

UNIT – I

Drafting and the law of pleadings

Facts · Order VI · Particulars · Amendment

Explanatory Lecture Slides

Drafting, Pleading and Conveyance · Clinical-III · Semester IX

DRAFTING, PLEADING AND CONVEYANCE

Topics covered in this unit

01

State the object of pleadings

02

Apply Order VI CPC

03

Distinguish fact, evidence and law

04

Place particulars, verification, signatures

05

Read amendment (O.6 R.17) after the 2002 cut-off

06

Note striking out and embarrassing pleadings

How this unit is organised

01	02	03	04	05	06
Object	Order VI	Fact v evidence	Particulars & verification	Amendment	Strike out

Object of pleadings

To give fair notice of the case, to fix the issues, to stop surprise, to make a decree possible. Odgers / Mogha in one line each is enough; CPC is the law.

- Pleadings are the skeleton of a civil trial. A 10-mark: four objects, one cost of getting them wrong (a dismissed plaint, a barred amendment, a wasted issue).

Object of pleadings

DO

- Notice.
- Fix issues.
- Bind the party.

DO NOT

- Write a novel.
- Hide the real cause.

Order VI — the constitution of a pleading

R.1 definition (plaint and written statement). R.2: facts, not evidence, in a concise form. R.4: particulars of misrepresentation, fraud, breach of trust, wilful default, undue influence. R.6: condition precedent. R.8: contract, implied terms. R.9: notice. R.14 signature. R.15 verification.

- A 16-mark of six rules with one sentence of work each. This is the unit the viva opens on.

Order VI — the constitution of a pleading

R.2

- Material facts, concise, not evidence.

R.4

- Fraud etc. need particulars — a general cry of 'fraud' is nothing.

Fact, evidence, law

Material facts (facta probanda) are pleaded. Evidence (facta probantia) is not. Law is generally not pleaded (the court knows it) except foreign law, a custom, a mixed plea that needs notice (estoppel, limitation as a fact-mix).

- Illustration: 'the defendant signed the note on 1 June' is a fact. 'I will call the attester' is evidence. 'A promissory note is negotiable' is law.

Fact, evidence, law

PLEAD

- The signing.
- The consideration in outline.
- The default.

DO NOT PLEAD

- Who will prove it.
- A textbook of the NI Act.

Particulars, verification, signatures

Fraud without particulars is liable to be struck. Verification: R.15, by the party, with date and place, distinguishing knowledge and information. Signature: party or a recognised pleader. A company: a principal officer who knows.

- False verification is a professional-ethics neighbour (and a s.227 BNS neighbour). Do not let a clerk sign in the party's name.

Particulars, verification, signatures

VERIFY

- What you know.
- What you believe from records, and say so.

NEVER

- A general 'all is true' over a fraud plea you have not particularised.

Amendment — O.6 R.17

At any stage, to determine the real questions. Proviso (2002): no amendment after trial has commenced unless despite due diligence it could not have been raised. Salem Advocate / Revajeetu / Vidyabai: the proviso is real; it is not a wall against a genuine mistake noticed on day one of evidence.

- Never introduce a time-barred cause in the guise of an amendment (a 10-mark with L.J. Leach / K. Raheja lines as your college teaches them).
- Costs can cure prejudice; they cannot cure a new barred claim.

Amendment — O.6 R.17

BEFORE TRIAL

- Liberal, if it is the real dispute.

AFTER TRIAL STARTS

- Due-diligence proviso.

Striking out — O.6 R.16

Scandalous, frivolous, vexatious, prejudice, abuse. A defamation-in-a-plaint that is unnecessary is scandalous. A second suit's replica may be an abuse.

- Use R.16 with O.7 R.11 (reject a plaint) — they are different tools. R.11 is for a plaint that is doomed on its face; R.16 is a scalpel inside a pleading that otherwise lives.

Striking out — O.6 R.16

R.16

- Scalpel.

O.7 R.11

- The door.

Particulars, verification, signatures

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Cases a KSLU answer should name

CASE

Revajeetu Builders v Narayanaswamy

(2009) 10 SCC 84

Amendment: the real controversy, not a new case by stealth.

CASE

Vidyabai v Padmalatha

(2009) 2 SCC 279

The 2002 proviso to O.6 R.17 is mandatory — trial's commencement is the hinge.

CASE

D. Ramachandran v R.V. Janakiraman

(1999) 3 SCC 267

Rejection vs striking: read the plaint as a whole; do not pick a stray line.

Provisions & materials to quote

CPC Order VI rr.1, 2,

The pleading code.

O.7 R.11

Rejection of plaint — the neighbour of R.16.

Limitation Act 1963

A new barred claim will not enter through R.17.

BNS s.227 / old IPC 19

False verification is not a drafting flourish.

Art. 21 / fair trial

Notice of the other side's case is due process in a civil suit too.

10 / 16-mark frames from this unit

Q1

What are pleadings? What are the objects of pleading?

Q2

'Plead facts, not evidence.' Explain with Order VI.

Q3

When can a pleading be amended after the 2002 amendment?

Q4

Write a note on particulars of fraud / verification / O.6 R.16.

Unit recap

- 1 Pleadings exist to give notice and to fix issues.
- 2 O.6 R.2: material facts, concise, not evidence.
- 3 R.4: fraud needs particulars.
- 4 R.17 proviso: after trial starts, due diligence.
- 5 R.16 is a scalpel; O.7 R.11 is the door.