Madras-600 100 in Lay-out plan L.A. 26/1970 comprised in S No. 11801 1 and 1180/2 situate at No. 34, Madhavarem Village, Saidapet Taluk, Chingleput District measuring about 2400 sq. ft. with a building thereon and more fully described in the Schedule hereunder, for a sum of Rs. 3,40,0001-. The Complainant states that at the time of execution of the aforesaid Sale Agreement, the building was incomplete and unfinished. It was, therefore, agreed between the parties hereto that opposite party shall complete the parties hereto that the Opposite Party Shall complete the incomplete building. In fact, under Clause IV of the Agreement, the items of the work to be completed before the registration of the Sale Deed, are:

   i. Front Compound Wall - 40 feet.
   ii. Other three sides fencing of the compound wall with R. C.C. Pillars 2' 5" chaining mesh.
   iii. O/H water Tank and Plumbing work with PVC pipes and fittings, and
   iv. Well platform.

It was further agreed that the sale be completed within 3 month after the completion of the aforesaid four works.

4. The Complainant states that the property to be conveyed was mortgaged by the opposite party with MIS Perambur Co- operative Bulding Society under a registered Mortgaged Deed dated 5.5.1992 (Document No. 2564/1992). Since there was pressure from the said society for payment of the mortgaged amount, the opposite party requested and insisted on the complainant to complete the registration of the Sale Deed even before the completion of the aforesaid work. The Complainant states that due to the pressure given by the opposite party, she had to register the Sale Deed for the value of the land and the incomplete building that was in existence in the date of registration for a s um of Rs. 1,80,0001-. In addition, as per the terms of the sale agreement dated 28.01.1993, the complainant paid a further sum of Rs. 1,60,0001- to the Opposite party for the completion of incomplete and unfinished items of work referred to supra.

5. The complainant states that the Opposite party fails to keep up her promise and did not take any steps to commence and complete the work of the unfinished items of work, despite receipt of the entire amounted sale consideration. The complainant issued a lawyer's notice dated18.06.1994, calling upon the opposite Party either to complete the unfinished items of work as agreed or to return the sum of Rs. 1,60,0001- paid by her for such work. The aid notice was acknowledged by the Opposite party on 22.06.1994 but did not care to send any reply. Hence, the complainant has filed present petition.

6. The complainant, therefore, states that a Consumer Disputes has arisen on account of the negligence and deficiency in service of the Opposite party, viz. the failure to complete the incomplete and unfinished items of work referred to supra even after receiving Rs. 1,60,0001- for that purpose and also the failure to return the said sum of Rs. 1,60,0001-. The complainant states that on account of the negligence and deficiency in service of the opposite party, she is not in a position to put the property to any profitable use and thereby she suffered heavy loss besides suffering mental agony and strain.

7. The complainant, therefore, prays that this forum may be pleased to:

a) Direct the Opposite Party to return the sum of Rs. 1,60,0001- paid by the complainant and a liquidated damages of Rs. 20,0001- in all totaling Rs. 1 ,80,000/-.

b) Direct the Opposite party to pay the complementation of a sum of Rs. 75,0001- for the mental agony and strain suffered by the complainant;

c) To punish the Opposite party in accordance with the provisions of the Act; and

d) To pass such further of other orders as this Hon'ble Forum may deem fit and proper in the circumstances of the case and thus render justice.

Dated at madras this the …….day of July, 1994.

Counsel for complaint *complainant.*

Verification

I, Mrs, Ryhana Banu alias Rahan Banu, the complainant above named, do hereby verity that what is stated above is true to my knowledge and belief.

Dated at Madras this the …….day of July, 1994.
Complainant.

Before the motor Accidents Claims tribunal Madras
O.P. No. …….. of 19

Petitioners
Versus
Respondents.

Petition under section 166 of MV Actand Rule 30f M.A.C.T. Rules.
Necessary particulars in respect of i'njuredl deceased vehicle given below:

1) Name and Father's name of the person injured deceased:
2) Full address of the person injured 1 deceased:
3) Age of the person injured Ideceases:
4) Occupation of the person injured 1 deceased:
5) Name and address of the employer of any of the injured 1 deceased:
6) Monthly income of the person injured 1 deceased:
7) Does the person in respect of whom compensation is claimed pay income tax? If so state the amount of income tax (to be supported y documentary evidence).
8) Place, date and time of the accident:
9) Name and address of the police station in whose jurisdiction the accident took place or was registered:
10) Whether the person in respect of whom compensations claimed traveling by the vehicle involved in the accident, if so, give names of starting of journey and destination:
11) Nature of injuries sustained:
    (a). Details of the damage caused to the property on account of the accident:
12) Name and address of the Medical Officer practitioner if any who attended on the injured/ deceased:
13) Period of treatmen5t and expenditure if any, incurred thereon:
    (a). Disability for work if any caused:
14) Registration number and type of he vehicle:
15) Name and address of the owner of the vehicle:
16) Name and address of the insurer:
    (a). Name and address of the driver in-charge of the vehicle at the time of accident:
17) Has many claim been lodged with the owner insurer, if so, with what result:

18) Name and address of the applicant:

19) Nature of relationship with deceased:

20) Title to the property of the decease:

21) Amount of compensation claimed:

(a). Particulars of the loss and expenses:

PART I

a. Loss earning from …… to ……
b. Partial loss of earning from ……to ……
c. At the net rate of Rs.
d. Transport to hospital …… a day week.
e. Extra nourishment:
f. Damage to clothing and articles:
g. Others:

PART II

h. Compensation for pain and suffering:
i. Compensation for continuing or permanent disability, if any:
j. Compensation for the loss of earning power: …… Total Rs. ……

22) Where the application is not made within six months of the occurrence of the accident the cause thereof;

a. (i) Where the injured / deceased has been involved in any other Road accident earlier (in case he was, state details).

(ii) Whether the injured / deceased has been preferred a claim from damage if any, on vehicle and if so how?

(iii) Whether the injured! deceased was related to or has known the owner of he vehicle and if so how?

23) Any other information that may be necessary or helpful in the disposal of this Claim here furnish a brief account of how the accident occurred and state how the applicant so entitled to claim compensation and how the Respondents are liable to any compensation claimed.

(a). To state how the respondents are liable to pay compensation to the petitioner.

Verification

I do hereby solemnly declare that the facts and particulars stated above are true and correct to the best of my! knowledge and that I/We have not claimed or obtained any compensation on under the Workmen's Compensation Act of 1923, so far as this case is examined.

Dated at..... this the..... .....day of..... 19.

Counsel for Petitioner Petitioner.

PETITIONS

Petitions under Arbitration Act

In the Court of..... at..... *petitioner.*

A B (add description and residence)

Versus

CD (Ad description and residence)

Petition under Section 11 of the Arbitration and Conciliation Act, 1996 for Appointment of an Arbitrator

The petitioner states as follows :

1. That on..... at ..... the parties hereto entered into an agreement of reference to arbitration of any dispute that may arise between the parties in respect of that the same shall be referred to arbitration of an arbitrator to appointed by the consent of both the parties.

2. The differences have arisen between the said parties on or about .....in respect of..... But the parties have not been able to concur in the appointment of a sole arbitrator.

   Or

   The differences have arisen between the said parties on or about. .....In respect of .....But the latter has refused to ad as such and the parties have not been able to concur in the appointment of another sole arbitrator in his place, and it was not intended that vacancy should not be supplied.

3. That the petitioner sent a notice, dated ..... by registered post to the respondent to concur on the appointment of the sole arbitrator (or to concur in the appointment of an arbitrator) but the respondent has not concurred in such appointment although more than thirty days have elapsed since the service of notice on the respondent on .....

4. That subject-matter of reference is within the cognizance of .....at.....

5. It is prayed that the court may appoint a sole arbitrator under the agreement of reference, dated ..... (Supply the vacancy by appointing an arbitrator in place of Shri. .....) to act as such under the power conferred in the said agreement.

Verification …….. Petitioner.
Place .....
Date .....

Petition under the Code of Civil Procedure

In the Court of District judge at. .....

A B (add description and residence) plaintiff.

Versus
C D (add description and residence) defendant

Suit No .....of.. .....

Petition of defendant under section 22, C.P.C., for transfer Of case to another Court

The defendant aforementioned states as follows :

1. That the above suit is pending in the court of .....at.....and the next date of hearing is which is fixed for settlement of issues.

2. That the suit could be instituted as well at….. , within the jurisdiction of this court, the Civil Court wherein has jurisdiction to try the present suit.

3. That on the grounds and for the reasons stated below, it is appropriate that the present suit be tried at. .....

1. That most of the witnesses of the parties reside at. ..... " ....
2. That the transaction was negotiated, and for the greater part completed at. .
3. That .....
4. That .....

4. That in the interest of justice and saving of unnecessary costs, it is prayed that the suit be transferred to the Civil Court at. .....

I verify that facts mentioned in paras 1 and 3 (i) and (ii) are true to my

knowledge and those in other paragraphs are correct on information received which is believed to be true.

Place ..... (Defendant).

Date ..... Counsel for Defendant
(Petitioner)

(1) C D (add description and residence)

(2) E F (add description and residence)

(3) G H (add description and residence)

Petition under Section 145, Cr. P.C., 1973 for restoration of possession

The petitioner states as follows :

i. That the petitioner was in possession of about ……. acres of land situate in village ……., Tehsil……., District. …….recorded in village revenue records as bearing No …….to …….

ii. That the respondents have been constantly obstructing the petitioner during the cultivation and rearing of the crops on the said land asserting, it is submitted wrongly, a claim to the said land in their own right.

iii. That on …….the respondents have forcibly occupied the said land and have unlawfully prevented the petitioner from entering into the said land and attending to the crops sown thereon by the petitioner, and the respondents are even claiming to have sown the said crops.

iv. That a dispute likely to cause a beach of the peace exists concerning the said land situate within the jurisdiction of the court.

v. That inquiry as to possession of the said land be made forthwith and on facts being proved as stated in para 3 above, the petitioner be restored to possession of the said land and the respondents be restrained from disturbing the petitioner's possession thereof.

vi. It is also prayed that pending such inquiry the land in dispute be attached and direction be issued in respect of the crops standing thereon to protect the interest of the part rightfully entitled to the possession of the said land.

Place: AB
Date: Petitioner.
For the petitioner. *Advocate*

In the High Court …….at …….

In the matter of companies Act, 1956 and of……. Co., Ltd.

Original Petition No ……. of …….

AS (add description and residence) *Petitioner*

Versus

……. Co. Ltd. (Add address) Respondent.

Petition under Section 433 of the companies Act for winding' up the company The petitioner above named states as under:

1. That the Co, Ltd (respondent) was incorporated as a company limited by the guarantee.
2. That the registered office of the company is situate at. .
3. That the liability of each of the members of the company is limited by the memorandum of RS.1000 to. be contributed to the assets of the company in the event of its winding up.
4. that the main objects of the company are: (Here set out the main objects)
5. That the petitioner is a member of the said company.
6. that the company should be wound up by court for the following, among other reasons:
   (i) That …….
   (ii) That …….
   (iii) That …….

7. it is prayed that for the reasons stated above it is just and equitable that the company be wound up, or such other order as the court thinks fit be passed in this behalf.

   N. S. - It is intended to serve the petition on …….

   Verification …… AB
   Place…… petitioner
   Date …… advocate

For the petitioner.

Petition under Guardians and Wards Act, 1890
In the Court of ……Judge at ……
Guardianship Case No …… of ……
In the matter of AS, a minor

CD (add description and address) Petitioner
Versus
(1) EF (add description and residence)
(2) GH (add description and residence) Respondents

Petition under Section 10 of the Guardians and Wards Act, 1890, for appointment of a guardian of the said minor

The petitioner states as under:

1. That AB above named is the son of P Q who was..... (add description) and was residing at ……
2. That P Q died on …… at …….
3. That A B is a minor, having been on …… He is now approximately ……years of age.
4. that the said A B is residing with ……. Who is related to him as ……
5. That the said A B is entitled in his own right to several assets and properties, to wit-
   (i) …….
   (ii) …….
   (iii) …….
6. That the said A B is governed by Hindu Law.
7. that the order relations of the said minor now living are:
   (i) (add ships) address, description and relation
   (ii) (add address, description and relationships)
   (iii) (add address, description and relationships)
8. That no guardian of the person or property of the said minor has been appointed either by will of the said P Q or by court.

That Shri ……. of ……..was appointed by will of P Q as guardian of the person and property of the

said minor, but the said Shri …….died on ……..at ……..
Or
That Shri ……. of……..was appointed by will of P Q as guardian of the person and property of the said minor, but the said Shri …….died on ……..at. ……..
Or
The Shri……. of ……..elder brother of the said minor appointed Shri ……..of as……..the guardian of the said, minor, but the said appointment is invalid and of no effect under the law to law which the minor is Subject.

9. That L.M. the person proposed as guardian is a land-owner. He is the nearest male relation of the said minor, is married and has …….children and resides with his family at. He is in good circumstances, having an income of about Rs …….. a year, and of good character and repudiation and of good business habits and a proper person to be appointed guardian of the person and property of the said minor.

10. That items Nos. (i) of para 5 above are in bad state of repair, and unless they are at once repaired, will seriously deteriorate I value, and it is in the interest of he miner that a sum of about Rs …….. should be at once expended for this purpose.
    Or

    The mortgagees of items (i) and (ii) of para 5 above threaten to take proceedings to realize their security; and in such case it is apprehended that the property will not realize its full value.

    Or
11. That the present environment on which the said minor is being brought up is not conducive to his proper education and development of good character.

12. It is in the interest of the minor that a fit and proper person be appointed as guardian of the person and properties of minor.

13. It is therefore prayed that -
    i. The said L M or some other fit and proper person may be appointed the guardian of the person and property 0 the said minor;

    ii. That security to be given by the appointed guardian may be fixed at…….and ……..Shri……..may be accepted as sureties of the said L M;

    iii. That a sum of Rs ……..A month may be fixed for the maintenance and education of the minor;

    iv. That a sum of Rs ……..a month may be allowed to the said guardian as his remuneration n respect of the collection of the rents of the immovable properties of the minor;

    v. That the said guardian may be at liberty out of the income of said minor to expend the sum of Rs …….. in his thread-wearing ceremony;

    vi. That the said guardian may be at liberty to invest any balance of the net income of the minor, after payment of the said sums and the costs of the application in ……. ;

vii. That the said guardian may be at liberty to raise the sum of Rs ……..by a mortgage of items (i) and (ii) of the said properties mentioned on pare 5 above at the rate of Rs……..per cent per annum as interest and to apply the said sum for payment of the mortgage mentioned in para 10 above;

viii. That the costs of this petition may be directed to be paid (or deducted) out of the income of the said minor;

And such other direction as the court may deem fit be given in this behalf.

Verification …….. CD
Petitioner
Place …….. Advocate
Date …….. for the petitioner.

Petitioner under Marriage and Divorce Laws

Before the Family Court at…….

A B, son of..... (add description and residence)

Versus

CD, wife of AB (daughter of ……..) (add description and residence)

The petitioner states as follows :

1. That he was married to respondent on ……..at ……..according to vedic rites in the presence of the parents of the parties and relations and friends.

2. That the respondent lived with the petitioner at…….. as husband and wife from pretext of the illness of her mother at……..

3. That the petitioner waited for her return for about a fortnight and then wrote to her to join the pioneer but she failed to do so.

4. That the petitioner went to the respondent at her parent's house at……..on but she refused to accompany the petitioner arid live with him as husband and wife without sufficient cause.

5. That the petitioner is entitled to a decree for restitution of conjugai rights against the respondent.

6. That the petition is not presented or being prosecuted in collusion with the respondent.

7. That there has been no unnecessary or improper delay in the institution of these proceedings.

8. That there is no other legal impediment or ground in the grant of the relief prayed for.

9. That the petitioner is not guilty of any such act or omission which should preclude him from obtaining the relief prayed for.

10. That the marriage having been solemnized at……..the court has jurisdiction.

11. It is prayed that a decree for restitution of conjugal rights be passed in favour of the petitioner against the respondent under Section 9 of Hindu Marriage Act, 1955, directing the respondent to return the petitioner and live with him as husband and wife.

I……..Petitioner aforesaid verify that facts mentioned in paras 1 to 4 and 6 are true to knowledge those in paras 5, 7 to 9 are correct on information received which is believed to be true.

Petitioner

In the Supreme Court of India, New Delhi

(In exercise of jurisdiction under Article 32 of the Constitution)

F.S, son of C D of village Jhita Kala, District Amritsar, at

Present detained as an Akali detenu in the District Jail at

Rohtak petitioner

Versus

(1) The State of Panjab

(2) The District Magistrate, Amritsar, and

(3) The superintendent, District Jail Rohtak

Hon'ble Shri……., Chief justice of India and his companion Justices of the Supreme Court of India,

This humble petition of the petitioner above named under Article 32 of the Constitution of India praying a writ of habeas corpus of such other writ, direction or order as the court may deem fit direction t respondents to cause the production of the petitioner in court and directing him to be set at liberty accordance with law respectfully.

Showeth:

1. That is petitioner is a respectable law-abiding citizen of India and was arrested by the Amrits (Panjab) Police on the ……..day of ……..19 ……..and is now confined as detenu under the order writ, of the second respondent in the custody of third respondent in the cause the production of the petitioner in court and direction him to be set at liberty in accordance with law respectfully.

2. That the detention of he petitioner purports to be under the preventive Detention Act, 1950.

3. That the petitioner was given the following grounds of detention under Section 7 of the preventing, Detention Act, 1950 on the …….. day of ……..19 ……...

i. On ……..you participated in the general meeting of the ……..when are solution delegator full powers to ……..to manage the affairs to the …….was passed. You also participated in an

inform meeting of the ……..workers on ……..when it was decided to hold ……..Convention on the ……..... and the ……..of ……..19 ……..as a result of these meetings resolution sponsored by ……..has been passed by the Working Committee of the ……..on the ……..to the effect that if he …….. MLA's of the Punjab Legislative Assembly do not voluntarily quit. The will be compelled to do so by coercive methods.

ii. You have in public utterances declared yourself to be a firm believer in leadership of ……..and, according to you, he is the only person who could deliver goods the ……..community. You are of the view that in the long run ……..would also have to revert the ……..'s lead.

iii. Now that a resolution making the intentions of the …….. very clearly has been passed the unlawful methods will be adopted, it is strongly believed that in pursuance of that resolution you w commit acts prejudicial to public order.

Your detention has, therefore been ordered to ensure the maintenance of public order.

4. That the petitioner was advised that his arrest and detention is illegal, malafide and capricious one…….. therefore moved the Hon'ble High Court of judicature for the state of Punjab at Simla ..... in Criminal Miscellaneous petition No …….. of ……..under Article 226 of the India. Constitution read with Section 491 of the Criminal procedure Code praying for a writ of he be as corporation for the release of the petitioner.

5. That the said Hon'ble High Court was pleased to reject the above said petition of the petition herein by its judgment dated ……..

6. That, in any case the petitioner with the orders of the Hon'ble High Court for the State of Punjab at Simla, and the petitioner is informed that the said ……..is separately taking steps for obtaining lea to appeal against that order of the High Court.

7. That, in any case the petitioner is advised that his continued detention on the above circumstances is in direct violation of his fundamental rights (as herein below detailed) and therefore begs to move the Hen'bIe court under Article 32 of the Constitution of India for a writ of habeas corpus or other appropriate writ order or direction directing the respondents to release the petitioner forthwith on the following amongst other.

Grounds

i. For that none of the grounds mentioned in para 3 above has any proximate connection or vacancy to the maintenance of public order.

ii. For that it is an abuse of the process granted to the Executive under the Preventive Detention Act……..to detain the petitioner for joining in any procession or making of any speeches as alleged in Supreme Court-paragraphs (i) and (ii) of para 3 above Such use of the Act is mala fide.

iii. For that similarly the use of the use of the said Act for a the detention of the petitioner in respect of the alleged activities of the petitioner as mentioned on sub-paragraphs (i) and (iii)of para 3 above is mala fide.

iv. For that the Resolution of the Working Committee dated ……..is unobjectionable……..has been released form custody on the ground that provisions of law under which he was being prosecuted, viz., Section 124-A and Section 153-A, I.P.C., etc., have been held to be ultra vires the countenanced and accepted as correct by the High Court,in its judgment referred to above falls to ground.

v. For that the leaned judges of the High Court erred in taking into consideration the speech made by…….and linking the same with the Resolution of the Working Committee.

vi. For that it is not proper to hold that any alleged past activities of the appellant not resulting in any disturbance of public order then, could form the basis of an assumption regarding the likelihood of an imminent danger of the breach of peace now at this distance of time; nor could the passing of the resolution of the Working Committee dated ……..bring about a charge in conditions as alleged with the consequential apprehended disturbance of public tranquility was not even a member of the said working Committee.

vii. For that the satisfaction of the learned District Magistrate was not based on such materials or rounds which could reasonably form the basis of an order of detention such as the one passed in this case. It is a camouflage to state that the allegations contained in the said grounds were such as were likely to be prejudicial to the maintenance of public order.

viii. For the detention of the petitioner is not in accordance with procedure established by law.

ix. For that the preventive Detention Act, ……..is ultra vires the constitution inter alia for the following reasons:

a) It offends against the provisions of Article 19(1)(a) of the Constitution inasmuch as it proceeds to indirectly what it could not do indirectly in the matter of unjustifiably restriction the freedom of speech expression, vide grounds in sub-paragraphs (i) and (ii).

b) It offends similarly against the provisions of Article 19 (1) (b) of the Constitution, inasmuch as it operates unreasonably on peaceable assembly without arm vide ground mentioned on sub-paragraph (ii) of para 3 above.

c) If offends similarly against the provisions of Article 19 (1) (c) of the constitution, vide grounds mentioned on sub-paragraph (i) and (ii) of para 3 above.

d) Section 3 of the said Act. Is contrary to procedure established by law. The subjective suggestion provided for in the section is ultra vires the Constitution.

e) Section 7 of the said Act, provides for representation to the State Government itself which repugnant to fundamental principle of law that no man can be judge in his own cause.

x. For that the extension dated ……..of the detention order is ultra vires and illegal. Further grounds in respect of the extension of detention order have been supplied to the petitioner.

xi. For that the detention order itself mentions "That security of State and the maintenance of pub

order," the grounds supplied relate only to maintenance of public order. The said detention order is itself either vague and inoperative or illegal.

xii. For that the decision in Gopalan;s case does not form appropriate precedent in this matter as was given I a different factual context. For the same reason Machindar's case is not so binding a further the purpose therein was different and the Constitution did not operate thereon.

xiii. For that the decision in Gopalan's case loses much of its validity and operation as precedent there were compelling reasons given by different judges which almost neutralize each other leaving the field clear.

xiv. For that in Gopalan's case, reference was made to due process of law, the Draft Committee Report, the Debates', etc. such maters could not be referred to. Personal liberty has always be understood to include freedom of speech and right of association and peaceable assembly. Constitution are interpreted in a manner in many respects peculiar to themselves. The correct approach to t problem of interpreting Articles 19 to 21 of the Constitution has been entirely overlooked. The well-known rules of interpretation have beginner on this behalf. Even the matters of procedure the various fundamental principles which form now the basis of legislation in this behalf for generations past are easily ascertain and have been declared by the judge in India and in the privy Councils and are now well established. To say that any enactment of Parliament forms the procedure established by law is contrary to t Constitution and is not good law.

8. Your humble petitioner therefore begs to pray that your Lordships may be pleased to issue rule nisi to the Respondents directing them to produce the petitioner before this Hon'ble Court and to justice his detention in accordance with procedure established by law and that after hearing the parties, your Lordships may be pleased to issue a writ of habeas corpus or other appropriate writ or direction to s the petitioner at liberty. For which favour this humble petitioner shall ever pray.

Delhi …….. Advocate
Dated …….. Supreme Court
Settled by
Senior Advocate, Supreme Court.

In the High Court of Judicature at…….. Petitioner
A B (add description and residence)

Versus

President, Municipal board …….. District …….. State of …….. Respondent

Petition for a writ of certiorari under Article 226 of the Constitution of India to quash the order of the president, dated ……..

Refusing to Allow Withdrawal of Resignation

The petitioner above named states as under:

1. That he was working as a Superintendent of the Municipal Board at. ……..in the distrust of

……..

2. that certain charges of misappropriation and other irregularities alleged to be committed by the petitioner were served on the petitioner on ……..by the Respondent and some investigation was made in this behalf but the said charges were dropped against the petitioner on or about. ……..

3. That the petitioner was made under duress (or undue influence), to submit a letter of resignation from service to take effect weeks after the date of submission thereafter. The petitioner asserts that he was not bound by the contents of the said letter.

4. That the petitioner withdrew by letter, dated the offer Resignation (prior to the data when the alleged resignation was to take effect) submitted on ……..as stated above, and requested that the said offer or resignation be not considered and be deemed as withdrawn.

5. That the Respondent rejected the prayer mentioned on para 4 above on…….. by his order, dated ……..and directed the petitioner to hand over charge of his office to……..

6. that the petitioner moved the Civil Court for a temporary injunction against the respondent to restrain him from giving effect to the said letter of resignation, in a suit filed for declaration that the said letter of resignation was not a voluntary one but had been extracted out of the petitioner under duress (or undue influence) but the Civil Court discharged the rule issued for a temporary in the said suit, as prayed for.

7. That the petitioner also submitted a representation to the representation to the State Government on ……..but the same has not yet been decided.

8. That being arrived by the order of the respondent, dated …….. The petitioner approaches this Hon'ble Court for issue of a writ of certiorari and such other direction and order as it may deem just, in the following among others.

Reasons

a. That the suit filed by the petitioner, as stated in para 6 above, has become in fructuous, the relief by means of a suit is not an equally adequate and efficacious one in the circumstance of this case.

b. That the letter of resignation abovementioned was to take to effect on or thereafter, it was not an unconditional resignation, the petitioner had a right to intimate to the Respondents that he no longer wished that his offer of resignation which was to come into existence from should be considered as effective. Till ……..there was no resignation at all.

c. That the Respondent had no jurisdiction to reject the prayer contained in this letter, dated ……..withdrawing from consideration the offer of resignation submitted as alleged.

9. It is, therefore prayed that the order of the Respondent, dated ……..mentioned above be quashed and such other direction or order as may be consequential and just in this behalf be made or passed.

N.B. - An affidavit in support of the petition along with the copy of the order, dated …….. abovementioned,

and sought to be quashed, is also filed herewith.

Dated …….. *Petitioner*
Counsel for the petitioner.

In the High Court of Judicature at .

In the matter of, Article 226 of the Constitution of India

Civil writ Petition No of . Petitioner
A B (add description and residence)
Versus
District Board of…….. Respondent

Petitioner for a writ of mandamus
The petitioner above named stated as follows:

1. That he is the owner of a passenger Bus No ……..which is plied for carrying passengers form ……...to …….. under permit No ……..issued on ……..by ……..

2. That in the course of the journey from ……...to…….., the said bus carrying passengers of otherwise has to cross the bridges at…….. and over the rivers ……..and …….. respectively at points ……..., and ……...

3. That in the rainy season the waters of the said rivers overflow the said bridges and in order to enable the passengers to go from one end of the river to another for the purpose of crossing the said rivers, the Respondent has made arrangements to carry the passengers or persons intending to cross the said river by providing boats at the ferry close to each said river, known as on the river ……..and …….. ferry on the river ……..

4. The Respondent levies a toll of Rs ……..Per bus for one trip when it proceeds to cross each of the said rivers over the bridges aforementioned. Thus Rs …….. are required to be paid by each bus (inclusive of the petitioner) to go from ……..to …….. and return there from ……..to …….

5. That it is alleged that this toll is charged in order to maintain the ferries under Northern India Ferries Act, 1878.

6. That no such toll is charged on the days when owing to floods the said bridges ate over flown with the current of the said rivers and the vehicular traffic cannot cross the bridge.

7. That the levy of the said toll from the petitioner at the crossing of his bus (passenger) at ……..and ……. is illegal.

8. That the petitioner being aggrieved by the said levy and charging of the said toll from the petitioner, he approaches this Hon'ble Court for issue of a writ of mandamus prohibiting the Respondent from making such charge of levy of said toll and for refund of sums already paid to the respondent in this behalf, on the following, among other.

Reasons

i. That the *pucca* bridges ((known as …….and …….) over the river……. and…….aforesaid are not ferries within the meaning of Northern India Ferries Act, 1878.

ii. That the notification issued under the said Act, in respect of the said, deemed to be ferries, is ultra vires.

iii. That the said bridges are part of the public roads and highways.

iv. That Government could not declare these bridges to be ferries.

v. That the said road from …….to …….and the bridges thereon are not maintained by the Respondent. It incurs no expenditure over their maintenance. Hence no levy could be made by the Respondent in this behalf form the petitioner.

vi. ……..……..…….

9. it is prayed that a writ of mandamus be issued to the Respondent to forbear from levying any toll, tax on the vehicle (bus) of the petitioner when it crosses the abovementioned two bridges over the rivers …….and …….the respondent be further directed to return the money deposited by the petitioner with the Respondent in this behalf.

N.B. - An affidavit in support of the petition is also filed herewith.

Date

Petitioner.
Advocate.
For the petitioner.

_____

In the High Court of Judicature at……..…….
In re, Article 226 of the Constitution of India
Civil Writ Petition No ……. of …….

A B (add description and residence) Petitioner
Versus

1) State of ……. Respondent
2) C D, Inspector-General of Police, at. ...
3) E F, Inspector of Police ..... Division at.

Petition under Article 226 of the Constitution of India for issue of a writ of Prohibition

The petitioner above named states as under:

1. That he was appointed as Sub-Inspector of Police in the State …….of…….on……..
2. That he served the State in various capacities, to wit as ……. in …….at……. and …….as

…….in …….at.

3. That while he was stationed at…….and serving as …….ne was served with a charge- sheet dated ……. a copy whereof is filed herewith.

4. That enquiry into the said charges was made by respondent No. 3 from …….to ……., who submitted a report dated ……. to respondent No. 2 finding the charges mentioned in charge-sheet above-mentioned to be proved.

5. That according to Rule …….of …….. the charges aforementioned could not be enquired into except by an officer of the rank of superintendent of police of ……. Division or with the approval of ……. respondent NO.2 of another Division in the State of …….

6. That on …….the petitioner received notice form respondent No.2 to show cause why he should not be dismissed from service.

7. That the aforesaid enquiry was illegal and ultra vires. Respondent No.2 had no jurisdiction to take into consideration the said enquiry or pass any order on the basis thereof. The so-called enquiry was held by person not duly authorized to do so.

8. The holding of a departmental enquiry by a Superintendent of Police is a condition precedent, a fact which must exist before respondent NO.2 can assume jurisdiction or authority for the purpose of passing the final order of dismissal under Rule ……. of against the petitioner.

   Here is a case of acting without or in excess of jurisdiction.

9. That in any view of matter here is a case in which there is a substantial error apparent on the fact of the record and an error of jurisdiction for the purposes of 'certiorari' or 'prohibition.'

10. It is, therefore, prayed that a writ be issued prohibiting the respondent form proceeding to take further action against the petitioner by way of dismissal of the petitioner from the police force or doing any other act to the prejudice of the petitioner based on the purported enquiry and the findings thereon referred to in the petition.

N. B .- An Affidavit in support of the petition is also herewith.

Dated …….

A B, petitioner
Advocate
For the petitioner

In the High Court of Judicature at…….

in re, Article 226 of the Constitution of India

A B (add description and resident) Petitioner

Versus

(1) C D (add description and residence)
(2) E F, Chairman of the Municipal Board of at……. at …….
(3) State of ……., through Secretary, Local Self-Government …….

Petition for a writ of quo warranto and other direction or order
The petitioner above named states as under:

1. That the Respondent NO.1 was nominated on …….by the Respondent No.2 under Section …….of……...Municipalities Acton the occurring of a vacancy in the Municipal Board of …….in respect of a seat to which a member had to be nominated.

2. That the respondent No. 1 was a candidate at the previous (19 …….) general election of this Municipal Board and had failed in getting elected.

3. That under the proviso to Section ……. of……. Multiple Actr.19 …….a person who had stood as a candidate at the previous general election and had not been elected could not be nominated to the Board.

4. That the respondent NO.1 was in contravention of the provisos of law and his membership of the Board is, therefore, invalid.

5. That the petitioner is a resident within the Municipality of…….and is a voter at No …….in Ward No. ……. of the said Municipality.

6. In the circumstances, it is prayed that a writ of quo warrant to be issued declaring that the nomination of respondent No. 1 is not entitled to hold the office of a member thereof and directing him not to exercise or use the rights, liberties and privileges in respect of the office of the member of the Municipal Board of…….

N. B. - An Affidavit in support of the petition is filed herewith.

A B, Petitioner
Advocate,
For the petitioner

Dated ……

(IV) AFFIDAVIT

Affidavit is a written declaration. on oath. A written statement sworn before a person having authority to administer on oath. An affidavit must be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications on which statements as to his belief, with the grounds thereof, may be admitted. Affidavits are required for filing in judicial proceedings before courts or in proceedings before other authorities. Usually the rules of courts of courts or the rules governing the proceedings before the authorities prescribe the form and contents of affidavits.

Order XIX of the CPC deals with Affidavits in Civil Courts. Rule 1 empowers the court to order that any particular fact or facts may be proved by Affidavits Rule 2 provides power to order attendance of deponent for cross-examination, and Rule 3 sets out the matters to which Affidavits shall be confined.

The Allahabad High Court has added Rule 405 to order XIX which prescribe in detail the form, the contents and the male of execution of Affidavits.

Section 139 of CPC prescribes the authorities who may administer oaths to the deponent of an Affidavit.

Section 3 (2) of the oath Act 1969 provides;

Without prejudice to the powers conferred by sub-sec.(1) or by or under any other law for the time being in force, any court judge, Magistrate or person may administer oaths and affirmations for the purpose of Affidavits, if empowered in this behalf: -

a) By the High Court, in respect of Affidavits, for the purpose of judicial proceedings,
b) By the state Govt. in respect of other Affidavits.

Oath Commissioners for swearing and Affidavits have been appointed· for all courts from· the amongst advocates and members of the staff of the court.

Affidavits are chargeable with stamp duty under Act. 4, schedule I, stamp Act. 1899. But no stamp duty is charged on Affidavits filed or used in courts. Such Affidavits are liable to payment of court fee prescribed for the various courts.

All Affidavits must strictly conform to the provisions of order XIX, Rule 3,

CPC and in the verification it must be clearly stated as to which portion are being ,sworn on the basis of personal knowledge and which on the basis if information received and believed to be true. In the latter case the sources of information are not disclosed, the Affidavits is not in accordance with law and such an Affidavit is inadmissible in evidence.

It is very important and material that the Affidavit should be properly verified otherwise it cannot be treated as evidence.

Affidavit is an important document and, therefore, it should be prepared very carefully, furnishing of a false affidavit is punishable under sections 199 and 200 of the Indian penal code.

An Affidavit is sometimes also required to be filed in support of an application and in that the facts and grounds etc. should be mentioned in the Affidavit only. But the application must state that the facts and grounds in support of the application are being given in the accompanying Affidavit.

Affidavit being and important document requires great care and skill in its drafting. It may be noted in this connecting that various High Courts have made it rules and Affidavit should be drafted so as to meet the requirements of those rule following general guidelines should be following general guidelines should be followed while preparing an Affidavits : -

a) The person making the Affidavit shall be fully described in an Affidavit in order to establish his identity clearly. For this purpose, it shall contain the full name, father's name, his professional status, occupation or trade and complete residential address.

b) An Affidavit should be divided into paragraphs and numbered consecutively and each paragraph should be confined to a distinct fact.

c) The declaring when speaks to any fact within his own knowledge he should use the words "I solemnly affirm" or "I make oath and say" or that "the deponent solemnly affirm and states as under".

d) Affidavit should generally be confined to matters within the personal knowledge of the declarant. If he verifies a fact on information received he should make a specific mention to this effect and use the words, "the information received from so and so which I believe it to be true".

e) Every person making an Affidavit for use in a civil court shall, if not personally known to the person before whom the Affidavit is made, be identified to the person by some one known to him and the person before whom the Affidavit is made state at the foot of the Affidavit the name, address and descript of the person the person by whom the identification was made as well as the date, time and place of such identification. Such identification. Such identification may be made by a person personally acquainted with the person to be identified or satisfied from papers in that person's possession or otherwise of his identity.

f) The person before whom Affidavit is bring made shall, before the same is made, ask the person proposing to make such Affidavit if he has read the affidavits and understood the contents thereof and if the person proposing to make such affidavit stats that he has not read the affidavit or appears not to understood the contents thereof or appears to be illiterate, the person before whom the Affidavit is being made shall read and explain, or cause some other competent person to read and explain in his presence the affidavit to the person proposing to make the same, and when the person before whom the affidavit is being made is thus satisfied that the person proposing to make such affidavit understood the contents thereof, the Affidavit maybe made.

g) The person before whom an Affidavit is made shall certify at the foot of the Affidavit the fact of the making of the affidavit before him and the date time and place when and where it was made and shall for the purpose of identification mark and initial exhibits referred to in the affidavit.

h) Any clerical error corrected in the Affidavit shall be initiated by the person before whom the affidavit is made.

i) Amendment in an Affidavit is not permitted, but a supplementary Affidavit can be filed with the leave of the court when any error or mistake is intended to be corrected or any addition is intended to be made.

j) The Affidavit should contain the following oath or affirmation at the end.

"I swear or, solemnly affirm that my this declaration is true or, that the contents of this Affidavit are time, and that it conceals nothing material, and that no part of it is false".

Verification: An Affidavit must be verified to show the genuiness and authenticity of facts and allegations made therein and also to make the deponent liable for the allegation. Verification of an Affidavit must be done in the lines of order XIX, Rule 3 CPC. The verification must specifically make a mention with reference to the numbered paragraphs of the Affidavit as to what he verifies of his personal knowledge and what he

verifies upon information received and believed by him to be time. It has been held that where an averment is not based on personal knowledge, the source of information should clearly be disclosed.

MODEL FORM OF AFFIDAVIT

(i) Parts of An Affidavit: An Affidavit may broadly be divided into the following parts, namely, the cause title, description of the deponent: Oath or affirmation, recitals, which may, again, be subdivided into two parts, the first describing the capacity of the deponent in which he swears or affirms and second, the facts or facts, put down in a narrative sequence, verification by the deponent, identification of the deponent and the certificate of verification to be given by the person before whom an affidavit is sworn.

(ii) Analysis of Parts

(a) **Cause Title:** Affidavit shall be entitled. "in the court of ……. at ……. (naming the court)" or "Before the …….(naming the designation of the authority)." If the affidavit be in support of, or in opposition to, an application respecting any case, in the court, it shall also be entitled in such case, it shall be entitled. "in the matter of

Thus the form of the cause of title can be set as follows:

In the court of /before .
Suit/case no …….of …….
In the matter of …….

(b) Description of the deponent- Every person making any Affidavit shall, be described therein in such manner as shall serve to identify him clearly, and where necessary for this purpose, it shall contain the full name, with aliases, it any, age, the name of his father, his caste or religion, his rank or status in life or his profession, trade, business or other avocation or calling and the true place of his residence stating the present address if the same be different form his true place of residence. It will, thus, be set in the following form:

Affidavits of ……., aged ……. son of ……. by caste ……. by religion …….resident of..... at present residing at ……. .

(c) Oath of Affirmation: To be in the following form -

"I, the above- named deponent, do hereby swear/ solemnly affirm as follows".

(d) Recitals: The first paragraph of the recitals must be begin as follows: "I, that I am (Capacity of deponent whether a plaintiff or defendant, application or opposite party, or petitioner or pairokar or agent ore attorney of any party, petitioner or applicant) in the above case/matter and, therefore fully acquainted with the facts deposed to here below".

Unless it be otherwise provided, an Affidavit may be made by any person haVing cognizance of the facts deposed to and the opening part of the recitals is meant to disclose this capacity - of the deponent.

Therefore, should begin the subsequent paragraphs.

Thus, each Affidavit shall be divided in paragraphs and every paragraph shall e numbered consecutively

and as nearly as may be, shall be confined to a distinct portion of the subject.

In case the affidavit is a counter-affidavit or rejoinder affidavit, the paragraph just after the first disclosing capacity of the deponent, shall state that he has read the Affidavit of his adversary or that he same has been read over and explained to him, and that he has fully understood the contents thereof, and then the facts should be stated how he regards the truth or contents of each paragraph in sequence of his adversary's affidavit.

When the declarant in any Affidavit speaks to any fact within his knowledge, he must do so directly and positively and in the first person.

The Affidavit shall contain no statement which is in the nature of an expression of opinion or argument or which is matter purely of law.

Except in interlocutory proceedings, Affidavits shall strictly be confined to such facts as the declarant is able of his own knowledge to prove. In interlocutory proceedings when the particular fact is not within the declarant's own knowledge, but is stated from information obtained from others the declarant shall use the expression" I am informed" and if such be the case, "and verify be believe it to be true", and shall state the name and address of, and sufficiently describe, for the purpose of identification, the person or persons from whom he received such information, when the application or the opposition there to rests on facts disclosed in documents or copies of e10cuments produced from any court of justice of other source, the declarant shall state what is the source from which they were produced, and his information and belief as to the truth of the fact disclosed in such documents. when any place is referred to an affidavit, it shall be correctly described. When in an affidavit any person is referred to, such person, the correct name and address of such person, and such further description as may be sufficient for the purpose of identification of such person. Shall be given in the affidavit.

(e) Verification: When the recitals are over, the deponent shall verify the contents of the Affidavit, shall verify the contents of the Affidavit, disclosing the source of information or knowledge on the basis of which the facts are stated to be true. Such verification will be in the following form.

“I……the above deponent, do hereby swear! solemnly! affirm that the contents of paragraph……to……of this Affidavit are true to my personal knowledge! true to information received and believed by me to be true, and that nothing material has been concealed.

Verified at ……on ……

Deponent"

(VI) EXECUTION PETITION

Execution is the enforcement of decrees and orders of courts by the process of the court.

It is the act if carrying into effect the final judgment of a court or other tribunal. In its practical sense, execution is the formal method prescribed by law, whereby the party, entitled to the benefit of a judgment or of any obligation equivalent to the judgment, may obtain that benefit.

Sections 36 to 74 and order 21 (XXI) of the code of Civil Procedure deal with the law and procedure for the

execution of decrees. The order consists of 106 rules and is the longest of all he order of the code.

The question as to the execution of decree shall arise only when the person against whom the decree has been passed, does not comply with it. Order XXI of the code deals with those steps which a decreeholder shall have to follow in the execution of he decree against the judgment- debtor.

According to Rule 30 or order XXI the expression, 'execution of a decree means the enforcement of the decree against a judgment debtor's person or property or both through the forum of the court.

According to court to Rule 21 of the same order the court may, in its discretion, refuse execution at the some time against the person and property of the judgment debtor.

The true executing against the person of the judgment- debtor means his arrest and detention in civil prison the term, execution against the property of the judgment debtor, means the attachment and sale of his property and then payment of the amount of the decree out of the sale proceeds to the decreeholder. A decree may be executed either by the court which passed it, or by the court to which it is sent for execution.

Application for Execution : Where a decree-holder desires to execute it, he shall apply to the court which passed the decree. Every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person who is acquainted with the facts of the case, and it shall contain the following particulars as provided under rules 11 (2) to 14 of the Order XXI.

a. The name of the court,
b. The number of the suit,
c. The names of the parties,
d. The date of the decree;
e. Whether any appeal has been preferred from decree, and if so what is the result thereof,
f. The nature, character and the amount of the decree and costs.
g. The mode of execution, against person or property movable and immovable and their detailed description.

If the application complies with rules 11 (2) to 14, the court will direct exclusion under rule 24; and if it does not it may be rejected or ordered to be amended under rule 17. When the application is rejected, the decree-holder can present another application properly framed. Where the application is made for arrest and detention of the judgment-debtor in prison, it shall state the grounds on which artest is applied for and shall be accompanied byan Affidavit of the applicant or any other person conversant with the facts of the case, (Rule 11- A). But where the decree is for the payment of money and the judgmentdebtor is present in the court at the time when the decree is passed, on the oral application (Rule 11 (1) Orper XXI) of the decree-holder, the court may order immediate execution of the decree by arresting the judgment-debtor without prior preparation of warrant under rule 11 (1) of the order.

Who May Apply for Execution: The application for execution is made by the decree-holder. Where the decree has been passed jointly in favour of more persons than one, anyone or mare of such persons may apply for execution (rule 15). Where a decree is transferred by the decree-holder, the transferee may apply for execution (Rule 16). If the decree-holder is dead, his legal representative may apply for execution.

Against Whom Execution May be Applied for: where judgment-debtor is living, the execution is applied for against him, but if he is dead, execution is applied for against his legal representative. When the execution is applied for against legal representative of the deceased judgment-debtor, it cannot be against the person of the legal representative, but only against the property of the jUdgment-debtor which has come to the legal representative and has not been disposed of by him (sec. 50).

Form of Execution Petition: An application for execution of decree under rule must state certain particulars. The decree-holder is required to state the details as number of The suit, names of e parties, the date of decree, etc, in his executions application, and if upon scrutiny, it appears that any of this detail is missing in the application; the court may give an opportunity to the decree-holder to remedy the effect. An application for execution is generally made in a tabular form given in form NO.6 in appendix E to the first schedule of the civil procedure code. But the fact that the petition for execution was not in a tabular form is, in itself, not a sufficient ground for rejection the application.

Verification of Application

Sub rule (2) of 11 enjoins that every application for the execution of ta decree shall be verified by

(i) The application, or
(ii) Some other person proved to the satisfaction of the court to be acquainted

with the facts of the case. A valid application can be signed and verified by any person proved to the satisfaction of the court to be acquainted with the facts of the case. So, if an incorporate body obtains a decree through its secretary and the application for execution is sighed and verified by its president, the application is competent. Rule 11 (1) does not require that the execution petition must be verified by a person authorised by the decree-holder. It may be verified by any person acquainted with the facts of the case.

The provisions, as regards the signing and verification in sub-rule (2) in respect of an execution application are mandatory and the omission to comply with the same constitutes a material irregularity, which unless cured, renders the application open to the objection that the some is not in accordance

h law. Where they are more applicants than are, the verification need not be signed by all a verification one of them acquainted with the facts of the case is sufficient.

In the court of ……
Execution Application No. ……
Name and
Particulars of
Party …… Applicant/Decree holder
Versus
Name and
Particulars of
Party ……judgement debtor

Application for execution of decree under order XXI Rule 11 (2) of Civil Procedure Code:

1. The decree holder …… is a ……
Prays for execution of decree, the particulars where of are states in the tabular column here under:

1. Suit No.
2. Name of the parties Plaintiff

   Vs.

   Defendant
3. Date of decree
4. Whether any appeal preferred form decree No.
5. Payment or adjustment made, if any, None
6. Previous application if any with date and result None
7. Amount with interest due upon the decree or other relief granted thereby together with particular of any cross-decree. Rs. …… principal (interest at % per annum, From the date of decree till Payment).

8. Amount of cost, if any, awarded. As awarded in decree Rs. ……

   Subsequently incurred Rs ……
   Total ……
9. Against whom to be executed Agains the defedant ……
10. Mode in which the assistance of the court is required it is humbly prayed by the decree holder

That the total amount of Rs ……
Along with interest ……

Till the full realization along with the cost Of the suit and the cost of taking out this Execution, be realized by attachment and sale of defendant's Immovable property and Bank accounts specified at the foot of this application and paid to decree holder.

I…… S/o ……R/o……Declare that what is stated above is true to the best of my knowledge and belief.

Dated …… day of …… 2009.

Sd/-

Decree Holder

Description and specification of property to be attached & sold

I, the decree holder humbly pray that the following bank accounts, movable and immovable properties ……listed below owned by ……be attached, sold and the decretal amount to be realised.

(i) …… ……
(ii) …… ……
(iii) …… ……
(iv) …… ……

I ……the decree holder declare that what is stated above is true to the best of my knowledge and belief and so far as I have been able to ascertain the interest of the therein specified.

Place ……
Date……

Limitation: By Art. 136 of the limitation Act 1963, the period provided for execution of decree is twelve years from date on which it becomes enforceable. If an appeal has been preferred, the decree becomes enforceable after dismissal of the same.

(VII) MEMORANDUM OF APPEAL AND REVISION

The memorandum of appeal shall set forth concisely and under distinct heads, the grounds of objection to the decree appealed form without any argument or narrative and such grounds shall be numbered consecutively. (Order XUI Rule 1 C.P.C.)

The memorandum according to order XLI, Rule 1 shall be accompanied by a copy of the decree appealed from and unless the appellate court dispenses there with, of the judgment on which it is founded. The word 'copy' means a certifieeJ copy. This is a mandatory requirement, in the sense that an appeal filed without a certified copy of Jhe decree makes the appeal incompetent. defective and [ilcompetent. But where the circumstances require it, the court has power to treat the appeal as competent and maintainable even in the absence of a copy of the decree attached. (Phool Chand V. Gopal Lal, AIR 1967 SG 1470)

The term 'appeal' means the judicial examination by a higher court of the decision of inferior court while the memorandum of appeal contains the grounds on which the Judicial examination is invited (Lakshmi Ratan Engineering Works, Ltd. V. Asst. Commissioner of sales Tax, AIR 1968 SC 488) An appeal in legal paralence is held to mean the removal of a cause from an inferior or subordinate to a superior tribunal or forum in order to test and scrutinise the correctness of the impugned decision. It amounts in essence and pith to a complaint to a higher forum that the decision of a subordinate tribunal is erroneous and, therefore liable to be rectified or set right.

There is a basic distinction between the right of suit and the right of appeal. There is and inherent right in every personto bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, however, frivolous the claim, that the law confers no such right to sue. Asuit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the positition in regard to appeal is quite the opposite. The right of appeal inheres in no one and, therefore, and appeal for its maintainability must have the clear authority of law. That exp,lains why the right of appeal is described a creature of statute. Under the code of civil procedure an appeal lies only as against a decree or as against an order passed under rules from which an appeal is expressly allowed by order XLIII, Rule 1. No appeal can lie against a mere finding for the simple reason that the code does not provide for any such appeal and if it is directed against a mere findlng recorded by the trial court, it is not maintainable. (Gangabai V. Vijay Kumar AIR 1974 SC 1126).

The right of appeal is not a guaranteed or a constitutional right. There is nothing whatsoever in the constitution which may even remotely vest any such inalienable right in the citizens. The right of appeal is not a fundamental right nor a constitutional one. It has been repeatedly held that the right of appeal is the mere creature of the stature. The creator that is the legislature which confers such right can equally take the

same away, if necessary. It inevitably follows there form that if the whole right can be thus taken away it can equally be impaired, regulated or burdened with condition either onerous or otherwise.

Grounds of Appeal: A memorandum of appeal is meant to be a statement of the grounds upon which the appellant proposes to support the appeal. It is a notice to the court that such and such specific grounds are proposed to be urged on behalf 0 the appellant, as also a notice to the respondent that he should be ready to meet those specific grounds. The parties concerned and their legal advisers should concentrate and focus their attention on the essential feature of cases so as to facilitate speedy and consequently, cheap administration of justice. (Kapil Deo Shukla V. state of Uttar Pradesh, 1958 SC R 640)

An appeal is essentially a continuation of the original proceedings. The theory of an appeal is that the suit is continued in the court of appeal and re-heard there.

An appeal is a continuation of a suit but this is only in a limited sense, it does not, however, mean that the rights which could be pleaded and enforced before a suit was finally adjudicated by the first court could be pleaded as of right for the first time during the pendency of the appeal. It is also true that courts do very often take notice of events that happen subsequent to the filing of suits and at times even those that have occurred during the appellate stage and permit pleadings to be amended for including a prayer for relief on the basis of such events but this is ordinarily done to avoid multiplicity of proceedings or when the original relief claimed has, by reason of change in the circumstances, become inappropriate and not when the plaintiff 's suit would by wholly displaced by the proposed amendment and a fresh suit by him would be barred by limitation. Although in cases where it would not be so barred different considerations might came into play and a different view might be possible. It cannot be, however, disputed that ordinarily an appellate court· can give effect to such rights only as had come into being before the suit had been disposed of and which the trial court was competent to dispose of (chunni Lal khusaldas Das V.K.Adhyaru, AIR 1956 SC 655,675). But if during dependency of the appeal it transpires that the respondent landlord has transferred the respondent landlord has transferred the property (House) which he, according to his petition required for his personal use, and the transfree had filed a suit for eviction against the tenant, the appellate court can take notice thereof and dismiss the transferor landlord's suit.

Right of appeal is not an inherent right of the subject but only exists where it is expressly conferred by statute.

Point of limitation not taken in the memorandum of appeal, being a pure ground of law, may be entertained at the hearing thereof.

Although the general rule may be that a plea once abandoned may not be raised, the right view seems to be that such fundamental issues as limitation and resjudicata are exceptions to it. Appoint of limitation is prima facie admissible even in a court of last resort.

The essential requirement of an appeal is rehearing of a grievance and merits. Under order XLI of code of civil procedure, the expressing "appeal" and "memorandum of appeal" are used to denote two distinct things. The appeal is the judicial examination, the memorandum of appeal contains the grounds on which the judicial examination is invited.

Order XLI, Rule 1 of C.P.C. deals with the form of appeal, what to accompany memorandum and contents of memorandum.

Memorandum Appeal consist of :-

(1) The formal part,

(2) The material part,

(3) The Relief,

The formal part of the memorandum of appeal contains the heading of the case. After the name of the court, the number of the appeal and the year in which it is filed ad mentioned the number is written by the official of the court for which space is left blank. There after the names and addresses of the parties are given. The name of the app~llant is given first and then of the respondent. It is also to be noted against the name of the parties as to what character each filled in the lower court.

After the names of the parties an introductory statement giving the particulars of the decree or order against which the appeal is directed. Its number and date the court which passed it and the name of the presiding officer should be written.

It may be stated that wherever the High Court has prescribed forms of heading of appeal from decrees and orders, the same should be followed.

Material part of the memorandum consists of the grounds of appeal. A memorandum of appeal is meant to be a succinct statement of the grounds upon which the appellant proposes to support the appeal. The grounds of appeal should be carefully drafted since these grounds are the very basis of the appellant's case for raising objection and attacking the decree or order appealed. While taking the grounds of objection, the defects and errors of the decision of the lower court should be pointed out. Errors of law, f any may also be indicated. The facts and circumstances which require the decision of the lower court o be altered and make it erroneous should be specifically high lighted in the grounds of appeal. It is mportant to note that no new plea, which was not taken in the pleadings and on which no issue was ramed nor evidence was led, should be raised. An appellant cannot argue in regard to any ground of)bjection not taken in the memorandum of appeal.

It is of utmost importance that the memorandum of appeal should be drawn up in accordance with order (L1, Rule 1, C.P.C. which provides form of appeal, its presentation, documents to be filed and grounds)f objection. It these provisions are not adhered to then the memorandum of appeal may be rejected by he court as provided in order XLI, Rule 3, C.P.C.

Order XLI Rule' 1,2,3 lays down the c conlents of memorandum: -

a. Grounds of objection should be in the concise form;

b. They should be written distinctly;

c. They should not be written in argumentative or narrative form;

d. Each ground should be numbered consecutively.

The ground should be written concisely to avoid vagueness and unnecessary details. It should be briefly iescribed to ensure that nothing irrelevant is unclouded. The grounds objections constitute an important actor of appeal and should be very carefully framed.

Each ground of attack should be clearly and separately stated. There should not be any vagueness in he ground of appeal. The grounds should be specifically and distinctly stated. The particular point and he error

of law, the particular point and the error of law, the particular finding of fact found to be wrong Ind the other mistakes committed by the lower court must be specifically stated.
The grounds of objection should not be framed in argumentative or narrative form. These should be distinctly and concisely stated. No argument or narration is required while taking grounds of objection.

Each ground should be numbered chronologically. Each objection should be different and not form the)art of another objection. It means that an objection taken should be complete in itself and not interdependent on another. An objection already stated in a Para should not be described subsequently n another form.

Relief : It is a general practice to mention the relief sought by the appellant though it is not mandatory to is so. Generally the relief would be to set aside the decree appealed against but if the appeal is by a defendant against a decree passed against him, it may be enough to say that the decree be set aside and the suit be dismissed.

FORM OF APPEAL

In the High court of …….
Regular first Civil Appeal No ……

Name and particulars of party …….Appellant/ Defendant

Vs

Name and particulars of party ……Respondent / plaintiff

Appeal under section 96 of C.P.C. against judgment and decree passed by Civil Judge …….On dt……. in suit No …….

The appellant most respectfully sheweth that.

1. The respondent had filed the suit No …….in the court of civil judge ……. against the appellant for the …….

2. The learned judge heard the said suit and passed a decree of …….against the appellant …….on dt…….

3. The appellant being aggrieved by the said decree and judgment prefers this appeal on the following amongst other grounds.

   i. That the learned judge erred in holding,

   ii. That the learned judge erred in the evidence of the appellant (defendant) and his witnesses.

   iii. That the decision of the learned judge is against the rule 50, of evidence in the case, and the learned judge ought to have dismissed the plaintiff's suit.

   iv. That the decision of the trial Court is against justice, equity and good conscience and hence not sustainable.

4. The appellant has not filed any other appeal prior to this in the Hon'ble court.

5. The appellant, therefore, submits that the Hon'ble court be pleased to send for the records of the suit from the trial court and set aside the decree and the judgment of the trial court.

Dated …….
Place …….

Advocated for the applicant

*** Before drafting a memorandum of appeal one must carefully study the judgment, the issues and the findings arrived thereon because a clue to the grounds may be got from them,

Revision

Sec. 115 of the code provides for revision by the High Court an order or decision of any court subordinate to such High Court.

Revision is not a continuation of suit but is altogether a separate proceeding.

Ordinarily appellate jurisdiction involves a rehearing and is invoked by an aggrieved person. Revisional jurisdiction is analogous to a power of superintendence. The conferment of revisional jurisdiction i generally for the purpose of keeping tribunals subordinate to the revising tribunal within the bounds 0 their authority to make them act according to law and according to well defined principles of justice. The extent of revisional jurisdiction and appellate jurisdiction is defined by statute and has to be considered i each case with reference to the language employed by the statute. 'Revision' means looking back t what is already done and corrects the same.

The question raised before the mall math Committee whether it is at all necessary to retain sec. 115 i view of Art 227 of the constitution the Malimath committee. Feel that the remedy provided by Art. 227 i likely to case more delay and involve more expenditure. The remedy provided in section 115 is on th other hand cheap and easy. The committees, therefore, feel that sec. 115, which serves useful purpose need not be altogether omitted particularly on the ground that on alternative remedy is available under Art.227 of the Constitution.

Revision is a separate proceeding therefore a fresh vakalatnama would be necessary to enable the advocate for doing the needful.

When in a case the successor of the original landlord has been impleaded and the implement would not cause failure of justice or the petitioner would not suffer irreparably, held the revision against the order of impleadment is misconceived.

Sec. 115 of the code lays. Down that:

1) The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears: -

   a. To have exercised a jurisdiction not vested in it by law,
   b. To have failed to exercise a jurisdiction so vested, or
   c. To have acted in the exercise of its jurisdiction illegally or with material irregularity.

The High Court may make such order in the case as it thinks fit.

Provided that the High Court shall not, under this section, vary or reverse any decidin~ an issue, in the course of a suit or other proceeding, except where-the order, if it had been made in favour of the party applying for the revision, would have finally disposed of the suit or other proceeding.

2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any court subordinate thereto.

3) A revision shall not operate as a stay of suit or other proceeding before The court except where such suit or other proceeding is stayed by the High Court.

Explanation: In this section, the expression "any case which has been decided" includes any order made or any order deciding an issue, in the course of a suit or other proceedings.

It may be noted that some states have made amendments for the application ~ section 15 of the principal Act.

FORM OF REVISION

In the High Court of Delhi (Under its revisional jurisdiction) Civil Revision No. _____

Name and particulars of party …….petition/Defendant…….

Vs.

Name and particulars of party …….Respondent/plaintiff…….

Revision under sec.115 of the code of civil procedure against the impugned order passed by it District, Judge of …….. on date …….. …….. in suit No. ……..

The petitioner submits as follows :

1. The respondent had instituted suit bearing No. …….. in the court of District judge, Delhi. The courts decreed the said suit of the respondent on…….. and order the petitioner to execute the decree the respondent.

2. the petition being aggrieved by the said decree and judgment prefers this application an the following among other ground:

a. That the decree and judgment passed by the learned judge is illegal and inoperative.
b. That the learned judge has erred in law by passing the said decree on the grounds of
c. That the Id. Judge erred in law by not appreciating the petitioner's application for producing material document.
d. That in doing so, the learned. Judge in the exercise of the jurisdiction has acted with an illegality and a material irregularity.

e. The said judgment and decree is against justice, equity and good conscience; and hence not sustainable in this court.

3. In the aforesaid circumstances, the applicant submits that the Hon'ble court be pleased to call for the records of the trial court and revise its judgment and decree its judgment and decree in the interest of justice.

Dated: Sd/-
Place: advocate for the petitioner.

If a court tries a suit for which it has no jurisdiction to try having regard to its local limit, or the subject matter thereof, it is an exercise of a jurisdiction not vested in it by law. Like wise, where a court has jurisdiction to entertain a suit, or to execute a decree, or to review its judgment, but refuses to do so on the ground that it has no jurisdiction, it is a case of failure to exercise jurisdiction vested in it by law. Similarly, it is an illegality, or a material irregularity in the exercise of jurisdiction vested in a court, if it passes a decree on order against a person without hearing him at all.

Presuming a hypothetical case now let us draft on petition for revision.

In the High Court of judicature al Allahabad civil Revision No. ……..

Name and particulars ……..…….. petition/plaintiff
Vs
Name and particulars ……..…….. Respondent/Defendant

Civil Revision petition under sec.115 C.P.C. against the impugned order dt. …….assed by shri ……. civil judge sr. Division ……when by the application of dismissed, for setting aside the impugned order and for allowing the aforesaid application of the petitioner and for acceptance of revision petition.

The grounds of revision petition are submitted as under: -

1) That briefly stating the facts of the case are that present petitioner has filed a suit for ……against the respondent! defendant before the Hon'ble trial court on the basis of

The defendant, on his appearance has filed written statement wherein he has denied the facts.
When the suit was fixed for framing of issues before the Id. Trial court the it revealed to plaintiff and plaintiff wants to file an application the plaintiff applied but the Id. Trial court disallowed the application vide impugned order dt- against the petition against which the present revision petition is being filed.

2) That the impugned order is wholly wrong, unjust against law, against facts and the same deserves to be set aside.

3) On the perusal of the aforesaid facts, it is clear that the plaintiff did not act any malafide manner.

4) That the learned trial court has erred in not judiciously and properly appreciating the controversy involved in the case and thereby it has caused grave miscarriage of justice with the petitioner.

5) That the Id. Trial court has erred on ignoring the settled principles of law with regard to and which are enunciated repeatedly by this Hon'ble court as well as Hon'ble Apex court in various judgments that the law is very liberal. It has been repeatedly held that pleadings in the trial courts are to be liberally interpreted.

6) The application was filed without any inordinate delay and the evidence of the parties was not yet started. Thus the stage of the suit is not belated one.

7) That in the wake of above narrated facts and circumstances, the impugned order passed by Id. Trial court denseness to be set aside.

8) That the present petition is being filed within limitation and is properly stamped.

It is therefore most respectfully prayed that impugned order dt …….passed by shri …….Civil Judge Sr. Division …….may kindly be set aside and the application of the plaintiff may kindly be allowed and the revision petition may kindly be accepted.

Dated : …….
Place …….

Counsel for the petition
_____

FORM OF APPEAL

In the High Court ……..…….
Civil Appeal No. ……..…….

Particulars of party's ……. Appellant/Defendant
V
Particulars of party's ……. Respondent/plaintiff

Appeal under sec. 96 C.P.C. against the impugned judgment and decree dt. ……. passed by ……. civil judge vide which the suit of the plaintiff has been decreed with costs, for setting aside the impugned judgment and decree and for dismissal of the suit of the plaintiff and for allowing the present appeal with costs.

The grounds of appeal are submitted as under:

1) That the impugned judgment and decree dt. Passed by shri ……. civil judge is wrong, illegal, against the law and thus, the same are liable to be set aside.

   Certified copies of judgment and decree are attached herewith.

2) That the impugned judgment and decree are wholly arbitrary, unjust, lacking reasoning and are based on surmises and conjectures.

3) That the learned trial court has not properly appreciated the evidence and material available on record. It has erred in passing the impugned judgment and decree against the appellant by wholly

misreading the evidence of the plaintiff which is going to· a material prejudice to the appellant.

4) that the learned trial court as erred in deciding issue No. 1 against the appellant That the learned trial court did not consider the martial contradictions in the statement of the plaintiff and the impugned document which makes their statements unreliable.

5) That the Id. Trial court has erred in decreeing the suit of the plaintiff against the defendant. The findings rendered by Id. Trial court under issues No. 122 deserve to e reversed and to be decided on favour often appellant.

6) That the present appeal is being filed within limitation and properly stamped. It is therefore, respectfully prayed that the impugned judgment and decree dt. ……passed by shri …….civil judge in civil suit no. ……of …….may kindly be set aside and the suit of the plaintiff may kindly be dismissed and the present appeal may kindly be allowed with costs.

Dated: sd/-
Place: Counsel for the Appellant

(VIII) PETITION UNDER ARTICLE 226 AND ARTICLE 32 OF THE CONSTITUTION

This section deals with the writs. The writs ate obviously intended to enable the Supreme Court and High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in vacation of the principles of natural justice, or refuse to exercise jurisdiction vested I them, or there is an error apparent on the face of the record, and such act, omission, error or excess, has resulted in manifest injustice. However, extensive the a jurisdiction maybe it seems that it is not so wide or large as to enable the court to convert .itself into a court of appeal and examine for it self the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made.

Art. 32 of the constitution of India give the right to move the Supreme Court by appropriate proceeding. For enforcement of the rights conferred by part III, of the constitution of India.

The provision merely keeps open the doors of the Supreme Court in much of the same way as is used to be said, the doors of chancery court were always open the state cannot place any hindrance in the way of an aggrieved person seeking to approach the supreme court. This is logical enough for it is against state action that fundamental rights are claimed. But the guarantee goes no further at least on the terms of Art. 32 Having reached the Supreme Court, the extent or manner of interference is for the court to decide. It is clear that every case does not merit interference. That must always depend upon the facts of the case. In dealing with cases which have come before it, the Supreme Court has already settled many principles on which it acts. The Supreme Court does not take action in cases covered by the ordinary jurisdiction of the civil court that is to say; it does not convert civil and criminal actions into proceedings for the obtainment of writs. Although there is no rule or provision of law to prohibit the exercise of its extraordinary jurisdiction, the Supreme Court has always insisted up on recourse to ordinary remedies or the exhaustion of other remedies. It is in rare cases, where the ordinary process of law, appears to be inefficacious that the Supreme Court interferes even where other remedies are available. This attitude arises from acceptance of a salutary principle that extraordinary remedies should not take the place of ordinary remedies.

Then again the Supreme Court refrains from acting under Art. 32, of the Constitution, if the party has

already moved the High Court under Art.26. This constitutes a comity between the Supreme Court and the High Court. Similarly, when a party had already moved the High Court with a similar complaint and for the same relief and failed, the Supreme Court insisted in an appeal to be brought before it and does not allow fresh proceedings to be started. In this connection the principle of res-judicata has been applied.

The citizens are ordinarily entitled to appropriate relief under Art. 32 once it is shown that their fundamental rights have been illegally or unconstitutionally violated. Therefore; Art. 32 does not give merely a discretionary power to the Supreme Court t grant an appropriate relief.

To enforce fundamental rights, resort can be had to art. 32 of the Constitution of India. Art. 32 is not to be invoked for infringement of a personal right of contract, nor is to be invoked for agitating questions which are capable of disposal under special enactments.

The amount there is a threat to a threat to fundamental rights to a citizen, he is entitled to approach the High Court under Article 32 not with standing actual threat has not taken place. The general attitude of the Supreme Court is not to answer any hypothetical question or a question if the same does not arise out if pleadings. (Sanjeev Coke V. Bharat Coking. AIR 1983 SC 239)

Art 32 provides in some respects for more effective remedy through Supreme Court then Art. 226 does through the High court. But the scope of the remedy is clearly narrower in that it is restricted solely to enforcement of fundamental right conferred by part III of the constitution. Art. 32 does not merely confer power on the Supreme Court as Art. 226 does on the High Court to issue certain writs for the enforcement of the rights conferred by part III, or for any other purpose, as part of its general jurisdiction. Art. 32 provides a "Guaranteed" remedy for the enforcement of those rights and this remedial right is itself made a fundamental right by being included in part III, the Supreme Court is thus the protector and guarantor of fundamental right and it cannot refuse to entertain applications seeking protection, against infringements of such rights. So and application for relief can be made to the Supreme Court direct. Art. 226 is wider in its scope vis-a- vis Art. 32, in that Art. 226 can be availed of both for enforcement of fundamental rights. But also of ordinary legal rights.

Art.32 (3) enables parliament to make a law empowering any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2) thereof one thing to be noticed is that the parliament can only empower any other court to exercise any of the powers exercisable by the Supreme Court under clause (2), it cannot confer guaranteed right mentioned in clued (1) on any person to move that curt. That is to say, the court to courts to which such powers are given would be in the same position as the High Court in respect of the enforcement of the fundamental rights. In short no person would have a guaranteed right to move any such other court for the enforcement of fundamental lights. A discretionally jurisdiction similar to that of the High Court be . conferred on them.

Application for writ and its maintainability

In the case of K.K. Kochunni v.state of Madras (AIR 1959 SC 725) it was observed that the Supreme Court is b9und to entertain a partition under Art. 32 of the constitution and to decide the same on merit even if it may encourage litigants to file many petitions under Art. 32 instead of proceedings by way of a suit. That consideration cannot by it self, be a cogent reason for denying the fundamental right of a person to approach the Supreme Court for the enforcement of his fundamental right which may, primafacie, appear to have been infringed.

Even, if the existence of other adequate legal remedy may be taken into consideration by the High Court in deciding whether it should issue any of the prerogative writs on an application under Art.226 of the constitution, the Supreme Court cannot on a similar ground decline to entertain a petition under Art. 32, for the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by part III of the constitution is itself, a guaranteed right. The mere, existence of an adequate alternative legal remedy cannot perse be a good and sufficient ground for throwing out a petition under Art. 32, if the existence of a fundamental right and a breach, actual or threatened, of such right is alleged and is prima-facie established on the petition.

In the following cases or circumstances writ petition under 32 lie: -

(a) Where action is taken under an ultra vires statutes,

(b) Where the statute is intravires but the action taken is without jurisdiction, and

(c) Where the action taken is procedurally ultra-vires -

The scope of Art-32 is being enlarged by judicial activism. In MC. Mehta V. Union of India (AIR 1987 SC 1086) it was pointed out that the court can entertrain claim for compensation suffered by a citizen on account of violation of fundamental rights.

Amendment of writ petition which cause no injustice to other side, avoids multiplicity of proceedings, and is necessary for determining real controversy of matter, should be allowed.

Aggrieved party can file a petition under Art. 32. and a petition for write under Art. 32 is not maintainable unless there has been a violation of some fundamental right.

In the case of Ravindra Nath Bose V. UOI (1970, 1SCC84) Supreme Court held that no relief should be given to petitioners who, without any reasonable explanation, approach the Supreme Court under Art 32 of the constitution after in ordinate delay. The Supreme Court administers justice in accordance with law and principles of equity and good conscience.

Applicability of Art. 226: The jurisdiction under Art.226 is to seeing that the judicial or quasi- judicial tribunals or administrative bodies exercising quasi- judicial powers, do not exercise their powers in excess of their statutory jurisdiction, but correctly administer the law within the ambit of the statute creating them or entrusting those functions to them where the Act has created its own hierarchy of officers and appellate authorities, to administer the law and so long as those authorities function within the letter and spirit of law, the High Court has no concern with the manner in which those powers have been exercised.

Writ jurisdiction is a discretionary and equitable jurisdiction. But since fundamental rights guaranteed by the Constitution the courts cannot refuse to enforce them on the ground of discretion. In the case of other rights the High Court generally refuse to exercise their discretion

(a) Where an alternative remedy is available to the petitioner,

(b) Where the petition is guilty of laches or unreasonable delay or acquiescence;

(c) Where the petition has, misrepresented or suppressed martial facts;

(d) Where it is no equitable to issue a writ;

(e) Where the writ, if issued, would be futile or ineffective or merely academic,

(f) Where the petition has become in fructuous;

(g) Where the grant of relief depends on investigation of disputed facts.

The writ jurisdiction of Supreme Court can be invoked only in cases of actual or threatened violation of fundamental rights guaranteed by part III of the constitution. The jurisdiction of the High Court is wider and can be exercised for the protection of fundamental rights as well as other legal rights. '

WRITS UNDER ARTICLE 32 & 226

1) **Habeas Corpus:** It is a writ in the nature of an order calling upon the person who has detained another to produce the detained person before the court, in order to let the court know on what ground he has been confined and to set him free if there is no legal justification for the detention. The writ is available in every case of unlawful detention either by an instrumentality of the state or by a private person.

   Art. 21 provide that no person shall be deprived of his life or personal liberty except according to procedure established by law. Art.22 provides protection against arrest and detention in certain cases. Whenever a case of arrest or detention by the authorities in violation of these provisions is established writ of habeas corpus would be issued. The jurisdiction can be invoked not only when a person is in actual detention but also when there is a real threat to his liberty and also when a person is on bail. But it cannot be invoked in the case of detention as a result of conviction on a criminal charge by a court of competent jurisdiction.

2) **Mandamus:** The writ of mandamus is a prerogative writ of a most extensive remedial nature, and is form, a command issuing from the court directed to any person, corporation inferior court, requiring him or them to do some particular thing specified which appertains to his or their office and is in the nature of a public duty. A writ of mandamus maybe granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge that statutory obligation.

In order to obtain a writ of mandamus the petitioner must establish

i. That he has a legal right to the performance of a legal duly by the respondent.

ii. That such duty is one imposed by the constitution, a statute, common law or by rules or orders having the force of law;

iii. That the duty is of a public nature and

iv. That a demand for justice was made and refused.

3) **Certiorari:** The object of a writ of certiorari is to keep the exercise of powers by judicial and quasi-judicial tribunals within the limits of the jurisdiction assigned to them by law and to restrain them from acting in excess of their authority.

Whenever the body of personas, having, legal authority to determine questions affecting rights of subjects and having the duty to act judicially act in excess of their authority, certioraris may issue to quash the decision that goes, beyond jurisdiction.

The decision of a judicial or quasi- judicial tribunal may be quashed by the issue of a writ of certiorari of one or more a the following grounds ate made out: -

(i) The tribunal has acted without or in excess of its jurisdiction,

(ii) That there is an error if law apparent on the face of the record;

(iii) That the tribunal has acted contrary to the principles of natural justice;

(iv) That the tribunal has acted in flagrant disregard of the procedure prescribed.

(v) That the tribunal was biased,

(vi) That the tribunal has acted malafide.

4) Prohibition : A writ of prohibition is also directed to wares keeping judicial and quasi judicial tribunals within the limits of their jurisdiction while a writ of certiorari can issue only after the tribunal has passed orders a writ of prohibition may be issued while the matter is still pending before the tribunal. A writ of prohibition is intended to prohibit or restrain the tribunal from action without or in excess of jurisdiction.

A writ of prohibition is issued to prevent the tribunal from proceeding further, when the tribunal proceeds to act:

(i) Without or on excess of jurisdiction;

(ii) In violation of the rules of natural justice;

(iii) In utter disregard of the procedure prescribed;

(iv) In contravention of fundamental rights; and

(v) Under a law which is ultra-vires of unconstitutional.

5) Qua-warran to: In order to invoke the jurisdiction for issuing a writ of quo-warranto the following conditions have to be satisfied -

(i) That the officer is a public office;

(ii) That it is substantive in character;

(iii) That it has been created by a statute, or the constitution to by rules having the force of law;

(iv) That the respondent has asserted a claim to the office; and

(v) That the respondent aid not legally qualified to hold the office or remain in the office, or that some statutory provisions have been violated in making the appointment, so that his title to the office becomes invalid or without legal authority.

FORM OF WRIT PETITION

In the Supreme Court of India, New Delhi

(In exercise of jurisdiction under Article 32 of the Constitution)

FS, son of C D of village Jhita Kala, District Amritsar, at

Present detained as an Akali detenu in the Dittrict Jail at

Rohtak Petitioner
Versus

(1) The State of Panjab

(2) The District Magistrate, Amritsar, and

(3) The superintendent, District Jail Rohtak
Respondent

Hon'ble Shri. ……. Chief justice of India and his companion Justices of the Supreme Court of India.

This humble petition of the petitioner above named under Article 32 of the Constitution of India praying for a writ of habeas corpus of such other writ, direction or order as the court may deem fit direction the respondents to cause the production of the petitioner in court and directing him to be set at liberty in accordance with law respectfully.

Showeth:

9) That is petitioner is a respectable law-abiding citizen of India and was arrested by the Amritsar (Panjab) Police on the …….day of ……19 …….and is now confined as detenu under the order writ, of the second respondent in the custody of third respondent in the cause the production of the petitioner in court and direction him to be set at liberty in accordance with law respectfully.

10) That the detention of he petitioner purports to be under the preventive Detention Act, 1950.

11) That the petitioner was given the following grounds of detention under Section 7 of the preventive Detention Act, 1950 on the …….day of …….19 ……..

i. on …….you participated in the general meeting of the …….when a resolution delegating full powers to ……. to manage the affairs to the ……. was passed. You also participated in an informal meeting of the workers on ……. when it was decided to hold ……. Convention on the ..... and the ……. of……. 19 …….as a result of these meetings resolution, sponsored by has been passed by the Working Committee of the …….on the ……. to the effect that if he …….MLA's of the Punjab Legislative Assembly do not voluntarily quit……. they will be compelled to do so by coercive methods.

ii. You have in public utterances declared yourself to be a firm believer in leadership of……. and, according to you, he is the only person who could deliver goods to the ……. community. You are of the view that in the long run ……. would also have to revert to ……. the ……. 's lead.

iii. Now that a resolution making the intentions of the ……. very clearly has been passed that unlawful methods will be adopted, it is strongly believed that in pursuance of that resolution you will commit acts prejudicial to public order.

Your detention has, therefore been ordered to ensure the maintenance of public order.

12) That the petitioner was advised that his arrest and detention is illegal, mala fide and capricious one …….therefore moved the Hon'ble High Court of judicature for the state of Punjab at Simla on ..... in Criminal Miscellaneous petition No …….of ……. under Article 226 of the India. Constitution read with Section 491 of the Criminal procedure Code praying for a writ of hebeas corpus for the release of the petitioner.

13) That the said Hon'ble High Court was pleased to reject the above said petition of the petitioner herein by its judgment dated …….

14) That, in any case the petitioner with the orders of the Hon'ble High Court for the State of Punjab at Simla, and the petitioner is informed that the said …….is separately taking steps for obtaining leave to appeal against that order of the High Court.

15) That, in any case the petitioner is advised that his continued detention on the above circumstances is in direct violation of his fundamental rights (as herein below detailed) and therefore begs to move this Hon'ble court under Article 32 of the Constitution of India for a writ of habeas corpus or other appropriate writ order or direction directing the respondents to release the petitioner forthwith on the following amongst other.

Grounds

(xv) For that none of the grounds mentioned in para 3 above has any proximate connection or relevancy to the maintenance of public order.

(xvi) For that it is an abuse of the process granted to the Executive under the Preventive Detention Act…….to detain the petitioner for joining in any procession or making of any speeches as alleged in Supreme Court-paragraphs (i) and (ii) of para 3 above Such use of the Act is mala fide.

(xvii) For that similarly the use of the use of the said Act for a the detention of the petitioner in respect of the alleged activities of the petitioner as mentioned on sub-paragraphs (i) and (ii) of para 3 above is mala fide.

(xviii) For that the Resolution of the Working Committee dated ……. is unobjectionable Has been released form custody on the ground that provisions of law under which he was being prosecuted, viz., Section 124-A and Section 153-A, I.P.C., etc., have been held to be ultra vires the Countenanced and accepted as correct by the High Court, in its judgment referred to above falls to ground.

(xix) For that the leaned judges of the High Court erred in taking into consideration the speech made by……. and linking the same with the Resolution of the Working Committee.

(xx) For that it is not proper to hold that any alleged past activities of the appellant not resulting in any disturbance of public order then, could form the basis of an assumption regarding the likelihood of an imminent danger of the breach of peace now, at this distance of time; nor could the passing of the Resolution of the Working Committee dated bring about a charge in conditions as alleged with the consequential apprehended disturbance of public tranquility

was not even a member of the said Working Committee.

(xxi) For that the satisfaction of the learned District Magistrate was not based on such materials or grounds which could reasonably form the basis of an order of detention such as the one passed in this case. It is a camouflage to state that the allegations contained in the said grounds were such as were likely to be prejudicial to the maintenance of public order.

(xxii) For the detention of the petitioner is not in accordance with procedure established by law.

(xxiii) For that the preventive Detention Act, …… is ultra vires the constitution inter alia for the following reasons :

f. It offends against the provisions of Article 19(1)(a) of the Constitution inasmuch as it proceeds to do indirectly what it could not do directly in the matter of unjustifiably restriction the freedom of speech ad expression, vide grounds in sub-paragraphs (i) and (ii).

g. It offends similarly against the provisions of Article 19 (1) (b) of the Constitution, inasmuch as it operates unreasonably on peaceable assembly without arm vide ground mentioned on sub-paragraph (ii) of para 3 above.

h. If offends similarly against the provisions of Article 19 (1) (c) of the constitution, vide grounds mentioned on sub-paragraph (i) and (ii) of para 3 above.

i. Section 3 of the said Act. Is contrary to procedure established by law. The subjective suggestion provided for in the section is ultra vires the Constitution,.

j. Section 7 of the said Act, provides for representation to the State Gover~ment itself which is repugnant to fundamental principle of law that no man can be judge in his own cause.

(xxiv) For that the extension dated ……of the detention order is ultra vires and illegal. Further no grounds in respect of the extension of detention order have been supplied to the petitioner.

(xxv) For that the detention order itself mentions "That security of State and the maintenance of public order," the grounds supplied relate only to maintenance of public order. The said detention order is in itself either vague and inoperative or illegal.

(xxvi) For that the decision in Gopalan;s case does not form appropriate precedent in this matter as it was given I a different factual context. For the same reason Machindar's case is not so binding and further the purpose therein was different and the Constitution did not operate thereon.

(xxvii) For that the decision in Gopalan's case loses much of its validity and operation as precedent as there were compelling reasons given by different judges which almost neutralize each other leaving the field clear.

(xxviii) For that in Gopalan's case, reference was made to due process of law, the Draft Committee's Report, the Debates', etc. such maters could not be referred to. Personal liberty has always been understood to include freedom of speech and right of association and peaceable assembly. Constitutions are interpreted in a manner in many respects peculiar to

themselves. The correct approach to the problem of interpreting Articles 19 to 21 of the Constitution has been entirely overlooked. The well-known rules of interpretation have beginner on this behalf. Even the matters of procedure the various fundamental principles which form now the basis of legislation in this behalf for generations past are easily ascertainable and have been declared by the judge in India and in the privy- Councils and are now well established. To say that any enactment of Parliament forms the procedure established by law is contrary to the Constitution and is not good law.

16) your humble petitioner therefore begs to pray that your Lordships may be pleased to issue rule nisi to the Respondents directing them to produce the petitioner before this Hon'ble Court and to justify, his detention in accordance with procedure established by law and that after hearing the parties, your Lordships may be pleased to issue a writ of habeas corpus or other appropriate writ or direction to set the petitioner at liberty. For which favour this humble petitioner shall ever pray.

Delhi …….
Dated …….

Advocate
Supreme Court
Settled by
Senior Advocate, Supreme Court.

In the High Court of Judicature at…….
A B (add description and residence)
Versus

Petition for a writ of certiorari under Article 226 of the Constitution of India to quash the order of the president, dated……..

Refusing to allow withdrawal of resignation

The petitioner above named states as under:

1. That he was working as a Superintendent of the Municipal Board at ……. in the distrust of …….

2. that certain charges of misappropriation and other irregularities alleged to be committed by the petitioner were served on the petitioner on …….by the Respondent and some investigation was made in this behalf but the said charges were dropped against the petitioner on or about.

3. That the petitioner was made under duress (or undue influence), to submit a letter of resignation from service to take effect weeks after the date of submission thereafter. The petitioner asserts that he was not bound by the contents of the said letter.

4. That the petitioner withdrew by letter, dated …….the offer Resignation (prior to the data when the alleged resignation was to take effect) submitted on ……. as stated above, and requested that ……. the said offer or resignation be not considered and be deemed as withdrawn.

5. That the Respondent rejected the prayer mentioned on para 4 above on ……. by his order, dated and directed the petitioner to hand over charge of his office to …….

6. that the petitioner moved the Civil Court for a temporary injunction against the respondent to restrain him from giving effect to the said letter of resignation, in a suit filed for declaration that the said letter of resignation was not a votuntary one but had been extracted out of the petitioner under duress (or undue influence) but the Civil Court discharged the rule issued for a temporary in the said suit, as prayed for.

7. That the petitioner also submitted a representation to the representation to the State Government on ……. but the same has not yet been decided.

8. That being arrived by the order of the respondent, dated ……. The petitioner approaches this Hon'ble Court for issue of a writ of certiorari and such other direction and order as it may deem just, in the following among others.

Reasons

i. That the suit filed by the petitioner, as stated in para 6 above, has become in fructuous, the relief means of a suit is not an equally adequate and efficacious one in the circumstance of this case.

ii. That the letter of resignation abovementioned was to take to effect on or thereafter, it was not an unconditional resignation, the petitioner had a right to intimate to the Respondents that he no longer wished that his offer of resignation which was to come into existence from should be considered as effective. Till ……. there was no resignation at all.

iii. That the Respondent had no jurisdiction to reject the prayer contained in this letter, dated withdrawing from consideration the offer of resignation submitted as alleged.

9. It is, therefore prayed that the order of the Respondent, dated …….mentioned above be quashed and such other direction or order as may be consequential and just in this behalf be made or passed.

10. **N.B.-** An affidavit in support of the petition along with the copy of the order, dated abovementioned, and sought to be quashed, is also filed herewith.

Delhi …….

Petitioner
Counsel for the petitioner.

In the High Court of Judicature at …….
In the matter of, Article 226 of the Constitution of India
Civil writ Petition No ……. of ……..

Petitioner

A B (add description and residence)
Versus

District Board of ……. Respondent

Petitioner for a writ of mandamus

The petitioner above named stated as follows:

11. That he is the owner of a passenger Bus No …….. which is plied for carrying passengers form ……..to …….. under permit No …….. issued on …….. by …….. .

12. That in the course of the journey from …….. to …….. the said bus carrying passengers …….. of otherwise has to cross the bridges at……..and over the rivers and …….. respectively at points ……..and ……..

13. that in the rainy season the waters of the said rivers overflow the said bridges and in order to enable the passengers to go from one end of the river to another for the purpose of crossing the said rivers, the Respondent has made arrangements to carry the passengers or persons intending to cross said river by providing boats at the ferry close to each said river, known as on the river…….. and …….. ferry on the river ……..

14. The Respondent levies a toll of Rs …….. Per bus for one trip when it proceeds to cross each of the said rivers over the bridges aforementioned. Thus Rs ……..are required to be paid by each bus (inclusive of the petitioner) to go from ……..to ……..and return there from to ……..

15. That it is alleged that this toll is charged in order to maintain the ferries under Northern India Ferries Act, 1878.

16. That no such toll is charged on the days when owing to floods the said bridges ate over flown with the current of the said rivers and the vehicular traffic cannot cross the bridge.

17. That the levy of the said toll from the petitioner at the crossing of his bus (passenger) at .....and ……..is illegal.

18. that the petitioner being aggrieved by the said levy and charging of the said toll from the petitioner, he approaches this Hon'ble Court for issue of a writ of mandamus prohibiting the Respondent from making such charge of levy of said toll and for refund of sums already paid to the respondent in this behalf, on the following, among other.

Reasons

i. That the pucca bridges(known as …….. and ……..) over the river …….. and aforesaid are not ferries within the meaning of Northern India Ferries Act, 1878.

ii. That the notification issued under the said Act, in respect of the said deemed to be ferries, is ultra vires.

iii. That the said bridges are part of the public roads and highways.

iv. That Government could not declare these bridges to be ferries.

v. That the said road from …….. to …….. and the bridges thereon are not maintained by the Respondent. It incurs no expenditure over their maintenance. Hence no levy could be made by the Respondent in this behalf form the petitioner.

vi. ……..……..

19. it is prayed that a writ of mandamus be issued to the Respondent to forbear from levying any toll tax on the vehicle (bus) of the petitioner when it crosses the abovementioned two bridges over the rivers …….. and ……..the respondent be further directed to return the money deposited by the petitioner with the Respondent in this behalf.

N. B.: An affidavit in support of the petition is also filed herewith.

Dated

Petitioner
Advocate
For the petitioner

In the High Court of Judicature at ……..
In re, Article 226 of he Constitution of India
Civil Writ Petition No …….. of……..

A B (add description and residence)

1. State of ……..……..……..
2. C D, Inspector-General of Police, at. ... Respondents
3. E F, Inspector of Police ..... Division at..

Petition under Article 226 of the Constitution of India for Issue of a Writ of Prohibition The petitioner above named states as under :

11. That he was appointed as Sub-Inspector of Police in the State …….. of …….. on ……..

12. That he served the State in various capacities, to wit as …….. in …….. at…….. and …….. as …….. in …….. at. ……..

13. That while he was stationed at…….. and serving as …….. he was served with a charge- sheet dated a copy whereof is filed herewith.

14. That enquiry into the said charges was made by respondent No.3 from …….. to…….. , who submitted a report dated ……..to respondent No. 2 finding the charges mentioned in charge-sheet above-mentioned to be proved:

15. that according to Rule …….. of …….. the charges aforementioned could not be enquired into except by an officer of the rank of superintendent of police of …….. Division or with the approval of ……..respondent No. 2 of another Division in the State of ……..

16. That on …….. the petitioner received notice form respondent No.2 to show cause why

he should not be dismissed from service.

17. That the aforesaid enquiry was illegal and ultra vires. Respondent NO.2 had no jurisdiction to take into consideration the said enquiry or pass any order on the basis thereof. The so-called enquiry was held by person not duly authorized to do so.

18. The holding of a departmental enquiry by a Superintendent of Police is a condition precedent, a fact which must exist before respondent No.2 can assume jurisdiction or authority for the purpose of passing the final order of dismissal under Rule …….. of against the petitioner.

Here is a case of acting without or in excess of jurisdiction.

19. That in any view of matter here is a case in which there is a substantial error apparent on the fact of the record and an error of jurisdiction for the purposes of *'certiorani*" or *'prohibition.* '

20. It is, therefore, prayed that a writ be issued prohibiting the respondent form proceeding to take further action against the petitioner by way of dismissal of the petitioner from the police force or doing any other act to the prejudice of the petitioner based on the purported enquiry and the findings thereon referred to in the petition.

N. B.: An Affidavit in support of the petition is also herewith.

A B, petitioner
Advocate
For the petitioner

Dated ……..

In the High Court of Judicature at. .

in fe, Article 226 of the Constitution of India

A B (add description and resident)

Versus

(1) C 0 (add description and residence)

(2) E F, Chairman of the Municipal Board of.. at. .

(3) State of …….., through Secretary, Local Self-Government.. .

Petition for a writ-of quo warranto and other direction or order

The petitioner above named states as under : .

4) That the Respondent No. 1 was nominated on …….. by the Respondent No. 2 under Section …….. of……..... Municipalities Act on the occurring of a vacancy in the Municipal Board ……..of……..in respect of a seat to which a member had to be nominated.

5) That the respondent No. 1 was a candidate at the previous (19) general election of this Municipal Board and had failed in getting elected.

6) That under the proviso to Section …….. of…….. Multiple Actr.19 …….. a person who had stood as a candidate at the previous general election and had not been elected could not be nominated to the Board.

7) That the respondent No. 1 was in contravention of the provisos of law and his membership of the Board is, therefore, invalid.

8) That the petitioner is a resident within the Municipality of …….. and is a voter at No …….. .in …….. Ward No ……..of the said Municipality.

9) In the circumstances, it is prayed that a writ of quo warrant to be issued declaring that the nomination of respondent No. 1 is not entitled to hold the office of a member thereof and directing him not to exercise or use the rights, liberties and privileges in respect of the office of the member of the Municipal Board of ……..

N. B.: An Affidavit in support of the petition is filed herewith.

Dated

A B, Petitioner
Advocate
For the petitioner

CRIMINAL

(I) COMPLAINT: Cases relating to crimes are triable by the Criminal courts of which the fir court is that of judicial or Metropolitan Magistrate Ordinary and simple crimes are tribal by Metropolita Magistrates, while the serious ones are initially investigated and then sent up to the sessions courts trial. The schedule appended to the code of Criminal procedure gives and provides a list of crimes and offences tribal by Metropolitan Magistrate and by the count of sessions.

What the students have to remember is that in cases of a serious nature where the police take cognizance of the case, it is the police which takes over the task of prosecuting the accused and leads evidence to establish the guilt of such. persons.

In the cases of defamation, malicious prosecution complaints are generally taken up by the private individuals on their own expenses;

Generally the formate used in all such complaints is similar because the complaint, whatever it nature, has to be filed before the Metropolitan Magistrate of the Area/District.

Normally a criminal case begins with the filling of an F.I.R. with the police station of the area and if there is a serious case, fatal! serious injury/ rape etc. the victim (s) have to undergo medical examination in order to establish the nature of the injury and the real cause of the injury (death) etc. thereafter the prosecution completes the investigation and puts the accused on trial. Students are advised to read the CR. P. C. of the author for further commentary.

There are certain private complaints which may be taken direct to the Metropolitan Magistrate with or without the participation of the police. However the complainant must have reported the nature and the

facts of the case to the local police and must have obtained a receipt thereof which must from a part of the complaint.

Hints on Drafting a Complaint : while drafting a complaint everyone should, remember the "Ten commandants" :-

1. Be brief,
2. Be positive,
3. Be precise,
4. Be relevant,
5. Plead fact and not evidence,
6. Plead fact not low,
7. Do not plead what the low or the court takes for granted or what the other side has got to prove.
8. Give particulars of fraud etc.
9. Do not change your terminology and do not use fine language or words that you do not understand.
10. Do not use the passive voice participle, phrases, pronouns or any sort of ambiguity.

Form of Complaint: No specia1 form as such is provided by law. The minimum requirements of a complaint are:

i. It must be addressed to a Magistrate;
ii. Stating facts which fulfill the ingredients to the offence complained of,
iii. And praying for action against the offender for punishment.

Apart from the other legal requirement, in practice the complaints are drafted in the following manner, and it should state;

a. Name of the court in which the complaint is to be lodged;
b. The Criminal case No. of the court
c. The name and description including age, occupation and place of residence of the complainant.
d. Then "versus" or "vs".
e. The name or names of the accused with his address.
f. The heading of· the complaint showing the section or section constituting the offences and prescribing punishment therefore.
g. The body or the substance of complaint. It is usually commenced in anyone of the following manners:

    i. The complaint begs to state as follows:

    ii. May it please the complainant above named begs to state on oath or solemn affirmation as follows:

    iii. The complainant above named;

iv. The prayer,

v. The place and date;

vi. Lastly the signature or the thumb mark of the complainant.

vii. The list of witnesses to be examined.

While giving the substance of the offence in the main body of the complainant, care should be taken to see that all the ingredients of the offences are complied with and incorporated without any exaggeration. It is advisable to avoid, as far as practicable, the details and circumstances of the commission of offence which consequently widen the scope of the cross-examination.

To entitle a magistrate to take cognizance there should not, only a complaint, which means allegation of commission of offence, but it must contain facts which constitute the offence. The basic facts and materials should be pleaded on which the allegation is founded are required to be stated. Factual details or evidential details need not be however incorporated in the complaint, but it must contain the path and substance of primary facts on the basic if which the allegation of the commission of on offence is being made.

Taking cognizance of an offence is the first and foremost step towards trial. The code of Criminal procedure has not defined the expression "cognizance of an offence" or "taking cognizance of an offence". Literally meaning of cognizance is knowledge or notice and taking cognizance of offence means taking notice, or becoming aware of the alleged commission of an offence. The judicial officer wit have to take cognizance of the offence before he could proceed to conduct a trial. Taking cognizance does not involve any formal action or indeed action of any kind but occurs as seen as a magistrate as such applies his mind to the suspected commission of an offence for the purpose of proceeding to take .IbIBtIII8Rtsteps (under sec.200, or section 202, 204) towards inquiry or trial. It includes intention of illi.1'I9 a judicial proceeding against an offender in respect of an offence or taking steps to see whether there is a basis for initiating Judicial proceeding.

When a magistrate applies his mind not for the purpose of proceeding as mentioned above, but for taking action of some other kind, that is ordering investigation under sec. 156 (3), or issuing a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of the offence.

A magistrate can take cognizance of an offence only within the time limits prescribed by law for this purpose (sec. 467 - 473) the accused is entitled to raise on objection to the maintainability of the complaint either on the ground of limitation or of jurisdiction or any other analogous ground. It is desirable that such preliminary points should be raised and decided at the beginning so that the time of the court could be saved and the accused person would also be saved from trouble and unnecessary expend time.

There may be cases in which preliminary points should not be allowed to be raised. But there are cases where the objection goes to the very root of the maintainability of the complaint and in such cases it is not only permissible but desirable that such objections should be raised at the earliest opportunity and decided so that unnecessary waste of time of the court and of the litigant public might be avoided. An accused person has a right to raise a preliminary objection to the maintainability of the complaint and to have it decided so that he may not be put to the necessity of under going a trial in case he succeeds on the preliminary objection.

The complaint is in the nature of an indictment. Therefore averments in a complaint must be established and properly proved by evidence. Before anyone can be convicted on charges formulated in a complaint, all

those charge must be fully and properly proved in accordance with procedure and the law of evidence applicable to Criminal charges.

(II) CRIMINAL MISCELLANEOUS PETITION

In offences state becomes the party and the accused has to put up his defence. It is the duty of the prosecution on behalf of the state to prove the guilt of an accused. In such a situation the aggrieved party is not required to institute any petition. It is the responsibility of the state to launch prosecution against the criminal who has committed the offences of Criminal nature.

The constitution of India empowers the Supreme Court and the High Courts under Art. 32 and 226 to provide remedy to the petition by way of issuing writs the jurisdiction of the High Court under 226 is in nature of ordinary original jurisdiction. It empowers every High Court, within its territorial jurisdiction to issue directions, orders or writs including writs in nature of habeas corpus etc. for the enforcement of any of the fundamental rights as well as "for any other purpose".

By virtue of Art.227 every High Court has superintendence on all courts and tribunals through out the territories in relation to which it exercises jurisdiction except those constituted under any law relating to armed forces.

The High Court May

a) Call for returns from such courts;
b) Make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts, and
c) Prescribe form in which books, entries and accounts shall be kept by the officers of any such courts.

It must be remembered that in exercise of its jurisdiction under 227 High Court does not act as a court of appeal. It cannot, therefore, review or reweigh the evidence upon decision. The supervisory jurisdiction conferred under Art.227 is limited to seeing that the inferior court or tribunal functions within limits of its authority and not to correct any error of law. (Mohd.Yunus V. Mohd. Mustquim AIR 1984 SC 38, 40)

Under the code of Criminal procedure High Court has also empowered its inherent jurisdiction, under sec. 482 Under this sec. the High Court may be exercised its inherent powers in a proper case either to prevent the abuse of process of any court or to secure the ends of justice. Inherent power of the High Court should be exercised only in the exceptional cases. (Amar Chand V. Shanti Bose, AIR 1973 SC 799)

In the following cases the inherent jurisdiction of the High Court should be exercised to quash the proceedings. (R.P. Kapur V. state of Punjab AIR 1960 SC 866)

i. Where there is a legal bar against the institution or continuance of the proceedings;

ii. Where the allegations in the first information or complaint do not constitute the offence alleged; and

iii. Where either there is no 'legal evidence adduced in support of the charge or the evidence adduced in support of the charge or the evidence clearly or manifestly failed prove the charge.

No limitation period has been prescribed for making an application under sec. 482 Cr. P.C. However the

application is to be filed within a reasonable time. The High Court may, to prevent the abuse of the process of court and secure the ends of justice, in a long drawn out proceedings where no prima-facie case is made out against the accused, internee and quash the proceedings, for more details for this provision or inherent powers of the High Court student should consult sec. 482 Cr. P.C. from their text book and bare Act. of Cr. P.C.

MODEL FORMS OF CRIMINAL MISCELLANEOUS PETITION

In the High Court of …….
CR. MISC. petitioner/ No. …….
AB (add description) …….Respondent! complainant
Complaint no …….
Police station …….

To the Hon'ble chief justice and his companion judge of the High Court of ……..

PRAYER

It is therefore most respectfully preyed that a notice may be issued against the respondent.

Date: sd/-

Place: Advocate of the petitioner

Other petitions under sec. 107, 109,125 and 133 Cr P. C. maybe filed in Criminal court.

(iii) BAIL APPLICATION

The concept of bail has a long history and deep roots in English and American law. In medieval England, the custom grew out of the need to free untried prisoners form disease ridden jails while they were waiting for the delayed trials conducted by traveling justices, prisoners were bailed, or delivered, to reputable third parties of their own choosing who accepted responsibility for assuring their appearance at trial. If the accused did not appear, his' bailor would stand trial in his place. It became the practice for property owners, who accepted responsibility for assuring persons to forfeit money when their charges failed to appear for trial. In the event of non-appearance the bond is for feited.

'Bail' in English common law is the freeing or setting at liberty of one arrested or imprisoned or imprisoned upon any action, either civil or Criminal, on surety taken for his appearance on certain day and a place named.

Under the Indian law the word 'bail ' has not been defined in the code Criminal procedure 1973 have defined the expression 'bailable offence' and non- bailable offence respectively in section 4(1) (b) and sec; 2 (a).

The word 'bail' means the security for a prisoner's appearance for trial. The effect of granting bail is accordingly not to set the prisoner free from jailor custody, but to release him form the custody of law and to entrust him to the custody of his sureties who are bound to produce him to appear at his trial at a specified time and place.

Under the provisions of Cr P.C., bails may be studied under three heads:

(1) Bails in bailable offences.

(2) Bails in non-offences.

(3) Anticipatory Bail.

1. **Bails in Bailable offences** - where an arrested person is accused of a bailable offence he shall be released on bail at any time while n custody, if he is prepared to give bail. But the officer in charge of a police station detaining the accused without a warrant may, instead of taking bail form such person, discharge him on executing a bond without sureties for his appearance. In every bailable offence bail is granted as a matter of favour. No discretion has been granted to courts in such cases. The granting of bail is imperative under sec. 436 of code of Criminal Procedure.

   Where a person fails to comply with the conditions of the bail bond regarding time and place of attendance, the court may refuse to release him on bail, when on a subsequent accession in the same the appears before the court or is brought in custody and any such refusal shall be without prejudice to the powers of the court to call upon any person bond by such bond to pay the penalty there of under sec. 446 in which the procedure when bond his been for feinted is given.

2. **Bails in Non-Bailable Offences :** All offences which do not fall under the category of bailable offences are non-bailable offences.

   A person accused of a non-bailable offence maybe released on bail, subject to certain restrictions. Sec. 437, Cr P.C., lays down that a person arrested for a non-bailable offence shall not be so relapsed if there appears reasonable grandees for believing that he has been guilty of an offence punishable with death or imprisonment for life. But there is also an exemption in the section, in the case of a person under the age. Of sixteen years or any woman or any sick or infirm person identification by witnesses is no ground for refusing bail.

3. Anticipatory Bails: Sec. 438 Cr. P.C. 1973 says the issuance of a direction that in the event of arrest of the application he shall be released on bail. Sec. 438 confers power on the High Court as also the Court of Session to grant bail to any person apprehending arrest on an accusation of having committed a non-billable offence in anticipation of his arrest, which is called anticipatory bail.

   The object of this section is that if a person has already obtained an order from the session judge or the High Court, he would be released immediately without having to undergo the rigours of jail even for a few days which would necessarily be taken up if he has to apply for bail after arrest.

Application for Anticipatory bail and its Contents

It is unrealistic to expect the applicant to draw up his application with the meticulousness of a pleading in a civil case and such is not the requirement of the section. But specific events and facts must be disclosed by the applicant in order to enable the court to judge the reasonableness of his belief.

Apart from the fact that the very language of the statute compels this contraction there is an important principle involved in the insistence that facts on the basic of which a direction under sec. 438 (1) is sought must be clear and specific, not vague and general it is only by the observance of that principle that a possible conflict between the right of an individual to his liberty and the right of the police to on investigate into crimes reported to them can be avoided.

Rule of prudence requires that the notice should be given to the other side before passing a final order for

anticipatory bail so that wrong order of anticipatory bail so that wrong order of anticipatory bail is not obtained by a party placing incorrect or misleading facts or suppressing material facts.

Authorities Competent to grant bail

Police officers, Magistrates, courts and Government are empowered to grant bail under the various provisions of the code of Criminal Procedure code.

(a) Police Officers: Police officer are empowered to grant bail to persons arrested without a warrant under sec. 41 (when police may arrest without warrant) or sec. 42 (Arrest on refusal to give name and residence) or Sec. 43 (Arrest by private person and procedure on such arrest) or Sec. 151 Cr. P.C. (Arrest to prevent the Commission of cognizable offences) or to a person arrested under a available warrant issued by a court, or to accused person to appear before the court when required.

(b) Magistrates and Courts: The Magistrates and Court are empowered to grant bail to any accused person. The provisions elating to bail are laid down in various sections of the Cr. P.C. like 436 to 439 in chapter XXIII of the Cr. P.C. the question of granting bail for apprehending arrest has been provided in sec. 438 of Cr.P.C.

(c) Government: Under sec.339 Cr. P.C. the Government may, upon and application who is lunatic and on such relations or friends giving security to the satisfaction of the state Government concerned, Order relatively or friend. Under sec. 432 Cr.P.C. The Government is empowered to suspend or remit sentence.

The usual practice is that a person desiring bail should first approach the lower court, but this practice is not inflexible because under sec 439 Cr P.C. special power have been conferred on the High Court or the court of session regarding bail. Further when a person has reason to believe that he may/be arrested on an accusation of having committed a non-bailable offence he may under sec, 438 Cr P.C. apply to the High Court or the court of session for a direction under the said section and that the Court may if it thinks fit direct in the event such arrest that he shall be released on bail.

In order to enable the judge to decide whether bail should be granted or not and what exactly are the terms on which he should be granted bail. It would be advantageous of notice is given to the public prosecutor. Though there is no provision which compels the court to give notices to the public prosecutor before granting bail the court has such power to direct notice in appropriate cases. Since bail in bailable cases is a matter of right for the accused to be enlarged on bail, there is no scope for giving notice to the Public prosecutor.

The circumstances which should be weighted on behalf of the prosecution and against the accused are:

1) That there is every liklyhood that the accused will be absconding on his release.

2) That there is a reasonable apprehension that the accused might tamper with the evidence of the prosecution witnesses by his influence where by the prosecution would be hindered and would not get a fair opportunity of adducing incriminating evidence against the accused.

3) That there is danger of such offence being repeated and continued etc.

FORM OF BAIL APPLICATION

It is also keep in mind by the students that so long as an accused is not charge-sheeted, the case against him is not numbered as the court case on its file; and hence it is referred as Cr P.C. No. (Crime Register Number) which relates to the particular Police station to which the offence has been reported to. But, as soon as the charge-sheet is filed in the court, the case s numbered as Court-case on its file.

In the Court of Judicial Magistrate,

Misc. Application No of 2009

Cr P.C. No …….of 2009

State V …….Accused

Offence u/s 304- AIPC

Police State …….

Application for Bail under Sec.436 Cr.P.C.

The humble application on behalf of MR. ……. s/o shri……R/o……police station …….District ……. respectfully submitted:

1) That the application 1 accused was arrested by the Police of Police Station ..... on …….and sent up for remand to custody in the above case.

2) That the applicant is innocent and has not committed the offence mentioned above

3) That the offence is available and the applicant is prepared to furnish bail.

Prayer

It is, therefore respectfully prayed that the Court be pleased to order that the applicant be released on bail pending decision on the above case.

Place
Dated

Applicant
or
Counsel for the applicant

(File Vakalatnama of the accused along with this bail application.)

IN THE COURT OF JUDICIAL MAGISTRATE,

CRIMINAL CASE NO ……. of 2009

State V…….Accused)

Offence under Sec. 13U.P.

Gambling Act

Police Station …….

Application under sec. 436 Cr P.C.

The humble application on behalf of……. s/o shri. ……R/o……., police Station ……. respectfully showeth as follows:

a. That the application is a respectable citizen and he has been falsely implicated the above case.

b. That the offence is bailable and the applicant is prepared to furnish bail for his appearance.

PRAYER

It is, therefore respectfully prayed that the court be pleased to grant bail to the applicant. *Applicant*

Place or

Date Counsel for the applicant

BEFORE THE COURT OF JUDICIAL MAGISTRATE
MISC APP. No. …….. of 2009
In
Criminal case No ……..……of 2008
State ……. Vs …….Accused

Under sec.25 Arms Art,

Police station .

Application under sec. 437 Cr P.C. 1973
The humble application on behalf of Shri ……S/o Shri ……R/o……Police Station ……District……., respectfully showeth as follows:

1) That the applicant is a respectable citizen and has never before been arrested or challenged

2) That the application is innocent and been falsely implicated in the above case due to enimity.

3) That there was no recovery of any incriminating article from the possession of the applicant.

4) That a pistol was recovered from a bush in front of the applicant's house, of which the applicant was unaware till the recovery.

5) That the offence of non-bailable but there is no evidence to connect the applicant with it and the circumstances do not exclude the possibility of some one having thrown, or concealed the pistol

PRAYER
It is therefore, respectfully prayed that the court be pleaded to allow bail to the applicant.

Dated: Applicant
Place: or
Counsel for the applicant.

In the court of Chief Judicial Magistrate, …… MISC Application No. ……. Of 2009
In

Criminal Case No ……of 2009

State of ……V……. (Accused)

Under sec.147/302 IPC

Police Station .

Application under sec. 437 Cr P.C.

The humble application on behalf of shri…….slo Shri……R/o……. Police Station ……. District……. respectfully showeth:

1) That the applicant was arrested by the police Station and he has been in detention since then.

2) That the applicant is innocent.

3) That the police have not completed their investigation and no-charge sheet has yet been received though more then 60 days have expired since the detention of the applicant in custody.

4) That the detention of the applicant is under the circumstances illegal and contrary to the provisions of sec. 167 Cr P.C.

PRAYER

Place: Counsel for the applicant
Dated:

IN THE COURT OF SESSIONS JUDGE,

Criminal case No ……of …….

In

State of ……V ……Accused

Under sec. 147/3021PC

Police Station…….

Application for bail under sec. 437 Cr P.C.

May it please your Honors?
The accused above named respectfully submits as follows:

1) That the applicant is a peace-loving, respectable. law-abiding citizen who has been falsely implicated in the above case.

2) That the applicant was arrested on and he has since then been in custody for the lost four months.

3) That the charge-sheet in the above case was submitted to the court about a month ago but the applicant has been remanded to custody to enable preparation of the copies of documents to be delivered to the applicant.

4) That there is no provision authorising the Magistrate thus to remand the applicant to custody for the

purpose state above and the detention of the applicant is illegal and contrary to law.

PRAYER

It is, therefore respectfully prayed that the court be pleased to allow the applicant to be released on bail.

Dated: *Counsel for the applicant*
Dated:

IN THE COURT OF SESSION JUDGE
Misc Application No ……. of …….
In
Criminal Case no. ……. of …….
State of……. V……..... (Accused)
Under sec. 147/436, IPC
Police Station . …….

Application for anticipatory bail under sec.438 Cr P.C.

The humble application of:

(1) Shri ……. s/o……. R/o……..

(2) Shri ……. s/o……. R/o……..

(3) Shri ……. s/o……. R/o……..

Station respectfully showeth as follows:

1) That the applicants are the students of the University.
2) That the applicant No.(1) is a student of LL.B. Final yr. of the University.
3) That the applicant No. (1) was elected to the office of the General Secretary of the University students Union in the last academic session of the University and shall continue to hold the said office till the assumption of offices by the new office-bearers of the Union to be ejected in the Union Elections Scheduled to e held on: -

4) That remaining applicants numbered (2) (3) are the supporters 0 the application No (1) and all the applications are members of ……. which is an association of students in the guiding activities of the students n the various Universities and educational institutions of the state and sponsoring candidates for elections to various· offices of the students· Union in the aforesaid Universities and institutions.

5) That the applicant No.(1) was nominated by the said Association as its candidate to contest election for the office of the president of the Uni. Student Union at the next Union Elections referred to in paragraph (3).

6) That Canvass ingon behalf of applicant no. (1) Is in full swing and all the applicants are actively participating in it.

7) That on ……the applicants led a peaceful demonstration of students numbering several

hundreds to the residence of he Vice-Chancellor of the University to protest against the partiality and unfair discrimination exercised by the members of the Admissions Committee of the University in making admissions to the various classes of the University.

8) That when the applicants were having peaceful talks with the Vice-Chancellor in the presence of the demonstrators who were also standing peacefully, there was the loud explosion of a bomb damaging a part of the residence of the Vice-Chancellor and setting at ablaze.

9) That the applicants and the demonstrators rushed to quench the fire and catch hold of the miscreants who managed to escape unnoticed.

10) That the applicants are innocent and it appears that the explosion was manipulated by elements opposed to the applicants and interested in damaging the election prospects of applicant No. (1) And causing the applicants to be arrested on the very eve of the said election.

11) That a case under section 147/436, IPC has been registered by the police and the applicant apprehend that they might be arrested therein and thereby prevented from carrying on the , election campaign.

12) That the offence is non-bailable. The application having no desire to evade the due process of law shall face the trial. The applicants shall make then selves available for interrogation by a police office as and when required.

13) That the applicants shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to 1lhe court or to any police officer.

PRAYER

It is, therefore respectfully prayed that the court be pleased to give a direction that in the event of the rest of the applicants the applicants be released on bail for such amount of money as the court deem it: to fix in the interest of Justice.

Place:
Dated:

Applicants
or
Counsel for the applicant

IN THE HIGH COURT OF AT

Misc Application No …….

In the matter of an application for bail under sec. 439 (1) (a) of Cr P.C. 1973.
And
In the matter of Criminal case No …….of …….the Court of Session at……... …….under sec. 122 I P.C.

And
In the matter of …….Shri…….son of…….R/o…….Police station.

To,

The Hon'ble Chief justice and his companion Justices of said Hon'ble Court. The humble petition of the petitioner above named.

Most respectfully showeth :

1) That the petitioner along with 28 persons was committed to the Court of Session on on a charge under sec. 122 I.P.C., on the allegation that your petitioner conspired with certain persons to wage war against the Government of India and has been collecting arms, ammunition, etc. for the purpose.

2) That the trial at the session court Commenced on ……and as many as 65 witnesses have been examined by the prosecution at the trial.

3) That although the prosecution evidence has been closed and the statements of he accused persons are being recorded there is no likelihood of the trial being terminated soon and that it will protect for a considerable length of time.

4) That petitioner's application for bail at the trial court was rejected on ……while some application for bail of some of the accused were allowed.

5) That the petitioner is a social worker having done many social works known to the people of the locality where he is being held in great esteem.

6) That there was no impediment in granting bail to the petitioner as there is no danger of the petitioner's fleeing from justice nor of his tampering with the prosecution witnesses.

7) That the petitioner is in jail for the last one year and so if he be kept in jail he fears that he will not be able to defend himself properly.

PRAYER

In the facts and circumstances set fort above your petitioner most humbly prays that your lordships may be graciously pleased to release your petitioner on jail.

And your petitioner as in duty bound shall ever pray.
Dated:
Place : *Counsel for the Applicant*

(IV) MEMORANDUM OF APPEAL AND REVISION

Ordinarily appellate jurisdiction involves a rehearing as it were in law as well as fact and is invoked by an aggrieved person. Ordinarily again revisional jurisdiction is analogous to a power of Superintendence and may sometimes be exercised without its being" invoked by a party. The conferment of revisional jurisdiction is generally for the purpose of keeping courts subordinate to the revising court within the bounds of their authority to make them act according to law, according to procedure established by law and according to well defined principles of justice. The extent of revisional jurisdiction is defined by statute and has to be

considered in each case with reference to the language employed by the statute.

Appeal in Code of Criminal procedure

The right of appeal is not only a matter of procedure but it is a substantive right. The right of appeal is a creation of statute; it is neither a fundamental nor an inherent right. There can be no inherent right of appeal form any Judgment or order unless an appeal is expressly provided for by the law itself. Statute governs the right of appeal. Appellate powers depend on the language and words of the statute. The provisions related with Criminal appeal are provided under sec.372-394 of the code of Criminal Procedure.

The expressions "appeal" and "memorandum of appeal" are used to denote two distinct things: The appeal is a judicial examination whereas the memorandum of appeal contains the grounds on which the judicial examination is solicited. The appeal is not a second trial but it is a continuance of the same in a higher court.

Let us draft the memorandum of appeal. The first thing that we have to do is to obtain the judgment of tile trial court then it should be carefully and critically examined scrutinizing the conclusions which the court has come to in relation to the hypothesis and in the light of the actual evidence of the case. This would help us in noting the defects of the judgments, its faculty logic, its sweeping generalization, its weaknesses for accepting one patty's evidence against that of the other and the attempts made in the Judgment to come to a particular conclusion by the court. This gives us an insight of the working of the mind of the author who wrote the judgment.

Secondly we should note whether the rules of the procedure have been strictly adhered to or have been violated to the prejudice of the accused person thus after going through the judgment; the memorandum of appeal should be drafted setting forth grounds on which the judgment is not sustainable and should be presented along with a certified copy of the judgment of the trial court to the court of Appeal. It may be presented by the appellant or by his advocate. In an appeal against a concoction at a session's trial the memorandum of appeal should contain the question of law raised.

After the appeal is file, it is posted or fixed for preliminary hearing before admission bench on one day when the appellant or his advocate is heard; if the judge of the Bench is satisfied with the grounds of appeal then it is admitted and notice is issued to the other party and a date is fixed for the final hearing of the appeal; and if not satisfied then it is rejected No. Criminal appeal can be dismissed for default of appearance by the party (as in a civil case). The dismissed has always to be on the merits of the case. An appeal abates only in case of the death of the appellant (accused).

The appellate court has a number of alternatives before it. It an appeal from a conviction it can reverse the finding and the sentence and discharge or acquit the accused or order retrial which is technically known as "remand". In the case of an appeal from on order of acquittal, it can reverse the order and direct further enquiry to be made, or that the accused be retried or Committed for trial, or find him guilty and pass sentence on him.

With the memorandum of appeal the copy of the Judgment of the trial court should be filed along with the Vakalatnama.

Appeal can be filed in the High Court within 60 days to be reckoned form the date of the sentence order of the trial court. It is well settled principle of law that rules of limitation are not meant to destroy the right of parties.

FORM OF MEMORANDUM OF APPEAL

In the Court of Session Judge ...
Criminal Appeal No of 2009

A
(Give particulars) ……. Appellant
Versus
State of ……. Respondent

May it please your Honour,

For the following among other grounds the appellant herein begs to prefer this appeal under sec, against the judgment dt…….of the Judicial Magistrate ……., in Criminal case No of……..... convicting the appellant under sec…….IPC and sentencing him to undergo ..... months SRI and to pay a fine of Rs …….

GROUNDS

a. That the learned Magistrate erred in law in taking cognizance of the case and as such the conviction is bad in law.

b. That the learned Magistrate overlooked the inherent improbabilities of he prosecution case as revealed by the evidence of prosecution witnesses.

c. That the learned Magistrate has hardly any material for coming to the conclusion that the accused had full knowledge of the facts and is maliciously involved in the matter.

d. That the conviction and sentence complained of are bad in law and improper in that they are based on erroneous hypothesis and assumptions not warranted by the legal materials on the record.

e. For that at all events the accused ought to have been given the benefit of doubt and acquitted.

f. For that the sentence is much too severe.

In the circumstances stated above your petitioner pray that your Honour may be graciously pleased to admit appeal, call for the record, admit your petitioner to bail pending the disposal of this appeal and after hearing set aside the conviction and sentence or pass such other order as the ends of Justice may call for.

And your petitioner, as is duty bound, shall ever pray

In the High Court of …….

Criminal Appeal No …….

Name and full

Description …….Appellant / complainant
Versus

a. Name and
b. description of
c. accused
d. and
e. state of ……Respondents / No. 1 to 4 or accused.

Under section ……..……

Appeal, against acquittal under

Sec ……R/w ……of IPC in Criminal case No ……of ……passed by the learned session judge ……

The Appellant Most Respectfully showeth as follows:

1. the facts leading. to appeal are as below: -
(Facts of the case)

2. The said trial court decided the said case on ……and acquitted the said accused persons. A certified copy of the said Judgment and order is annexed hereto and marked as Annexure – 'A'

3. Being aggrieved by the said order of acquittal passed by the learned sessions judge ……on……. in the said Criminal case No. 1- 4 are acquitted of the charge framed against them. The Appellant humbly and respectfully, bags to prefer this appeal against the same to this Hon'ble court, for leave to appeal against the said order of acquittal. The appellant, therefore, prays that the record and proceedings of the said Criminal case be called for, and the evidence in the case be reassessed, and the respondents herein (in original accused) be convicted of the offence charged, and be punished according to law on the following amongst other grounds:

(a) That the order of acquittal is not warranted by law and is against the weight of evidence;

(b) That the learned session's judge approach to the entire case was that the prosecution case was false and hence he had accepted the defence without any reasonable ground. The learned Magistrate should have, on the contrary held that the prosecution has proved the case beyond reasonable doubt;

(c) That the learned session's Judge should have held the story of the defence as highly improbable;

(d) That the learned session's Judge has erred in relying on the prosecution witness No. 4 who has turned hostile and has suppressed the material facts.

(e) That the learned session's Judge erred in law and facts both by not having accepted the evidence of P W No.6 who is a Government Medical Officer who has clearly stated that the injuries caused to the complainant cannot be caused by fall.

(f) The learned session's Judge's judgment is against the weight evidence and probabilities and is based on inferences which are not sustainable in this Hon'ble court.

4. The appellant submits that he has filed, separately on application for leave to appeal in this matter.

5. The appellant further submits that he has preferred no other similar petition in the matter to this Hon'ble Court.

And for this act of kindness and justice the Appellant shall as in duty bound ever pray. Sd/-

Sd/-

Dated: *Advocate for the appellant*

Place:

(This appeal against acquittal must accompany an application for leave to appeal along with the certified copy of the judgment and order appealed against)

CRIMINAL REVISION (Sec. 397 to 405)

In Criminal revision legality and the correctness of the propriety of any finding, sentence of order or the regularity of any proceeding can be questioned by the High Court or the session's judge suomotu or on the application made to it or him under sec. 397 and sec. 398 of the Cr P.C., 1973. Sec 401deals with the revisional power of the High Court, and sec.399 and 400 respectively deal with the power of revision of the session judge.

Sec. 397 Cr P.C. congers on the High Court or a session Judge the power of Superintendence by calling for and examining the record of any proceeding before any inferior Criminal court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself of himself of himself;

(i) As the correctness, legality or propriety of any finding, sentence or order; and

(ii) As to the regularity of any proceeding of such inferior court and may, when calling for such record, direct that the executing of any sentence or order be suspended and, if the accused is in conferment, that he be released on bailor on his own bond pending the examination of the of the record.

All Magistrate, whether executive of Judicial and whether exercising original or appellate Jurisdiction shall be deemed to be inferior to the session judge for the purposes of sub-section (1) of sec.397 and sec.398

The powers of revision conferred shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

But, I an application under sec. 397 has been made by any person either to the High Court or to the session Judge, no further application by the same person shall be entertained by the other of them.

Sec. 397 (3) is to prevent a multiple exercise or revisional power and to secure early finality to order any person aggrieved by and order of an inferior Criminal Court is given the option to approach. either the sessions judge or the High Court and once he exercises the option he is precluded from invoking the revisional jurisdiction of the other authority.

When a revision petition is dismissed by the sessions Judge the order is final and no second revision petition lies before the High Court.

Distinction Between Appellate and Revisional Jurisdictions

a. Appeal is a statutory right given to the appellant which he can demand from the Court either on a question of fact or on a question of law or upon both. In revision the applicant has no statutory right beyond inviting the attention of the court. The court has a discretion to exercise its revisional power or not.

b. In appeal the High Court decides both on question of law and fact, in revision it only decides or adjudicates on a question of law and fact, in revision it only decides or adjudicates on a question of law; but it may, for the ends of justice, enter into questions of fact.

c. In appeal the High Court can convert an acquittal into conviction and Vice-versa, but in revision it cannot convert a finding of acquittal into one of conviction.

FORM OF CRIMINAL REVISIONS

In the Court of Session Judge:

CRIMINAL REVISION NO -

A……..……. petitioner

Versus

State of ……. Respondent

Revision petition under sec. 397 Cr P.C. against order dt ……in Criminal case no…….

.

The petitioner above named most respectfully submits this revision petition against the order aforementioned on the following amongst other grounds of revision.

GROUND OF RIVISION

a) Because the order passed by the learned magistrate is incorrect, illegal, improper.
b) Because the order of the learned Magistrate is illegal and against the facts on record.
c) Because the proceedings before the court of the magistrate are irregular due to the following reasons.

(a)
(b)
(c)

PRAYER

It is therefore most respectfully prayed that the record of the Criminal case No …….of …….state V . …….. be called for and examined and the revision petition may be allowed and the sentence order recorded therein be set aside. It is further prayed that the sentence may be suspended pending the Criminal revision in this court and the accused petitioner be released on bail.

Dated:

Place: ***Counsel for the petitioner***

CONVEYANCING

"Convincing" is an art of drafting deeds and documents whereby any right, title or interest in an immovable property is transferred from one person to another. Such persons may be natural or artificial i.e. Corporate, the company, the society or the corporate sole as the case may be.

Conveyancing is based on law and legal principles which have been evolved in the sphere of Conveyancing over years or rather Centuries. The objective of Conveyancing cannot be possible without a thorough knowledge an understanding of the legal provisions applicable on the subject matter of transfer of property· or right therein.

In the present world, the scope of Conveyancing has become very wide and extensive in use and advantage to different fields of business, profession and industries,

Drafting document is now a legal task and not merely a technical one. Different types of deeds require knowledge of different types of law on which those deeds are based. To draft a trust deed, the law of the country regarding creation of trusts is very much essential to be known.

In the ancient times in England the deed writing was optional and continued to remain optional until the time of King Charles II, particularly the cases in which the deed was required not to be under seal. Writing was required only in the matter of great importance. It was only during the reign of king Charles II that the British parliament enacted in 1677 a legislation requiring writing for creation and transfer of interest in landed property with an exception in case of lease for less than three years. The Real Property Act. of 1845 required all grants of landed interest to be made by writing which became known as "Conveyancing" the pr8$entform of Conveyancing is based on the Conveyance of land Act of 1845 and the Iaw of property Act 1925.

(1) In India the forms of Conveyancing are based on the present English forms. No. legislation in India has ever been passed on the law of Conveyancing. Conveyancing in India is not unknown as the words, "Qabuliyatnama", "Jagirdar", "Muafidar" and "charpatra". etc are accruing from ancient days in the India literatures. Thus, as in England and so in India, too, there are two types of deeds - "Deed poll" and "indenture". Charpatra (Redemption of rent), Jagir grants, Qabuliyats, etc. were all of the nature of Deed polls. The deed poll is a document which is executed unilaterally in the first person while on indenture is a bilateral or multilateral deed. Bonds, power of attorney and wills are "deed polls", Mortgages, sales gifts, and lease is bilateral document and so they are "Indenture".

Principal of drafting of drafting of document may be classify into 4 parts-

(1) clarity of expression -

(2) Design of the draft -

(3) Precision of language -

(4) Communicability of the intention of the parties to the document.

(i) Clarity of Expression -

It is the first principle of drafting of Conveyance or document that what ever is being scribed, it must be clear in its expression. It should. be unambiguous, that is, it must not have two meaning of any expression used in drafting. The sentences for the purpose should be short and easily understandable, should not have compound and compels sentences, so that the reader or the person using the document should not have any difficulty in understanding the meaning of the sentence which is being scribed. The words used should not be technical or in a foreign language. Which the parties do not understand at all. Everyday language of the place or state should be used in the drafts being prepared.

(ii) Design of the draft -

The design of the drafts should be in conformity with law. But however it should not be too technical which may entangle the parties in the technical design of the document itself and the real intention of the document may be kept behind that technical draft concealed under it. As a matter of fact the parts or parcels of a document are not prescribed by any law. These are simply the production of document expects for the sake of convenience to learn the art but it is not the end of goal of the art it self. It is merely for the practice of the art of Conveyancing so that the draftsman may express the statement of the document serially and chronologically and rather systematically the design is simply to be followed so that nothing material or relevant may be left or omitted and nothing unnecessary may be included in the document, which is quite irrelevant for the purpose. A well-drafted deed is that which is strictly logical step by step and has nothing emotional or imaginary or unsystematic.

(iii) Precision of language -

The language of the document must be precise, the words used for a particular meaning should be used. If the words used in the draft do not convey the exact meaning, then the draftsmen should not hesitate to explain the same. The deed must be intelligible to laymen even. It should no be made a classic to be understood only by the advocated or traditional draftsmen. It should not become a subject of interpretation in order to come to a conclusion what does the expression or the language means to convey. A draftsman should keep· in mind the following rules:

i. Familiar words of every day common language should be preferred over too technical words.
ii. Concrete words should be preferred over the abstract words or words of the imaginary world.
iii. Short words should be preferred to the long or compound words.
iv. Simple Sentences should be preferred to compound or complex sentences, and
v. Active voice of grammar should be preferred to the passive voice.
vi. Communicability of the intention of the parties to the document.

The only purpose of scribing a deed is to communicate the intention of the parties to the other parties to the document and the public at large who may come in contact with the document or the property which is the subject matter of that document the real intention of the parties to the deed should be very honestly expressed and communicated by such document. The intention aforesaid should e so expressed, as it may make it easily to be understood and be made operative by way of the deed. The principle of communication of the intention of parties to the deed should be well respected and followed by a draftsman.

(I) ESSENTIALS OF A DEED

An instrument Or deed usually consists of three parts: -

(A) The non-operative part,
(B) The operative part, and
(C) The format part

The non-operative part contains: -

(i) Description or name - It is usual but not necessary to begin a deed by giving it a name. The name has to be chosen with great case. The name should be indicative of the true contents of the deed, sometimes in construing a deed. The name has also to be taken into consideration. The nature of the transaction depends entirely upon the terms of the deed.

(ii) Date of the deed - It is usual to give the date on which a deed is executed either after the name or at the end before the signatures. The date is stated thus:

This deed of sale made on the fifth day of September, one thousand nine hundred and eighty-two (5th day of September) between …….

If the deed does not mention the date on which it will come into effect a presumption arises that it will come into effect from the data of execution. Certain deeds take effect from the date if delivery of the deed. In such cases it is the date of delivery which is the date of the deed. Wills take effect not from the date of execution. Certain deeds take effect from the date of delivery of the deed. In such cases it is the date of delivery which is the date of the deed. Wills take effect not from the date of execution but from the date of the death of the executants (testator)

(iii) Parties to the deed: -

(a) After the name and date of the deed the names of the parties to the deed are setout. The names name and particulars of the parties should be given in such detail from which the parties can easily be identified. It is usual to describe parties by their name, age, parentage, occupation and residence. In cases where it is intended that the successors the parties win also be bound by the deed it is usual to add a clause after the description of the parties stating;

The parties shall include their heirs, successors, assigns and legal representative it is necessary for the draftsman to determine the parties who should be joined before drafting a deed.

(b) Description of certain parties: -

Companies and firms are described thus:

The Delhi sugar Mills Co. Ltd. A company registered under the companies Act, 1956 having its registered office at…….(add ress) Delhi.

A B, son of ……. resident of, …….a partner of, and acting for and on behalf of the firm carrying on business under the name and style of …….(firm's name) at……. (firm's address)

Minor: can act only through their guardians:

A B, son of ……. resident of …….a minor, acting through his …….and natural guardian …….C.D., son of …….resident of ……. a lunatic can act only through a manager appointed by the court. He is to be described thus:

A B, son of …….resident of ……., a lunatic, acting through acts through its trustees:

A,B,C,D and E,F, trustees of the trust known as …….trust, situate at.. …….

Government :
Contracts on behalf of the Union and state Government are entered into in the name of the president or the Governor as the case may be. (Act. 299 constitution) they are executed by persons who are authorized in this behalf by the president or the Governor.

(c) Reference to parties in the body of the deed:

Unilateral deeds: Since there is only one party he can refer to himself as 'I' or as "the executants" in the body of the deed.

Bilateral deeds: it is usual to describe the parties by their capacities like:

Between A B…….(Herein after called the Lessee) and C.D. ……. (Here in after Called the Lessee) …….
In subsequent parts of the deed they be referred to as the lessor and the lessee. Multilateral deeds: the description is:

This deed of partition dated …….between A B …….(Party of the first part), C,D, …….(Party of the second part), E, F…….(part of the third part)

In the body of the deed they are referrer to as "party of the first part" etc.

(iv) Recitals: These are a narrative of what has led to the necessity or desirability of executing the deed or document. They contain a brief history or in short form the motive for making the deed. Recitals begin with the familiar words "whereas the parties are desirous of or have agreed on some particular course of action, etc." Recitals usually show the reasons and the history of title designed to show that the grantor is entitled to make the disposition. These must beset out in such a manner as to show a complete unbroken chain and is such order that they are properly connected and consistent.

Where the operative part of a deed is unambiguous the recitals have no effect on the construction of the deed but if the operative part is ambiguous, the recitals govern the construction.

(B) The operative part contains:

(i) Testatum or premises: - After the recitals the operative parts of the deed begin generally with the words

"Now this deed witnesses that". 'This part gives effect to the intention of the parties and sets out in detail the transaction between the parties. It sets out the capacities in which the parties are acting and the payment and receipt of consideration. Words like "grants", "agrees", "confirms", "sells", "transfers", "conveys", "assigns" etc. are used to denote the purpose and object of the deed. In this part the property which is the Subject of the deed is also described.

(ii) Hebendum: Next follows the habendum. This part of the deed used to be introduced by the words "to have and to hold", now generally shortened to "to hold". This purpose of the habendum is to define the interest conveyed and to set out the limitation on the property involved. It shows whether or the creation of a trust or an obsolete sale. It mentions whether the property is encumbered or not. It also names the grantee again. The habendum is not an essential or necessary part of a deed.

(iii) Exception and reservations: In this part of the deed all the exceptions and reservations which are intended to be attached to the transfer should be clearly stated. For example, if it is desired to lease out a parcel of land the transferor may desire to retain the right to extract minerals therefrom, or again a person may reserve the right to pass rainwater over the land demised-all such exceptions and reservations must be clearly set forth in this part of the deed .

(iv) Covenants:- Almost every document, whether a sale, lease or mortgage must contain terms by which the parties bind themselves. It is not necessary to mention such covenants as are attached by law to a particular transaction, but if any special terms or agreements are made at variance with the implied covenants then these must be clearly 'state'. For instance, a lease under the transfer of property Act implies the right to sublet, but the parties may impose conditions against subletting. In such a case the terms must clearly be given in the deed.

(c) The formal part contains:

(i) The Testimonium: - This set forth the fact that the parties have signed the deed. It usually begins with the words:

In witness whereof the parties aforesaid, namely, have on the day and year just above- mentioned put their signatures in the presence of the witnesses.

It the date of the execution of the deed has not been given in the beginning it is to be given in this part. In place of the words "the day and year just above-mentioned" the words "this day of ……20 ……" are to be substituted;

(ii) Signature and attestation: -Immediately following the testimonium the parties put their signatures. There after the witnesses put their signatures if the deed requires attestation then the executants must sign in the presence of the witnesses and the witnesses must sign in the presence of the executants. In such a case after the signatures of the executants the following words are written:

Signed by the above-named parties in our presence and we have signed in his presence.

Then follows the signature of the witnesses. Where a document consists of more than are page the-parties and witnesses must sign each page.

(iii) Parcels of description of the property: - the property is described in detail accurately and correctly

either at the foot of the deed or in schedules annexed to the deed. The object of the description is to make the property easily identifiable. Sometimes a plan is attached and made part of the deed. Some guidance in this respect may be taken from the provisions of sec. 21 and 22 of the Registration Act, 1908.

Sec. 21- Description of property and maps or plans: -

a) No non-testamentary document relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same

b) House in towns shall be described as situate on the north or other side of the street or road (which should be specified) to which the front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered.

c) other houses and lands shall be described by their names, if any, and as being in the territorial division in which they are situate, and by their superficial contents, the roads and other properties on which they about and their existing occupancies, and also, whenever it in practicable by reference to a government map or survey.

d) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of time copies of the map or plan as are equal to the number of such districts.

Sec. 22 Description of the houses and land by reference to government maps or survey: -

(i) Where it is, in the opinion of the state Government practicable to describe houses, not being houses in towns, and lands by reference to a government map or survey, the state Government may, by rule made under this Act, require tat such houses and lands as aforesaid shall, for the purpose of sec. 21 be so described.

(ii) save as otherwise provided by any rule made under sub-section (i) failure to comply with the provisions of sec 21, sub sec. (2) or sub-section (3), shall not disentitle a document to be registered if the description of the property to identify that property.

Attendant requirements of execution:

It is essential for the draftsman before putting pen to paper to consider whether the parties to a deed are free to contract in the capacity in which they intend to contract. For instance, a minor cannot contract except through a guardian, natural or one appointed under the provisions of the Guardian and wards Act, 1890 and sometimes the leave of the court has to be taken before the deed can be executed. In the case of joint Hindu families a contract by a kurta has to be in his personal capacity and as manager of his joint family. These and such like impediments have to be taken into account and the draftsman would be well advised to thoroughly study this aspect of the matter.

After the deed has been drafted, if the parties are illiterate the deed should be read out to them and thoroughly explained to them. Execution includes attestation and the necessary number of witnesses must be present at the time when the parties put their signature or mark or cause the same to be put upon the deed. Thereafter the witnesses must be sign in the presence of the parties.

Construction or interpretation of documents

Some of the main rules of constructing deeds are:

a. The meaning of the document or of a particular part of it is to be sought for in the document it self. The intention of the parties must be discovered, if possible, from the expressions they have used. The question is not what the parties intended to say, but what they have said.

b. Clear and unambiguous words prevail over an intention, but if the words used are not clear or unambiguous the intention will prevail.

c. The plain, ordinary meaning of the words used is to be adopted in constructing a document. Words are to be taken in their literal meaning.

d. The literal meaning which the parties were in the habit of affixing to the expression employed.

e. Technical legal terms will have their legal meaning.

f. Extrinsic evidence may be admitted, not for finding out the writer's intention, but only to interpret the language used.

g. The deed must be construed as a whole.

Exclusion of oral evidence by documentary evidence:

Once a document has been executed no oral evidence will be permissible in proof of the terms of the contract, grant or other disposition of property except the document itself or secondary evidence of the contents of the document when permissible (sec.91, evidence Act, 1872)

When the document has been proved, no evidence of any oral agreement or statement shall be admitted for the purpose of contradicting, varying, adding to or subtraction form the terms contained therein (sec.92 evidence Act, 1872)

When the language used in a document is on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects. See 93 evidence Act. 1872)

When the language used in a document is plain in itself, and when it applies accurately to existing fads, evidence may not be given to show that it was not meant to apply to such facts. (Sec.94)

When a language used in a document is plain in itself, but is unmeaningful in reference to existing fact, evidence may by given to show that it was used in a particular sense. (sec. 95, Evidence Act)

Sec.96. when the facts are such that the language used might have been meant to apply to anyone and could not have been meant to apply to more than one, of several persons or things evidence may be given of facts which show which of those persons or things it was intended to apply to.

Sec.97. when the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which

of the two it was meant to apply.

Sec.98. Evidence may be given to sow the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local and provincial expressions, of abbreviations and of words used in a particular sense.

Attestation:

To attest means to be witness to, Attestation is defined in sec. 3 of Transfer of Property Act, 1882 thus "Attested" in relation to an instrument, means and shall be deemed always to have meant, attested by two or more witnesses each of whom has seen the executants sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executants, or has received from the executants a personal acknowledgement of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of he executants, but it shall not be necessary that more than are of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary.

Some of the documents which are required by law to be attested are; Bonds (sec.265 of stamp Act, 1899), Gift deed in respect of immovable property (sec. 123, transfer of property Act, 1882) Mortgagee (sec.59, Transfer of property Act, 1882) and wills (sec.63, Indian Succession Act, 1925). Attestation is not necessary for the validity of documents not required by law to be attested but in practice it is invariably, adopted as the witnesses can be called to prove the execution of the deed when required. The witness must sign as a witness and for the purpose of attesting the execution. A party to the document cannot be and attesting witness. It is not necessary that the attesting witnesses should be made aware of the nature or contents of the document. They are merely witnesses of the execution of the document by the executants.

The rules relating to proof of execution of documents by attesting witnesses are contained in sections 68 to 92 of the Indian Evidence Act, 1872. These sections real as below:

Sec.58. Proof of execution of document required by law to be attested: If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence.

Sec.59. proof where no attesting witness found: It no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Sec.70. admission of execution by the party to attested document: The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Sec.71 : Proof when attesting witness denies the execution may be proved by other evidence.

Sec.72. proof of document not required by law to be attested: It the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Stamp Duty: Sec. 3 of the Indian stamp Act, 1899, provides that every instrument shall be chargeable with duty of the amount indicated in Schedule I Amendments have been made to the stamp act by almost every state. On account of this the duty chargeable on an instrument values from state to state. Duty on an instrument is payable as prescribed in the state in which the instrument is executed. If the instrument is sought to be used in another state, where the duty prescribed for that instrument is higher, then the difference between the two has to be paid in addition to the duty already paid before the instrument can be so used. A draftsman must be conversant with the requirements of the stamp Act; He must familiarize himself with the duty chargeable on the instrument in the state where the instrument is executed. An efficient draftsman has not only to Sec. that the proper duty is paid on an instrument but also to be seen that no extra or avoidable burden is placed in the executants. A clever and able draftsman will easily be able to word his instrument in such a manner as to be chargeable with the minimum duty

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Sec. 10 and the rules made there under prescribed how stamp duties are to be paid most instruments have to be written on non-judicial stamp-paper of the requisite value. Sec. 11 enumerates the instruments which maybe stamped with adhesive stamps.

An instrument not duly stamped is not invalid, but it is incapable of being used in evidence until it is stamped properly. Sec. 35 of the stamp Act lays down the disabilities with which an instrument not duly stamped suffers. Sec. 62 provides that every person executing, making or using an instrument without the some being duly stamped shall be punishable with fine which may extend to five hundred rupees.

Registration

(i) Compulsorily and optionally registrable documents.- Sec. 17 of the Registration act, 1908 enacts that where a document is executed to effectuate any of the transactions spe~ified in Sec. 17,' such document must be registered not with standing that the transaction is one which the law does not require to be in writing. The registration of these documents is compulsory. Sec. 18 specifies the documents of which registration is optional. In fact every document can be registered some state amendments provide that the registering officer shall refuse to register any document presented to him for registration unless it is accompanied by a time copy thereof.

(ii) Time of Presenting: A document must be presented for registration within four months of its execution (Sec. 23). Where a document is executed by different persons at different times it may be presented for execution within four months form the date of each execution. The sub-registrar has no power to extend the time or to condone the delay in presenting a document for registration. But where a document could not be presented within time owing to urgent necessity or unavoidable accident" the Registrar, when the delay in presentation does not exceed four months may condone the delay on payment of a fine not exceeding ten times the amount of the proper registration fee. There does not appear to be any power to condone delay beyond four moths. However, a will may be presented for registration at any time.

(iii) Place of Presenting: A document relating to property has to be presented for registration in the office of the sub-registrar within whose sub-district the whole or some portion of the property to which the documents relates is situate. Other documents maybe presented for registration either in the office of he sub-Registrar in whose sub-district the document was executed or in the office of any other subRegistrar under the state Government at which all the person executing and claiming under the document desire it to be registered.

The Registrar may in his discretion receive and register any document which might be registered by ay sub-

registrar subordinate to him.

(iv) Who may present document for registration registration: A document to be registered is required to be presented at the proper registration office:

(a) By some person executing or claiming under it;

(b) By the representative or assign of such person, or

(c) By the agent of such person, representative or assign, duly authorised by a power of attorney executed and authenticated in accordance with the provisions of Sec.33

(d) Effect of registration : A registered document operates from the time from which it was intended to operate and not from the date of registration.

A registered document, other than a will relating to property, takes effect against any oral agreement or declaration relating to such property except when the oral agreement or declaration is accompanied or followed by delivery of possession and the same constitutes a valid transfer under the law.

(vi) Effect of non-registration: A document which is compulsorily registrable but is not registered fails to effect and is void as regards immovable property. It cannot affect any immovable property comprised therein or confer any, power to adopt. It cannot be received in evidence of any transaction affecting such property or conferring such power. But such a document may be received as evidence of a contract in a suit for specific performance or as evidence of part-performance of a contract for purposed of Sec. 53-A of the transfer of property Act, 1882. Or as evidence of any collateral transaction not required to be effected by a registered instrument (Sec. 49 of the Registration Act, 1908) Sec. 49 hits instruments and not transactions. A registered document relating to immovable property takes effect as regards the property comprised therein against unregistered document relating to the same property even j the two documents are not of the same nature (Sec. 50)

Hints on drafting: on drafting: The object with which a document is executed is to state the intentions of the parties in the dearest possible language in order to keep the evidence of those intentions in writing. The first duly d a draftsman, therefore, is to have a clean conception of what the intentions of the parties are and then to examine how far their wished can be carried out without contravening the provisions of law for this he must have a sound knowledge of laws. This will also enable him to find out the facts from the parties which are necessary for drafting a proper which are necessary for drafting a proper deed. Nothing should be inserted or omitted for which there is no satisfactory reason. Only material facts should be stated. All facts are material, the statement of which is essential to the validity of the transaction. Conclusions or inferences of law or facts should be avoided. It is a common error of unskilled draftsmen to make negative statements. This should not be done. Thus, in stating that A and B took as tenant- in-common it is unnecessary to add "and not as Joint tenants". Where however, the happening of a condition subsequent depends upon the non-existence of a particular fact or event, a statement of the negative fact or event becomes material. The language of the document be clean and precise.

It is desirable to use technical expressions which have acquired a clear meaning and to avoid unusual words and expressions which cause confusion. Facts should, as a general rule, be stated in chronological order both in the recital and the operative parts.

(ii) SALE DEED

Sale of immovable property is defined in Sec. 54 of the Transfer of Property Act, 1882 as a transfer of ownership in exchange for a price paid or promised or part paid and part promised.

Sale of goods (movable property) is defined in Sec. 4 of the Sale of Goods Act, 1930 as a contract whereby property in goods is actually transferred by the seller to the buyer for a price.

Price: Price is not defined in the transfer of property Act, but is defined in Sec. 2 (10) of the Sale of Goods Act to mean the money consideration for a sale of goods. In he case of CITV.M. & G. Stores, (AIR 1968 SC 200) the Supreme Court has held that in the absence of any definition in the transfer of property Act, the word 'price' used in Sec. 54 of that Act must be construed in the same sense in Which it is used in a See A read with Sec. 2(10) of the sale of Goods Act that is money consideration it has further been observed by the Supreme Court in the abovementioned case that the presence of money consideration is an essential in a transaction of sale and that if the consideration is an essential in a transaction of sale and that if the consideration is not money but some other valuable consideration the transaction may be an exchange not a sale. Money consideration does not necessarily mean case consideration. A decretal amount, outstanding debts and other monetary liabilities can be price in a sale. If no price is paid or promised even a registered deed does not affect a sale.

The law does not require that the consideration should be immediately ascertainable in money. It is sufficient if it is ascertainable at the time when payment is made. The actual payment of prince is not essential to the completion of a sale. The sale is complete as soon as the sale deed is registered even if the payment of price is promised on a future date provided it has been ascertained or made as certain able.

Immovable and Movable Property:

Immovable property is defined in Sec. 2 (26) of the General Clauses Act, 1897 thus:

"Immovable property" shall include land, and things attached to the earth, or permanently fastened to anything attached to the earth.

In Sec. 3 of the transfer of property Act it is stated that for purposes of this Act, "Immovable property" does not include standing timber, growing crops or grass. Thus, in the transfer of property Act, "Immovable property" has a slightly restricted meaning.

Movable property is defined in Sec. 2 (30) of the General clause Act to mean property of every description except immovable property. The Sale of Goods Act, does not define movable property but defines "goods" to mean every kind a movable stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be served before sale or under the contract of sale.

Intangible Property: The words 'tangible' means something that can be touched, i.e., a material object. All abstract right are incapable of being touched and are hence intangible. Some examples of intangible property are good will of business, chooses in action, mortgagee rights, lessee rights and the interest of a partner in a partnership.

What may be Transferred or Sold: Generally, the right to property includes the right to transfer it to another person. Sec. 6 of the transfer of property Act provides that property of any kind may be transferred, except as provided buy this Act or by any other low for the time being in force. To this rule clauses (a) to (i) of Sec. 6 constitute exceptions. These clauses read:

a. The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman or any other mere possibility of a like nature, cannot be transferred

b. A mere right of reentry for breach of a condition subsequent cannot be transferred to anyone except the owner of the property affected thereby'

c. An easement cannot be transferred apart from the dominant heritage.

d. An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(i) A right to further maintenance, in whatsoever manner arising, secured or determined, cannot be transferred.

e. A mere right to sue cannot be transferred.

f. A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has be become payable.

g. Stipends allowed to military, naval, air force and civil pensioners of the government and political pensions cannot be transferred.

h. No. transfer can be made.
b) Insofar as it is opposed to the nature of the interest affected thereby, or

c) For an unlawful objected or consideration within the meaning of section 23 of the Indian contract Act, 1872, or

d) To a person legally disqualified to be transferee.

i) Nothing in this shall be deemed to authorize a tenant having an un transferable right of occupancy, the farmer of and estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a court of wards, to assign his interest as such tenant, former or lessee.

Persons Competent to Transfer:

see. 7 at the Transfer of Property Act deals with the competency to be a transfer. The transfer must be:

(i) Competent to contract, and
(ii) Have title to the property, or authority to transfer if not his own.

Who is competent to contract is laid down in Sec. 110f the contract Act, Sec. 11, reads:

Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

Consequences of Transfer and Rights and Liabilities of Buyer and Seller:

Section 8 lays down the consequences which follow from the transfer of property. All interests which the transferor is capable of passing passes forthwith to the transferee, if the property is land, the easements annexed, the rents and profits accruing after the transfer and all things attached to the earth pass to the transferee and if the property is machinery attached to the earth, the movable parts thereof. In the case of a house, the casements annexed to it. The rent the locks, keys, bars, doors, windows and all other things provided for permanent use there in pass to the transferee. It the property is a debt or other actionable claim, the securities therefore but not arrears of interest accrued before the transfer. And if the property is money or other property yielding income, the interest or income accruing after the transfer passes to the transferee. But it is open to the parties to provide, expressly or by necessary implication that consequences other than those mentioned above will flow from the transfer.

The rights and liabilities of the buyer and seller are set out in detail in section 55 of the transfer of property Act. These conditions are implied in every transfer and it is not necessary to mention them in the deed of transfer. But it is open to the parties, by agreement, to supplement these or to vary them or anyone or more of. When this is done specific mention must be made in the deed of the added condition or of the varied condition.

Unlawful Conditions which may not be Included in Deeds of Transfer:

Sec. 10 makes void a condition absolutely restraining the transferee from parting with or disposing of his interest in the property. Sec. 11 provides that in cases of transfers of absolutE: interest a condition restricting the enjoyment of the property will be ignored. Sec. 12 enacts that a condition making the interest of the transferee determinable on insolvency or attempted transfer shall be void. This section doesn't apply to a condition in a lease for the benefit of the lesser. By Sec. 13 an interest created for the benefit of an unborn person subject to an interest created by the same transfer, shall not take effect unless the interest created for the benefit of the unborn person extends to the whole of the remaining interest of the transferor in the property. Sec. 14 lays down the rule against perpetuity.

It makes inoperative a transfer which postpones the power of alienation to one or more lives in existence and the period of minority of a person who shall be in existence at the expiration of those lives.

It is advisable for the draftsman to study these provisions before in cooperating conditions in a deed of transfer.

Sale how effected: Registration

There are only two modes of transfer by sale and these are: -

(1) By registered instrument, and

(2) By delivery of possession.

(i) Tangible immovable property of the value of RS.1 00 and upwards,

(ii) A reversion, and

(iii) Other intangible thing can be made only by a registered instrument. A sale of tangible immovable property a value less than Rs. 100/- can be made either by a registered instrument or by delivery of property.

Sec. 54 of the Transfer of Property Act has been amended in Utter Pradesh with the result that a sale of immovable property or whatever description and of whatever valuation can be made only by a registered instrument. A contract for the sale of immovable property can also be made only by a registered instrument.

Form and Content of a Sale Deed :

A sale deed is usually executed as a deed poll by the vendor and written in the first person. The law does not require execution by the purchaser also. Sometimes it is executed as a deed between the ' vendor and the purchaser, particularly when it contains covenants binding on the purchaser.

A sale deed must contain, apart from the description of the deed and the date, details of the following elements:

(i) The parties,

(ii) The capacity and capability of the vendor to transfer the property,

(iii) The vendor title to the property,

(iv) The property and its capability of being transferred,

(v) The encumbrances and charges, if any, upon the property and whether the sale is subject to the encumbrance and charges, and whether any money was being left with the purchaser to payoff the encumbrance and charges.

(vi) The price settled, how and when paid or to be paid, (earnest money if paid to be set-off).

(vii) The other terms agreed upon (the implied terms and conditions set out in section 55 of the Transfer of Property Act. need not be mentioned unless there is a variation in any of them).

(viii) Delivery of possession, actual or constructive.

Though not so required by any law, a sale deed is usually attested by two witnesses.

Sale and agreement to sell movable goods may be made either in writing, or by word of mouth or partly in writing and partly by word of mouth, or may be implied by the conduct of the parties. Writing is not necessary in any case whatever may be the nature or value of the property. An agreement to sell is generally drawn up in writing when the property is or large value or it is not in existence at the time of the agreement.

Stamp Duty:

Stamp duty in a sale deed is chargeable under Art. 23 schedule I of the Stamp Act. Transfers covered by Art 62 and assignment of copy right under the copy right Act, 1957 are not covered by this article. The duty chargeable is advalorem.

Effect of Non-registration :

If a sale deed which is required to be registered, there is no transfer and property does not pass. This is so even if the sale deed is executed in respect of tangible immovable property of value less than Rs.100 though the sale is not required to be effected by a registered instrument, but if such a sale deed is accompanied by delivery of possession the sale would be effective in spite of non-registration. An unregistered sale deed maybe used as evidence of the character of possession. Twelve years possession under an unregistered sale deed of immovable property, of whatever value will create title by adverse

possession.

Students can draft the sale deed with the help of different books of conveyancing

(iii) MORTGAGE DEED

Definition of Mortgage: The Transfer of Property Act, 1882, Sec. 58, defines a mortgage. A mortgage is :

(a) The transfer of an interest,
(b) In specific immovable property.
(c) For the purpose of securing.
(i) The payment of money advanced or to be advanced by way of loan, or
(ii) An existing or future debt, or
(iii) The performance of an engagement which may give rise to pecuniary liability.

The transfer of an interest in immovable property must, in order to Constitute institute a mortgage, before one of the purposes mentioned on (c) above. Not only rights of ownership but other interest in immovable property can be mortgage, like lessee's rights, mortgaged, rights and mortgage's rights. A mortgage by the owner is known as a mortgage of proprietary rights, of mortgager's rights as mortgage of equity of redemption or subsequent mortgage and of mortgage rights as sub-mortgage.

Transfer of an Interest

These words are to be contrasted with the words "transfer of ownership" used in the definition of sale in section 54. In a sale all the rights of ownership, which the transferor has, pass to the transferee. In a mortgage out of the bundle of tights which constitute ownership, some are transferred to the mortgagee and some remain vested in the mortgagor. The rights remaining with the mortgagor (also called equity of redemption) can again be transferred.

Specific Immovable Property

The word "specific" shows that the description of the immovable property should not only be free from ambiguity and uncertainty, but that it should be specific as distinguished from general. The description must at least be sufficient to identify the property. The ruses laid down in Sec. 21 and 22 Registration Act for description of property must be followed. A proper description of the property is necessary to create a mortgage and for its registration.

Securing payment of money advanced or to be advanced by way of loan a mortgage maybe exacted to secure a loan of money already taken or to secure a future loan. A "security", speaking generally, is anything that makes the money more assured in its payment or more readily recoverable. It is the assurance in its payment or ready recoverability that constitutes a particular thing a security for the debt. A mortgage may be executed for the purpose of providing a security for the repayment of a loan already taken or for a loan to be taken in future. A mortgage may not only be made for a specific sum but to

secure a current account . between the parties up to a limit named. It is sufficient if the money is left at the mortgager's disposal in a bank deposit

Securing an Existing or Future Debt:

A mortgage may be made as security for the payment of a present debt or for the payment of a debt that may be incurred in future. A mortgage may be made to secure the unpaid price of a house purchased. A future debt may be a contingent liability, e.g. to secure the payment of the respondent's costs in appeal. A security bond given to an officer of the court to secure an amount that may be decreed or ordered by the court is a mortgage to secure a future debt.

Securing the Performance of An Engagement:

The word "engagement" means a contract and the qualification "as may give dse to pecuniary liability" means a contract the fulfillment or non fulfillment of which may result in a liability to pay money. In other words it contemplates a liability to pay money arising out of a contract. It includes cases in which there is a legal obligation to pay damages or to pay for the value of improvements due to a person who is to continue in possession of the land.

Kind of Mortgages:

Section 58 of the transfer of property Act enumerates six kinds of mortgages.

(i) **Simple Mortgage:** the salient features are:

(a) Mortgager under takes personal liability for repayment.

(b) No possession of mortgaged property is delivered.

(c) On mortgager's default in making payment mortgagee is entitled to cause mortgaged property to be sold.

(d) There is no foreclosure of the mortgaged property.

(e) No power of sale out of court. Power to sell mortgaged property is only obtained on a decree for sale being obtained.

(f) The mortgage must be effected by a registered deed even if the consideration is below Rs. 100.

(ii) **Mortgage by Conditional Sale:** the salient features

(a) The mortgage ostensibly sells the mortgaged property.

(b) The stipulation being that the sale shall be absolute in default of payment by a particular date or that the sale shall be void on payment by a particular date and the property retransferred.

(c) The remedy of he mortgage is by foreclosure and not by sale.

(d) The mortgage must be by registered deed if the consideration is Rs. 100 or more. If the consideration is less than Rs. 100 possession is necessary.

(e) The transaction must be embodied in a single deed.

(iii) **Usufructuary Mortgage:** the salient features are:

(a) There is delivery of possession of the mortgage property to the mortgagee.

(b) The property remains in the possession of the mortgagee till full repayment.

(c) The profit of the property is appropriated by the mortgagee towards liquidation of the advance.

(d) The property is returned when the amount due is personally paid or is discharged by rent and profits received.

(e) There is no remedy by sale or foreclosure.

(f) The mortgage must be affected by a deed registered if the consideration is Rs. 100; registration is optional but delivery of property is essential.

(iv) English mortgage: the salient features are:

(a) The mortgage property is transferred absolutely by the mortgage to the mortgagee.

(b) There is a personal covenant to repay on a certain date.

(c) There is a stipulation for its retransfer in case of repayment of the loan.

(d) the remedy of the mortgagee is by sale and not by fore closure.

(e) power of sale out of court is conferred on certain persons under some circumstances (Sec. 69)

(v) mortgage by deposit of title deeds: the salient features are:

(a) Such a mortgage is only created in the towns of Calcutta, Chennai, and Mumbai in any other town which the state Government may by notification in the official Gazette, specify. A number of towns and cities have been specified.

(b) It is created by delivery of the material title deeds in respect of the mortgaged property to the mortgagee; no delivery of possession of property takes place.

(c) It is made only for the purposes of securing a past debt or advance or to cover future advances.

(d) No registration is necessary even if there is a writing recording the deposit.

(e) The remedy is by sale and not by fore closure.

(f) All the provisions relating to a simple mortgage apply to an equitable mortgage

(vi) Anomalous mortgagee: The salient features are:

(a) A mortgage which is not a mortgage of the 5 kinds enumerated above is an anomalous mortgage.

(b) It may be a combination of two or more kinds of mortgages

(c) The remedy is by sale or by foreclosure depending on he terms of the deed.

(d) It the mortgage is foe a consideration of Rs. 100 or more the deed must be registered, if below Rs. 100 delivery of possession is essential, registration is optional.

Mortgage Registration:

(i) A simple mortgage can, whatever be the amount secured, only be made by a written instrument signed by the mortgagor attested by at least two witnesses and registered.

(ii) For a mortgage by deposit of title deeds no formalities are prescribed. It can be either oral or written. When such a mortgage so reduced to writing it must be attested by at least two witnesses and registered if the money secured is a Rs. 100 or more. But a mere memorandum of an oral mortgage does not require registration.

(iii) The other four kinds of mortgage, if the amount secured is Rs. 100 or above can only be effected by a written instrument signed by the mortgage, attested by at least two witnesses and registered. If the amount secured is less than RS.1 00 the mortgages can be effected either by a written instrument signed by the mortgagor, attested by at least two witnesses and registered or by delivery of the property.

A mortgage may be drafted either as added poll (unilateral document) exacted by the mortgagor and the mortgagee.

Right of Redemption:

The mortgager's right of redemption after the date fixed for payment is called the equity of redemption. The mortgagor who has parted with some rights of ownership has the right to resume what he has parted with. The right cannot be fettered or taken away by any term or condition in the mortgage deed.

The right of redemption arises when the principal money secured by the mortgage has become due and may be exercised at any time thereafter, subject of the law of limitation. It is, however, permissible for the parties to make a provision that the mortgagor may discharge the debt within a specified period and take back the property. The right is exercised by the payment or tender to the mortgagee at the proper time and at the proper place of the mortgage money.
The right of redemption is regulated by sec. 60 of the transfer of property Act, and the right of usufructuary mortgagor to recover possessor is governed by Sec. 62.

Right of foreclosure:

The right of foreclosure is a right of the mortgagee to obtain a decree absolutely. Debarring the mortgagor from exercising his right to redeem the property. The result of the passing of a decree for foreclosure is that the mortgaged property vests in the mortgagee and the mortgagor cannot recover it. But this right can only be exercised in the case of a mortgage by conditional sale and in an anomalous mortgage the terms whereof provide for foreclosure.

Another right which a mortgagee has is applying to the court for a decree for the sale of the mortgage property to satisfy the amount secured by the mortgage. A usufructuary mortgagee and a mortgagee by conditional sale cannot exercise this right.

These rights can be exercised, in the absence of a contract to the contrary after the mortgage money has become due and before a decree for redemption had been passed or the mortgage money has been paid or deposited (Sec. 67).

Mortgagee's right to sue for mortgage money: -
While Sec. 67 provides remedies against the mortgaged property Sec. 68 provides a personal remedy against the mortgager. The circumstances in which a suit for the mortgage money can be filed are enumerated in Sec. 68.

Stamp Duty on mortgager of immovable property - stamp duty is chargeable under Art. 40 schedule I of the stamp Act.

(iv) LEASE DEED

A lease of immovable property is defined in Sec. 105, of the Transfer Act. 1882. It consists of the following elements:

(i) There must be a transferor (lessor) and a transferee (lessor) who both agree to the transaction;
(ii) The lease must be a for a certain time, express or implied, or in perpetuity (period or duration),
(iii) There must be transfer of the right to enjoy immovable property
(iv) The transaction must be in consideration of a price paid or promised (premium, salami or nazrana);
(v) In consideration 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 (rent).

Essentials of lease: - The essential elements of a lease are:
(i) The lessor must have the capacity and the right to granta lease. Under Sec. 7 of the transfer of property Act every person competent to contract and entitled to transferable property not his own, is competent to transfer such property. Though a minor cannot, his guardian can grant a lease. The manager of a lunatic, the karta of a joint Hindu family, can grant a lease. But one out of several Conveyancing-shares cannot grant a lease unless he is authorized by all the Co-sharers to do so;

(ii) The immovable property should be transferable;
(iii) The commencement date and the period or duration of the lease;
(iv) The premium to be fixed,
(v) The rent payable and the time when it is to be paid.

Duration and commencement of lease: -

The commencement of a lease must be certain in the first instance, or capable of being ascertained with certain after wards, so that both the time when it begins and the time when it begins and the time when it ends is fixed.

It is open to the parties to fix the duration or period of the lease. They can even make a perpetual lease. Where land is let out for building purpose and no period is fixed the presumption is that it was intended to create a permanent tenancy. (AIIR 1962 SC 413) Sec. 106 of T P Act provides that in the absence of a contract or local law or usage to the contrary for agricultural or manufacturing purposes shall be deemed to be lease from year to year, and a lease for any other purpose shall be deemed to be a lease from month to

month.

Sometimes a lease contains a renewal clause. The renewal May be at the option of the lessor or the lessee or of both. The option does not affect the duration. of the lessee or of both. The option does not affect the duration of the lease because until exercise it creates no interest in the added ferm.

Premium and rent: -

A lease may be granted on payment of premium alone or rent alone or on payment of both premium and rent. A "zarpeshgi lease" is a lease for a premium. Though in some cases premium in the form of pugree or salami or nazrana is also taken in addition to rent, most of the lease are for rent alone. Premium can also be paid in installments.

In a month-to month tenancy rent is usually payable monthly. But even in a yearly tenancy the parties may stipulate payment of rent monthly. This can be done even in cases of tenancies for fixed periods.

Right and liabilities of the lessor: -

In the absence of a contract or local usage to the contrary the lessor possesses and is subject to the liabilities mentioned below;

(a) The lessor is bound to disclose to the property, with reference to its intended use, of which the former is and the latter is not aware and which the latter could not with ordinary care discover;

(b) The lessor is bound on the lessee's request to· put him in possession of the property.

(c) The lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contract binding on the lessee he may hold the property during the time timed by the lease without interruption.

The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whore or any part there of from time to time vested.

These will be implied in every lease unless provided otherwise. It is not necessary to set them out in the lease deed.

Rights and liabilities of the lessee:-

In the absence of a contract or local usage to the contrary the lessee possesses and is subject to the liabilities mentioned below:

a) If during the continuance of the lease any accession is made to the property such accession (subject to the law relating to alluvion for the time being in force. Shall to be comprised in the lease;

b) if by fire, tempest or flood, or violence of any army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was let, the lease shall at the option of the lessee, be void;

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be

entitled to avail himself of this benefit of this provision;

c) If the lessor neglects to make within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may made the same himself; and deduct the expense of such repairs with interest form the rent, or otherwise recover it from the lessor;

d) If the lessor neglects to make and payment which he is not made by him, or recoverable form the lessee or against the property, the lessee may make such payment himself, and deduct it with interest form the rent, or otherwise recover it from the lessor;

e) The lessee may even after the determination of the lease remove, at any time whilst he is in possession of the property leased, but not after-wards, all things which he has attached to the earth; provided he leaves the property in the state in which he received it;

f) When a lessee he or his legal representative is· entitled to all the crops planted or sown by the Lessee and growing upon the property when the lease determines, and to free ingress and egress together carry them;

g) The lessee may transfer absolutely by way of mortgage or sublease the whole or any part of his interesting the property, and any transferee of such interest or part may again transfer it. The lessee shall not by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease;

Nothing in this clause shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a court of words, assign his interest as such tenant, farmer or lessee;

h) The lessee is bound to disclose to the lessor any fact as to the nature or extent of tile interest which the lessee is about to take of which the lessee is, and the lessor is not, aware, and which materially increased the value of such interest;

i) The lessee is bound to payor tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf;

j) The lessee is bound to keep, and on the termination of the lease to restore, the property in as good a condition as it was at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agent at all reasonable times during the term to enter upon the property and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition there of and give or leave notice of any defect in such condition, and when such defect has been caused by any act or default on the part of he lessee, his servant or agents, he is bound to Take it good within three months after such notice has been given or left;

k) If the lessee becomes aware of any proceeding to recover the property or any part thereof or of any encroachment made upon, or any interference with the lessor's rights concerning such property he is bound to give, with reasonable diligence, notice thereof to the lessor;

l) The lessee may use the property and its products ((if any) as a person of ordinary prudence would use them if they were his own, but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell or sell timber, pull down or damage buildings belonging to the lessor, or work mines or quarries not open when the lease was granted or commit any other act which is destructive or permanently injurious thereto;

m) He must not without the lessor's consent, erect on the property any permanent structure, except for agriculture purposes;

n) On the determination of the lease, the lessee is bound to put the lessor into possession of the property.

Lessee holding over

Where a person who has been in possession under a lawful lease continues in possession after the lease has been determined without the consent of the lessor he is said to be a tenant at sufferance. In such a case the possession was rightful in its inception but wrongful in its continuance; whist the possession of a trespasser is wrongful both in its inception and in its continuance. Such a tenant can be evicted without giving notice to quit.

If a lessee remains in possession after determination of the lease and the lessor accepts rent from him or otherwise assents to his continuing on possession the lease is renewed from year to year or from month to month according to the purpose for which the property was leased. The tenant is called a tenant holding over.

A tenancy at will is one which is terminable at the will either of the landlord or of the tenant. It can be created by express agreement

Leases How Made : Registration

A lease of immovable property -

(a) from year to year, Of

(b) For any term exceeding one year, or

(c) Reserving a yearly rent,

Can be made only by a registered instrument. All other leases of immovable property may by made by a registered instrument or by oral agreement accompanied by delivery of possession. The lease deed is to be executed both by the lessor and the lessee. A lease should be drafted as a deed between the landlord (lessor) and the tenant (lessee) .

Determination of leases

A lease of immovable property determines

(a) By efflux of the time limited thereby;

(b) Where such time is limited conditionally on the happening of some event, by the happening of such event;

(c) Where the interest of the lessor in the property terminates on; or his power to dispose of the same extends only to the happening of any event, by the happening of such event;

(d) In case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right

(e) By express surrender, that is to say in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them;

(f) By implied surrender;

(g) By for feature, that is to say

(1) In case the lessee breaks an express condition which provides that on breach there of the lessor may re-enter, or

(2) In case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself;

(3) The lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these gives notice in writing to the lessee of his intention to determine the lease;

(h) On the expiration of a notice to determine the lease, or to quit, the property leased, duly given by one party to the other.

Notice to Quit : Waiver of Notice

A lease from year to year can be terminated either by the lessor or the lessee by giving to the other six months notice expiring with the end of the year of the tenancy. And a lease from month to month can be terminated either by the lessor or the lessee by giving to the other fifteen days notice expiring with the end of the month of tenancy. Simple notice to quit or the expiry of six months in the case of tenancies from year to year and 30 days in the case of tenancies from month to month, from the date of the receipt of the notice, is sufficient in U.P.

The notice must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party or to one or his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

A notice to quit is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting. A typical case of waiver is acceptance of rent for a period after the expiry of the notice.

Effect of rent and eviction control legislation:

In every state there is legislation affecting the rights of lessors and lessees of residential and commercial buildings. They override the provisions of the Transfer of Property Act. Legislation in one state differs from that in another, but all such legislations control and restrict the rent payable and the grounds on which a tenant may evicted. Some enactments regulated duration ofa lease, some forbid the payment of premium

and some even control the letting out to the extent that this function is exercised by the authorities. It is desirable to study the local rent control and evection legislation before entering into a transaction of lease and before taking any action on the basis of a lease.

Execution and stamp duty -

Leases can either be oral or written and registered. A lease which is permitted to be made by oral agreement will be valid only if accompanied by delivery of possession it such a lease is reduced to writing it must be registered and delivery of possession will not validate it. An unregistered written lease is a not valid.

A written registered leases should be attested by at least to witnesses.

Stamp duty on a deed of lease is chargeable under Art. 35, schedule I of the Stamp Act. The amendments made by the relevant state legislation may be studied to find out the actual amount of stamp duty payable.

For drafting of lease deed students refer book on drafting of Conveyancing.

(V) GIFT DEED

Section 122 of the Transfer of Property Act, 1882 defines 'gift' thus:

(i) Gift is the transfer of certain existing movable or immovable property and not of future property;

(ii) It must be voluntary; it should not be induced by coercion, undue influence, fraud or misrepresentation;

(iii) It should be without consideration: it can be for natural love and affection or for past consideration. it cannot be for natural love and affection or for past consideration, it cannot be for present or future consideration;

(iv) It must be accepted by the donee. It may be pointed out that the definition of gift in the Gift Tax Act.1958, includes a transfer for inadequate consideration, a release, a discharge and surrender. But this definition is for the purposes of gift tax only.

Persons Capable of Making Gifts :

A person who is competent to contract can make a valid gift. A minor or a lunatic cannot make a gift. The donor must also have a disposing power over the property sought to be gifted.

Who can be Donee: The donee must be on existing person. He must be an ascertained or ascertainable person. A gift can be made in favour of a minor or a Hindu idol. But a gift in favour of the public, to dharma or for worship of God is void for vagueness of donee. A gift can be made in favour of a legal person. It can even be made in favour of government.

Acceptance of Gift: Acceptance of a gift be in behalf of the donee is essential to the validity of a gift. The acceptance must be made during the lifetime of the donor and while he is still capable of giving. If either the doner or the donee dies before acceptance the gift is void the acceptance can be made either orally or by

conduct (e.g., by taking possession of the property) or in writing.

The best and the safest course is to join the donee as a party to the deed and to state the acceptance of the gift in the deed itself. Or a separate endorsement may be made by the donee on the deed accepting the gift and signed by him

A gift may be accepted on behalf of a minor by his guardian and on behalf of an idol by its manager. The donee's receiving the gift deed form the donor after execution thereof, and presenting it for registration and getting its registered, amounts to acceptance of the gift.

Gifts under Hindu Law:

The right given and the restrictions imposed by Hindu law in respect of the powers of a Hindu to make a gift still apply but the made of making a gift is governed by the provisions of chapter VII of the Transfer of Property Act. Thus a gift by a Hindu of his separate and self-acquired immovable property can only be made in the manner prescribed by Sec. 123 of the transfer of property Act, and it has to be accepted by the donee.

Gift under Mohammedan Law

The Mohammedan law of gifts is unaffected by the provisions of the Transfer of Property Act. Since Mohammedan law permits an oral gift even with respect to a gift of immobile property a registered instrument is not necessary for such a gift by a Mohammedan under Mohammedan law the essentials of a gift are a declaration of gift by the doner, the acceptance of the gift b Y the donee and delivery of possession such as the subject of 'the gift is susceptible of even a registered deed of gift is ineffectual under Mohammedan law if it is not accompanied by delivery of possession.

Under Mohammedan law a Mohammedan can make a valid gift to a Hindu or any other person and such a gift is governed by the law of the donor.

Gift How Made

The mode of making gifts is prescribed by Sec. 123 of the transfer of property, can only be made by a written instrument signed by the donor, attested by at least two attested. A gift of movable property may be made either by a written, attested and registered document or by delivery of the property to the donee.

It is permissible to make conditional gifts. The donor and donee may agree that on the happening of any specified event which does not depend on the will of he donor a gift shall stand revoked. A gift which the parties agree shall be revocable at the will of the donor. A gift can be made which is effective only during the lifetime of the donee. A donor can reserve a right in himself for life to take the profits of the property gifted or he may also, while making an outright gift, impose a condition that the donee shall maintain him. A gift may also be made for a specific purpose and on the failure of that purpose the property reverts to the donor.

Revocation of Gifts

A gift once duly made and accepted cannot be revoked. A conditional gift which provides that it shall stand revoked on the happening of a specified event which does not depend on the will of the donor is revoked when that event happens. A gift may also be revoked if it has been obtained by coercion, undue influence, fraud or misrepresentation. A gift for specific purpose can be revoked on the failure of that purpose.

Stamp Duty

An instrument of gift is chargeable with stamp duty under Art. 33 of schedule I of the Stamp Act. The duty is the same as is payable on a conveyance which is for a consideration equal to the value of the gifted property. A conveyance is charged under article 23.

(VI) PROMISSORY NOTE

A promissory not is an instrument on writing, not being a bank note or a 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. The essential requisites of a promissory note are:

(i) It must be in writing signed by the maker;

(ii) The promise to pay must be unconditional;

(iii) The sum of money to be paid must be certain;

(iv) The drawer must be a certain person, and

(v) The drawee must be a certain person.

It may provide for payment on demand, or within a fixed time or on a specified date. Where it is silent on this point, it is payable on demand.

Stamp duty is payable under Art. 49, schedule I, stamp Act. Registration is not required.

FORM OF PROMISSORY, NOTE

ON DEMAND I …….. aged about …….. years, son of …….., resident of……..,
promise to pay to …….., aged about ……..years, son of resident of …….., or order the …….. sum of Rupees ……., (Rs ……..) only, with interest at ……..% per annum until repayment for value received.

DATED AND DELIVERED at …… this the …….. day of ……..20…….

(VII) POWER OF ATTORNEY

A power of attorney is a document whereby one or more persons give authority to one or more persons to act in his or their place. It is defined in Sec. 2 (2) of the Stamp Act thus.

"Power of attorney" includes any instrument (not chargeable with a fee under a law relating to court fees for the time being in force) empowering a specified person to act executing it.

It is a delegation of authority in writing by which one person empowers another to act on his behalf. The giver of the authority is called the 'donor' and the recipient is called the 'donee'. If the appointment is made for specified act or acts the deed is called "special power of attorney" and if it is made generally for certain acts, it is called "general power of attorney".

A power of attorney can be executed by any person who is able to contract.

A power of attorney can be executed by or in favour of two or more persons. When executed in favour of

more than one person it is desirable to state whether the donee's will act only jointly or severally and jointly.

Authority of donee

So long as the donee acts within the powers delegated to him, his acts will be deemed to be the acts of the donor and will bind him. Sec. 2 of the power of attorney Act, 1882 (as amended in 1982) provides;

The donee of a power of attorney may, if he thinks fit, execute or do any instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power and every instrument and thing so executed and every instrument and thing so executed and done, shall be as effectual in law as if it had been exacted or done by the dinee of the power in the name, and with the signature and seal, of the donor thereof.

Normally after the revocation of the power of attorney the donee ceases to be an agent of the donor. But Sec. 3 protects persons making payment and doing acts in pursuance of the power of attorney even after the death etc. of the donor in certain circumstances. This section reads:

Normally after the revocation of the power of attorney the donee ceases to be an agent of the donor. But Sec. 3 protects persons making payments and doing act in pursuance of the power of attorney even after the death etc. of the donor in certain circumstances.

This Sec. reads:

Any person making or doing any payment or act in good faith in pursuance of a power of attorney, shall not be liable on respect of the payment or act, by reasons that before the payment or act, the donor of he power had died, or become of unsound mind, or bankrupt or insolvent, or had revoked the power, if the fact of death, unsoundness of mind, bankruptcy, insolvency or revocation was not at the time of the payment or act, known to the person making or doing the same.

Execution, attestation and authentication

A power of attorney has to be in writing signed by the donor. It is executed in the form of a deed poll, a unilateral document, usually in the first person.

No law requires a power of attorney to be attested but it is useful to have it attested by witnesses.

Though no law requires a power of attorney to be authenticated it is desirable to have this done so as to avail of the presumption under sec. 85 of the Evidence Act. This section provides:
The court shall presume that every document purporting to be a power of attorney, and to have been executed before, and authenticated by a Notary public, or any Court, Judge, Magistrate Indian Counsul or Vice Counsul or representative of the contra Govt., was so executed and authenticated.

Stamp duty and Registration

Stamp duty on a power of attorney is payable under Article 48 of he stamp Act. A deed canceling a power of attorney is chargeable to duty under Article 17.

A power of attorney is not compulsorily registrable. But by virtue of the provisions of Sec. 32 and 33 of the

Evidence Act, a power of attorney specifically presenting a document for registration must be itself registered.

Deposit in High Court or District court

Section 4 of the Power of Attorney Act as amended in 1982 provides that: -

(a) An instrument creating a power of attorney, its executing being verified by affidavit, statutory declaration or other sufficient evidence may, with the affidavit or declaration, if any be deposited in the High Court or District court within the local limits of whose jurisdiction the instrument may be.

(b) A certified copy of an instrument so deposited shall, without further proof, be sufficient evidence of the contents of the instrument and of the deposit there of in the High Court or District Court.

(viii) WILL

The law relating to wills is contained in part VI of the Indian Succession Act, 1925. But this is not applicable to wills made by Mohammedans. They are governed by the Mohammedans Law under which wills maybe made orally or in writing and formalities of signatures, attesting witnesses etc. are not required to be followed. There is however, nothing to prevent a Mohammedans from execution a written will duly singed and attested as required by the a Act. All the provisions of part VI do not apply to Hindus, Buddhists, Sikhs and Jains. The provisions of this part which apply to Hindus, Buddhists, Sikhs and Jains are enumerated in schedule III to the Act. But by virtue of Sec. 30 of the Hindu Succession Act, 1956, a Hindu, Buddhist, Sikh or Jain may execute a will in accordance with the provisions of the Indian Succession Act.

"Will" is defined in Sec. 2 (h) of the Act to mean the legal declaration of the intention of the testator with respect to his property which he desires to be carried into effect after his death. The fundamental idea of a will is that the testator should thereby dispose of his property or such part of it as his personal law permits him to bequeath by will, in such a manner as seems to him best. The two essential characteristics of a will are that:

(1) It must be intended to come into effect after the death of the testator, and
(2) It must be revocable by the testator at any time.

Though usually wills are made for disposing property they can also be made for appointing executors, for creating trusts and for appointing testamentary guardians of minor children.

"Codicil" is defined in section 2(b) of he Act to mean an instrument made in relation to a will, and explaining, altering or cadding to its dispositions, and shall be deemed to from part of the will when the alteration and additions are minor a codicil is the proper thing but if substantial changes are to be made in the will it is desirable to execute a fresh will and to revoke the earlier one. If there is inconsistency between the will and the codicil the codicil will prevail. A codicil requires the same formalities as a will.

A will or any part of a will, the making of which has been caused by fraud or coercion which takes aw3.Y the free agency of the testator, is void.(Sec. 61)

Privileged and unprivileged wills:

A privileged will is one which is made by a solider employed in an expedition or in actual warfare, or an

airman so employed or engaged or a mariner at sea. He must have completed 'the age if eighteen years. A will executed by persons other than these is known as an unprivileged will.

A privileged will can be oral or in writing. The formalities prescribed for unprivileged wills like signature and attestation do not apply to privileged wills. They are governed by rules set out in Sec. 65 (2) of he Indian Succession Act. The provision s relating to privileged wills in the Act. apply to Mohammedans, Hindus, Buddhists, Sikhs and Jains also.

The following requirements have to be complied with in executing an unprivileged will.

(a) The testator shall sign or affix his mark to the will, or it shall be signed by some other person on his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence of and by the direction of the testator, or has received form the testator a personal acknowledgment of his signature or mark, or the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than are witness should be present at the same time, and no particular form of attestation shall be necessary.
These formalities are not applicable to wills made by Mohammedans. If the will consists of more than one page; each page should be signed or marked by the testator and signed by the attesting witnesses.

No particular form of will is prescribed by law. It is not necessary that any technical words or terms of art be used in a will, but only that the wording be such that he intention of the testator can be known there from (Sec. 74) a will or bequest not expressive of any definite intention is void for uncertainty (Sec. 89).

Capacity:- The testator must be of sound and disposing mind at the time of the execution of his will sec 59 says that every person of sound mind not being a minor may dispose of his property by will.

A married woman may dispose by will any property which she could alienate by her own act during her life.

Persons who are deaf or dumb or blind are not thereby incapacitated for making a will if they are able to know what they do by it.

A person who is ordinarily insane may make a will during an interval, in which he is of sound mind,

No person can make a will while he is in such a state of mind, whether arising form intoxication or from illness or from any other cause that he does not know what he is doing.

Property, that can be bequeathed

All property, movable and immovable, of which the testator is owner and which is transferable can be disposed of by a will. Property which is legally non-transferable cannot be bequeathed. If a person has only a life interest in a property, he cannot make a will in respect of it.

Sec. 30 of the Hindu Succession Act, 1956, provides:

Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him, in accordance with the provisions of the Indian Succession Act, 1925, or any other law for the time being in force and applicable to Hindus.

Signature and attestation: -

The testimonium Clause (signature) and the attestation clause (witnesses) are the most important parts of a will. If these are not made strictly in accordance with the requirements of law it will not be a valid will.

The testator and all the attesting witnesses must sign on every page of the will. The attesting witnesses need not know the contents of the will. They ate only witnesses to the signature or mark of the testator. The scribe of a will can be a competent attesting witness if he signs as an attesting witness. "Executor" is defined in Sec. 2 C. of the Indian Succession J\ct to mean a person to whim the execution the last will of a deceased person, is by the testator's appointment, confide. An executor is charged with the duty and conferred with the power to carry out the directions contained in the will. He has to collect and realise the estate of the deceased pay his debts and distribute the legacies.

Stamp Duty: registration

No stamp Duty is chargeable on a will, and registration is opt10nal. A will can be registered by the testator in his lifetime or by the executor or legatee after testator's death.

Sec. 42 to 46 of the Registration Act, 1908 made provisions for the deposit of wills. Revocation of wills.

Revocation of wills

Sec. 62 of the Indian Succession Act provides that a will is liable to be revoked or altered by the maker of it at any time when he is. competent to dispose of his property by will. Sec. 69 enacts that every will shall be revoked by the marriage of the testator. Sec. 69 does not apply to wills made by Hindus, Buddhists, Sikhs and Janis or by Mohammedans. The mode of revocation of unprivileged wills or codicils is laid down in Sec. 70 and that of privileged will in Sec. 72.

Probate and letters of administration

Sec. 213 of the Indian Succession Act enacts that no right as executor or enacts that n right as executor or legatee can be established in any court of justice, unless a court of competent jurisdiction in India has granted probate of the will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed.

This Sec. applies only to wills made: -

(i) By Christians and Jews;

(ii) By Hindu, Buddhists. Sikhs and Janis Within the territories of West Bengal or the presidency

Towns of Madras and Mumbai or in respect of immovable properties situate in these territories, and
(iii) By parsi within the local limits of the ordinary civil jurisdiction of the High Courts at Calcutta, Madras

and Mumbai or in respect of immovable properties situate within those limits.

It does not apply to wills made by Hindus, Buddhists, Sikhs and Jaonis out side the territories maintained in (ii) above in respect of immovable properties situate outside these territories. Nor does it apply to wills made by Parsis outside the limits mentions in (iii) above in respect of properties situate outside those limits.

"Probate" is defined in Sec. 2 (f) to mean the copy of a will certified under the seal of a court of competent jurisdiction with a grant of the administration to the estate of the testator. Probate of a will when granted established the will from the death of the testator, and renders valid all intermediate acts of the executor as such. It establishes conclusively the legal character of the person to whom the grant is made. It is conclusive evidence of the validity and due execution of the will and of the testamentary capacity of the testator Probate can be granted only to the executor appointed by the will. It cannot be granted to a person who is a minor or is of unsound mind, nor to any association of individuals unless it is a company which satisfies the conditions prescribed by rules made by the Sate Government in this behalf. Other provisions relating to probate will be found in Sec. 224to 227 and 276.

(IX) AGREEMENTS

Agreement and Contract

A proposal when accepted becomes a promise, and every promise and every set of promises forming the consideration for each other is an agreement. An agreement enforceable by law is a contract, for a lawful consideration and with a lawful object, and is not expressly declared by the Contract Act, 1872 to be void. An agreement not enforceable in law at the option of one or more of the parties thereto, to but not at the option of the other or others, is a Voidable contract.
Persons Competent to contract

Every person is competent to contract:-

(i) Who is of the age of majority according to the law to which he is subject,

(ii) Who is of sound mind, and

(iii) Who is not disqualified form contracting by any law to which he is subject.

Under Sec. 3 of the Indian Majority Act, 1875 a minor becomes a major when he attains the age of 18 years except a minor of whose person or property or both a guardian has been appointed by any court, who becomes a major when he attains the age of twenty-one years. Sec. 12 of the Contract Act, 1872 lays down what is a sound mind for purposes of contracting.

Voidable· agreements

An agreement into which a party has entered without free consent is a contract Voidable at the option of the party. Two or more persons are said to consent when they agree upon the same thing in the same sense.

Consent is said to be free when it is not caused by: -

(i) Coercion (Sec. 15, Contract Act)

(ii) Undue influence (Sec. 16, Contract Act)

(iv) Misrepresentation (Sec. 17, Contract Act)

(v) Mistake (Sec. 20, 21 and 22 Contract Act)

Thus a contract into which a party has been induced to enter on account of coercion, undue influence, fraud, misrepresentation or mistake is Voidable at his instance.

Void agreements

An agreement is void:

(i) If the consideration for the object is unlawful (Sec. 24 Contract)

(ii) If it is without consideration (Sec. 25 Contract)

(iii) If it is in restraint of marriage (Sec. 26 Contract)

(iv) If it is in restraint of trade or profession (Sec. 27 Contract)

(v) If it is in restraint of legal proceedings (Sec. 28 Contract)

(vi) If its meaning is not certain or capable of being made certain (Sec. 29 Contract Act) or

(vii) If it is by way of wager (Sec. 30)

The consideration or object of an agreement is lawful, unless: -

(i) It is forbidden by law; or

(ii) It is of such a nature that, if permitted, it would defeat the provisions of any law, or

(iii) Is fraudulent; or

(iv) Involves or implies injury to the person or property of another, or

(v) The court regards it as immoral or opposed to public policy.

Agreements binding on representatives

Legal representatives of parties have a right to require specific performance of a contract or are bound by the promise to perform the contract in the absence of a contrary intention. This does not apply where the obligation is personal in nature As a rule obligations under a contract cannot be assigned except with the consent of the promise. On the other hand, rights under a contract are assignable unless the contract is personal in nature or the rights are incapable of assignment either under the law or under the agreement between the parties. It is, however, usual to have a clause in a deed specifically stating that the parties shall include their executors, administrators, heirs, legal representatives and assigns.

Attestation

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

Stamp Duly

The stamp duty for different kinds of agreements varies from state to state. Agreement are covered by Article 5 of Schedule I to the stamp Act. While drafting an agreement the draftsman should ascertain the proper stamp duty having regard to the changes made in the Stamp Act. In the state where the agreement is executed.

Registration

Agreements not relating to immovable property and agreements not creating an interest in immovable

property are not compulsory registrable. Only agreements creating an interest in immovable property worth more then Rs. 100/- are required be law to be registered.

IMPORTANT QUESTIONS

Q.1. What do you mean by pleading? Discuss its fundamental rules.

Q.2. What do you mean by deed? Discuss in brief its components.

Q.3. What do you understand by cause of action?

Q.4. What do you mean by attestation?

Q.5. What do you mean by plaintiff?

Q.6. What do you mean by interlocutory orders?

Q.7. What do you mean by Deed Poll and deed indenture? Q.8. What do you mean by a Codicil?

Q.9. What is exparty decree?

Q.10. What do you mean by legal representative? Q.11. How can a plaint be amended?

Q.12. What is interpleaded suit?

Q.13. What do you understand by an Affidavit?

Q.14. What is pauper suit?

Q.15. What do you mean by written statement and what are the two parts of w.s.?

Q.16. What do you mean by Conveyancing?

Q.17. Draft a plaint and ws. for specific performance of a contract for purchase of car? Q.18. Draft a plaint for recovery of money.

Q.19. Draft a plaint for compensation for malicious prosecution?

Q.20. Draft a petition under Art. 226 of Indian Constitution for issue of a writ of Habeas Corpus.

Q.21. Draft a petition for divorce by mutual consent under Sec. 13 B of HM Act 1955.

Q.22. Draft a Criminal Complaint for wrongful confinement.

Q.23. Draft a bail application on behalf of an accused arrested for the offence of bigamy.

Q.24. Draft a sale deed for sale of Joint family property by father for a legal necessity and antecedent debt.

Q.25. Draft a notice for payment of arrears of rent.

Q.26. Draft a special power of attorney for recovery of debt. Q.27. Draft a promissory note.

Q.28. Draft a mortgage deed.

Q.29. Draft a petition on behalf of the wife for judicial separation on the ground of desertion under Hindu Marriage Act, 1955.

SUGGESTED READINGS

1. Pleading and Practice, N.S. Bindra
2. Conveyancing, Precedents & Forms, Shiva Gopal
3. Drafting of Pleadings, N.H. Jhabwala
4. Principles and Forms of Pleadings and Conveyancing, A.N. Chaturvedi
5. Law of Pleadings & Conveyancing, M.K. Majumdar
6. Law of Pleadings in India, P.C. Mogha, M.C. Agarwal, G.C. Mogha
7. Art of Conveyancing and Pleading, Murli Manohar
8. Pleading, Drafting & Conveyancing, R.N. Chaturvedi
9. Indian Conveyancer, P.C. Mogha, K.N. Goyal, G.C. Mogha

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