



FACULTY OF JURIDICAL SCIENCES

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Subject Name- Drafting, Pleading and conveyancing

SUBJECT CODE- BAL-703

Course- BA LLB, VII Sem

LECTURE SEVEN

[WRITTEN STATEMENT]

Written Statement

Introduction

The expression 'additional written statement' has not been defined in the Civil Procedure Code, 1908 (C.P.C). According to a legal dictionary, the term 'written statement' means a pleading for defence. In other words, a written statement is a reply of the plaintiff, in which defendant deny or admit each and every allegation or facts given in the plaint. However, an additional written statement is different from a written statement. As filing the written statement is the right of the defendant but the additional statement is based on the discretion of the court. Further, in written statement defendant can put his case also under the heading additional plea, and can state new facts or ground which is necessary to defeat the opponent. If the defendant wants to put his own claim against the plaintiff he can put it by way of set-off and counterclaim u/o 8 Rule 6 and 6A of C.P.C. However, once the written statement is filled the defendant cannot file a counterclaim or set off, unless it is an additional written statement.

The rule 9 of Order 8 was omitted by the CPC (Amendment) Act, 1999 (46 of 1999), has been restored by CPC (Amendment) Act, 2002 (22 of 2002) with a fixed a time period. The effect of the change is that subsequent pleadings shall be continued to be filed and the court shall fix a time for presenting the same, which shall be not more than thirty days. Merely because the amendment sought is alleged to be inconsistent with the previous case of the defendant, it is not a good reason for rejecting the application of the defendant for amendment. As per general rule, in cases of this nature the leave to amend or to file additional written statement is granted unless the party filing for amendment is acting malafidely or by the parties own blunder if some injury inflicted to his opponent which cannot be compensated by award of costs; otherwise whether the original omission arose from negligence, carelessness, or accidental error, the defect may be allowed to be remedied if no injustice is done to the other side.

Legal provision for an additional statement

Before Amendment Act, Order 8, Rule 9 under the nomenclature "subsequent pleadings" read as follows :

“9. No pleading subsequent to the **written statement** of a defendant other than by way of defence to a set-off or counter-claim shall be presented except by leave of the Court and upon such terms as the Court thinks fit, but the Court may any time require a **written statement** or **additional written statement** from any of the parties and fix a time for presenting the same.”

By the Amendment Act of 2002, Rule 9, Order 8 was re-enacted as follows :

MCQs-

i. in which year order eight was amended/

- a. 2002
- b. 2001
- c. 2008
- d. 1990

ii. which rule of order eight was amended?

- a. rule nine
- b. rule eight
- c. rule six
- d. rule five

iii. Whenever practicable a summon must be _____ to the defendant in person or to his authorised agent.

- a. delivered
- b. serviced
- c. carried
- d. served

iv. ".....to understand judicial Process in India we must understand why the nature of the judicial process in India has undergone a metamorphosis; the reasons underlying the expansion of the scope of judicial review and the legitimacy of such a response" is said by

- a. bejamin cordozo
- b. hart
- c. bentham
- d. austin

v. Who asserts that “Acts of Parliament, and presumably also judicial decisions, have the force of law because Judges, officials and private citizens recognize that primary rules are to be identified by reference to certain criteria, one of which is the enactment by the legislature makes law, and another of which would state that certain parts of certain judicial pronouncements bind other Courts in the Court’s hierarchy”

- a. grey
- b. stone

c.hart
d.henry maine