

- b. **Reliance on Opinion of ‘Special’ Counsel:** Considerations similar to those arising in the selection and use of local counsel apply in the retention of special counsel. A lawyer who has no expertise in a specialized matter should not render an opinion in the specialized area, and should refer the matter to a lawyer qualified in that field. The principal opinion giver normally does not furnish an opinion on the same matters as the specialist, even an opinion rendered solely in reliance on the specialist’s opinion. The specialist customarily is retained specifically because the principal opinion giver does not have sufficient expertise to render the opinion in question.

9. Signature

The procedure typically followed by most law firms is for the opinion letter to be manually signed in the name of the firm. Some law firms follow different practices, such as “XY&Z by A, a partner” or “A on behalf of XY&Z.”

10. **Usual disclaimers:** Disclaimers can save the opinion giver from being reported for malpractice if the opinion is wrong. Under the disclaimer, it is written that the opinions provided are based on the law as per the time of drafting the opinion. Moreover, it is also indicated that the opinion is also based on the documents and facts provided. All the documents that the clients provided for the sake of drafting the legal opinion can also be listed.

F. THINGS TO BE KEPT IN MIND WHILE PREPARING FOR OPINION LETTER

Differences between opinion givers and opinion recipients generally arise over (1) the time and expense required to render an opinion on a matter that is peripheral to the primary concerns of the opinion recipient, (2) the appropriate scope of a particular opinion, (3) whether the opinion will cover matters that are essentially factual in nature, (4) whether the opinion will cover matters about which there is some recognized legal uncertainty, and (5) requests for what historically were referred to as “comfort opinions” but are more properly referred to as “negative assurances.”

1. Opinions That Are Not Cost-Effective

Opinion givers are held to certain standards of skill and care in rendering legal opinions. Although the nature and extent of the applicable standards of care are not defined, the opinion giver is obligated to avoid misleading opinion recipients about the scope and depth of any investigation undertaken. Moreover, lawyers are responsible for conducting customary legal and factual diligence in rendering legal opinions. For this reason, rendering an opinion letter is a costly process, even in the context of a relatively straightforward matter or business transaction. In determining whether a particular opinion is appropriate under the circumstances and, if so, what the nature and scope of that opinion should be, the opinion giver must consider the costs of giving the opinion relative to the benefits to the client of satisfying the request of the opinion recipient.

2. Inappropriate Scope

In a business transaction a number of opinions would be considered inappropriate because their scope is not reasonably within the competence of the opinion giver or they are not cost-justified. Examples of such opinions include the following:

- the client is qualified to do business as a foreign corporation in all jurisdictions in which its property or activities require qualification or in which the failure to qualify would have a material adverse effect on the client;
- the client is not in material violation of any central, state or local law, regulation or administrative ruling; and
- the client is not in material violation of any contract, indenture or undertaking to which it is a party or by which it may be bound.

The common characteristic of these examples is that they are essentially open-ended. Requests for opinions of this sort inherently cast into question whether the party requesting the opinion may be effectively seeking legal “insurance” rather than legal “assurance.” an opinion giver may properly refuse to give such opinions.

3. **Confirmations of Fact; Negative Assurance**

Opinion givers should take care that the opinion letter makes a clear distinction between those portions that constitute actual opinions on matters of law and other portions (including confirmations of a purely factual nature) that do not.

Opinion givers generally decline to provide confirmations of purely factual matters. Although often characterized as an opinion, these confirmations in essence ask the opinion giver to express a view not founded on professional competence. The function of a legal opinion is to provide informed judgments on matters of law, not assurance regarding factual statements that the parties to a transaction are in a better position to verify. An opinion giver normally should not be asked to state that it lacks knowledge of particular factual matters. Opinion givers generally should not be asked for opinions on the outcome of pending or threatened claims or legal actions.

4. **Opinions Regarding Issues of Significant Legal Uncertainty**

A fourth common area of disagreement involves legal issues that, although potentially appropriate for inclusion in an opinion, are subject to significant legal uncertainty. If the uncertainty extends only to one of the opinions expressed, the question is frequently resolved by a “qualification” to that opinion. The “qualification” may be a statement that the particular opinion does not cover the effect of a certain law or laws or may identify the uncertainty. Such qualifications are usually acceptable if they relate to demonstrable legal uncertainties.

An opinion giver should not render an unqualified opinion on an issue as to which there is significant uncertainty. If there is disagreement regarding the existence or degree of the legal uncertainty, a compromise is sometimes reached in the form of a “reasoned” opinion. In that situation, the opinion giver does not simply express a legal conclusion but also presents a discussion of relevant statutory and judicial authorities, often (but not always) indicating that the matter is uncertain or “not free from doubt,” and stating a prediction of the likely judicial resolution of the matter if the issue were appropriately presented to a court of competent jurisdiction. By their nature, these opinions can require substantially more time and effort in their preparation than would ordinarily be the case.

Where an issue of legal uncertainty exists, the opinion giver should discuss the matter with its client before agreeing to issue the requested opinion because the opinion may influence the form or even the viability of the business transaction as proposed.

5. **Fraudulent or Misleading Opinions and the Limits of Professional Competence**

A lawyer should not render an opinion that the lawyer knows would be misleading. In addition, a lawyer should not render an opinion based on factual assumptions if the lawyer knows that the assumptions are false or that reliance on those facts is unreasonable. In addition, a lawyer should not be asked to render opinions on matters that are outside his or her area of professional competence. Where an opinion is appropriate but beyond the competence of the opinion giver, then the opinion giver should associate competent counsel to render the opinion. In no event should a lawyer be asked for opinions that are beyond the professional competence of lawyers generally, such as financial statement analysis or valuation.

6. **The Time to prepare Opinion Letter**

Sometimes one may be faced with the necessity of giving an urgent opinion or one when the time is not available to allow one to perform the depth of research one would wish. This may occur because the matter is truly urgent or more often because either the lawyer or professional client has delayed moving for advice until the last possible moment. In such a case one should qualify the opinion with a disclaimer.

Sometimes the reason for urgency might be of one's own making. Even in these circumstances one should not make the mistake of giving a half baked, half thought out opinion over the telephone and promising the written advice at a later date. If the opinion giver is wrong not only will he face considerable embarrassment in correcting his informal opinion but if his client has acted on the faith of it, the opinion giver will have no defence to a claim for damages. Further the desire of opinion giver to make the final opinion accord with his interim one will destroy his objectivity.

G. STANDARDS APPLICABLE TO PREPARATION OF AN OPINION

1. **Generally:** A lawyer is expected to be well informed and to exercise such skill, prudence and diligence as lawyers of ordinary skill and capacity commonly possess and exercise in the performance of the tasks which they undertake. When a matter falls within a recognized area of legal specialty, such as tax or securities law, it is advisable to take that assignment only if it falls within the competence of the professional.
2. **Customary Practice:** An attorney does not ordinarily guarantee the soundness of his opinions and, accordingly, is not liable for every mistake he may make in his practice. He is expected, however, to possess knowledge of those plain and elementary principles of law which are commonly known by well informed attorneys, *and to discover those additional rules of law which, although not commonly known, may readily be found by standard research techniques.*

The opinion preparers should devote the time needed to interpret and apply legal principles relevant to the situation at hand, ascertain (through appropriate inquiry and certificates of officers of the Company) the facts that underlie the opinion, and identify areas of significant uncertainty (if any) in the interpretation and application of legal principles. In certain cases, opinion givers may conclude that it is necessary to conduct research with respect to particular legal principles or to conduct an investigation of the underlying facts relevant to the opinion.

3. **Fraudulent or Misleading Opinions**

An opinion giver may be liable for an opinion that constitutes fraudulent misrepresentation. A lawyer owes a duty to non-clients to refrain from fraudulent misrepresentation. It is generally understood that, regardless of compliance with other standards, and even if an opinion is technically correct, a lawyer should not render an opinion that the lawyer recognizes would be misleading to the opinion recipient.

4. **Ethical Issues Relating to the Provision of Opinions to Non-clients**

A lawyer delivering an opinion letter to a non-client should also consider ethical principles. For example, rendering an opinion to a non-client may conflict with the opinion giver's ethical obligations to maintain the confidences of its client. He should decline to give legal opinion in such cases.

WRITS

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.

The Constitution also confers power on the High Courts to issue certain writs. Article 226 of the Constitution lays down : “Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories, directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III (Fundamental Rights) and for any other purpose”.

Types of Writs

As mentioned in Articles 32 and 226 of the Constitution, writs are in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*. A brief discussion of each is as follows:

Habeas Corpus : The writ of habeas corpus is a remedy available to a person who is confined without legal justification. The words “Habeas Corpus” literally mean “to have a body”. 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. 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 applicant must have a legal right to the performance of a legal duty by the person against whom the writ is prayed. Mandamus is not issued if the public authority has a discretion.

Mandamus can be issued by the Supreme Court and all the High Courts to all authorities. However, it does not lie against the President of India or the Governor of a State for the exercise of their duties and powers (Article 360). It also does not lie against a private individual or body except where the State is in collusion with such private party in the matter of contravention of any provision of the Constitution or of a Statute. It is a discretionary remedy and the Court may refuse if alternative remedy exists except in case of infringement of Fundamental Rights.

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.

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. If abuse of power is apparent this writ may be prayed for as a matter of right and not a matter of discretion. The Supreme Court may issue this writ only in case of Fundamental Rights being affected by reason of the jurisdictional defect in the proceedings. This writ is available during the pendency of the proceedings and before the order is made.

Certiorari : The writ of certiorari is available to any person whenever any body 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.

Quo warranto : 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.

Specimen Form of a Writ Petition

In the High Court of..... at.....

Civil Original (Extra-ordinary) Jurisdiction

Civil Writ Petition No..... of 2018

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 having its registered office at.....
 The respondent-company is wholly owned by the Government of India and is, thus, an instrumentality of State is given in Article 12 of the Constitution.
- 3. That the petitioner was an employee of the respondent-company, having been appointed as a Sub Inspector Grade-I on..... 2018 and he continued to work, earning one promotion also.

- 4. That on..... 2018 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 other,

GROUND

- 7.1 That the petitioner being a permanent employee of the respondent-company, his services could not be terminating without holding an enquiry under the rules applicable to the employees of the company.
- 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.
- 7.3 That the impugned order is otherwise also erroneous and unsustainable, as it does not contain any reason and is a non-speaking order.
- 7.4 That the impugned order is arbitrary and contravenes Article 14 of the Constitution.
- 7.5
- 7.6
- 8. That the petitioner has not filed any petition other proceedings relating to the matter at this petition in any other court.

PRAYER

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.....

COUNSEL

MR.....

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

Special Leave Petitions

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, –

- (a) may, if it deems fit so to do, on its own motion; and

- (b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing 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.

Article 136 of the Constitution confers upon the Supreme Court power to grant special leave to appeal. The Article lays down:

- “(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India.
- (2) Nothing in clause (1) shall apply to any judgement, determination, sentence or order passed or made by any Court or tribunal constituted by or under any law relating to the Armed Forces”.

Section 112 of the Code of Civil Procedure, 1908 keeps the powers of the Supreme Court under Article 136 of the Constitution to grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India, beyond the scope of the provisions of the Code.

Section 112 lays down:

- (1) “Nothing contained in this Code shall be deemed:
 - (a) to affect the powers of the Supreme Court under Articles 136 or any other provision of the Constitution;
 - or
 - (b) to interfere with any rule, made by the Supreme Court, and for the time being in force, for the presentation of appeals to that Court, or their conduct before that Court;

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.
- 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.....
- 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.

GROUNDS

- 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 relevants 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

LESSON ROUNDUP

- The term “opinion” can be defined in a variety of ways, depending upon the context in which it is used. In business transactions, a legal opinion regarding a particular issue is customarily presented in an opinion letter and is widely understood to express the opinion giver’s professional understanding of the legal principles generally applicable to a specific transaction or applicable to a particular aspect of the transaction.
- The primary purpose of a legal opinion is communication of advice to either a lay or professional client. It is therefore of the utmost importance that it is clear and in plain, understandable English. Every word of the legal opinion should be chosen because it communicates precisely the advice which the writer intends to convey.

- There is no form for a legal opinion prescribed by law or rule. Opinion letters, however, have developed a certain uniformity because of their repeated use. In general, a legal opinion will cover the following: (1) introductory matters, such as the date, the identity of the opinion recipient, the role of the opinion giver giving the opinion, and the purpose for which the opinion is given; (2) a general or specific recitation of the documents and other factual and legal matters reviewed by the opinion giver, including in some instances a statement of reliance on various factual assumptions; (3) the legal conclusions expressed in the opinion, and any qualifications to the legal conclusions; (4) matters peculiar to the particular opinion, such as matters relative to opinions of local counsel in other jurisdictions and specific limitations on the use of the opinion; and (5) the signature of the opinion giver.
- The obligation of an opinion giver to exercise diligence in determining the factual and legal bases for an opinion is implicit in every opinion letter.
- Differences between opinion givers and opinion recipients generally arise over (1) the time and expense required to render an opinion on a matter that is peripheral to the primary concerns of the opinion recipient, (2) the appropriate scope of a particular opinion, (3) whether the opinion will cover matters that are essentially factual in nature, (4) whether the opinion will cover matters about which there is some recognized legal uncertainty, and (5) requests for what historically were referred to as “comfort opinions” but are more properly referred to as “negative assurances.”
- 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.

SELF TEST QUESTIONS

1. Discuss the common purposes for which legal opinion are sought.
2. The primary purpose of a legal opinion is communication of advice to a client. Comment.
3. Enumerate the types of legal opinion.
4. What are the things to be kept in mind while preparing for opinion letter?
5. Draft a specimen of writ petition before the high court.

Lesson 11

Appearances and Art of Advocacy

LESSON OUTLINE

- Introduction
- Right to legal representation
- Appellate authorities under the Companies Act, 2013
- Appellate authorities under TRAI Act, 1997
- Appellate authorities under SEBI Act, 1992
- Appellate authorities under the Competition Act, 2002
- Drafting of Affidavit in Evidence
- Arguments on Preliminary Submissions
- Arguments on Merits
- Legal Pleadings and Written Submissions
- Dress Code
- Etiquettes
- Court Craft
- LESSON ROUND UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

A Company Secretary has been recognized under various Acts to appear as an authorized representative before various tribunals/quasi judicial bodies such as National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT), Securities Appellate Tribunal, Competition Commission of India and Competition Appellate Tribunal etc. Apart from being conversant with the provisions of various corporate and other laws, rules and regulations, it is equally important for professionals to possess a professional look and demeanor to project a professional and competent image in the corporate world as well as while appearing before the tribunals and other quasi judicial bodies.

The objective of this study lesson is to acquaint the students with the legal provisions pertaining to appearance before various tribunals/quasi judicial bodies as well as the drafting of written submissions, affidavit of evidence etc. Further the students will also be acquainted with the importance of dress code for professionals, etiquettes and court craft.

INTRODUCTION

The corporate sector has recognized the role of the Company Secretaries as a compliance officer and as a nodal point of contact between the company and its shareholders, debenture holders, depositors, financial institutions and the Government. The Company Secretaries in practice are rendering value added services to corporate sector as independent professionals. Apart from this a Company Secretary can appear as an authorized representative before NCLT, Competition Commission of India (CCI), Securities Appellate Tribunal (SAT), Telecom Regulatory Authority of India (TRAI) and various other Tribunals.

RIGHT TO LEGAL REPRESENTATION

Under the Companies Act

Section 432 of the Companies Act, 2013 dealing with right to legal representation envisages that the applicant or the appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any officer to present his or its case before the Tribunal or the Appellate Tribunal, as the case may be.

Under the TRAI Act

Section 17 of the Telecom Regulatory Authority of India (TRAI) Act, 1997 authorizes Company Secretaries to present his or its case before the Appellate Tribunal. As per the Explanation appended to the Section 'Company Secretary' means a Company Secretary as defined in clause (c) of sub-section (1) of Section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of Section 6 of that Act.

Under the SEBI Act

Securities and Exchange Board of India (SEBI) Act, 1992 under Section 15V permits the appellant either to appear in person or authorise one or more of practising Company Secretaries, Chartered Accountants, Cost Accountants or Legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

Under the Competition Act

Competition Authorities and the companies world over avail services of professionals to guide and advise them on various aspects of competition law. Professionals also assist companies in designing, implementing and maintaining effective competition compliance programmes.

Sections 35 of the Competition Act, 2002 authorises Company Secretaries in practice to appear before Competition Commission of India. Besides, there are a number of concepts and terms such as value of assets, turnover, determination of market, relevant market, geographic market which require active professional involvement and advice. Further, Competition Act, 2002 provides a number of factors to be considered by the Competition Commission of India in determining appreciable adverse effect on competition.

Under Real Estate (Regulation and Development) Act, 2016

As per Section 56 of the Real Estate (Regulation and Development) Act, 2016 a Company Secretary holding certificate of practice can appear before Appellate Tribunal or a Regulatory Authority or Adjudicating Officer on behalf of applicant or appellant as the case may be.

Hence a Company Secretary holding certificate of practice can –

- ✓ Represent a person (promoter) before any real estate regulatory authority for registration of real estate project,

- ✓ Represent a person before real estate appellate tribunal.
- ✓ Represent a person before Adjudicating Officer.

APPELLATE AUTHORITIES UNDER THE COMPANIES ACT, 2013

Constitution of National Company Law Tribunal

As per Section 408 of the Companies Act, 2013, the Central Government constituted Tribunal to be known as the National Company Law Tribunal consisting of a President and such number of Judicial and Technical members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and functions as are, or may be, conferred on it by or under the Act or any other law for the time being in force.

Constitution of Appellate Tribunal

Under Section 410 of the Companies Act, 2013, the Central Government constituted an Appellate Tribunal to be known as the National Company Law Appellate Tribunal consisting of a chairperson and such number of Judicial and Technical Members, not exceeding eleven, as the Central Government may deem fit, to be appointed by it by notification, for hearing appeals against, –

- (a) the order of the Tribunal under the Act; and
- (b) any direction, decision or order referred to in section 53N of the Competition Act, 2002 in accordance with the provisions of that Act.

Appeal from Orders of Tribunal

Section 421 of the Companies Act, 2013 provides that any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.

No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.

Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:

It may be noted that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

On the receipt of an appeal, the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal

Appeal to Supreme Court

As per Section 423 of the Companies Act, 2013 any person aggrieved by any order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of receipt of the order of the Appellate Tribunal to him on any question of law arising out of such order:

It may be noted that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Registrars of Companies

Registrars of Companies (ROCs) appointed under Section 396 of Companies Act, 2013 are vested with the primary duty of registering companies in States and Union Territories and ensuring that such companies comply with statutory requirements under the Act. These offices function as a registry of records, relating to the companies registered with them. The records are available for inspection by the public on payment of the prescribed fee. The Central Government exercises administrative control over these offices through the respective Regional Directors

Regional Directors

The Regional Directors supervise the working of the offices of the Registrars of Companies and Official Liquidators located in different locations in the country. They also maintain liaison between the respective State Governments and the Central Government on matters relating to the administration of the Companies Act. The Regional Directors have been delegated powers to directly take up work and dispose off certain business under the provisions of Companies Act.

APPELLATE AUTHORITIES UNDER SEBI ACT

Appeal to the Securities Appellate Tribunal.

As per Section 15T of the SEBI Act, 1992, any person aggrieved by an order of the Board made under the Act, or the rules or regulations made thereunder; or by an order made by an adjudicating officer under the Act ; or by an order of the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order made by the Board or the Adjudicating Officer or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be, is received by him and it shall be in such form and be accompanied by such fee as may be prescribed.

It may be noted that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

On receipt of an appeal , the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against

The Securities Appellate Tribunal shall send a copy of every order made by it to the Board, or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be the parties to the appeal and to the concerned Adjudicating Officer.

The appeal filed before the Securities Appellate Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

APPELLATE AUTHORITIES UNDER THE INCOME-TAX ACT, 1961

Appeal against the order of the Income-tax Officer lies with the Appellate Assistant Commissioner or the Commissioner (Appeals) or Commissioner of Income-tax. Appeal against the order of the Appellate Assistant Commissioner or the Commissioner (Appeals) can be preferred by the assessee or the income-tax department and such appeal lies with the Appellate Tribunal. Appeal against the order of the Appellate Tribunal by way of reference by the Tribunal can also be preferred by the assessee or the income-tax department and such appeal lies to the High Court. The Order of the High Court on the reference can be challenged either by the assessee

or by the income-tax department by preferring an appeal to the Supreme Court which is the final appellate authority.

Appeal to Commissioner (Appeals)

Section 246 A (1) of the Income-tax Act provides that any assessee aggrieved by any order of an Income-tax Officer, as prescribed in the section may appeal to the Commissioner (Appeals) against such order.

Every appeal against an order specified in sub-section (2) which is pending immediately before the appointed day before a Deputy Commissioner (Appeals) and any matter arising out of or commenced with such appeal and which is so pending shall stand transferred on that day to the Commissioner (Appeals) and the Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was on that day:

Provided that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be re-opened or that he be re-heard.

Appeal by Person Denying Liability to Deduct Tax

Section 248 of the Act states that where under an agreement or other arrangement, the tax deductible on any income, other than interest, under section 195 is to be borne by the person by whom the income is payable, and such person having paid such tax to the credit of the Central Government, claims that no tax was required to be deducted on such income, he may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income.

Appeals to Appellate Tribunals

According to Section 253 of the Act:

- (1) Any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -
 - (a) an order passed by a Deputy Commissioner (Appeals) before the 1st day of October, 1998 or, as the case may be, a Commissioner (Appeals) under section 154, section 250, section 271, section 271A or section 272A; or
 - (b) an order passed by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, after the 30th day of June, 1995, but before the 1st day of January, 1997; or
 - (ba) an order passed by an Assessing Officer under sub-section (1) of section 115VZC; or
 - (c) an order passed by a Commissioner under section 12AA or under clause (vi) of sub-section (5) of section 80G or under section 263 or under section 271 or under section 272A or an order passed by him under section 154 amending his order under section 263 or an order passed by a Chief Commissioner or a Director General or a Director under section 272A;
 - (d) an order passed by an Assessing Officer under sub-section (3) of section 143 or section 147 or section 153A or section 153C in pursuance of the directions of the Dispute Resolution Panel or an order passed under section 154 in respect of such order.
 - (e) an order passed by an Assessing Officer under sub-section (3) of section 143 or section 147 or section 153A or section 153C with the approval of the Commissioner as referred to in sub-section (12) of section 144BA or an order passed under section 154 or section 155 in respect of such order.

Sub-section (2) of the section allows an Income-tax officer, on the direction of the Commissioner, if he objects to any order passed by a Deputy Commissioner (Appeals) before the 1st day of October, 1998 or, as the case may

be, a Commissioner (Appeals) under section 154 or section 250, to appeal to the Appellate Tribunal against the order.

Sub-section 2A lays down that the Commissioner may, if he objects to any direction issued by the Dispute Resolution Panel under sub-section (5) of section 144C in respect of any objection filed on or after the 1st day of July, 2012, by the assessee under sub-section (2) of section 144C in pursuance of which the Assessing Officer has passed an order completing the assessment or reassessment, direct the Assessing Officer to appeal to the Appellate Tribunal against the order.

Sub-section (3) lays down that every such appeal shall be filed within sixty days of the date on which the order sought to be/ appealed against is communicated to the assessee or to the Commissioner, as the case may be.

In accordance with the Sub-section (6) of the Section, an appeal to the Appellate Tribunal shall be in the prescribed form (Form No. 36 and Form 36 A) and shall be verified in the prescribed manner and shall except in the case of an appeal referred to in Sub-section (2) or a memorandum of cross-objections referred to in Sub-section (4) be accompanied by a fee of:-

- (a) where the total income of the assessee as computed by the Assessing Officer, in the case to which the appeal relates, is one hundred thousand rupees or less, five hundred rupees,
- (b) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than one hundred thousand rupees but not more than two hundred thousand rupees, one thousand five hundred rupees,
- (c) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than two hundred thousand rupees, one per cent of the assessed income, subject to a maximum of ten thousand rupees,
- (d) where the subject matter of an appeal relates to any matter, other than those specified in clauses (a), (b) and (c), five hundred rupees.

Statement of the Case to the High Court

Section 256(1) of the Act lays down : "The assessee or the Commissioner may within sixty days of the date upon which he is served with notice of an order under Section 254, by an application in the prescribed form (Form No. 37) accompanied where the application is made by the assessee by a fee of two hundred rupees require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and, subject to the other provisions contained in this Section, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the case and refer it to the High Court.

Provided that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days.

Sub-section (2) of the section lays down that if, on an application made under Sub-section (1) the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, may, within six months from the date on which he is served with notice of such refusal apply to the High Court, and the High Court may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition, the Appellate Tribunal shall state the case and refer it accordingly.

Statement of Case to the Supreme Court

Section 257 of the Act makes provisions for reference of a case by the Appellate Tribunal to the Supreme Court. It lays down: "If, on an application made under Section 256 of the Act, the Appellate Tribunal is of the opinion

that, on account of a conflict in the decisions of High Courts in respect of any particular question of law, it is expedient that a reference should be made direct to the Supreme Court, the Appellate Tribunal may draw up a statement of the case and refer it through its President direct to the Supreme Court.”

Appeal to the Supreme Court

According to Section 261 of the Act, an appeal shall lie in Supreme Court from any judgment of the High Court delivered on a reference made under Section 256 or an appeal made to High Court in respect of an order passed under Section 254 in any case which the High Court certifies to be a fit one for appeal to the Supreme Court.

APPELLATE AUTHORITIES UNDER REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

Real Estate Regulatory Authority

Apart from the day to day implementation of the Real Estate (Regulation and Development) Act, 2016 and the Rules and Regulations made thereunder the immediate responsibility of the Regulatory Authority are:

- a) Registration of the real estate project and the real estate agent;
- b) Extension of registration of the real estate project and its revocation;
- c) Renewal of registration of the real estate agent and its revocation;
- d) As per section 34 the Authority is responsible to maintain a website of records for public viewing of –
 - all projects registered with the Authority including details of projects as specified in the Act and the rules and regulations - to be disclosed on the website;
 - details of promoters with photographs of promoters;
 - details of projects in case of revocation of registration or where any project penalized under the Act;
 - details of agents registered under the Act including his photograph and also of those agents whose registration has been revoked.
- e) As per section 71 the Authority is required to appoint one or more ‘adjudicating officer’ in consultation with appropriate Government.
- f) As per section 85 the Regulatory Authority is required to notify Regulations within 3 months of establishment.
- g) As per section 32 the Regulatory Authority is also required to make recommendations on various matters for the growth and promotion of a healthy, transparent, efficient and competitive real estate sector

Real Estate Appellate Tribunal

The Appellate Tribunal is a quasi-judicial body, which is empowered to hear appeals from the orders / decisions / directions of the Regulatory Authority or the Adjudicating Officer, as the case may be. The form and manner and the fees payable towards filing the appeal and the manner for hearing and disposing the appeal are to be provided by Rules to be made by the appropriate Government.

DIRECTORATE OF ENFORCEMENT

Directorate of Enforcement is a Multi-Disciplinary Organization mandated with the task of enforcing the

provisions of two special fiscal laws – Foreign Exchange Management Act, 1999 (FEMA) and Prevention of Money Laundering Act, 2002 (PMLA).

The main functions of the Directorate are as under

- Investigate contraventions of the provisions of Foreign Exchange Management Act, 1999 (FEMA) which came into force with effect from 1.6.2000. Contraventions of FEMA are dealt with by way of adjudication by designated authorities of ED and penalties upto three times the sum involved can be imposed.
- Investigate offences of money laundering under the provisions of Prevention of Money Laundering Act, 2002 (PMLA) which came into force with effect from 1.7.2005 and to take actions of attachment and confiscation of property if the same is determined to be proceeds of crime derived from a Scheduled Offence under PMLA, and to prosecute the persons involved in the offence of money laundering. There are 156 offences under 28 statutes which are Scheduled Offences under PMLA.
- Processing cases of fugitive/s from India under Fugitive Economic Offenders Act, 2018. The objective of this Act is to provided for measures to deter fugitive economic offenders from evading the process of law in India by staying outside the jurisdiction of Indian Courts and to preserve the sanctity of the rule of law in India.
- Sponsor cases of preventive detention under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) in regard to contraventions of FEMA.
- Render cooperation to foreign countries in matters relating to money laundering and restitution of assets under the provisions of PMLA and to seek cooperation in such matters.

DRAFTING OF AFFIDAVIT IN EVIDENCE – IMPORTANT CONSIDERATIONS

The provisions of Sections 101, 102, 103, 106, 109, 110 and 111 of the Indian Evidence Act must be carefully gone through before one proceeds to draft the affidavit-in-evidence. It is well settled that evidence should be tailored strictly according to the pleadings. No extraneous evidence can be looked into in absence of specific pleadings (*Habib Khan v. Valasula Devi*, AIR 1997 A.P 52). The following must be kept in mind while preparing the affidavit-in-evidence by the parties –

- (i) The best evidence is that of a person who was personally involved in the whole transaction. In case, that person is not available for any reason, then any other person who has joined in his place to make deposition by way of his affidavit.
- (ii) In case, the petitioner himself was involved in the execution of a contract, he should file affidavit-in-evidence.
- (iii) The allegations or charges or grounds relating to facts should be re-produced duly supported by documentary evidence.

It may be noted that in the affidavit in evidence, the position of law or legal provisions or principle of law are not reproduced because the position of law or settled principles of law are not required to be proved by any party and they are deemed to exist and any party can argue and take help of those settled position of law while arguing their case before the Court or Tribunal or Forum and need to be proved by filing an evidence. [Section 5, Indian Evidence Act.]

- (iv) In case, the point or issue pertains to engineering, medical, technology, science or other complex or difficult issues, then the evidence of expert is to be filed in the form of his Affidavit. If necessary, the said witness has to appear before the Forum for the purpose of cross-examination by the counsel for the other party. For example, hand-writing or finger print experts etc.
- (v) Besides the leading evidence on the points raised by the petitioner or by the opposite party in his written

statement/reply, if possible, the party who is filing the affidavit-in-evidence should also file documents, papers or books or registers to demolish the defence or case set up by the opposite party.

- (vi) It is also permissible for any party to bring any outside witness (other than the expert witness) in support of his case if the facts and circumstances of the case so warrant and permitted by the Court/ Tribunal.
- (vii) At the time of tendering affidavit-in-evidence, the party must bring alongwith it either the original of papers, documents, books, registers relied upon by it or bring with it the carbon copy of the same.

It may be noted that only photocopy of any paper or document (in the absence of its reply, original or carbon copy) can not be relied upon and tendered as an evidence.

Evidence, as defined in Section 3 of the Evidence Act, 1872 means and includes—

- (1) all statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry; such statements are called oral evidence;
- (2) all documents including electronic records produced for the inspection of the Court; such documents are called documentary evidence.

Rule of Adverse Inference

No evidence is required of matters which are, either formally admitted for the purposes of the trial, in civil cases, by the pleadings, by answer to interrogatories, by agreement or otherwise and in criminal cases, as regards proof of those documents admitted under Section 294, Code of Criminal Procedure, 1973.

It is 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. The Court will be justified in drawing an adverse inference against that party. [Ms. Shefali Bhargava v. Indraprastha Apollo Hospital & Anr., 2003 NCJ 787 (NC)].

It is equally incumbent upon a party to produce evidence of some expert where the issue involved is a complex or difficult one as for instance, issues pertaining to engineering, medical, technology or science etc. Since the court cannot constitute itself into an expert body and contradict the claim/proposition on record unless there is something contrary on the record by way of expert opinion or there is any significantly acclaimed publication or treatise on which reliance could be based. [Dr. Harkanwaljit Singh Saini v. Gurbax Singh & Anr., 2003 NCJ 800 (NC)].

ARGUMENTS ON PRELIMINARY SUBMISSIONS

Preliminary submissions should primarily confine to the true and correct facts regarding the issue involved and which have been suppressed or not disclosed by the other side in the pleadings. Additionally the provisions of law or legal objections relevant and applicable to the issues involved in the matter should also be mentioned so as to demonstrate that the relief being claimed by the opponent is not eligible to be granted and/or that the relief being claimed by the party being represented by a lawyer/authorized representative should ordinarily be allowed as per those provisions of law. Before incorporating such facts and/or provisions of law in the write-up, a lawyer/ authorized representative should be thorough with the provisions of law and interpretation, thereof, based upon relevant judgments so as to ensure that the submissions being made on behalf of the client are accepted and upheld by the Presiding Officer/Court/Tribunal as the case may be. Thus, for eg., if a claim being opposed by a lawyer/authorized representative is evidently barred by limitation, such an objection should be taken in the preliminary submissions/objections. Such type of submissions/objections should be duly supported by law on the point or by relevant case law/judgments.

ARGUMENTS ON MERITS

Such arguments as relate to the facts pleaded by the parties are termed as arguments on merits. While addressing arguments on merits, a lawyer/authorized representative should carefully point out the pleadings of the parties and the relevant evidence in support thereof, lead by the parties, both oral as well as documentary. A lawyer/ authorized representative should ensure that all or any contradiction in the pleadings of the opponent and the evidence in support of such pleadings are duly pointed out while submitting his/her arguments. Thus, where an agreement/contract of service is pleaded and there is no evidence either oral or documentary on record in support of such an agreement/contract, it should be specifically pointed out that the opponent has failed to prove/establish that such an agreement/contract actually exists or that the same had actually been executed at all. Similarly, where notice is alleged to have been served prior to filing of the case and there is no documentary evidence like postal receipt/courier receipt placed on record by the opponent, it should be pointed out that the opponent has failed to establish that the notice had actually been served. Furthermore, the relevant facts and/or contradictions extracted from the opponent or his/her witness during the course of cross-examination and relating to the factual issues involved in the matter, should be highlighted so as to draw attention of the Court/Tribunal towards such facts/contradictions.

LEGAL PLEADINGS/Written SUBMISSIONS

As already pointed out above, legal pleadings/submissions should be taken under the heading “preliminary submissions/objections”. While taking such plea one should ensure that the legal provisions and/or interpretation, thereof, is very clear and directly applicable to the issues involved in the matter. Thus, where an unregistered agreement/contract forms the basis of a claim set up by a party and such an agreement/ contract compulsorily requires registration under Section 17 of the Registration Act, a legal plea should be taken that since the agreement/contract is not a registered document, the same could not be looked into or relied upon by the Court for the reasons that the same cannot be read in evidence. Similarly, all other legal submissions which go to the root of the controversy and which are sufficient as well as material for adjudication of the issues involved, should be taken in opposition to the claims put forth by the opponent. Some illustrations are as under:

- (i) Suit is not maintainable for want of statutory notice etc.
- (ii) Plaintiff does not disclose cause of action.
- (iii) Plaintiff has no right to sue.
- (iv) Suit barred by principles of res-judicata.
- (v) Suit barred by principles of waiver, estoppel, acquiescence.
- (vi) Suit is barred by special enactment.
- (vii) Court has no jurisdiction.
- (viii) Suit is barred by limitation.
- (ix) Suit is premature, and so on.

Some of these are known technically as ‘special defences’. In a suit based on contract, defendant may admit that he made the contract, but may avoid the effect of admission by pleading performance, fraud, release, limitation etc.

DRESS CODE

In professional life it is important to look presentable because personal appearance counts. How you look can be a major factor in how you are perceived by others. How you look, talk, act and work determines whether you are a professional or an amateur. The way you dress, speaks volumes about who you are as a person and as

a professional. Whenever you enter a room for the first time, it takes only a few seconds for people you have never met to form perceptions about you and your abilities. Your clothes and body language always speak first. So it is important that your image gives people the right impression.

Some of the perceptions people can form solely from your appearance are: your professionalism; your level of sophistication; your intelligence and your credibility. Whether these perceptions are real or imagined, they underscore how your appearance instantly influences the opinions of strangers, peers, and superiors. Being well dressed in a corporate setting can influence not just perceptions, but also promotions.

A dress code is a set of rules governing a certain combination of clothing. Apart from the legal profession, professional dress code standards are established in major business organizations and these have become more relaxed in recent decades. Dress codes vary greatly from company to company, as different working environments demand different styles of attire. Even within companies, dress codes can vary among positions.

Getting dressed for work is to project a professional and competent image. It has been observed that the professionals who do not take the time to maintain a professional appearance or those who have never learned how to dress properly for their chosen field of work, are not being taken seriously by co workers and present the image of not being able to perform satisfactorily on the job.

Guidelines for Professional Dress of Company Secretaries

If you are concerned about your career, you will be more concerned with looking professional than looking cute or trendy. If you look and behave like a highly-trained and well-groomed professional, you will win the respect and honour of your valued clients.

To enhance the visibility and brand building of the profession and ensuring uniformity, the Council of the Institute of Company Secretaries of India has prescribed the following guidelines for professional dress for members while appearing before judicial/quasi-judicial bodies and tribunals:

- (a) 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.
- (b) The professional dress for female members will be saree or any other dress of a sober colour with a navy blue jacket.
- (c) Members in employment may wear the dress/uniform as specified by the employer for all employees or if allowed the aforesaid professional dress.
- (d) 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.

It may be pointed out that any person whether a lawyer, pleader or authorized representative representing a litigant before any Court of law or a Tribunal or any other authority discharging the functions of a Court/a quasi judicial authority, should comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community and a gentleman.

PROFESSIONAL ETIQUETTES

Etiquette is the fine art of behaving in front of others. It is a set of practices and forms which are followed in a wide variety of situations. Many people consider it to be a branch of decorum, or general social behavior. Each society has its own distinct etiquette, and various cultures within a society also have their own rules and social norms.

In today's world of business, professionals need to know how to conduct themselves within the business world. One of the best ways to do so is to practice good professional etiquette. Practicing good

professional etiquette is necessary for professional success in the emerging business scenario which is constantly changing and making the market place more competitive and contestable. Corporates look for those candidates who possess manners, a professional look and demeanor, and the ability to converse appropriately with business colleagues and clients. Though your academic knowledge and skills may be spectacular, but not knowing proper etiquette required to be successful in the professional career could be a roadblock preventing you to achieve success in the professional life and business relationships. Good professional etiquette indicates to potential employers that you are a mature, responsible adult who can aptly represent their company.

Dealing a client with confidence, acting appropriately at business interactions and knowing the proper table manners at a business dinner are just some of the necessary skills today's professionals must have in an increasingly competitive environment, and that will leave a lasting impression – good or bad. Some manners and behaviour remain constant. Nonetheless, other etiquette moments require you to conduct yourself differently than you do when you are with professional colleagues or clients at any business meeting/get-together. It is in these moments that you need to understand the particulars of etiquette. Being corporate professionals, you must practice some basic etiquette tips that would help you to go up the ladder of success in the workplace. These include Dressing Etiquette; Introduction and Greeting Etiquettes; Conversation Etiquette; Communication Etiquettes; Invitation Etiquette and Dining Etiquettes etc.

Dressing Etiquette

With every organization program comes the inevitable question: What do I wear? Knowing what to wear, or how to wear something, is key to looking great in any event.

- Always wear neat and nicely pressed formal clothes. Choose corporate shades while you are picking up clothes for your office wear.
- Ties for men should compliment.
- Women should avoid wearing exposing dresses and opt for little but natural make-ups. Heels should be of appropriate or modest height.
- Men need to keep their hair (including facial hair) neatly trimmed and set.
- Always polish your shoes.
- Keep your nails clean.
- Wear clothes which you are comfortable in and can carry well. This is very important while you are in a business meeting or client presentation.

Handshake Etiquette

Etiquette begins with meeting and greeting. A handshake is a big part of making a positive first impression. A firm shake is an indication of being confident and assertive. The following basic rules will help you get ahead in the workplace:

- Always rise when introducing or being introduced to someone.
- Shake hands with your right hand.
- Shake hands firmly (but not with a bone crushing or fish-limp grip), and with only one squeeze.
- Hold it for a few seconds (only as long as it takes to greet the person), and pump up and down only once or twice.
- Make eye contact while shaking hands.

Communication Etiquettes

- Always speak politely. Listen to others attentively. A good listener is always dear to every client.
- While speaking over telephones, always greet the other person while starting and ending the call.
- Speak only when the other person has finished talking instead of interrupting in between.
- Show interest in what other people are doing and make others feel good.
- Stand about an arm's length away while talking to others.
- Question another person in a friendly, not prying, manner.
- Make eye contact when talking to others.
- Be polite. Avoid foul language, unkind statements, and gossip.
- Keep your conversations short and to the point.
- Maintain your sobriety and politeness even if the client speaks something offensive or rude and avoid replying back in harsh tone/words.

Invitation Etiquette

How you respond to an invitation says volumes about your social skills. It reflects negatively on your manners if your response (or lack of response) to an invitation costs time or money for your host.

- Reply by the date given in the invitation, so that the host or hostess knows what kind of arrangements to make for the event, food is not wasted, and unnecessary expense is eliminated.
- If an RSVP card is not included, respond by calling or sending a brief note.
- If you cancel after initially accepting an invitation, phone your regrets as soon as possible. Send a note of regret following the phone conversation.
- Don't ask for permission to bring a guest unless the invitation states.
- Arrive at the event promptly, but not too early.
- Mingle and converse with the other guests.
- Don't overstay your welcome.
- Extend your thanks as you leave.

Dining Etiquettes

- Always be courteous while official dinners. Offer the seat to your guest first. If you are the guest, be punctual and thank the host for the dinner.
- Wait until you receive your host's signal.
- Initiate conversations while waiting for the food.
- Never begin eating any course until everyone has been served or the host/hostess has encouraged you to do so.
- Chew quietly; don't speak with your mouth full.
- Avoid pointing the knife or fork towards the other person while eating and speaking.
- Allow your guest to select the menu and wine.

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- If something unwanted has gone to your mouth, place the napkin in front of your mouth tactfully and bring it out instead of putting your hand inside the mouth to get rid of it.
- Learn the basic table manners before you go out to dine with a potential client or an important business meet.

That apart, you must pay special attention to the following general etiquettes: Always be punctual at your workplace; During a meeting, turn off your mobile phone or put it on silent mode. It is considered extremely impolite to allow a mobile phone to ring during a meeting and take a call while sitting in a meeting. In case it is a must to receive a phone call, it is best to discreetly excuse yourself from the meeting and take it out into the hall or private area; When in a meeting room, always stand up to greet the seniors if they arrive after you; Try to ignore and overlook funny or embarrassing sounds when in a meeting or official conversation; If you have forgotten somebody's name ask him/her politely saying that you are sorry that you cannot remember the name; Always keep a comfortable distance while conversing with others; Avoid standing or sitting too close to the other person. An arm's length would be ideal to maintain the comfort zone.

COURT CRAFT

Practicing these etiquettes in your professional life, will make a great impact on everyone you are associated with. You must always be conscious that your mannerisms reflect on your professionalism and your company.

Company Secretaries act as an authorized representative before various Tribunals/quasi judicial bodies. It is necessary for them to learn art of advocacy or court craft for effective delivery of results to their clients when they act as an authorized representative before any tribunal or quasi judicial body.

For winning a case, art of advocacy is important which in essence means to convince the judge and others that my position in the case is the proper interpretation. Advocacy/court craft is learned when we enter the practising side of the profession. The aim of advocacy is to make judge prefer your version of the truth.

Apart from the legal side of the profession, advocacy is often useful and sometimes vital, in client interviewing, in negotiation and in meetings, client seminars and public lectures. It is a valuable and lifelong skill worth mastering.

Technical and legal knowledge about the area in which Company Secretaries are acting is essential. Better their knowledge, the better their advocacy skills and the greater their impact. Good advocacy or negotiating skills will not compensate for lack of appropriate knowledge.

Preparatory Points

There are certain basic preparatory points which a Company Secretary should bear in mind when contacted by a client.

- Take minute facts from the client;
- Lend your complete ears to all that client has to say;
- Put questions to the client while taking facts so that correct/relevant facts can be known;
- Convey to the client about exact legal position in context of relief sought by the client;
- Give correct picture of judicial view to the problem posed by the client.

Drafting of Pleadings

Pleadings could be both written and oral. Mastering both the kinds of pleadings is must for effective delivery of results to the clients. Some of the important factors which may be borne in mind while making written pleadings are as under:

- Quote relevant provisions in the petition and excerpts of observations made by the Courts relevant to the point;
- Draft prayers for interim relief in such a manner which though appears to be innocuous but satisfy your requirements;
- Do not suppress facts;
- Highlight material facts, legal provisions and Court decisions, if any;
- State important points at the outset together with reference to relevant provisions/judgements.

If you are opponent

- File your reply to the petition at the earliest opportunity;
- Take all possible preliminary contentions together with reference to relevant law point and judgements;
- Submit your reply to each paragraph of the petition.

If you are for the petitioner

- File your rejoinder upon receiving the reply at the earliest opportunity;
- Meet clearly with the specific points raised by the opponent in the reply affidavit.

Oral Pleadings

Effective oral pleadings are relevant both at the stage of preparation of the case before actual presentation and also at the stage of actual presenting a case before CLB/NCLT or other tribunals. Following aspects could be relevant at both these stages:

- Preparation before presentation of the case;
- Carefully read your petition, provisions of law and judgements;
- Note down relevant points on a separate sheet of paper together with relevant pages of the compilation;
- Keep copies of judgements to be relied ready for the Court and for your opponent(s).

While Presenting Your Case

- Submit a list of citations to the Court Master before opening of case; Start your address with humble note;
- Refer to the order sought to be challenged or reliefs sought to be prayed;
- State brief facts;
- Formulate issues/points, categorise them and address them one by one;
- Take each point, state relevant facts, provisions of law and relevant binding decisions;
- Hand over xerox copies of binding decisions to the Court Master while placing reliance;
- Refer to relevant pages of the compilation, provisions of law and judgements;
- Complete all points slowly but firmly;
- Conclude your arguments by reiterating your points in brief;
- Permit the opponent counsel uninterruptedly. However, if facts are being completely twisted, interrupt depending upon the relevant circumstances;

- Take instructions from client in advance with respect to alternative reliefs.

As Regards Advocacy

Company Secretaries should be able to formulate and present a coherent submission based upon facts, general principles and legal authority in a structured, concise and persuasive manner. They should understand the crucial importance of preparation and the best way to undertake it and be able to demonstrate an understanding of the basic skills in the presentation of cases before the tribunals. They should be able to:

- Identify the client's goals;
- Identify and analyse factual material;
- Identify the legal context in which the factual issue arises;
- Relate the central legal and factual issues to each other;
- State in summary form the strengths and weaknesses of the case from each party's perspective;
- Develop a presentation strategy;
- Outline the facts in simple narrative form;
- Structure and present in simple form the legal framework of the case;
- Structure the submission as a series of propositions based on the evidence;
- Identify, analyse and assess the specific communication skills and techniques;
- Demonstrate an understanding of the purpose, techniques and tactics of examination, cross-examination and re-examination to adduce, rebut and clarify evidence;
- Demonstrate an understanding of the ethics, etiquette and conventions of advocacy.

CONDUCT AND ETIQUETTE

Duty to the Court

- (i) A Company Secretary shall, during the presentation of his case and while otherwise acting before a Court/Tribunal, conduct himself with dignity and self-respect. He shall not be servile and whenever there is proper ground for serious complaint against a judicial officer, it shall be his right and duty to submit his grievance to proper authorities.
- (ii) A Company Secretary shall maintain towards the Courts a respectful attitude, bearing in mind that the dignity of the judicial office is essential for the survival of a free community.
- (iii) A Company Secretary shall not influence the decision of a Court by any illegal or improper means. Private communications with the judge relating to a pending case are forbidden.
- (iv) A Company Secretary shall use his best efforts to restrain and prevent his client from resorting to sharp and unfair practices or from doing anything in relation to the Court, opposing counsel or parties which the Company Secretary himself ought not to do. A Company Secretary shall refuse to represent the client who persists in such improper conduct. He shall not consider himself a mere mouthpiece of the client, and shall exercise his own judgment in the use of restrained language in correspondence, avoiding scurrilous attacks in pleadings, and using intemperate language during arguments in Court.
- (v) A Company Secretary shall not enter appearance, act, plead or practice in any way before a Court/Tribunal or any other Authority, if the sole or any member thereof is related to the Company Secretary.
- (vi) A Company Secretary shall not appear in or before any Court or Tribunal or any other Authority for

or against an organization or an institution, society or corporation, if he is a member of the Executive Committee of such organization or institution or society or corporation.

- (vii) A Company Secretary should not act or plead in any matter in which he is himself pecuniarily interested.

Duty to Client

- (i) A Company Secretary shall not ordinarily withdraw from engagements once accepted, without sufficient cause and unless reasonable and sufficient notice is given to the client.
- (ii) A Company Secretary shall not accept a brief or appear in a case in which he has reason to believe that he will be a witness and if being engaged in a case, it becomes apparent that he is a witness on a material question of fact, he should not continue to appear if he can retire without jeopardizing his client's interest.
- (iii) A Company Secretary shall at the commencement of his engagement and during the continuance thereof, make all such full and frank disclosures to his client relating to his connection with the parties and any interest in or about the controversy as are likely to affect his client's judgment in either him or continuing the engagement.
- (iv) It shall be the duty of a Company Secretary to fearlessly uphold the interest of his client by all fair and honourable means without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence.
- (v) A Company Secretary shall not at any time, be a party to fomenting of litigation. A Company Secretary shall not act on the instructions of any person other than his client or his authorized agent.
- (vi) A Company Secretary shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client.

Duty to Opponent

- (i) A Company Secretary shall not in any way communicate or negotiate upon the subject-matter of controversy with any party represented by an Advocate except through that Advocate.
- (ii) A Company Secretary shall do his best to carry out the legitimate promise/ promises, made to the opposite-party.

Important Principles

Some of the important principles of advocacy a Company Secretary should observe include:

1. Act in the best interest of the client;
2. Act in accordance with the client's wishes and instructions;
3. Keep the client properly informed;
4. Carry out instructions with diligence and competence;
5. Act impartially and offer frank, independent advice;
6. Maintain client confidentiality.

Advocacy Tips

Some of the tips given by legal experts which professionals like Company Secretaries should bear in mind while

appearing before Tribunals or other quasi-judicial bodies are given herein below. They say while pleading, a judge in your pleadings looks for:

- (i) Clarity: The judge's time is limited, so make the most of it.
- (ii) Credibility: The judge needs to believe that what you are saying is true and that you are on the right side.
- (iii) Demeanour: We don't have a phrase "hearing is believing". The human animal which includes the human judge, is far more video than audio. The way we collect most of our information is through our eyesight.
- (iv) Eye contact: While pleading, maintain eye contact with your judge.
- (v) Voice modulation: Voice modulation is equally important. Modulating your voice allows you to emphasize the points you want to emphasize. Be very careful about raising your voice. Use your anger strategically. But use is rarely. Always be in control of it.
- (vi) Psychology: Understand judge's psychology as your job is to make the judge prefer your version of the truth.
- (vii) Be likeable. At least be more likeable than your opponent. If you can convert an unfamiliar Bench into a group of people who are sympathetic to you personally, you perform a wonderful service to your client.
- (viii) Learn to listen.
- (ix) Entertain your judge. Humour will often bail you out of a tough spot.

LESSON ROUND-UP

- A Company Secretary can act as an authorized representative before NCLT, Competition Commission of India (CCI), Securities Appellate Tribunal (SAT), Telecom Regulatory Authority of India (TRAI) and various other Tribunals/quasi judicial bodies.
- The provisions of Sections 101, 102, 103, 106, 109, 110 and 111 of the Indian Evidence Act must be carefully gone through before one proceeds to draft the affidavit-in-evidence. It is well settled that evidence should be tailored strictly to the pleadings. No extraneous evidence can be looked into in absence of specific pleadings.
- It is 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.
- Preliminary submissions should primarily confine to the true and correct facts regarding the issue involved and which have been suppressed or not disclosed by the other side in the pleadings.
- Legal pleadings/submissions should be taken under the heading "preliminary submissions/objections". While taking such plea one should ensure that the legal provisions and/or interpretation thereof, is very clear and directly applicable to the issues involved in the matter.
- How you look can be a major factor in how you are perceived by others. How you look, talk, act and work determines whether you are a professional or an amateur.
- Some of the perceptions people can form solely from your appearance are: your professionalism; your level of sophistication; your intelligence and your credibility.
- Besides legal profession, professional dress code standards are established in major business organizations and these have become more relaxed in recent decades.

- To enhance the visibility and brand building of the profession and ensuring uniformity, the Council of the Institute of Company Secretaries of India has prescribed guidelines for professional dress for members while appearing before judicial/quasi-judicial bodies and tribunals.
- Practicing good professional etiquette is necessary for professional success in the emerging business scenario which is constantly changing and making the market place more competitive and contestable.
- Corporate professionals must practice some basic etiquettes tips that would help them to go up the ladder of success in the workplace. These include dressing etiquette; introduction and greeting etiquettes; conversation etiquette; communication etiquettes; invitation etiquette and dining etiquettes etc.
- For winning a case, art of advocacy is important which in essence means to convince the judge and others that my position in the case is the proper interpretation. Art of advocacy/court craft is learned when we enter the practising side of the profession.
- There are certain basic preparatory points which a Company Secretary should bear in mind when contacted by a client.
- Company Secretaries should be able to formulate and present a coherent submission based upon facts, general principles and legal authority in a structured, concise and persuasive manner. They should understand the crucial importance of preparation and the best way to undertake it.

SELF-TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation)

1. Explain the Appellate Authorities under the Companies Act and SEBI Act.
2. Explain the general rules of drafting in respect of applications and petitions.
3. What are the important considerations to be kept in mind while drafting a reply/written statement?
4. Explain the important considerations while drafting Affidavit in Evidence.
5. What is a dress code and what is its significance for professionals in the changing global scenario?
6. What is meant by etiquette? Why practicing good professional etiquette is necessary for professional success?

PRACTICAL EXERCISES

For the information of the students it may be mentioned that most of the practical exercises have been covered at relevant places in the study material. Only those exercises which have not been covered elsewhere in the study material have been given hereunder.

Notice to Quit Premises Held by Monthly Tenancy by Landlord to Tenant

Dear Sir,

Under instructions from my client A. B. of etc., your landlord, you notice to quit deliver to him on the 16th day after expiry of 15 full days from the date of receipt of this notice by you and handover possession of (description of premises) situate at..... held by you of him as a monthly tenant.

Dated the day of 20

Signed

Advocate for

To

(Name and address of Tenant)

Notice of determination of a tenancy-at-will on behalf of the landlord

(Under section 106 of T.P. Act, 1882).

Dated

The20....

To

The

.....

Dear Sir,

Under instructions from my client (name, description and address) I call upon you to deliver up possession of the premises, detailed below, within 30 days hereof which you now hold of my client as a tenant.

2. In default of your compliance your occupation of the premises, after the period allowed hereinabove, will be wrongful and an act of trespass and you will be liable to pay damages to my client at the rate of Rs.....per each day of your wrongful occupation of the same till you are ejected therefrom and that my client will sue you for your eviction and for recovery of damages.

3. A copy of this notice is being kept in my office for future use, if necessary. Schedule of premises.

Yours faithfully

Notice by Tenant to His Landlord to Determine the Tenancy

Dear Sir,

Under instructions from my client A. B. of etc., your tenant, I hereby give you notice that in pursuance of a power contained in the lease dated..... day of made between you of the one part and the said A. B. of the other part, it is his intention to determine the said lease with the expiry of the 15th day from the date of receipt of the legal notice by you and that he shall deliver up to you the possession therein comprised on the next day after such 15th day.

Dated.....day of.....

Signed.....

Advocate for the said A.B.

(C.D. landlord).

Notice of suit under s. 80, C.P.C. for suing the State Government :

Notice to the Collector of a district

(Simple Form)

Notice under s. 80, C.P. Code

Registered with A/D

Dated.....

The..... 20...

To

The Collector of the District of.....

P.O.....

Dt.....

Sir,

Under instructions from my client Sri....., son of....., by caste..... by occupation....., residing at.....P.O.....P.S.....Dt..... I give you this notice under s. 80, C.P.C. and state that my aforesaid client intends to sue the Government of West Bengal (or, name the State) on expiry of two months, after service of this notice, on the cause of action and for reliefs appearing hereinbelow :

- (a) Cause of action (give in brief/acts giving rise to cause of action).
- (b) Reliefs claimed (give here reliefs which the plaintiff would sue for).

Yours faithfully,

Notice of suit under s. 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 s. 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.

Notice on behalf of the vendee to comply with terms of agreement for sale with threat of suit for specific performance of contract

Dated

The 20.....

Registered with A/D

To

Sri

(Name and address of the vendor)

Sir,

Under instructions from my client Sri.....son of residing at.....I hereby give you this notice as follows:

You contracted by executing on..... a Bainanama to sell to my client your property described in the Schedule below at a total consideration of Rs.....and took from my client a sum of ₹..... as advance on the occasion of execution of the said Bainanama. You agreed therein to complete the sale on accepting from my client the balance of consideration money within.....

My client had tendered to you the balance of the consideration onand required you to complete the sale. You did not accept the money and have been avoiding compliance with the terms of the agreement. My client was always willing and is so even now to complete the purchase by payment of the balance of the consideration subject to performing your part of the said agreement (Bainanama).

Take notice that you are requested to complete the sale of the said property by executing a proper deed in favour of my client after accepting from him the balance of the consideration money within..... and register the same.

In default, my client shall sue you in a court of law for specific performance of the said contract.

Schedule

Yours faithfully,

Application under section 5 of the Limitation Act for condonation of delay in preferring an appeal

In the High Court at Calcutta

(Civil Appellate Jurisdiction)

In the matter of No.....of 20.....

A.B. Versus C.D.

And

In the matter of an application under s. 5 of the Limitation Act for condoning delay in filing the appeal

And

In the matter of

A.B.Appellant-Petitioner

Versus

C.D.Opposite-Respondents

E.F.

Valued at Rs.....

To

The Hon'ble Mr..... Chief Justice and His companion Justices of the said Hon'ble Court

The humble petition of the petitioner above-named

Most respectfully showeth:

- 1. | (State the facts of the case and subject-matter leading upto filing of the appeal on)
- 2. |
- 3. The appeal is out of time by days. Your petitioner has filed a petition under Or. 43, r. 3A(1), C.P.C. along with memo of appeal.
- 4. That your petitioner could not prefer the appeal because of..... Your petitioner submits that there was sufficient cause namely,..... for which the appeal could not be preferred in time.

In the premises aforesaid it is humbly prayed that Your Lordships would be pleased to issue a Rule on the Respondent to show cause why the delay in filing the appeal should not be condoned.

And, on hearing the cause shown, if any, to make the Rule absolute.

Petition for grant of probate of a will

(Under s. 276 of the Indian Succession Act 1925)

In the Court of the District Judge/District Delegate

at.....

Act 39 of 1925 Case (Or. Misc. Judicial Case) No.of 20.....

A.B. son of C.D.

(State here description and address)

..... Petitioner.

In the matter of grant of a probate of the will of E.F., deceased, under s. 276 of the Indian Succession Act.

The above-named petitioner states as follows:

- 1. That E.F., since deceased ofP.S. Dist.....died at his residence at.....

on.....(date of death) and the writing annexed, in sealed cover, is his last will, duly executed by the deceased on.....

2. That the petitioner was named as the executor in the said will.
3. That the amount of assets which is likely to come to the petitioner’s hand is estimated at Rs.....as described in Schedule ‘A’ below (when necessary – and the amount of debts are shown in Schedule ‘B’ below).
4. That the said deceased left behind the following relations, besides the petitioner :

- | | | | |
|--------------------------|----------|--|------------------|
| (i) G..... Son of | | | |
| (State residence) | Brother | | |
| (ii) H..... widow of | | | of the deceased. |
| (State residence) | Widow | | |
| (iii) M..... Daughter of | | | |
| (State residence) | Daughter | | |

5. That at the time of his death the deceased had his fixed abode at..... (or the deceased had his immovable properties at village – P.S. – Dist.-) within the jurisdiction of this court.
6. That to the best of the petitioner’s belief no application has been made to any other court for a probate of the said will (see s. 279 of the Indian Succession Act).
7. (Where necessary) That the petitioner has paid off Estate Duty on the estate of E.F. – deceased.

The petitioner, therefore, prays that the court may be pleased to grant to the petitioner probate of the said will of the deceased.

Verification

I, (A.B.), the petitioner in the above petition, declare that statements made in paras 1 to 7 hereinabove are true to my knowledge and belief and I sign this verification this theday of 20..... at the Bar Library, (place) (see s. 280 of the Indian Succession Act).

A.B.

I, Sri.....one of the witnesses to the last will of E.F. deceased, declare that I was present and saw the said testator affixing his signature in the said will. (See s. 281 of the Indian Succession Act).

Schedule ‘A’

(State here assets likely to come to the hand of the executor).

Schedule ‘B’

(State here liabilities, debts, if any – where necessary).

Petition for Letters of Administration (without will annexed)

(Under s. 278 of the Indian Succession Act 1925).

In the Court of the District Judge/District Delegate at.....

Act 39, 1925 Case No.....of 20.....

In the matter of grant of Letters of Administration to the estate of A.B.– deceased.

1. That A.B., lately of.....P.S.Dist.died on.....at..... within the jurisdiction of this court.

2. That the deceased left behind him the following near relations or next of kin besides the petitioner.

- (a) |
- (b) | (Name and residence) (State relationship with the deceased).

3. That the petitioner being the only son is entitled to grant of letters of administration to the estate of the said A.B. – deceased.

4. That the amount of assets which are likely to come to the petitioner’s hand is Rs.as shown in Schedule A below and the amount of (on the property) liabilities of the deceased is shown in Schedule B below.

5. That the deceased had his fixed place of abode at.....within the jurisdiction of this court.

6. That the deceased died intestate and to the best of the petitioner’s belief no application has been made for letters of administration to the estate of the deceased.

Your petitioner, therefore, prays that letters of administration to the estate of A.B. may be granted to the petitioner.

Schedule ‘A’

(State here particular of property)

Schedule ‘A’

(State here particular of assets)

Petition for Letters of Administration (with will annexed)

(Under s. 278 of the Indian Succession Act 1925).

In the Court of the District Delegate/Munsiff (Sadar) at.....

Act 39. Case No.20.....

Applicants :

- (1) A.B. son of E.F.

of.....

P.S. Dist.

In the matter of grant of Letters of Administration with the will annexed, of the estate of G.H. – deceased, under s. 276 of the Indian Succession Act.

The above-named applicants beg to state as follows :

1. That G.H. died at her residence at.....Town on the day of 20..... and that the writing annexed is her last will and testament, which was duly executed by her.

2. That by the said will, G.H. made a scheme for worship of an idol “Sree Sree Radha Govinda Vighraha” and bequeathed properties in Schedule A below to the deity and by the said will constituted the applicants as joint shebaites of the said deity. The applicants since after death of the said G.H. have been discharging their duties as shebaites.

3. That by the said will the said G.H. bequeathed her dues, from the State of West Bengal, as compensation for vesting of her intermediary rights in equal shares to her three daughters, P.W. and R.

4. That the amount of assets, which are likely to come to the applicants’ hands is Rs. 14,157 as shown in Schedule B below.

5. That the deceased left no debts.
6. That the applicants are sons of the deceased. That no executor having been appointed by the said will, the applicants apply for letters of administration with the will annexed.
7. That the testatrix left behind her the following near relations, besides the applicants:

(1) M	Sons.
(2) N	
(3) O	

(State here description and address).

(4) P	Daughters and Legatees.
(5) Q	
(6) R	

(State individual description and respective address).
8. That the deceased, at the time of her death, had her fixed residence at..... within the jurisdiction of this court.
9. That to the best of the applicants' belief, no application has been made to any other court for letters of administration of the said estate.
10. (Where necessary) That the Estate Duty on the estate of the late G.H. has been duly paid.

The applicants, therefore, pray that the court may be pleased to grant to them letters of administration with the will annexed to the estate of the said deceased.

Verification

I, A.B., applicant No. 1, declare that the above statements contained in paras 1 to 9 are true to my knowledge and I sign this verification this the day of May, 1981, at.....

Dated.....

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

Sd/-

I, Sri.....one of the witnesses to the last will and testament of the testatrix mentioned in the above application, declare that I was present and saw the said testatrix affixed her signature thereto.

Sd/

Application for appointment of a Receiver (in a partition suit)

(Under Or. 40, r. 1 of the Code of Civil Procedure).

In the Court of the Asst. District Judge.....

Title Suit No.....of 20...

A.B. Plaintiff.

Versus

C.D. and 10 others Defendants.

Petition under Or. 40, r. 1 of C.P. Code

The above-named plaintiff states as follows:

1. That the plaintiff is the owner of .66 acres of land (vide Schedule "C" of the plaint) by purchase by a registered Kobala from Defendant No. 2, a co-sharer of the holding.
2. That the said land in Schedule C is separated from the rest of the holding by clear and defined boundaries and is so mentioned in the plaintiff-petitioner's title deed.
3. That the plaintiff has been in possession thereof. All the defendants excepting Defendants No. 5 to 8 have submitted a joint written statement confirming plaintiffs possession over the "C" Schedule land.
4. That Defendants No. 5 to 7 are denying the plaintiff's possession. The plaintiff has sought for relief of partition in the above suit.
5. That for undue interference by Defendants No. 5 to 7, the plaintiff apprehends breach of peace and molestation if cultivation by the plaintiff is resorted to. On the contrary, the plaintiff would lose crops if the land is not cultivated and tilled immediately.
6. That in the circumstances of the case, a Receiver should be appointed for bringing the land in Schedule C under cultivation and to reap and harvest the future crop under the court's orders, even if the said Defendants No. 5 to 7 claim falsely possession over the land in Schedule C.

Affidavit

I, A.B.aged.....years, son of late.....by caste Hindu, by occupation –agriculturist, residing at village P.S. Dist. solemnly declare and affirm as follows :

- (a) That I am the plaintiff of the above numbered title suit. I know facts of the case and I am competent to swear this affidavit. This is true to my knowledge.
- (b) That the contents in paras 1 to 6 herein above are true to my knowledge.

Declared by Sri A.B., before the Commissioner of Affidavits.

Declarant is identified by me:

Petition for appointment of a guardian of a minor

In the Court of the District.....

Misc. (Guardianship) Case No.of.....

(Or. Act VIII Case No. of 20.....).

In the matter of appointment of Guardian of

(A)		Minors.
(B)		
(C)		

Under s. 10 of the Guardians and Wards Act

And

In the matter of 'X', widow of late.....

by caste Muslim,

residing at village.....

P.S..... Dt.....

.....Petitioner.

The humble petition of the aforesaid petitioner respectfully sheweth:

1. That A.B. and C, sons of late "D", ordinarily residing at VIII..... P.S. Districtwithin the jurisdiction of this court, were born respectively in..... B.S..... B.S..... B.S. and by religion are and by sex are.....

2. That the said minors are entitled to certain property; nature, situation and approximate value of which are:

Locality	Khatian No.	Area	Jama	Approx. value
Mouja.....				
Thak No.....				
J.L. No.....				
P.S.....				
District.....				

		Total		Total Rs.

3. That the said property is in the possession of one 'X', grandfather of minors, residing at Vill..... P.S..... Dt.

4. That..... mother of minors, has the custody of the person of the said minors.

5. That the minors have the following near relations:

- (i) P son of late Q. Grandfather of minors residing at Vill. P.S.....Dt.
- (ii) S.S./of T. Maternal grandfather of minor, residing at Vill.....

P.S.....Dt.....

- (iii) E.
- (iv) F.
- (v) G.

Sons of Z—Maternal uncles of minors residing
 at Vill.....P.S.....Dt.....

6. That no application has at any time been made to this court, or to any other court, with respect to the guardianship of the persons and property of the said minors.

7. That no guardian of the person or property of the said minors has been appointed by any person entitled or claimed to be entitled by the law to which the minors are subject to make such appointment.

8. That this application is for the appointment of a guardian to the person and property of the said minors.

9. That your petitioner is the mother of minors. The minors were so long living in the same mess along with their mother with grandfather P. The said P was neglecting the welfare of the minors and appropriated to himself all the returns from minors' properties. Of late he stopped payment of tuition fees of private tutor of minors A and B. In last..... .B.S. the said P managed to transfer minors'..... bighas of land in the name of his daughter..... by a fraudulent and forged kobala after the death of minors' parents. Besides, he is selling the produce of the lands of the minors and appropriating proceeds to himself. He has kept the revenue in arrear for.....years for which minors' properties are liable to be sold for threatened Certificate Proceedings. To recover possession of the land, to manage properties, for the welfare of minors the situation requires that the mother petitioner be appointed guardian for minors without further delay.

(Or, that the appointment is necessary for sale of a portion of minors' property for meeting debts left by the deceased father of minors).

That your petitioner, therefore, prays that an order appointing the petitioner a guardian for the person and property of minors be issued under s. 7 of the Guardians and Wards Act 1890.

And your petitioner, as in duty bound, shall ever pray.

I, Achhimon Bewa, petitioner named in the above petition do solemnly affirm that what is stated therein is true to the best of my information and belief.

L.T.I, of petitioner.

Signed in the presence of

- (1)
- (2)

I, Achhimon Bewa, the guardian proposed in the above application do hereby declare that I am willing to act as such.

Signature of proposed guardian.

Signed in presence of

- (1)
- (2)

Application to sue as an indigent-person

In the Court of the Sub-Judge at.....

Misc. Judicial Case No. /20.....

Title Suit No. /20..... (New)

A.B. Plaintiff.

Versus

C.D. Defendant.

Suit for title and Khash possession Valued at Rs.....

The above-named plaintiff states as follows:

(Here insert the pleadings)

Then add:

The plaintiff petitioner is an indigent person. He is not possessed of sufficient means to enable him to pay the said court-fees of Rs..... prescribed by law for the plaint of the above suit.

(Or, where no such fee is prescribed – The plaintiff petitioner is an indigent person. He is not entitled to property worth Rs. 1,000 other than the subject-matter of this suit).

The petitioner has not entered into any agreement with anybody in respect of the subject-matter of the suit. He has not transferred any of his property within two months next before presentation of this application, either fraudulently or in order to be able to apply for permission to sue as an indigent person.

The properties owned and possessed by the petitioner, with estimated value thereof, are specified below.

List of properties with value thereof.

(a) Rs.....

(b) Rs.....

(In words) Rs.

It is, therefore, prayed that the plaintiff petitioner may be permitted to sue as an indigent person.

Memo of Appeal from a Decree of a lower court (Original Decree)

In the Court of the District Judge, Allahabad.

Title Appeal No.....of 20.....

..... Plaintiff-Appellant.

Versus

..... Defendant-Respondent.

The appellant appeals to the Court of the District Judge, Allahabad from the judgment and the decree passed by Mr..... Subordinate Judge.....in Title Suit No.....of 20..... dated the.....day of..... 20..... dismissing the appellant's suit on the following grounds of objection:

1. Because the findings of the lower Court.
2. Because.....
3. Because.....

Value of the appeal – Rs. 5,000.

Relief: To set aside the decree of the lower Court and to decree the plaintiff's suit with costs of both Courts.

.....
Advocate for the Appellant

Application for review of a judgment

(Under Or. 47, r. 1 of C.P. Code)

A.B. Plaintiff.

Versus

1. C.D.

2. E.F. Defendants

The above-named defendants most respectfully sheweth:

1. That the plaintiff instituted a suit against the petitioner-defendants in this court and obtained a judgment and a decree in his favour on.....
2. That no appeal is allowed against the said judgment/decree by law. (Or, no appeal has been preferred against the said decree/judgment).
3. That the defendants are aggrieved with the said judgment/decree and pray for review of the said judgment/decree on the following, amongst others,

Grounds

- (a) Discovery of new and important matter or evidence.
- (b) Discovery of some mistake or error apparent on the face of the record.
- (c) Any other sufficient reason.

It is, therefore, prayed that Your Honour may be pleased to

- (i) set aside the judgment;
- (ii) re-hear the suit and pass judgment accordingly.

Application for a caveat (s. 148A)

In the Court of the

Money Suit No...../20.....

In the matter of Money Suit No. /20.....

between A.B. S/o of C.D.

.....etc.

Versus

P.Q.S/o of M.N.

.....etc.

And

In the matter of caveat

P.Q., son of M.N.

residing at.....

.....

Caveator-Petitioner

The above-named petitioner states:

1. That Mr. A.B. named above has instituted the above money suit against Mr. P.Q. and the said suit is pending. The summons has not been served on the petitioner as yet.
2. That as far as the petitioner could know, the said Mr. A.B. is contemplating to file a petition under Or. 38, r. 5 of the C. P. Code for attachment of your petitioner’s properties before judgment.
3. That your petitioner has every right to appear before the court on the hearing of such application, if any.
4. That your petitioner hereby lodges a caveat to the effect:

‘Let nothing be done in the matter of application under Or. 38, r. 5, C.P. Code, if any, touching properties of the petitioner without notice to the petitioner’.

Model Limited Liability Partnership Agreement or LLP Agreement

[See Section 23(4) of the LLP Act, 2008 (6 of 2009)]

THIS AGREEMENT of Limited Liability Partnership (LLP) is made at this day of 20.....

BETWEEN

- (1) a company registered under the Companies Act, 1956, having its Registered Office at..... through its authorised representative which expression shall, unless it be repugnant to the subject or context thereof, include their legal heirs, successors, nominees and permitted assignees and hereinafter called the FIRST PARTY,
- (2) S/o, D/o, W/o R/o which expression shall, unless it be repugnant to the subject or context thereof, include their legal heirs, successors, nominees and permitted assignees and hereinafter called the SECOND PARTY, and
- (3) S/o, D/o, W/o R/o which expression shall, unless it be repugnant to the subject or context thereof, include their legal heirs, successors, nominees and permitted assignees and hereinafter called the THIRD PARTY, and

(All the PARTIES hereto, i.e., the FIRST PARTY, the SECOND PARTY and the THIRD PARTY shall be collectively called or referred to as the PARTNERS).

WHEREAS the First Party is

WHEREAS the Second Party is

WHEREAS the Third Party is

NOW the First Party, the Second Party and the Third Party are interested in forming a Limited Liability Partnership (LLP) under the Limited Liability Partnership Act, 2008 and intend to write down the terms and conditions of the said LLP as below.

IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES/PARTNERS HERETO AS FOLLOWS:

Name of the LLP

1. A Limited Liability Partnership (LLP) shall be carried on in the name and style of M/s. LLP and hereinafter called as the LLP.

Registered Office

2. The LLP shall have its Registered Office at and/or at such other place or places, as shall be agreed to by the majority of the partners from time to time.

Capital Contribution

3. The Capital Contribution of the LLP shall be Rs. (Rupees ... only) which shall be contributed by the partners in the following proportions:

First Party% i.e. Rs. (Rupees only)

Second Party% i.e. Rs (Rupees only)

Third Party.....% i.e. Rs..... (Rupees..... only)

The further Contribution if any required by the LLP shall be brought by the partners in their profit sharing ratio.

Profit sharing ratio (PSR)

4. All the Partners of the LLP are entitled to share Profits & Losses in the ratio of their respective Capital Contribution in the LLP. The net profits & losses of the LLP shall be arrived at after providing for payment of Remuneration to the Designated and working partners and Interest on Partners' Contribution in the LLP or Loan given by them to the LLP.

Business and Objects of the LLP

5. The objects, business and activities of the LLP shall be under :

.....
.....
.....
.....

and other incidental and ancillary business more particularly described in the Schedule 'A' annexed herewith or any other business in any other manner as may be decided by the majority of the Partners.

Common Seal

6. The LLP shall have a common seal to be affixed on documents as defined by partners under the signature of any of the Designated Partners.

7. That the immovable properties purchased by the LLP shall be clear, marketable and free from all encumbrances.

Admission of New Partner

8. No Person may be introduced as a new partner without the consent of all the existing partners. Such incoming partner shall give his prior consent to act as Partner of the LLP.

9. Capital Contribution of the new partner may be tangible, intangible, movable or immovable property and the incoming partner shall bring minimum Contribution of Rs (Rupees only).

10. Profit Sharing Ratio (PSR) of the incoming partner will be in proportion to his capital contribution in the LLP.

First Schedule of LLP Act not to apply

11. Provisions of First Schedule to the Limited Liability Partnership Act, 2008 (the LLP Act, 2008 (6 of 2009)) will not apply to the LLP as the LLP will be governed by the terms of this LLP Agreement.

Remuneration & Interest to Partners

12. The LLP shall pay such Remuneration to the Designated Partners and working partners as may be decided by the majority of the Partners, for rendering his/her/its services.

13. The LLP shall pay such Interest to the Partners on Capital Contribution in the LLP as may be decided by the majority of the Partners.

14. If any partner advances any sum of money to the LLP over and above his Capital Contribution, the same shall be a debt due from the LLP to the said partner and shall carry simple interest at the rate of% per annum or any other rate decided by the partners by majority/unanimously.

Rights of the Partners

15. All the partners hereto shall have the rights, title and interest in all the assets and properties in the said LLP in the proportion of their Capital Contribution.

16. All the partners of the LLP shall be the working partners and each of the partners shall give time and attention as may be required for the fulfillment of the objects of the LLP business.

17. Every partner has a right to have access to and inspect and have copy any of the books of the LLP.

18. Each of the parties hereto shall be entitled to carry on their own, separate and independent business as they might hitherto be doing or may hereafter do as they deem fit and proper and other partners and the LLP shall have no objection thereto, provided that the said partner has intimated the said fact to the LLP before starting or commencing the independent business and in case of a business directly or indirectly competing with that of the LLP taken written consent of the LLP, provided also that he/she/it shall not use the name of the LLP to carry on the said business.

19. The LLP shall have perpetual succession and the death, retirement or insolvency of any partner shall not dissolve the LLP.

20. On retirement of a partner, the retiring partner shall be entitled to full payment in respect of all his rights, title and interest in the partnership as herein provided. However, upon insolvency of a partner his or her rights, title and interest in the LLP shall come to an end.

21. Upon the death of any of the partners herein any one of his or her or its heirs will be admitted as a partner of the LLP in place of such deceased partner. The heirs, executors and administrators of such deceased partners shall be entitled to and shall be paid the full payment in respect of the right, title and interest of such deceased partner.

22. On the death of any partner, if his or her or its heirs opt not to become the partner, the surviving partners shall have the option to purchase the contribution of the deceased partner in the LLP.

Duties of the Partners

23. Every partner shall account to the limited liability partnership (LLP) for any benefit derived by him without the consent of the LLP from any transaction concerning the LLP, or from any use by him of the property, name or any business connection of the LLP.

24. Each Partner shall be just and faithful to the other partners in the conduct of business and all the transactions relating to the LLP.

25. Every partner shall indemnify the limited liability partnership (LLP) and the other existing partners for any loss caused to it by his/her/its fraud in the conduct of the business of the limited liability partnership (LLP).

26. Each partner shall render true accounts and full information of all things affecting the LLP to any partner or his legal representatives.

27. In case any of the Partners of the LLP desires to transfer or assign his, her or its interest or share in the LLP

he has to offer the same to the remaining partners by giving 15 days notice. In the absence of any communication by the remaining partners the concerned partner can transfer or assign his share in the market.

28. No partner shall without the written consent of the LLP, –

- (1) Engage any employee or dismiss any employee of the LLP except for gross misconduct.
- (2) Employ any money, goods or effects of the LLP or pledge the credit thereof except in the ordinary course of business and upon the account or for the benefit of the LLP.
- (3) Lend money or give credit on behalf of LLP or have any dealings with any person, company or firm whom the LLP has previously in writing forbidden it to trust or deal with. Any loss incurred through any breach of the provisions shall be made good to the LLP by the partner incurring the same.
- (4) Enter into any bond, bail or become guarantor, surety or security with or for any person or knowingly do, cause or suffer to be caused anything whereby the LLP property or any part thereof may be seized or endangered.
- (5) Assign, mortgage or charge his/her/its share in the LLP or any asset or property of the LLP or make any other person a partner or sub-partner therein.
- (6) Compromise or compound or release or discharge any debt due to the LLP (except upon payment in full).
- (7) Engage directly or indirectly in any business competing with that of the limited liability partnership (LLP).

Meetings of Partners of the LLP

29. All matters related to the LLP as mentioned in Schedule B to this LLP Agreement shall be decided by a Resolution passed by majority in number of the partners & for this purpose each partner shall have one vote.

30. The meeting of the Partners may be called by sending 15 days prior notice to all the partners at their residential address or by mail at the e-mail ID provided by the individual Partners in written to the LLP. In case any partner is a foreign resident the meeting may be conducted by serving 15 days prior notice through e-mail. Provided that the meeting may be called at shorter notice, if the majority of the partners agree in writing to the same either before or after the meeting. In case, any urgent meeting is called, the notice requirement may be ratified by all the Partners.

31. Meetings of the Partners shall ordinarily be held at the Registered Office of the LLP or at any other place as per the convenience of partners.

32. With the written Consent of all the partners, a Meeting of the Partners may be conducted through Tele-Conferencing or Video-Conferencing.

33. The limited liability partnership (LLP) shall ensure that decisions taken by it are recorded in the minutes within thirty days of taking such decisions and are kept and maintained at the registered office of the LLP.

Duties of Designated Partners

34. Authorised representatives of the First Party and the Second Party shall act as the Designated Partners of the LLP in terms of the requirements of the Limited Liability Partnership Act, 2008 (6 of 2009).

35. Designated Partners shall be responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership (LLP) in respect of compliance of the provisions of the LLP Act including filing of any Document, Return, Statement and the like Report pursuant to the provisions of Limited Liability Partnership Act, 2008.

36. The Designated Partners shall be responsible for the doing of all acts and deeds arising out of this LLP Agreement.

37. Each partner shall punctually pay and discharge the separate loans and debts and indemnify the other

partners and the LLP assets against any loss caused or suffered by the LLP and all proceedings, costs, claims and demands from the LLP in respect thereof.

Books of Account

38. Books of Accounts of the limited liability partnership (LLP) shall be kept at the registered office of the LLP for reference, access, inspection and having copies of by all the partners.

39. The accounting year of the LLP shall be the Financial Year, i.e., from 1st April of the year to 31st March of the subsequent year. The first accounting year shall be from the date of commencement of the LLP till 31st March of the subsequent year.

Bank Accounts

40. Bankers of the partnership shall be Bank, Branch and/or such other Bank or Banks as the partners may from time to time be agree upon by majority/ unanimously.

41. Bank Accounts of the LLP including Loans, Advances & Credit Limits, if any, from the Banks and Financial Institutions taken by the LLP, may be opened and operated by the Designated Partners and other Partners either singly or jointly as may be agreed upon from time to time by the partners by majority/ unanimously.

Extent of Liability of the LLP

42. The LLP is not bound by anything done by a partner in dealing with a person if –

- (1) the partner in fact has no authority to act for the LLP in doing a particular act; and
- (2) the person knows that he has no authority or does not know or believe him to be a partner of the LLP.

Indemnity

43. The limited liability partnership (LLP) shall indemnify each partner in respect of payments made and personal liabilities incurred by him –

- (1) in the ordinary and proper conduct of the business of the limited liability partnership (LLP); or
- (2) in or about anything necessarily done for the preservation of the business or property of the limited liability partnership (LLP).

44. The LLP shall indemnify and defend its partners and other officers from and against any and all liability in connection with claims, actions and proceedings (regardless of the outcome), judgment, loss or settlement thereof, whether civil or criminal, arising out of or resulting from their respective performances as partners and officers of the LLP, except for the gross negligence or willful misconduct of the partner or officer seeking indemnification.

Arbitration

45. All disputes between the partners or between the Partners and the LLP arising out of the LLP Agreement which cannot be resolved in terms of this LLP Agreement shall be referred for arbitration as per the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996).

Cessation of existing Partners

46. Any partner may cease to be a partner of the LLP by giving a notice in writing of not less than 30 days to the other partners of his intention to resign as partner.

47. No majority of Partners can expel any partner except in the situation where any partner has been found guilty of carrying of activity/business of the LLP with fraudulent purpose.

Winding up of the LLP

48. The LLP can be wound up with the consent of all the partners subject to the provisions of the Limited Liability

Partnership Act 2008.

IN WITNESS WHEREOF the parties have put their respective hands the day and year first hereinabove written.

Signed and delivered by

For and on behalf of (Name of the LLP)

(Partner)

(Partner)

(Partner)

Witnesses:

1. Name:

Address:

Signature:

2. Name:

Address:

Signature:

SCHEDULE A

Incidental, Ancillary or Other Business of the LLP

(1) THE OBJECTS OR BUSINESS INCIDENTAL OR ANCILLARY TO THE ATTAINMENT OF THE MAIN OBJECTS OR BUSINESS ARE:

(2) THE OTHER BUSINESS ARE:

SCHEDULE B

MATTERS TO BE DECIDED BY A RESOLUTION PASSED BY A MAJORITY IN NUMBER OF THE PARTNERS

PROFESSIONAL PROGRAMME
DRAFTING, PLEADINGS AND APPEARANCES

PP-DP&A

WARNING

It is brought to the notice of all students that use of any malpractice in Examination is misconduct as provided in the explanation to Regulation 27 and accordingly the registration of such students is liable to be cancelled or terminated. The text of regulation 27 is reproduced below for information:

“27. Suspension and cancellation of examination results or registration.

In the event of any misconduct by a registered student or a candidate enrolled for any examination conducted by the Institute, the Council or the Committee concerned may suo motu or on receipt of a complaint, if it is satisfied that, the misconduct is proved after such investigation as it may deem necessary and after giving such student or candidate an opportunity to state his case, suspend or debar the person from appearing in any one or more examinations, cancel his examination result, or studentship registration, or debar him from future registration as a student, as the case may be.

Explanation – Misconduct for the purpose of this regulation shall mean and include behaviour in a disorderly manner in relation to the Institute or in or near an Examination premises/centre, breach of any regulation, condition, guideline or direction laid down by the Institute, malpractices with regard to postal or oral tuition or resorting to or attempting to resort to unfair means in connection with the writing of any examination conducted by the Institute”.

PROFESSIONAL PROGRAMME

DRAFTING, PLEADING AND APPEARANCES – TEST PAPER

[This Test Paper is for recapitulate and practice for the students. Students need not to submit responses/ answers to this test paper to the Institute.]

Time Allowed: 3 Hours

Maximum Marks: 100

• All questions are compulsory

• Marks for each question is indicated alongside of the question.

1. (a) What is meant by 'pleadings'? Explain the fundamental rules of pleadings.
(b) Drafting of document is skilled man's job. Explain this statement with some Do's and Don'ts in drafting.
(10 marks each)
2. (a) Briefly explain Special Leave petitions under the Constitution of India.
(b) Discuss the essential points to be observed for drafting of lease documents. Distinguish between license and lease.
(10 marks each)
3. (a) Second Board Meeting of Alpha Company is scheduled to be held on 27th of June 20XX. Draft a specimen notice of board meeting with the illustrative list of agenda items which would be discussed during meeting. Also provide option for attending the meeting through video conferencing in the notice.
(b) The primary purpose of a legal opinion is communication of advice to a client. Comment.
(10 marks each)
4. (a) What is a "collaboration agreement". Mention important guidelines which are required to be followed while entering into a foreign collaboration agreement.
(b) "Practising of good professional etiquettes is necessary for professional success in the emerging business scenario." Discuss.
(10 marks each)
5. Write short note on:
 - (a) Recital
 - (b) Continuing Guarantee
 - (c) Rule of adverse inference
 - (d) Extinction of a trust
(5 marks each)