



## **FACULTY OF JURIDICAL SCIENCES**

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Subject Name- Drafting, Pleading and conveyancing

**SUBJECT CODE- BAL-703**

**Course- BA LLB, VII Sem**

# **LECTURE 12**

## **AFFIDAVIT**

### **What is an affidavit?**

An affidavit is a willingly made declaration in writing, signed by the deponent (person making the affidavit) and accompanied by an oath (vis-à-vis the authenticity of the contents). “Affidavit” has its roots from a Latin word which literally means to “pledge ones faith.” It is to be signed and witnessed (vis-à-vis the genuineness of the affiant’s signature or his identity) by a notary authority.

It is also signed without any cross-examination by the affiant. The difference between an affidavit and a deposition is that the former is voluntary but the latter is not.

Another way to think of an affidavit is as a sort of written court testimony. Where, in a court of law, you are required to place your hand on a Holy Book and swear that you’re telling the truth and nothing but the truth, similarly on an affidavit, you do this in writing. You’re under oath, but your testimony is on paper. They are important in a way that the oral submission/evidence/testimony is only admissible before a judge but an affidavit can be used as an alternative to this.

However, misleading information in an affidavit can lead to perjury charge against the affiant but if the affiant forgets to include something or omits something then he cannot be penalized for such omission. If the affiant mentions something in the affidavit which is not an established fact or is not backed up by some evidence, then he will have to mention that it is his ‘opinion’.

The law on affidavits in India is governed by Section 139, Order XIX of the Code of Civil Procedure and Order XI of the Supreme Court Rules. Judiciary at many instances has upheld the importance of the veracity of an affidavit by the virtue of the aforementioned rules and sections.

### **Components of an Affidavit**

#### 1. Written Statement

All affidavits to be in writing. For an affidavit to be taken as an evidence before the court it has to be written.

## 2. Affirmation on oath

A solemn promise by the deponent regarding his actions must be found in the document.

## 3. Made Voluntarily

## 4. Deponent/Affiant

## 5. Notarization

All affidavits must be notarized by the officer/person authorized in this regard by the Government.

### **Importance of affidavits**

- Orders in courts are passed on the basis of affidavits.
- Applications made to the courts under different enactments are filed and backed by affidavits.

### **Who can affirm and affidavit**

An affidavit can be affirmed by –

- A judge / Executive Magistrate
- A commissioner of Oaths appointed by a court of competent jurisdiction.
- A notary appointed under Notaries Act, 1952.

### **Consequences of filing and affidavit**

- An affidavit is personally binding on the deponent.
- It is important that you have full knowledge of the matter contained in the document.
- Rule 3 of Order 19 of the Code of Civil Procedure provides that affidavits shall be confined to the facts that can be proved within the knowledge capacity of the deponent
- A false affidavit has the same punishment as a false evidence.
- Section 191 of the Indian Penal Code, 1860 provides that whoever swears falsely by making statements he knows or believes is false given out a false affidavit.

Section 193 of the Indian Penal Code, 1860 provides a 7 years imprisonment with the payment of a fine for the giving of a false affidavit

### **Drafting an Affidavit**

- The first person should be used in the drafting of an affidavit.
- It should be divided into paragraphs which are given a specific number.
- Each paragraph of the document should be specific on each subject.
- It should mention the names, age, religion, residence and occupation of the deponent.
- Where any alterations are to be made in the document, it must be authenticated by the authority.

### **MCQs-**

- i. Whether there is any punishment attached with false affidavit?
  - a. Yes, under sec 193 of IPC.
  - b. No
  - c. May be
  - d. None of the above
- ii. What does should affidavit mention?
  - a.name, place, age, sex of the deponent
  - b.name, place, resident, caste of the deponent
  - c. names, age, religion, residence and occupation of the deponent
  - d.name, place, occupation of the deponent
- iii. An affidavit is a willingly made declaration in .....
  - a. writing
  - b. oral
  - c. both of above
  - d. neither of the above
- iv. An affidavit should be made voluntarily?
  - a.yes
  - b. no
  - c. partially yes
  - d. partially no

- v. An affidavit can be affirmed by –
- a. A judge / Executive Magistrate
  - b. A commissioner of Oaths appointed by a court of competent jurisdiction.
  - c. A notary appointed under Notaries Act, 1952.
  - d. all of the above