

UNIT – II

The plaint and the written statement

O.7 · O.8 · Set-off · Affidavit

Explanatory Lecture Slides

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

DRAFTING, PLEADING AND CONVEYANCE

Topics covered in this unit

01

Draft the body of a plaint under O.7

02

Apply O.7 R.11 as a defence lawyer

03

Draft a written statement under O.8

04

Place set-off and counter-claim

05

Note non-traverse and implied admission

06

Place the supporting affidavit and IAs

How this unit is organised

01	02	03	04	05	06
Plaint	O.7 R.11	Written statement	Set-off / counter-claim	Non-traverse	Affidavit & IAs

Plaint — Order VII

R.1: name of court, parties, description, cause of action and when it arose, jurisdiction facts, value, relief. R.3: immovable property description. R.7: relief specifically. R.11: rejection. Documents: O.7 R.14.

- A 20-slide unit is useless if you cannot write a cause-of-action paragraph. Formula: duty / right → breach → damage → relief, with dates.
- Jurisdiction: pecuniary, territorial (O.7 R.1(i), ss.15–20), subject-matter. Value for court-fee and for jurisdiction may differ — say so.

Plaint — Order VII

MUST HAVE

- Parties.
- Cause of action with dates.
- Jurisdiction.
- Relief.

DOCUMENTS

- List and produce what O.7 R.14 asks; do not ambush.

O.7 R.11 — the door

Where it does not disclose a cause of action; where it is undervalued and not corrected; insufficient stamp; barred by law; plaint not in duplicate; where a statute so says. Read the plaint a whole (Liverpool & London / D. Ramachandran).

- Limitation as a R.11(d) bar only when it is obvious on the plaint. Mixed questions of fact go to trial.
- A 10-mark of the six clauses with one illustration.

O.7 R.11 — the door

OBVIOUS BAR

- A suit on a face-barred promissory note with no acknowledgment pleaded.

NOT FOR R.11

- A dense fact-fight the defendant wishes would go away.

Written statement — Order VIII

R.1: 30 days, 90 outer (the 2020–22 COVID / 2022 SC story — know the current outer limit your course text teaches). R.2: new facts. R.3: specific denial. R.5: every allegation not denied is taken to be admitted (with the court's discretion for a person under disability).

- A WS is not 'everything is denied'. That is incompetence. Deny the fact you dispute, admit the rest, plead additional facts, then a prayer to dismiss.
- Set up: limitation, want of notice, undervalue, misjoinder, no cause, payment, accord, fraud on the contract.

Written statement — Order VIII

R.3

- Deny specifically, not generally.

R.5

- Silence is admission, unless the court says otherwise.

Set-off and counter-claim

O.8 R.6 legal set-off (ascertainable money, same character, recoverable). Equitable set-off (a connected claim, even un-ascertained). Counter-claim R.6A–G: a cross-suit, court-fee, can survive the plaintiff's death in some cases.

- A 10-mark table: set-off v counter-claim (court-fee, nature, excess, independence).
- Do not counter-claim a title suit into a rent fight without a cause that can stand.

Set-off and counter-claim

SET-OFF

- Shield, same suit, money.

COUNTER-CLAIM

- Sword, a cross-suit, court-fee.

Non-traverse and subsequent pleadings

A evasive denial is no denial (R.4). Replication is not a right in every court; where practice allows, it answers a new WS fact. Do not introduce a new cause of action in a replication.

- O.8 R.9 subsequent pleadings with leave.

Non-traverse and subsequent pleadings

EVASIVE

- 'Not admitted as pleaded' without a positive case — often useless.

REPLICATION

- Answer a new fact; do not rebuild the plaint.

Affidavits and IAs

O.19 affidavits. IAs: temporary injunction O.39, attachment before judgment O.38, appointment of a receiver O.40, amendment, condonation. Every IA is a mini-plaint: facts, grounds, prayer, affidavit.

- A 6-mark specimen: an O.39 R.1–2 notice of motion in six numbered paragraphs.
- False affidavit: ethics + contempt + a prosecution. Do not let the client swear what the clerk drafted in the air.

Affidavits and IAs

IA

- Facts.
- Grounds.
- Prayer.
- Affidavit.

NEVER

- A prayer without a fact.
- An affidavit of information presented as knowledge.

Set-off and counter-claim

O.8 R.6 legal set-off (ascertainable money, same character, recoverable). Equitable set-off (a connected claim, even un-ascertained). Counter-claim R.6A–G: a cross-suit, court-fee, can survive the plaintiff's death in some cases.

- A 10-mark table: set-off v counter-claim (court-fee, nature, excess, independence).
- Do not counter-claim a title suit into a rent fight without a cause that can stand.

Cases a KSLU answer should name

CASE

Dahiben v Arvindbhai Kalyanji Bhanusali

(2020) 7 SCC 366

O.7 R.11 — read the plaint meaningfully; a clever drafting of a barred claim still fails.

CASE

Kailash v Nanhku

(2005) 4 SCC 480

O.8 R.1 timeline — directory / mandatory has a history; know the current outer limit.

CASE

Jai Jai Ram Manohar Lal v National Building Material

(1969) 1 SCC 869

Liberal amendment of a genuine mistake of parties — the old generous face, now read with Vidyabai.

Provisions & materials to quote

CPC O.7 rr.1, 11, 14

Plaint, rejection, documents.

O.8 rr.1–6G

WS, denial, set-off, counter-claim.

O.39 rr.1–2 / O.38 / O

The ordinary IAs.

O.19

Affidavits.

Court Fees Act / Karna

Value the relief; under-stamping is a R.11 door.

10 / 16-mark frames from this unit

Q1

What particulars must a plaint contain? When may it be rejected?

Q2

Explain the rules of denial in a written statement.

Q3

Distinguish set-off and counter-claim.

Q4

Draft (outline) a plaint in a money suit / a WS raising limitation and denial of execution.

Unit recap

- 1 O.7 R.1 is a checklist, not a novel.
- 2 R.11 reads the plaint as a whole for an obvious legal bar.
- 3 O.8 R.3/R.5: specific denial, or you admit.
- 4 Set-off is a shield; counter-claim is a cross-suit.
- 5 Every IA is facts—grounds—prayer—affidavit.