

## **LL.B. V Term**

### **Paper : LB – 502 - Drafting, Pleadings, Conveyancing**

**Note:** This is a kind of practical paper, related to purely procedural aspect of the legal profession, wherein it is difficult to explain the concepts theoretically. Depending upon the facts of a particular matter students, in the capacity of a lawyer, would be required to do '**Drafting**' of :

- various applications, petitions and replies etc. of a particular litigation – which constitute part of the court proceedings –falling under '**Pleadings**'; and
- documents, reflecting **conveyance** of property from one person to another person. Depending upon the nature of such dealings/transactions between the parties qua that property nomenclature of such a document is done. This part falls under '**Conveyancing**'.

In this scenario, the students would be required to undertake, under this subject, to do these practical exercises in the class itself under the guidance of their teacher, after recollecting what they have learnt in the other substantive subjects during their LL.B. Course. For that reason, no specific book is being recommended for the present paper. Therefore, keeping in view the nature of this paper, there is no substitute of class – lectures of the present subject.

#### **PURPOSE OF LAW IS TO HAVE PEACE IN THE SOCIETY**

It is needless to emphasize the importance of peace in society, since we cannot enjoy life to its fullest extent without peace. This aspect is further substantiated in terrorist-stricken world of today, where in the agenda of every world leader 'peace' finds top priority. In fact, peace means and exists when there is no dispute. The dispute arises only when a person claims his right over a particular thing and the same is disputed by the other, which creates tension and ultimately leads to breach of peace. Here law plays a very vital and significant role in the society, because through justice delivery system it adjudicates these kinds of disputes, arising out of clash of interests amongst the people.

#### **LAW CAN BE SUBSTANTIVE LAW OR PROCEDURAL LAW**

The law can be substantive law or procedural law. The substantive law is the one which actually decides the rights, liabilities and duties of the respective persons. On the other hand, the procedural law is the one which lays down guidelines as to how to decide those rights, liabilities and duties. In other words, the procedural law lubricates substantive law. It helps in determining the rights, liabilities and duties of the litigants. It is procedural law which puts life into the substantive law by providing remedy for enforcement of those rights and liabilities. In this way, both the branches of law are complementary to each other and at the

same time independent of each other. Indian Penal Code, 1860, Customs Act, 1962, Prevention of Food Adulteration Act, 1954, Sale of Goods Act, 1930, Transfer of Property Act, 1982 and Rent Control Legislations, etc. are the examples of substantive laws, whereas Code of Criminal Procedure, 1973, Code of Civil Procedure, 1908, Indian Evidence Act, 1872, etc. are procedural laws. However, there are certain laws, regarding which, due to the nature of their provisions and the object, for which they were legislated, it is difficult to point out as to whether they are substantive laws or procedural laws. In such cases, on one hand the provision of such a law provides procedure for enforcement of certain rights and at the same time violation of that procedure leads to taking away of that substantive right of the violator. For example, under the Registration Act, 1908 if a particular document, which requires compulsory registration, is not registered then the party to that document, claiming right on the strength of the contents of the said document would not be able to establish his substantive right under that unregistered instrument.

### **PLEADINGS**

It would be beneficial to distinguish between the pleadings and conveyancing. The dictionary meaning of the term 'plead' means 'to state and argue a case'. Therefore, pleading comprises of respective contentions of the parties in a dispute, which are reduced into writing. 'Pleadings', under Civil as well as Criminal Law, meant that to determine what the parties were currently fighting about. Pleading is the beginning stage of a lawsuit in which parties formally submit their claims and defences. In Civil proceedings the plaintiff submits a plaint stating the cause of action -- the issue or issues in controversy. The defendant submits an answer- the reply- the written statement- stating his or her defences and denials. In other words it is nothing but the formal presentation of claims and defences by parties to a lawsuit. Therefore, it includes every legal document filed in a lawsuit, petition, motion and/or hearing, including complaint, petition, answer/reply, rejoinder, motion, declaration and memorandum of points and authorities (written argument citing precedents and statutes).

Hence, the term pleading would be applicable to the Court proceedings including filing of the complaint/plaint, etc., replies thereto and other incidental documents related to the dispute filed by either of the parties. Needless to mention here that, our legal system is adversary legal system wherein there are two contesting parties. One party stakes its claim or right to a particular thing, which is disputed by the opposite side before the Court. Under these circumstances each of the parties in support of its claim files in writing various contentions and submissions in terms of the different provisions under the law before the Court. All these documents constitute pleadings. It is only after the completion of the pleadings that a matter is argued and subsequently the dispute is adjudicated by the Court. Under this part of the subject we would be learning drafting of various kinds of pleadings, as mentioned in the syllabus.

### **CONVEYANCING**

On the other hand the dictionary meaning of the 'conveyance' is 'an act by which property is conveyed or voluntarily transferred from one person to another by means of a written statement and other formalities'. It also means 'instrument' itself. Therefore, the term

conveyancing does not apply to the Court proceedings, rather it is applicable to the instrument, which have been documented not for the purpose of Court proceedings, rather for the purpose of creating evidence of a particular transaction, which may be used before the Court in case of any dispute. So broadly speaking the pleading and conveyancing may be distinguished by simply stating that while the pleadings are applicable to Court proceedings and conveyancing is applicable to the documentation done outside the Court and not meant for the Court proceedings particularly, though they may be used in the Court proceeding, in order to substantiate a particular contention, claim or submission. Under this part of the subject we would be learning drafting of diverse documents, reflecting different kinds of transactions between the parties, as mentioned in the syllabus.

**Prescribed Books:**

1. M.C. Agarwal and G.C. Mogha, *Mogha's The Law of Pleadings in India* (17<sup>th</sup> ed., 2006)
2. M.R. Mallick, Ganguly's, *Civil Court: Practice and Procedure* (13<sup>th</sup> ed., 2005)

**Prescribed Legislation:**

The Code of Civil Procedure, 1908, Orders VI to VIII

**PART - A : DRAFTING PLEADINGS**

I. DRAFTING RULES & SKILLS

II. FORMS OF PLEADINGS

CIVIL PLEADINGS

1. Suit for recovery under Order XXXVII of the Code of Civil Procedure 1908
2. Draft Affidavit
3. Suit for Permanent Injunction
4. Application for Temporary Injunction Under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908
5. Application under Order XXXIX, Rule 2-A of the Code of Civil Procedure, 1908
6. Suit for Ejectment and Damages for Wrongful Use and Occupation.
7. Model Draft Written Statement
8. Caveat under section 148-A of the Code of Civil Procedure, 1908
9. Transfer Petition (Civil) U/s 25 of the Civil Procedure Code, 1908
10. Application for the Execution of Decree

#### MATRIMONIAL PLEADINGS

11. Petition for Restitution of Conjugal Rights under Section 9 of the Hindu Marriage Act, 1955
12. Petition for Judicial Separation under Section 10 of the Hindu Marriage Act, 1955
13. Petition for Dissolution of Marriage by Decree of Divorce under Section 13 of the Hindu Marriage Act, 1955
14. Petition for Dissolution of Marriage by Decree of Divorce under Section 13B(1) of the Hindu Marriage Act, 1955

#### PLEADINGS UNDER INDIAN SUCCESSION ACT, 1925

15. Petition for Grant of Probate in High Court
16. Petition for Grant of Letters of Administration

#### PETITONS UNDER CONSTITUTIONAL LAW

17. Writ Petition under Article 226 of the Constitution of India
18. Writ Petition (Cri.) for Enforcement of Fundamental Rights
19. Caveat for Special Leave Petition
20. Special Leave Petition (Civil) under Article 136 of the Constitution of India
21. Counter Affidavit in Special Leave Petition
22. Special Leave Petition (Criminal ) under Article 136 of the Constitution of India
23. Curative Petition under Article 129, 137,141, 142 of the Constitution of India

#### PLEADINGS UNDER CRIMINAL LAW

24. Application for Regular Bail
25. Application for Anticipatory Bail
26. Complaint under section 138 of the Negotiable Instruments Act, 1881
27. Application under section 125 of the Code of Criminal Procedure, 1972
28. Reply to the Application U/s 125 Cr.P.C
29. Rejoinder to the Reply to the Application under section 125 Cr.P.C.

#### OTHER MISCELLANEOUS PLEADINGS

30. Contempt Petition under Section 11 and 12 of The Contempt of Courts Act, 1971

31. Complaint under Section 12 of Consumer Protection Act, 1986
32. Written Statement to the Complaint under Consumer Protection Act, 1986
33. Petition under section 12 of Domestic Violence Act, 2005
34. Written Arguments in Extradition Matter.

### **PART – B : CONVEYANCING**

#### **Prescribed Book:**

1. J.M. Srivastava and G.C. Mogha, **Mogha's *The Indian Conveyancer*** (13<sup>th</sup> ed., 2004)
2. C.R. Datta and M.N. Das, De Souza's, ***Forms and Precedents of Conveyancing*** (13<sup>th</sup> ed., 1999)

#### **I. COMPONENT PARTS OF A DEED**

#### **II. FORMS OF DEEDS AND NOTICES**

1. Will
2. General Power of Attorney
3. Special Power of Attorney to execute Sale Deed
4. Agreement to sell
5. Sale Deed
6. Lease Deed
7. Mortgage Deed
8. Partnership Deed
9. Deed of Dissolution of Partnership
10. Hire Purchase Agreement
11. Deed of Family Settlement between rival claimants of an Estate
12. Relinquishment Deed
13. Notice under section 106 of The Transfer of Property Act, 1882
14. Notice under section 80 of Civil Procedure Code, 1908
15. Notice under Section 138 of the Negotiable Instruments Act, 1881
16. Reply to Legal Notice under Section 138 of Negotiable Instruments Act, 1881

The forms of pleadings/deeds enlisted above are only illustrative and not exhaustive. The pleadings/deeds are to be drafted on different grounds/facts.

#### **IMPORTANT NOTE:**

1. The topics and cases given above are not exhaustive. The teachers teaching the course shall be at liberty to add new topics/cases.
2. The students are required to study the legislations as amended up-to-date and consult the latest editions of books.



**LB – 502**  
**Drafting, Pleadings, Conveyancing**

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