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Solved Scanner Appendix

CS Professional Programme Module - III
(New Syllabus)
(Solution of December - 2017)

Paper - 8 : Drafting, Appearances and Pleadings

Chapter - 1 : General Principles of Drafting & Relevant Substantive Rules 2017 - Dec [1] (a), (b)

- (a) The following things should be avoided while drafting the documents :
- (a) Avoid the use of words of same sound. For example, the words "Employer" and "Employee".
 - (b) When the clause in the document is numbered it is convenient to refer to any one clause by using single number for it. For example, "in **clause 2** above" and so on.
 - (c) Negative in successive phrases would be very carefully employed.
 - (d) Draftsman should avoid the use of words "less than" or "more than", instead they must use "not exceeding".
 - (e) If the draftsman has provided for each of the two positions to happen without each other and also happen without, "either" will not be sufficient; he should write "either or" to express the meaning of the two in other clauses.

In writing and typing the following mistakes always occur which should be avoided:

1. "And" and "or";
2. "Any" and "my";
3. "Know" and "now";
4. "Appointed" and "Applied";
5. "Present" and "Past" tense.

(b)

Distinction between drafting and conveyancing	Both the terms "drafting and conveyancing" provide the same meaning although these terms are not interchangeable. Conveyancing gives more stress on documentation much concerned with the transfer of property from one person to another, whereas "drafting" gives a general meaning synonymous to preparation or drafting of documents, Documents may include document relating to transfer of property as well as other "documents" in a sense as per definition given in Section 3 (18) of the General Clauses Act, 1897 which include any matter written, expressed or described upon any substance by means of letters figures or mark, which is intended to be used for the purpose of recording that matter. For example, for a banker the document would mean loan agreement, deed of mortgage, charge pledge, guarantee, etc. For a businessman document would mean something as demanded under Section 2(4) of the Indian Sale of Goods Act, 1930 so as to include a document of title to goods i.e. "Bill of lading, dock warrant, warehouse-keepers certificate, wharfingers certificate, railway receipt multi modal transport document warrant or order for the delivery of goods and any other document used in ordinary course of business as proof of the possession or control of goods or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented". The Companies Act, 2013 defines vide Section 2(3b) the term "document" in still wider concept so as to include "summons, requisitions order, other
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	<p>legal process and registers, whether issued, sent or kept in pursuance of this or any other Act, or otherwise". Thus, drafting may cover all types of documents in business usages.</p> <p>In India, the commercial houses banks and financial institutions have been using the term "documentation". In substitution of the words "drafting and conveyancing". Documentation refers to the activity which symbolises preparation of documents including finalisation and execution thereof.</p>
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2017 - Dec [3] (d)

Conveyance and contract:

Contract	Conveyance
(a) Any right of any action is not created in contract.	(a) It alters the ownership of existing right.
(b) Provisions of Indian Contract Act, 1872 governs any contract.	(b) Whereas it is governed by the Transfer of Property Act, 1882.
(c) Contract remains to be performed and its specific performance may be sought.	(c) Conveyance passes on the title of property to another person.
(d) A contract to mortgage or sale would not amount to activate thus per of interest in the property.	(d) The deed of mortgage or sale would operate as conveyance of such interest.

Chapter - 2 : Drafting and Conveyancing Relating to Various Deeds and Agreements

2017 - Dec [1] (c), (d)

(c) Del Credere Agency:

There is a special type of agency, which combines agency with guarantee. This is known as del credere agency. A del credere agent is one who, for an extra remuneration undertakes the liability to guarantee the due performance of the contract by the buyer. By reason of his

charging a del credere commission he assumes responsibility for the solvency and performance of the contract by the vendee and thus indemnifies his principal against loss. He, therefore, gives an additional security to the seller, but he does not shift the responsibility of payment from the buyer to the seller. A commission del credere is the premium or price given by the principal to the agent for guarantee, which presupposes a guarantee.

A del credere agent like any other agent, is to sell according to the instructions of his principal, to make such contracts as he is authorised to make for his principal and be bound, as soon as he receives the money, to hand it over to the principal. He is distinguished from other agents simply in this that he guarantees that those persons to whom he sells perform the contracts which he makes with them.

(d) Formal Agreements: The following rules of interpretation may be applied:

- (i) Under **Section 91** of the Evidence Act provides that a deed constitute the primary evidence of the terms of a Contract, or of a grant or of any other disposition of property.
- (ii) In case of uncertainty, the rule embodied in provisions 2 and 6 of **Section 92** of the Evidence Act can be invoked for construing a deed -
- (iii) The cardinal rule is that clear and unambiguous words prevail over any hypothetical consideration.
- (iv) Sometimes a contract is completed in two parts:-
 - (a) An executory contract is executed
 - (b) An executed contract
- (v) The Court must interpret the words in their popular, natural and ordinary sense, subject to certain exceptions as,
 - (a) Where the contract affords an interpretation different from the ordinary meaning of the words; or
 - (b) Where the conventional meanings are not the same with their legal sense.
- (vi) All mercantile documents should receive a liberal construction.

- (vii) If certain words employed in business, or in a particular locality have been used in particular sense, they must *prima facie* be construed in technical sense.
- (viii) The ordinary grammatical interpretation is not to be followed, if it is repugnant to the general context.
- (ix) If the main clause is clear and the contingency mentioned in the proviso does not arise, the proviso is not attracted at all and its language should not be referred to for construing the main clause in a manner contradictory to its import.
- (x) As a general rule of construction of documents, the recitals are not looked into, if the terms of the deed are otherwise clear. If in a deed the operative part is clear, or the intention of the parties is clearly made out, whether consistent with the recitals or not, the recitals have to be disregarded.
- (xi) Sometimes a standard form is used, particularly in contracts with government departments or big corporations. In these standard printed forms, words not applicable are deleted according to the requirements of individual transactions.

2017 - Dec [2] (a), (b)

(a) Subrogation of Surety to the Rights of Creditor on Payment:

Section 140 of the Act invests a surety with all the rights which the creditor has against the principal debtor, where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety has made the payment or performed all that he is liable for.

(b) The Shrink-wrap Agreements: Shrink wrap contracts are license agreements or other terms and conditions which can only be read and accepted by the consumer after opening the product like CD ROM of software. The terms and conditions are printed on the cover of CD ROM. Sometimes additional terms are imposed when in such licenses appear on the screen when the CD is downloaded to the computer. The user has right to return if the new terms and conditions are not to his liking.

Chapter - 3 : Drafting and Conveyancing Relating to Various Deeds and Agreements -I

2017 - Dec [6] (b)

GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS THAT I, Francis S/o. / W/o. aged 38 about years, residing at House No. 418 Bapu Bazar, New Delhi do hereby nominate, appoint constitute and appoint Sri./Smt. Mr. Robert S/o. /W/o. aged about 40 years residing at Mary House Kunoor, Mysore, as my true and lawful power of attorney holder to do the following acts, deeds and things on my behalf and in my name in respect of the schedule property. Whereas, the sole and absolute owner in and possession of the schedule property, which is self acquired property.

Whereas, I am being unable to maintain manage and look after the affairs of the said property, I hereby appoint the said attorney holder to the following acts, deeds and perform things on my behalf and in my name with entire powers thereon.

1. To appear before the authorities of BDA Corporation, Revenue Office / Village Panchayath Office, or any other office pertaining to state or central Government or any other office and to represent in all respect.
2. To make payment of taxes, rates, cesses, assessments, to get plan sanction to any competent authority levied by them from time to time on my behalf.
3. To appoint advocate/s, pleader/s, prosecutor/s, or any other competent authority for all purpose.
4. To file cases either civil or criminal in any competent court/s and to complete the proceedings.
5. To apply and to obtain relevant document in respect of the schedule property on my behalf, and to put up any constructions in the schedule property.
6. To sign all documents, papers, agreements, affidavits forms vakalaths, receipts, declarations, etc., and to derive all kind of benefits and profits in respect of the schedule property on my behalf.
7. I have not given any power to this attorney holder to alienate property. I hereby agree to ratify and confirm all and what so ever that my said attorney shall lawfully do or cause to be done be virtue of this document.

SCHEDULE

All the piece and parcel of immovable property bearing No. _____

Measuring _____

Bounded by:-

On the East :

On the West :

On the South :

On the North :

IN WITNESS WHEREOF I the executant above named has signed to this general power of attorney on this ____day _____ month _____year.

WITNESS:

EXECUTANT

Chapter - 4 : Drafting and Conveyancing Relating to Various Deeds and Agreements -II

2017 - Dec [3] (b)

Licence v/s Lease			
S. No.	Basis	Licence	Lease
(i)	Heritable	It's a personal non-heritable right.	It's a heritable right in rem.
(ii)	Forfeiture	Denial of grantors title does not necessarily result in forfeiture.	Denial of lessor's title results in forfeiture.
(iii)	Registration	As it's an instrument granting right, registration is optional.	As it's an instrument creating right registration is mandatory.
(iv)	Governing Act	It's governed by Indian Easement Act, 1882.	It's governed by Transfer of Property Act, 1882.
(v)	Consideration	Consideration is paid	Consideration is paid by

		by way of fee.	way of rent.
(vi)	Rent & public nuisance	The licensee is not liable for rent and public nuisance.	The lessee is liable for rent and public nuisance.

2017 - Dec [4] (a)

A Specimen of Deed of Sale by Liquidator of a Company in Voluntary

Liquidation: Liquidation means winding up of the company and Liquidator is the officer appointed to conduct the winding up of a company. Voluntary winding up is one of the three modes of winding up recognised under **Section 270 of the Companies Act, 2013** which includes liquidation by Court, voluntary and subject to the supervision of the Court.

Sale Deed to be drafted for being executed by the Liquidator of a company in voluntary liquidation assumes the following form:

THIS SALE DEED is made on the.....day of..... by voluntary liquidator of.....Co. Ltd., (in voluntary liquidation) (hereinafter called the vendor") of the one part, in favour of Shri.....son of Shri.....Occupation....., resident of(hereinafter called "the purchaser") of the other part, under the terms and conditions mentioned below.

WHEREAS by a special resolution passed by the shareholders of.....Co. Ltd., at an Extraordinary General Meeting held on theday of.....of which notice as prescribed by law had been duly given and it was resolved that the company be wound up voluntarily.

WHEREAS the said vendor was appointed its voluntary liquidator on.....the notice whereof was duly submitted to the Registrar of Companies.....as prescribed by law, on the.....day of

AND WHEREAS in a meeting of the shareholders of the said company held in accordance with the provisions of the **Companies Act, 2013** it was resolved that the properties mentioned in the Schedule annexed hereto be sold by the vendor after publishing a notice for sale in.....anddaily newspapers twice within a period of a fortnight and pursuant to such resolution, the vendor had duly advertised the sale of the

said properties in the issues of.....dated.....respectively and issue of.....of.....dated.....respectively and pursuant thereto have received offers, the highest whereof was that of the said purchaser.

AND WHEREAS the said vendor agreed to sell and the said purchaser agreed to purchase the said properties on the terms and conditions mentioned herein and incorporated in an agreement to sell dated.....between the said vendor and the said purchaser.

NOW THIS DEED OF SALE WITNESSES AND IT IS HEREBY AGREED AND DECLARED AS FOLLOWS : That pursuant to the agreement dated..... aforementioned and in consideration of the sum of ₹.....(Rupees) paid by the purchaser before the Sub-Registrar,.....on presentation of this Deed of sale for registration thereof (the receipt whereof the vendor hereby acknowledges) the vendor hereby transfers by way of sale and conveys on behalf of the said company all those items of the property mentioned more particularly in the Schedule attached hereto, unto the said purchaser, his heirs and assigns to have and to hold the same absolutely and forever.

IN WITNESS WHEREOF the parties aforementioned have signed this Deed of Sale on the date, month and the year aforementioned.

Witness:

Vendor

Witness:

Purchaser

Schedule

Item Nos	1.	2.
	3.	4.

Chapter - 5 : Drafting and Conveyancing Relating to Various Deeds and Agreements -III

2017 - Dec [2] (d)

Onerous gift: Lastly reference may also be made to what is known as an onerous gift. It may be that several things are transferred as a gift by single transaction. Whereas some of them are really beneficial the others convey burdensome obligations. The result is that the benefit which it confers is more than counter balanced by the burden it places. For instance, A makes a gift of shares in the companies X and Y. X is prosperous but heavy calls

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are expected in respect of shares in Y company. The gift is onerous. The rule as laid down in **Section 127** is that the donee takes nothing by the gift unless he accepts it fully. Where the gift is in the form of two or more independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the other.

2017 - Dec [4] (b)

Gift has been defined under **Section 122 of the Transfer of Property Act, 1882**. **Section 122** states that 'Gift' is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. Such acceptance must be made during the life time of the donor and while he is still capable of giving. If the donee dies before acceptance, this gift is void.

For the purpose of making gift of immovable property, the transfer must be affected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses.

Deed of Gift - How Made:

The gift deed should be drafted as a deed of transfer with recitals if necessary. There is no consideration involved in gift as such no mention is required to be made of the same in the gift deed. However, the words "natural love and affection" is generally expressed in all cases of gift to relations, and "consideration of esteem and regard" is expressed when the gift is in favour of same person for whom the donor has regard e.g. when the donee is his religious preceptor. But for a Company these intra-personal characteristic may be necessary. A Company may make gift to honour a person for his outstanding achievements in social life if so authorised under its memorandum and articles.

Stamp Duty and Registration:

The value of the property gifted must be set forth in the deed of gift. Stamp Duty is payable on gift deed as on the conveyance as per amount of value of the property as mentioned in the deed or as per market value of such property whichever is greater as per **Article 23 of the Indian Stamp Act, 1899**. If the value of the property is intentionally omitted or under-valued with a view to defraud the revenue, prosecution may be invited under **Section 64**

of Indian Stamp Act (Muhamad Muzaffar Ali ILR 44 Allahabad 339 FB). Further, penalty provisions under Gift-tax Act may also be attracted.

Gift deed of immovable property is compulsorily registrable as per **Section 123 of the Transfer of Property Act and Section 17(i)(a) of the Registration Act, 1908**, whatever may be the values.

Specimen Forms of Gift Deeds:

Having been acquainted with the relevant provisions of the law concerning “gift” the following specimen forms of gift deed are given below which can be used in different situations by making suitable modifications as per the needs:

1. Deed of gift for love and affection.
2. Deed of gift of property for particular purpose.
3. Deed of gift of land in trust to charity.
4. Grant of land for building a temple.
5. Memorandum of gift of movables.
6. Gift of business goodwill.
7. Deed of gift of immovable property in favour of one of the sons of the donor.
8. Memorandum of a completed verbal gift in favour of the sons of the donor.

Deed of Gift for Love and Affection

THIS GIFT is made on the..... day of.....
BETWEEN AB, etc. (called “the donor”) AND CD, etc. (called “the donee”).
WHEREAS the donor is owner of the property described in the Schedule and out of his paternal affection for his daughter, the donee, is desirous of making a gift of the said property to the donee at the time of her marriage.

Now this deed witnesses as follows:

1. In consideration of the natural love and affection of the donor for the donee, the donor transfers to the donee free from encumbrances ALL the property described in the Schedule TO HOLD the same to the donee absolutely for ever.

2. The donee accepts the transfers.

IN WITNESS WHEREOF, etc.,

The Schedule above referred to

Signed, sealed and delivered

AB

CD

Chapter - 6 : Drafting and Conveyancing Relating to Various Deeds and Agreements -IV

2017 - Dec [5] (a)

Special Leave Petition (SLP) to the Supreme Court under Article 136

In suitable cases, where some arguable questions, mostly on legal points are involved, the Constitution confers under **Article 136** wide discretionary powers on the Supreme Court to entertain appeals even in cases where an appeal is not otherwise provided for. But so far as questions of fact, as distinct from questions of law, is concerned, it is only in rare or exceptional cases that the Supreme Court interferes and that too when finding of the High Court or the lower Court is such that it shocks the conscience of the court.

Specimen Form of a Petition for Special Leave in the Supreme Court of India

CIVIL APPELLATE JURISDICTION

IN THE MATTER OF:

Special Leave Petition under Article 136
of the Constitution of India

AND

IN THE MATTER OF:

ABC Company Ltd., a company registered under the Companies Act, 1956 through..... Chairman/Managing Director, the company having its registered office at.....

...Petitioner

Versus

1. S/o..... R/o.....
2. Union of India through the Secretary, Ministry of Corporate Affairs, New Delhi.
3. The Registrar of Companies.....

...Respondents

May it please the Hon'ble Chief Justice of India and His Lordship's Companion Judges of the Supreme Court.

The petitioner-appellant-(company)

MOST RESPECTFULLY SHOWETH:

1. That the petitioner is a company duly incorporated under the provisions of the Companies Act, having its registered office at..... and is challenging by way of this Special Leave petition the judgment and order of the High Court of..... dated in proceeding under Section..... of the Companies Act, 1956.
2. That the questions of law involved in this matter are as follows:
 - (a) Whether the High Court has fallen into error in taking the view that.....?
 - (b) Whether it would be a good ground for winding up of the petitioner-company that two of its directors are not on speaking terms and there is, thus, a deadlock in the administration of the affairs of the company.

or

[Here state any other ground that has been taken by the respondents or any of the respondents seeking the relief of winding up of the company from the High Court or any other relief].

 - (c) Whether.....
3. That respondent No. 1 herein had filed a petition before the Hon'ble High Court of.....seeking the relief..... which petition was contested by the petitioner-company *inter alia* on the grounds that.....

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4. That the High Court after hearing the parties through their respective counsel allowed the said petition, holding that sufficient grounds had been made out for winding up of the petitioner-company (or any other relief claimed in the petition before the High Court).
5. That the aforesaid findings and the final judgement/order of the High Court are assailed on the following, amongst, other.

GROUND:

- 5.1 That.....
- 5.2 That.....
- 5.3 That.....
6. That the petitioner has not filed any appeal or other proceeding relating to this matter in this Hon'ble Court or any other Court.

RELIEF

The petitioner-company accordingly prays that this Hon'ble Court be pleased to grant Special Leave to Appeal in the matter and to allow the appeal, set aside the impugned judgement/order passed by the High Court and dismiss the petition filed by the respondent (No.) in the High Court.

PETITIONER

AFFIDAVIT

IN THE HON'BLE SUPREME COURT OF INDIA

IN THE MATTER OF:

.....

...Petitioner

Versus

1.
2.
3.

...Respondent

AFFIDAVIT

I,company through the petitioner in the Special Leave Petition titled as above do hereby solemnly affirm and state as under:

1. That I am the Chairman/Managing Director etc. of the petitioner-company and am fully aware of and conversant with the relevant facts concerning the matter in issue in this petition.
2. That the contents of the accompanying Special Leave Petition are true and correct to the best of my knowledge and belief.
3. That no relevant fact has been concealed or kept back in the S.L.P.

I, further solemnly affirm at..... (place) this the..... day of..... that the above averments are true and correct. Nothing has been kept back or concealed.

DEPONENT

Chapter - 7 : Drafting of Agreements under the Companies Act 2017 - Dec [2] (c)

A pre-incorporation contract means a contract entered into by the promoters on the behalf of a proposed company i.e. before incorporation of a company. These contracts are usually made by the promoters to acquire some property or right for the proposed company.

Hence, a contract made by a promoter purporting to act on behalf of a company prior to its incorporation never binds the company because at the time the contract was concluded, the company was not in existence.

Further, even after incorporation such a purported contract cannot be ratified by the company [**Kelner v. Baxter (1866) L.R. 2 C.P. 174**].

Even if the company takes some benefit from a contract purported to have been made before its formation the contract is not binding on the company.

The Promoters alone remain personally liable for any contract they purport to make on behalf of the company, unless the company enters into the contract in terms of such agreement after incorporations.

A company cannot ratify a pre-incorporation contract, but it is open to it to enter into a new contract after its incorporation to give effect to a contract made before its incorporation [**Howard v. Patent Ivory Co. (1888) 38 Ch D 156**].

2017 - Dec [2A] (Or) (i)

Slump Sale Agreement: Slump sale is one of the widely used ways of business acquisitions. In simple words, 'slump sale' is nothing but transfer of a whole or part of business concern as a going concern; lock, stock and barrel. The concept of 'slump sale' was incorporated in the **Income Tax Act, 1961** ("IT Act") by the **Finance Act, 1999** with the inclusion of **Section 2(42C)**. The term 'slump sale' is defined as transfer of one or more undertakings as a result of the sale for a lump-sum consideration without values being assigned to the individual assets and liabilities in such sales. For looking at the meaning of word 'undertaking' resort has to be made to Explanation 1 to **Section 2(19AA)**. **Section 2(19AA)** defines "demerger" in relation to companies. Explanation 1 to **Section 2(19AA)** defines "undertaking" to be any part of an undertaking or a unit or division of an undertaking or a business activity taken as a whole but does not include individual assets or liabilities. As per definition of 'undertaking' even any part/division of an undertaking or business activity as a whole can be considered.

2017 - Dec [3] (c)

Memorandum of Association	Articles of Association
1. It is the Charter of the Company which define its objects and powers.	They are the regulation for the internal management of the company and are subsidiary to the memorandum.
2. The memorandum is supreme document of the company.	While the Articles are subordinate to the memorandum.
3. Every company must have its own-memorandum.	A company limited by shares need not have Articles of its own. In such a case Table F applies.
4. The memorandum define the relationship between the company and the outsiders.	While Articles define the relationship between the company and its members.

5. Any act of the company which is ultra vires the memorandum is wholly void and cannot be ratified even by the whole body of shareholders.	Any act of the company which is ultra vires the Articles (but is intra-vires the memorandum) can be confirmed by shareholders.
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Chapter - 8 : Pleadings

2017 - Dec [3] (a)

COMPLAINT

Complaint under **section 2(d)** of the Criminal Procedure Code means any allegation made orally or in writing to Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown has committed an offence, but it does not include a police report.

However, a report made by the police officer in a case which discloses after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint and the police officer making the report as a complainant. In general a complaint into an offence can be filed by any person except in cases of offences relating to marriage, defamation and offences mentioned under **sections 195 and 197**.

A complaint in a criminal case is what a plaint is in a civil case. The requisites of a complaint are:

- (i) an oral or a written allegation;
- (ii) some person known or unknown has committed an offence;
- (iii) it must be made to a Magistrate; and
- (iv) it must be made with the object that he should take action.

FIRST INFORMATION REPORT (FIR)

Section 154 Cr. P.C. 1973 deals with information in cognizable cases.

Section 154 reads:

1. Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction and be read over to the informant and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

2. A copy of the information as recorded under **sub-section (1)** shall be given forthwith, free of cost, to the informant.
3. Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in **sub-section (1)** may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

2017 - Dec [3A] (Or) (i), (ii)

- (i) An affidavit being a statement or declaration on oath by the deponent, is an important document. Therefore, great care is required in drafting it. The consequences of a false affidavit are serious. The following rules should be remembered when drawing up an affidavit:
 1. Not a single allegation more than is absolutely necessary should be inserted;
 2. The person making the affidavit should be fully described in the affidavit;
 3. An affidavit should be drawn up in the first person;
 4. An affidavit should be divided into paragraphs, numbered consecutively and as far as possible, each paragraph should be confined to a distinct portion of the subject;
 5. Every person or place referred to in the affidavit should be correctly and fully described, so that he or it can be easily identified;
 6. When the declarant speaks of any fact within his knowledge he must do so directly and positively using the words "I affirm" or "I make oath and say";
 7. Affidavit should generally be confined to matters within the personal knowledge of the declarant and if any fact is within the personal knowledge of any other person and the petitioner can secure his affidavit about it, he should have it filed. But in interlocutory proceedings, he is also permitted to verify facts on

information received, using the words "I am informed by so and so" before every allegation which is so verified. If the declarant believes the information to be true, he must add "and I believe it to be true".

8. When the application or opposition thereto rests on facts disclosed in documents or copies, the declarant should state what is the source from which they were produced and his information and belief as to the truth of facts disclosed in such documents;
9. The affidavit should have the oath or affirmation written out at the end.

An affidavit has to be drawn on a non-judicial Stamp Paper as applicable in the State where it is drawn and sworn.

An affidavit shall be authenticated by the deponent in the presence of an Oath Commissioner, Notary Public, Magistrate or any other authority appointed by the Government for the purpose.

10. Affidavits are chargeable with stamp duty Under **Articles 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.

(ii) **Execution of decree:** Application for execution of a decree shall be made by a holder of a decree who desires to execute it to the appropriate court which passed it or to the officer appointed in this behalf. In case the decree has been sent to another court than the application shall be made to such court or the proper officer thereof. Application for execution of a decree may be either (1) Oral; or (2) written.

(a) **Oral Application:** Where a decree is for payment of money the court may on the oral application of the decreeholder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgement debtor, prior to the preparation of a warrant if he is within precincts of the court.

(b) **Written Application:** Every application for the execution of a decree shall be in writing save as otherwise provided sub-rule (1) (above) signed and verified by the applicant or by some other person proved to the satisfaction of the court to be acquainted with

the facts of the case, and shall contain in a tabular form the following particulars, namely :

- (a) the No. of the suit;
- (b) the name of the parties;
- (c) the date of the decree;
- (d) whether any appeal has been preferred from the decree;
- (e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;
- (f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;
- (g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross decree, whether passed before or after the date of the decree sought to be executed;
- (h) the amount of costs (if any) awarded;
- (i) the name of the person against whom execution of the decree sought; and
- (j) the mode in which the assistance of the court is required, whether—
 - (i) by the delivery of any property specifically decreed;
 - (ii) by the attachment or by the attainment and sale, or by the sale without attachment, of any property;
 - (iii) by the arrest and detention in prison of any person;
 - (iv) by the appointment of a receiver;
 - (v) otherwise, as the nature of the relief granted may require.

The Court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree. Some High Courts in different States have framed additional rules in this regard may also be taken care by the draftsman or the executing lawyer.

2017 - Dec [6] (a)

Notice of suit under Section 80, C.P. Code against a Public Officer of a State Government or Central Government

Registered with A/D

Dated

The.....20.....

To

.....
(Name & official designation)

P.O.

Dt.

Notice under Section 80 of the Code of Civil Procedure

Dear Sir,

Please take notice that my client..... son of..... residing at.....intends to bring a suit against the (state here the office the intended defendant holds), a Public Officer of the Government of (state the name of the province or simply, of the Government of India, as the case may be) in a competent court of law on the cause of action stated herein-under and for reliefs appearing below:

Cause of action for the intended suit.....

Reliefs sought for.....

Yours faithfully,
Advocate.

Chapter - 9 : Appearances

2017 - Dec [2A] (Or) (ii), (iii)

(ii) Plaint Structure: A suit is instituted by filing a plaint, which is the first pleading in a civil suit. It is a statement of the plaintiff's claim and its object is simply to state the grounds upon, and the relief in respect of which he seeks the assistance of the court.

Order VII of the Civil Procedure Code, 1908 deals with plaint. As per Order VII, R.1 CPC, every plaint must contain the following things:

- (a) the name of the Court in which the suit is brought;
- (b) 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 so allowed or relinquished; and
- (i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits.

(iii) Rule of Adverse inference :

- Its incumbent upon a party in possession of best evidence on the issue involved to produce such evidence and if such party fails to produce the same, an adverse inference is liable to be drawn against such party.
- In the case of ***Ms. Shefali Bhargave v. Indraprastha Appollo Hospital & Anr. 2003 NCJ 787 (NC)***, the Court had held that drawing an adverse inference against a party the Court would be justified in its action.
- Again, it could be equally incumbent upon a party to produce evidence of some expert where the issue involved is complex or difficult one, as for instance matters pertaining to Engineering, Medical Technology, etc.
- Since the Court cannot constitute itself into an Expert body and contradict the claim/proposition on record unless there is something contrary on record by way of expert opinion or there is any significantly acclaimed publication on which reliance could be placed by the Court.

2017 - Dec [5] (b)

- (i) The professional dress for male members will be Navy Blue suit and white shirt with a tie (preferably of the ICSI) or navy blue buttoned-up coat over a pant or a navy blue safari suit.
- (ii) The professional dress for female members will be saree or any other dress of a sober colour with a navy blue jacket.

- (iii) Members in employment may wear the dress/uniform as specified by the employer for all employees or if allowed the aforesaid professional dress.
- (iv) Practising Company Secretaries appearing before any tribunal or quasi-judicial body should adhere to dress code if any prescribed for appearing before such tribunal or quasi-judicial body or if allowed the aforesaid professional dress.

Chapter - 10 : Compounding of Offences

2017 - Dec [2A] (Or) (iv)

Consent Order : Consent Order means an order settling administrative or civil proceedings between the regulator and a person (party) who may prima facie be found to have violated securities laws. Here, Administrative/Civil enforcement actions include issuing directions, suspension or cancellation of certificate of registration, imposition of monetary penalty, pursuing suits and appeals in Courts and Securities Appellate Tribunal (SAT). It may settle all issues or reserve an issue or claim, but it must precisely state what issue or claims are being reserved. A Consent Order may or may not include a determination that a violation has occurred.

Consent Order provides flexibility of wider array of enforcement and remedial actions which will achieve the twin goals of an appropriate sanction, remedy and deterrence without resorting to litigation, lengthy proceedings and consequent delays.

Remedies available with SEBI in case of violation: Violation of consent order by a party (i.e. failure to obey) would invite appropriate action, including for violating SEBI orders, besides revival of the pending action. In this context, any proceeding which had been kept in abeyance pending the consent process will begin from such stage at which it was suspended.

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