

CHAPTER 1- GENERAL PRINCIPLES OF DRAFTING AND RELEVANT SUBSTANTIVE RULES

DRAFTING

Drafting relates to making a draft of something. Drafting a document would imply making a rough copy of a document. Drafting requires knowledge of law and required ability to deal with abstract concepts and presence of mind. The company has to enter into various types of agreements with different parties and have to execute various types of documents in favour of its clients, banks, financial institutions, employees and other constituents.

Drafting may be defined as the synthesis of law and fact in a language form. Perfection cannot be achieved in drafting unless the nexus between law, facts and language is fully understood. The essence of legal drafting is the law and the facts of document.

The process of drafting operates in two planes: the conceptual and the verbal. Besides seeking the right words, the draftsman seeks the right concepts. Drafting, therefore, is first thinking and second composing. Drafting, in legal sense, means an act of preparing the legal documents like agreements, contracts, deeds etc.

CONVEYANCING

Technically speaking, conveyancing is the art of drafting of deeds and documents whereby land or interest in land i.e. immovable property, is transferred by one person to another; but the drafting of commercial and other documents is also commonly understood to be included in the expression.

The most common type of documents that illustrate conveyance is a deed of sale, mortgage, lease etc. However, 'Conveyancing', used in relation to drafting deeds, is paradoxical as the term 'conveyancing' has wider use when it is referred in relation to drafting of various other documents like a marriage contract, a will, etc. in which no transfer may be involved.

DRAFTING AND CONVEYANCING

Drafting	Conveyancing
Drafting gives a general meaning synonymous to preparation of drafting of documents	Conveyancing gives more stress on documentation much concerned with the transfer of property from one person to another.
Drafting is a part of documents and it is used in different context of law. i.e. Under General Clauses Act, 1897, The Indian Sale of Goods Act, 1930 or under Companies Act, 2013	Conveyancing is the science of creating validity under a law. i.e. Conveyance as defined in the Indian Stamp Act or Bombay Stamp Act
It is based on the skill in terms of preparing documents and agreements are the most intellectually demanding of all skills for a professional.	It is based on the knowledge of what rights can exist in or over particular kinds of property.
For example - Arbitration Agreement	For example- Sale Deed

CONTRACT AND CONVEYANCING

Contract	Conveyancing
Contract remains to be performed and its specific performance may be sought.	Conveyance passes on the title to property to another person. Conveyance does not create any right of any action but at the same time it alters the ownership of existing right. There may be cases where the transaction may partake both contract as well as conveyance. For example, lease, whereby obligation is created while possession of the property is transferred by lessor to lessee.
Contract is governed by the provisions of the Indian Contract Act, 1872.	Conveyancing is governed by the provisions of Transfer of Property Act, 1882
In the contract each party is bound to perform the promise.	In conveyancing such obligation is not required as the subject matter already passes to the Transferee.

GENERAL PRINCIPLES- DRAFTING OF DEEDS, CONVEYANCING AND OTHER WRITINGS

Key points Corporate Executive should keep in mind-

1. He must read the introductory note or the literature on the subject of the instrument.
2. Note down the important requirements of law which fulfilled complete instrument on the subject while drafting.
3. The facts which should be disclosed in the document cannot be suppressed. Nothing is to be omitted or admitted at random.
4. A company being a legal entity. The document is executed a person duly authorised by the directors by their resolution or by their power of attorney.
5. the format of documents adopted adheres to the customs and conventions in vogue in the business community or in the ordinary course of legal transactions. For any change in the form of such document, use of juridical and technical language should invariably be followed.
6. The order of the draft should be strictly logical. Legal language should be, to the utmost possible extent, precise and accurate. The draft must be readily intelligible to laymen. All the time the draftsman must keep his eye on the rules of legal interpretation and the case-law on the meaning of particular words and choose his phraseology to fit them.
7. Document should be supported by the schedules, enclosures or annexures to the material facts.
8. Use concrete words.
9. Write short sentences.
10. Prepare a outline.

Fowlers' five rules of drafting

1. Prefer the familiar words.
2. Prefer the concrete word avoid abstract words.
3. Prefer the single word avoid synonyms words.

4. Prefer the short word rather than long words.
5. Prefer the Saxon word rather than Roman.
6. Prefer active voice to the passive voice in the drafting of documents.

Other rules

1. Sketch or outline the contents of a document before taking up its drafting. This rule is suggested by Mr. Davidson, a celebrated authority on conveyancing in his book on Conveyancing.
2. Skelton draft and its self-appraisal- The Draftsman should frame "skeleton draft" which should be filled in or elaborated as he proceeds with his work. Once the draft of the document is ready, the draftsman should appraise it with reference to the available facts, the law applicable in the case, logical presentation of the facts.
3. Due care is required in certain documents to ensure it adheres with applicable laws.

Do's	Don'ts
Reduce the group of words to single word	Avoid the use of words of same sound. For example, the words "Employer" and "Employee"
Use simple verb for a group of words	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.
Avoid round-about construction	Negative in successive phrases would be very carefully employed.
Avoid unnecessary repetition	Write "either or both" or express the meaning of the two in other clauses.
Write shorter sentences	Avoid- <ul style="list-style-type: none"> > "And" and "or"; > "Any" and "my"; > "Know" and "now"; > "Appointed" and "Applied"; > "Present" and "Past" tense, > "less than" or "more than" use "not exceeding"
Prefer the active to the passive voice sentences	
Choose the right word	
Know exactly the meaning of the words and sentences you are writing	
Put yourself in the place of reader, read the document and satisfy yourself about the content, interpretation and the sense it carries.	

RULES FOR DRAFTING

- › Use legal dictionary and ordinary dictionary for ascertaining the meaning of the words.
- › Use current meaning of the words, case laws, where such words or phrases have been discussed, could be quoted in reference.
- › Technical words may be used after ascertaining their full meaning, import of the sense and appropriate use warranted by the circumstances for deriving a technical or special meaning with reference to the context.
- › The draftsman should be able to convey his intention to the readers, in the same way as he wishes them to understand.
- › It is always beneficial to use reference of eminent legal experts' work, while interpreting the statute as it will give the readers clear idea and guidance.

IMPORTANT TERMS IN THE DRAFTING

Instrument

1. According to the Farlex dictionary the word instrument is defined as a formal or legal written document; a document in writing, such as a deed, lease, bond, contract, or will. A writing that serves as evidence of an individual's right to collect money, such as a check.
2. Instrument/document is described under different references, cases and provisions under particular law. Some of the examples as follows-
3. Under Section 2(b) of the Notaries Act, 1952, and Section 2(14) of the Indian Stamp Act, 1899 'instrument' means every document by which any right or liability is, or purports to be, created, transferred, modified, limited, extended, suspended, extinguished or recorded.
4. Under General Clauses Act 'instrument' to be understood as including reference to a formal legal writing like an order made under constitutional or statutory authority.
5. 'Instrument' includes an order made by the President in the exercise of his constitutional powers (Mohan Chowdhary v. Chief Commissioner)
6. 'Instrument' includes awards made by Industrial Courts (Purshottam v. Potdar)
7. "Instrument" does not include Acts of Parliament unless there is a statutory definition to that effect in any Act (V.P. Sugar Works v. C.I. of Stamps U.P.)
8. A will is an instrument (Bishun v. Suraj Mukhi)
9. Under section 1 of the Interest Act the word "instrument" in cover a decree (Savitribai v. Radhakishna)

- **'At' 'Near' 'On' 'In the vicinity' and like**

Word 'at' used to a place which is not definite rather than 'in' or 'on'.

- Word 'near' signifies to describe location of building or real estate. It may replace in the sense of 'along' word.
- The word 'on' when used in describing the location of the land with reference to some geographical feature may mean, 'in the vicinity of'.

- The phrase 'in the vicinity' imports nearness to the place designated but not adjoining or abutting on it. The word 'immediate' used to qualify the word 'vicinity'.
- 'Adjoining', 'Adjacent' or 'Contiguous'
In the absence of anything to the contrary indicated by the deed sometimes words may be assumed to have a general meaning in nature i.e. a generally known signification and may not always necessarily have a technical meaning while giving effect to the intention of the parties.
Also at times the description may also be regarded to have a technical meaning unless it is otherwise specified in the deed.
- The word 'adjoining' is not used boundary of the land. It can be conveyed conterminous with the boundary of the adjoining land.
- The term 'adjacent' is not synonymous and "abutting". It may be used on the circumstances of the case.
- Word 'lot' can be used in the technical sense i.e. a lot in a township as duly laid down by the original proprietors. If there are no qualifying words it would be understood to the original place of the city or town.
- The word 'and' is conjunctive, while 'or' used to alternative or disjunctive to indicate substitution.
- The Word 'Subject to' conveying an interest in real property in the deed or agreement, to avoid ambiguity consider all the circumstances and main meaning of word 'subject to' may be departed.
- Use of the terms "excepting, "reserving" and the like
While there is a well-defined distinction between a "reservation" and an "exception" in deed, the use, in the instrument of conveyance, of one or the other of these terms is by no means conclusive of the nature of the provisions. In fact, it may be said that since these two terms are commonly used interchangeably little weight is given to the fact, that the grantor used one or the other. The use of the technical word "exception" or "reservation" will not be allowed to control the manifest intent of the parties, but that such words will be given a fair and reasonable interpretation looking to the intention of the parties, which is to be sought from a reading of the entire instrument, and when their intention is determined it will be given effect, provided no settled rules of law are thereby violated. In cases of doubt, the question will be determined in the light of the subject matter and circumstances of the case, and the deed will be construed, where possible, so as to give it validity.
- 'More or less', 'about', 'estimated' and the like
The words 'more or less' is referred to the particular circumstances involved. The words 'more or less' used to the specified area. The words 'estimated' and 'about' are synonymous with the phrase 'more or less'.
- In construing a description as to the length of a line, the words "more or less" may be deemed to have some meaning so as not to fix the distance absolutely even though they may be often construed as having practically no effect.

OBSERVE ACCURACY AND CLARITY IN THE DOCUMENTS

Informal Agreements

- The agreement is to be interpreted according to the sense used by the party
- Question should reasonably have apprehended that the other party may apprehend them
- If the intention is ambiguous the other party has right to know exact meaning which bear more

than one meaning.

Formal and written Agreements

1. The document should, therefore, contain all the terms and conditions, preceded by recital of all relevant and material facts. Void contradiction, any addition or subtraction or variation in the document.
2. If uncertainty caused the court can examine the facts and surrounding circumstances to which the language of the document may be related, while the second proviso permits evidence of any separate oral agreement on which the document is silent and which is not inconsistent with its terms.
3. The cardinal rule is that clear and unambiguous words prevail over any hypothetical considerations or supposed intention.
4. In case the terms are not unambiguous it is legitimate to take into account the surrounding circumstances for ascertaining the intention of the parties i.e. conditions of the country.
5. In the executory and executed contract format if there is difference between the preliminary contract and final contract, the terms of the latter must prevail.
6. If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the latter clause is to be rejected as repugnant and the earlier clause prevails.
7. The court must interpret the words in their popular, natural and ordinary sense, unless description is different from ordinary meaning of the words and conventional meaning is not same with legal terms.
8. Hardship to either party is not an element to be considered unless it amounts to a degree of inconvenience or absurdity so great as to afford judicial proof that such could not be the meaning of the parties.
9. Adopt common sense approach in mercantile documents. Construction given to mercantile documents years ago, and accepted in the mercantile world should not be departed.
10. Clause should not be superfluous. Give a meaning to every word and part of the document.
11. Description used for particular locality or in business should understand in technical sense.
12. In the general context avoid ordinary grammatical interpretation.
13. Do not consider Antecedent facts or correspondence, or words deleted before the conclusion of the contract.
14. Evidence of acts done under a deed can, in case of doubt as to its true meaning, be a guide to the intention of the parties, when the acts is to be done after the date of instrument.
15. Unless the language of two documents is identical, and interpretation placed by courts on one document is no authority for the proposition that a document differently drafted, though using partially similar language, should be similarly interpreted. However, judicial interpretation of similar documents in the past can be relied on, but as the effect of the words used must inevitably depend on the context and would be conditioned by the tenor of each document such decisions are not very useful unless words used are identical.
16. If the clauses of deed are clear and no contingency arise, do not refer its language in a contradictory manner.
17. The fact that a clause in the deed is not binding on the ground that it is unauthorised cannot *ipso facto* render the whole deed void unless it forms such an integral part of the transaction as to render it impossible to sever the good from the bad.
18. As a general rule of construction of documents, the recitals are not looked into, if the terms of the deed are otherwise clear.

19. In government standard format reference to the deleted words to be given if the clauses are ambiguous. For solving the ambiguity assistance may be derived by looking at the deleted words. If something is added in handwriting or by typewriter to a printed form, such addition should prevail over the language in print.
20. If an alteration by erasure, interlineations, or otherwise is made in a material part of a deed after its execution by, or with the consent of, any party thereto or person entitled thereunder, but without the consent of the party or parties liable thereunder, the deed is thereby made void, but only with prospective effect.

Drafting clarity

Good modern drafting must, achieve both precision and clarity. The points laid out below need to be borne in mind when drafting-

1. Purpose of Document
2. Accuracy
3. Syntax (arrangement of words in sentence)
4. Style
5. Active/ Passive Voice
6. More use of Short Words
7. Use proper Punctuation
8. Layout and Order
9. Legal implications- Doubtful meaning, inherent ambiguity, difficulties in interpretation of documents, difficulties in executing objectives, causing harms to unrelated persons etc.

DEED

A deed is any legal instrument in writing which passes, affirms or confirms an interest, right, or property and that is signed, attested, delivered, and in some jurisdictions sealed. It is commonly associated with transferring title to property. The deed has a greater presumption of validity and is less rebuttable than an instrument signed by the party to the deed. A deed can be unilateral or bilateral. Deeds include conveyances, commissions, licenses, patents, diplomas, and conditionally powers of attorney if executed as deeds.

DOCUMENT

According to the section 3 of the Indian Evidence Act, 1872 states that a "Document" means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used or which may be used, for the purpose of recording that matter.

- Writing is a document;
- Words printed, lithographed or photographed are document;
- A map or plan is a document;
- An inscription on a metal plate or stone is a document;
- A caricature is a document.

Section 3 (18) of the General Clauses Act, 1897, states that a "Document" shall include any matter written, expressed or described upon any substance by means of letters, figures, or marks or by more than one of those means, which is intended to be used or which may be used for the purpose of recording that matter. Documents will also include Electronic records.

VARIOUS KINDS OF DEEDS

There are four basic deed types regularly used to convey property.

- **General warranty deed**

This deed contains covenants of title, which are promises by the grantor that he owns the property and that he is conveying his entire interest to the grantee. The grantor warrants or guarantees against any acts or omissions on his part or on the part of any of his predecessors in title that might undermine the quality of the title and interest conveyed.

- **Bargain and sale deed**

This deed simply recites that consideration (money or something of value) has been paid and purports to convey the described property. The deed contains no express warranties.

- **Quitclaim deed**

This deed operates to release all of the right, title and interest of the grantor in the lands described. It also contains no warranties.

- **Special warranty deed**

This deed also contains covenants of title, but the grantor warrants only against defects that arose through his own acts or omissions, or the acts or omissions of those who hold by, through or under him. Such a deed, therefore, does not warrant against defects or claims against the property that arose prior to the grantor's ownership.

TERMS USED IN THE DEED

- **Deed Pool**

A deed between two or more parties where as many copies are made as there are parties, so that each may be in a possession of a copy. This arrangement is known as deed pool.

- **Deed Poll**

A deed made and executed by a single party e.g. power of attorney, is called a deed poll, because in olden times, it was polled or cut level at the top. It had a polled or clean cut edge. It is generally used for the purpose of granting powers of attorney and for exercising powers of appointment or setting out an arbitrator's award. It is drawn in first person usually.

- **Indenture** - Indenture are those deeds in which there are two or more parties. It was written in duplicate upon one piece of parchment and two parts were severed so as to leave an indented or vary edge, forging being then, rendered very difficult. Indentures were so called as at one time they are indented or cut with uneven edge at the top. In olden times, the practice was to make as many copies or parts as they were called, of the instruments as they were parties to it, which parts taken together formed the deed and to engross all of them of the same skin of parchment.

- **Cyrographum**

This was another type of indenture in olden times. The word "Cyrographum" was written

between two or more copies of the document and the parchment was cut in a jugged line through this word. The idea was that the difficulty of so cutting another piece of parchment that it would fit exactly into this cutting and writing constituted a safeguard against the fraudulent substitution of a different writing for one of the parts of the original. This practice of indenting deeds also has ceased long ago and indentures are really now obsolete but the practice of calling a deed executed by more than one party as an "indenture" still continues in England.

- **Deed Escrow**

A deed signed by one party will be delivered to another as an "escrow" for it is not a perfect deed. It is only a mere writing (Scriptum) unless signed by all the parties and dated when the last party signs it. The deed operates from the date it is last signed. Escrow means a simple writing not to become the deed of the expressed to be bound thereby, until some condition should have been performed.

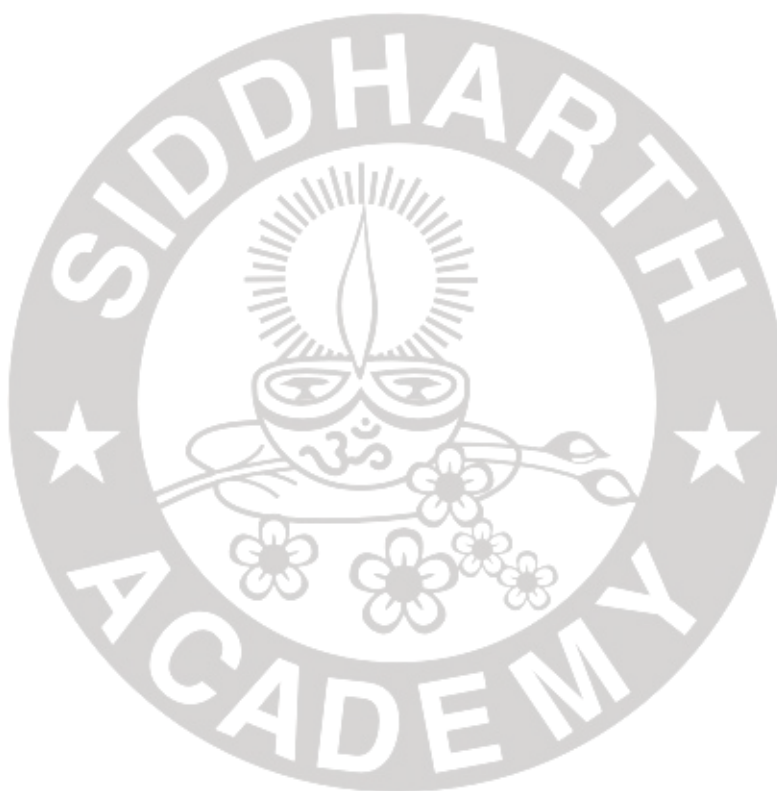
COMPONENTS IN DEEDS

- **Description of the Deed Title-** i.e. 'This deed of sale' or 'This is deed of mortgage' etc.
- **Place and Date of execution of a Deed-** i.e. 'This Deed of Mortgage made on the first day of January, 1986'
- **Description of Parties to the Deed-** Name comes first, and then the surname and thereafter the address followed by other description such as s/o, w/o, d/o, etc. It is customary to mention in India caste and occupation of the parties before their residential address.
- **Recitals-** Recitals begin with the word 'whereas'
- **Testatum-** It is witnessing clause
- **Consideration-** Consideration is important to ascertain stamp duty.
- **Receipt Clause-** i.e. "Now this Deed witnesses that in pursuance of the aforesaid agreement and in consideration of sum of Rs. 100,000/- (Rupees One Lakh Only) paid by the transferor to the transferee before the execution thereof (receipt of which the transferee does hereby acknowledge)".
- **Operative Clause-** i.e. 'Transfer by way of simple mortgage'
- **Description of Property-** Generally mentioned in the schedule of the deed or agreement.
- **Parcels Clause-** Clause starts with the words "All those....." and covers type of property.
- **Exceptions and Reservations-** generally is signified by the use of words "subject to" in deeds, where it is mentioned, it is advisable that both the parties sign, to denote specific understanding and consenting to this aspect.
- **Premises and Habendum-** The clause usually following the granting part of the premises of a deed, which defines the extent of the ownership in the tiling granted to be held and enjoyed by the grantee
- **Covenants and Undertakings-** i.e. "The Parties aforesaid hereto hereby mutually agree with each other as follows:" Such covenants may be expressed or implied.
- **Testimonium Clause-** i.e. "In witness whereof the parties hereto have signed this day on the date above written"
- **Endorsements and Supplemental Deeds-** Endorsement is used to give legal significance to a particular document with reference to new facts to be added in it while Supplemental deed is a document which is entered into between the parties on the same subject on which there is a prior document existing and operative for adding new facts to the document on which the

parties to the document have agreed which otherwise cannot be done by way of endorsement.

STAMPING OF DEED

After approval of draft document by the parties the document is engrossed by appropriate value. In case document is drafted on plain paper but approved without any changes, it can be lodged with Collector of Stamps for adjudication of stamp duty, who will endorse certificate recording the payment of stamp duty on the face of document and it will become ready for execution. If a document is not properly stamped, it is rendered inadmissible in evidence.



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CHAPTER- 6- DRAFTING AND CONVEYANCING RELATING TO VARIOUS DEEDS AND AGREEMENTS-IV

WRITS(SPECIMEN IN ANNEXURE -1)

For enforcement of Fundamental Rights as conferred on the citizens of India and others under the Constitution of India, Article 32 of the Constitution confers on the Supreme Court of India power to issue directions or orders or writs including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the said rights.

Any person can either approach to High Court or to Supreme Court for issuance of any or all the writs (court order) as per facts and circumstances. Basically the purpose of these writs are to safeguard the fundamental rights of public but even for other rights these writs can be issued. Where a fundamental right has been violated then a person can directly approach to Supreme Court under Article 32 of Constitution of India. Under Article 32 and 226 of the Constitution of India the power to issue writs of following nature has been conferred upon both courts.

Habeas Corpus

The term *habeas corpus* (you have the body) is a Latin term derived from the longer phrase used in medieval times, "habes corpus ad subjiciendum". The writ of *habeas corpus* is a remedy available to a person who is confined without legal justification. This is an 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 his detention. This writ has to be obeyed by the detaining authority by production of the person before the Court. Under Articles 32 and 226 of the Constitution, any person may move the Supreme Court and the High Court of competent jurisdiction respectively, for the issue of this writ. The applicant may be the prisoner himself moving the Court or any other person may move the Court on his behalf to secure his liberty praying for the issue of the writ of *habeas corpus*. The principle of *habeas corpus* ensures that a prisoner can be released from unlawful detention that is, detention lacking sufficient cause or evidence. No person can be punished or deprived of his personal liberty except for violation of any law and in accordance with the due process of law. Dis-obedience to the writ of *habeas corpus* attracts punishment for contempt of Court under the Contempt of Courts Act, 1971.

Mandamus

The expression "*mandamus*" means a command. The writ of *mandamus* is, thus, a command issued to direct any person, corporation, inferior Court or Government authority requiring him to do a particular thing therein specified which pertains to his or their office and is further in the nature of a public duty. This writ is used when the inferior tribunal has declined to exercise jurisdiction. *Mandamus* can be issued against any public authority.

The duty sought to be enforced must have two qualities (a) It must be a duty of public nature and (b) the duty must be imperative and should not be discretionary. These two preconditions form the foundation for the issue of *mandamus*. The primary scope and function of *mandamus* is to "command" and "execute" rather than to "enquire" and "adjudicate". It cannot be issued to change the decision of a body so as to suit the petitioner. Obligations which are not of statutory nature cannot be enforced by *mandamus*. The writ petition is not maintainable when a remedy provided for under the Code of Civil Procedure is available.

Prohibition

The writ of prohibition is issued by the Supreme Court or any High Court to an inferior Court preventing the latter from usurping jurisdiction which is not legally vested in it. It compels courts to act within their jurisdiction when a tribunal acts without or in excess of jurisdiction or in violation of rules or law. In other words, a writ of prohibition is an order to a court to cease trying a case. The writ also covers the parties involved in the case, ordering them to cease their activities. The writ of prohibition is available only against judicial or quasi-judicial authorities and is not available against a public officer who is not vested with judicial functions.

Certiorari

The writ of *certiorari* is available to any person whenever anybody of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, acts in excess of its legal authority. The writ removes the proceedings from such body to the High Court in order to quash a decision that goes beyond the jurisdiction of the deciding authority.

This writ operates after the order has been passed in a case without jurisdiction. It's a curative remedy after an illegal order has been passed.

Quo warranto

The meaning of term Quo-Warranto is "What is your authority". The writ is issued to call upon the holder of a public office to show to the court, under what authority he/she is holding that office, which he/she is not entitled to hold. The writ of *quo warranto* is prayed, for an inquiry into the legality of the claim which a person asserts to an office or franchise and to oust him from such position if he is an usurper. The holder of the office has to show to the Court under what authority he holds the office. This writ is issued when:

- (i) the office is of a public and of a substantive nature;
- (ii) the office is created by a Statute or by the Constitution itself; and
- (iii) the respondent must have asserted his claim to the office. It can issue even though he has not assumed charge of the office.

The fundamental basis of the proceedings of *quo warranto* is that the public has an interest to see that no unauthorised person usurps a public office. It is a discretionary remedy which the Court may grant or refuse. When an applicant challenges the validity of an appointment to a public office, it is maintainable whether or not any fundamental or other legal right of such person has been infringed. This writ is intended to safeguard against the usurpation of public offices.

SPECIAL LEAVE PETITIONS (SPECIMEN IN ANNEXURE -2)

"Special leave petition" or SLP holds a prime place in the Indian judicial system. It provides the aggrieved party a special permission to be heard in Apex court in appeal against any judgment or order of any Court/tribunal in the territory of India.

Article 134A of the Constitution of India lays down that every High Court, passing or making a judgement, decree, final order, or sentence, referred to in Clause (1) of Article 132 or Clause (1) of Article 133 or Clause (1) of Article 134, or making of such judgement, decree, final order or sentence, determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in Clause (1) of Article 132, or Clause (1) of Article 133 or, as the case may be, sub-clause (c) of clause (1) of Article 134, may be given in respect of that case.

Where a High Court refused to issue the required certificate to enable an aggrieved party to appeal to the Supreme Court against the judgment, order or sentence awarded by the High Court, the aggrieved party may petition to the Supreme Court for grant of special leave to appeal under Article 136 of the Constitution.

Special Leave petition (SLP) can be presented under following circumstance

1. SLP can be filed against any judgment or decree or order of any High Court /tribunal in the territory of India.
2. SLP can be filed in case the High court refuses to grant the certificate of fitness for appeal to Supreme Court of India.

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.

It has been provided as a “residual power” in the hands of Supreme Court of India to be exercised only in cases when any substantial question of law is involved or gross injustice has been done. It is discretionary power vested in the Supreme Court of India and the court may in its discretion refuse to grant leave to appeal. The aggrieved party cannot claim special leave to appeal under Article 136 as a right but it is privilege vested in the Supreme Court of India to grant leave to appeal or not.

OPINION WRITING

An opinion is a professional's written response to client's instructions to advise in writing. It follows that it must contain advice. Professionals do not advise someone simply by telling them what to do, but supplement it with the basic reasoning behind it. Advising is inextricably bound up with and is part of the mental attitude with which professionals approach opinion writing, with the thinking process that precedes the actual writing of the opinion, and with the writing process itself.

Scope of Legal Opinion

1. Interpretation of statutes or documents.
2. Advise a transaction structure.
3. Opinion for guidance of decision makers in commerce, industry.
4. Opinion for Investors for compliance by Target Companies.
5. Opinion on Foreign Direct Investment.
6. Determining provision for contingent liabilities or determination of contingent assets.
7. Merits or demerits of legal proceedings.
8. Provision for contingent liabilities or Identification of contingent assets.
9. Initiating civil or criminal proceedings.
10. Drafting a pleading.

11. Preparation for trial of arbitral or legal proceeding.
12. Ascertain compliance level for issue of securities and identification of risk factors for investors.
13. Valuation of business.

Drafting of Legal Opinion

Drafting a legal opinion can and should always be split into three processes: The mental attitude, the thinking process and the writing process.

The mental attitude

The mental attitude required to write a good opinion, or give good advice, is that of a practitioner as opposed to an academic. The approach required is a practical approach not an academic approach. The practical approach is something to be developed and acquired, and defining it does not necessarily help. But, the four fundamental principles to remember to develop the right mental attitude at all times are

1. You are dealing with a real situation.
2. The facts are more fundamental than the law.
3. The law is a means to an end.
4. Answer the question.

The Thinking Process

It involves the following stages

1. Read and digest your Instructions- Find out exactly what your instructions are, what is required of you, what the case is about, what are the basic facts and what your client actually wants to know.
2. Answer the primary question- You must have a clear idea of what your client wants to know if you are to address your mind the right issues and give proper advice. Your objective is after all, to tell your client what he or she wants to know.
3. Digest & organise the facts- The first thing to do is to digest and organise the facts. There will be facts in any case which are relevant and pertinent to the case and facts which are not. A legal opinion must focus on the relevant facts, but it may also be necessary to specifically advise that certain things are not relevant. The first stage will be about organising the facts of the case into these categories. It is a matter of personal preference how this is done, but charts and schedules are often useful and a chronology should be a starting point for every fact marshaling exercise.
4. Construct a legal framework- Once the facts are at your fingertips, a legal framework needs to be constructed into which these facts can be logically slotted. Different types of cases will involve different legal frameworks, but whatever the legal issue, the legal opinion must be continuously advising on the strength of the client's position in the case. One question which is implicit in every request for a legal opinion is 'what should be done next?' This should be decided at the planning stage and should inform the legal opinion throughout.
5. Look at the case as a whole- What should also be borne in mind throughout the planning stage is the opponent's case. A legal opinion will be useless if it considers the client's case in isolation. Evidential issues must also be considered. A good legal opinion will always address how a particular factual situation can be proved.
6. Consider your advice- What your client needs is good practical advice, so you should also consider the practical steps that you advise your client to take.

Before you begin writing a legal opinion, you will know exactly what advice you are going to give, why you are giving it and how you are going to present it.

The Writing Process

1. Simply knowing your opinion, knowing the answer, does not mean the writing process is a mere formality. You have to know how to express yourself in an opinion, how to transfer the thinking process on the paper.
2. The legal opinion should be written following a structure. It should be entitled OPINION or ADVICE and contain the title of the case in the heading. The first paragraphs should serve as an introduction to the legal opinion, laying out the salient facts and what you have been asked to advise about.
3. At this point, many legal opinions will set out the main conclusions and advice and the overall opinion. This is good practice as it will encourage focus throughout the legal opinion and the reader will be able to read the following paragraphs knowing where they are leading. A percentage chance of success can be included in this section if appropriate.
4. The subsequent paragraphs should set out your reasons for reaching the legal opinion which you do in the opening paragraphs. This is where the legal structure will come in. Each issue should be taken in its logical order. Each section should include your opinion on that issue and the reasons for it.
5. There are certain rules of structure which ought to be followed for the sake of consistency in legal opinions. One example of these is that liability should be dealt with before quantum in civil claims. If there are two or more defendants take each of the defendant's liability in turn before turning to quantum.

Using the law in Legal Opinion and Writing

1. Have basic understanding with the legal terminology and its meaning.
2. Understand the impact of the legal terms so used in document.
3. Check what any other legal professional would interpret the term.
4. The legal terms should be used very carefully with an understanding the interpretation before court.

SINCE 1997

ANNEXURE- 1

WRIT PETITION

In the High Court of &&&&&&& at &&&&&&&

Civil Original (Extra-ordinary) Jurisdiction

Civil Writ Petition No &&&&&&& of 2013

In the matter of:

JKL S/o &&&&&&& R/o &&&&&&& former employee (Inspector Grade-I) in the Respondent-Company.

&Petitioner

1. XYZ Company Ltd., a company wholly owned by the Govt. of India and having its registered office at &&&&&&& through its Chairman.
2. Managing Director of the above Company

&Respondent

Civil Writ Petition against the order dated &&&&&&& passed by the Managing Director, respondent No. 2 herein, by which the services of the petitioner as an employee of the respondent-company have been terminated.

May it please the Hon'ble Chief Justice of the High Court of &&&& and His Lordship's companion Judges. The Petitioner

MOST RESPECTFULLY SHOWETH:

1. That the petitioner is a citizen of India and is therefore entitled to enjoy all the rights guaranteed by the Constitution of India.
2. That respondent No. 1 is a company registered under the Companies Act, 1956 having its registered office at &&&&&&&
3. That the petitioner was an employee of the respondent-company, having been appointed as a Sub-Inspector Grade-I on &&&&&&& 2013 and he continued to work, earning one promotion also.
4. That on &&&&&&& 2013 respondent No. 2 herein abruptly issued the impugned order dated &&&&& terminating the services of the petitioner and the petitioner came to be relieved of his duties the same day. A copy of the impugned order is annexed hereto and marked as *ANNEXURE-1*.
5. That on a bare reading of the impugned order it becomes clear that the order has been issued on the basis of some alleged misconduct on the part of petitioner, but no inquiry under the relevant rules has been held before the passing of the order.
6. That the petitioner has not committed any act that could be termed to be an act constituting misconduct.
7. The impugned order is being assailed on the following, amongst

PRAYER

7.2 That the principles of natural justice have been contravened by the respondents in not giving to the petitioner any opportunity of being heard.

7.4 That the impugned order is arbitrary and contravenes Article 14 of the

7.6 & & & & & & & & & & & &

8. That the petitioner has not filed any petition other proceedings relating to the matter at this petition in any other court.

In the facts and circumstances stated above the petitioner prays that a direction in the form of a writ of *quo warranto* and *mandamus* or any other appropriate writ be issued quashing the impugned order and reinstating the petitioner in service with all consequential benefits including back wages.

It is further prayed that the respondent be burdened with costs.

PETITIONER

THROUGH

DATED&&&&&&&

COUN

SEL

MR. & & & & & &

The Writ petition must be supported by an affidavit of the petitioner.

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ANNEXURE- 2

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 &&&&&

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

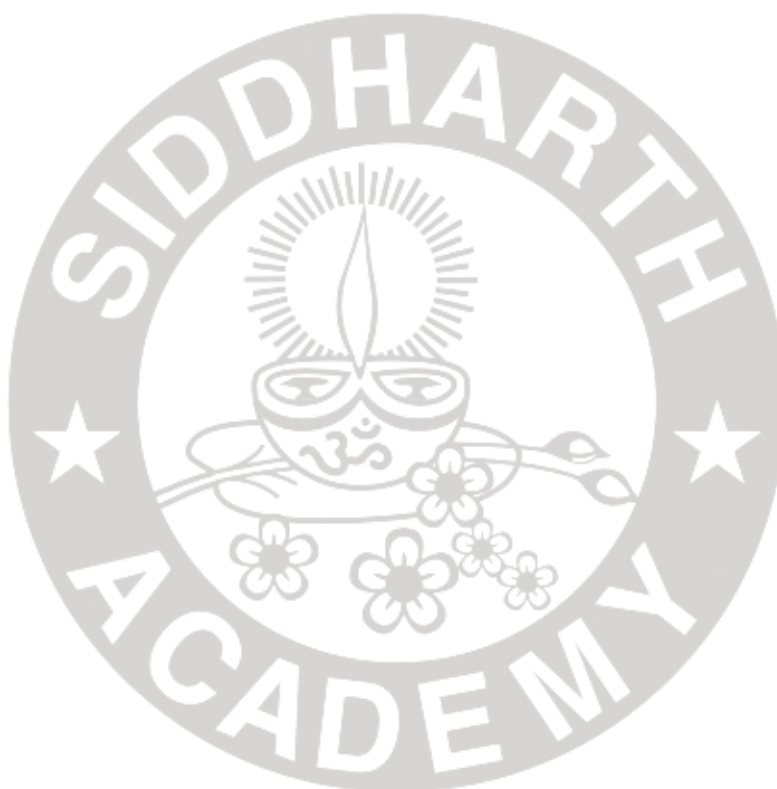
[Here state any other ground that has been taken by the respondents or any of the respondents seeking the relief of winding up of the company from the High Court or any other relief &&&&&&&].

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



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