



**RAMA
UNIVERSITY**

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FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B. 1st Semester

SUBJECT: ADVANCE LEGAL WRITING SKILL-I

SUBJECT CODE: BAL 108

LECTURE: 35

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Lecture-35



Amendment of Pleadings

Amendment is the formal revision or addition or alteration or modification of the pleadings. Provisions for the amendment of pleadings are intended for promoting the ends of justice and not for defeating them. Rules 17 and 18 of Order VI of Code of Civil Procedure, 1908 deals with provisions regarding amendment of pleadings and failure to amend after order respectively. Rule 17 of the Code of Civil Procedure, 1908 provides that, “The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Proviso to the Rule 17 of Order VI of Code of Civil Procedure, 1908 as inserted by the Code of Civil Procedure (Amendment) Act, 2002 restricts and curtails power of the Court to allow amendment in pleadings by enacting that no application for amendment should be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

Amendment of pleadings when granted:- Amendment of pleadings can be granted by the Court in two situations namely, (i) where the amendment is necessary for the determination of the real question in controversy; and (ii) can the amendment be allowed without injustice to the other side.

Amendment of pleadings when refused:- Amendment of pleadings can be refused in many circumstances. Following are the situations or circumstances when amendment of pleadings can be refused by the Court:-

(1) When the proposed amendment is unnecessary.

- (2) When the proposed amendment causes an injury to the opposite party which cannot be compensated for by costs.
- (3) When the proposed amendment changes the nature of the case.
- (4) When the application for amendment is not made in good faith.
- (5) When there has been an excessive delay in filing the amendment application.

Failure to amend:- Rule 18 of Order VI of Code of Civil Procedure, 1908 deals with this issue. It provides that if a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited

then within 14 days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such 14 days, as the case may be, unless the time is extended by the Court.

Pleadings are the backbone of legal profession. It is the foundation stone on which case of a party stands. The case of a party must be set out in the pleadings. Pleadings do not only define the issues between the parties for the final decision of the court at the trial, they manifest and exert their importance throughout the whole process of the litigation. Pleadings provide a guide for the proper mode of trial. They demonstrate upon which party the burden of proof lies, and who has the right to open the case. They also determine the range of admissible evidence which the parties should adduce at the trial. They also lay down limit on the relief that can be granted by the Court.

Four fundamental rules of pleading are; (1) Pleadings should state facts and not law; (2) The facts stated in pleadings should be material facts; (3) Pleadings should not state the evidence; and

(4) The facts in pleadings should be stated in a concise form. The main points to be considered before a party is allowed to amend his pleading are: firstly, whether the amendment is necessary for the determination of the real question in controversy; and secondly, can the amendment be allowed without injustice to the other side.

Plaint

Order 7 Rule 1 of civil procedure code says that plaint shall contain the following particulars:-

1. The name of the court in which the suit is brought.
2. The name, description and place of residence of the plaintiff.
3. The name, description and place of residence of the defendant, so far as they can be ascertained.
4. Where the plaintiff or defendant is a minor or a person of unsound mind, a statement to that effect
5. The fact constituting the cause of action and when it arose.
6. The fact showing that the court has jurisdiction;
7. The relief which the plaintiff claim;
8. Where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or so relinquished :and
9. a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits.

MCQ

1. Which of the following is NOT included in the attributes of juridical capacity?

- a) Juridical capacity is inherent in every natural person, and therefore it is not acquired.
- b) Juridical capacity is lost only through death.
- c) Juridical capacity is the fitness to be the subject of legal relations.
- d) Juridical capacity cannot exist without capacity to act.

2. Which of the following is NOT a restriction on one's capacity to act?

- a) Minority
- b) Marriage
- c) Deaf-mute
- d) Civil Interdiction

3. This attribute or incident of a case determine whether it is a conflict-of-laws case or one covered by domestic law.

- a) Cause of action
- b) Foreign element
- c) Jurisdiction

d) Forum non conveniens

4. The capacity of an heir to succeed shall be governed by the:

- a) national law of the decedent's heirs
- b) law of the country where the decedent was a resident at the time of his death
- c) national law of the person who died
- d) law of the country where the properties of the decedent are located.

5. Atty. BUKO, a Filipino, executed a will while he was in Spain. The attestation clause of the said will does not contain Buko's signature. It is valid under Spanish law. At its probate in Manila, it is being opposed on the ground that the attestation clause does not contain BUKO's signature. Is the opposition correct? Choose the best answer..

- a) Yes, because it is a fatal defect.
- b) Yes, the will is not valid under Philippine law.
- c) No, attestation clause is not an act of the testator.
- d) No, the governing law is Spanish law.