



FACULTY OF JURIDICAL SCIENCES

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Subject Name- Drafting, Pleading and conveyancing

COURSE NAME- LLB, III Sem

SUBJECT CODE-LLB-303

LECTURE 13

MEMORANDUM OF APPEAL AND REVISION

The memorandum of appeal shall set forth concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative and such grounds shall be numbered consecutively. (Order XVI Rule 1 C.P.C.) The memorandum according to order XVI, Rule 1 shall be accompanied by a copy of the decree appealed from and unless the appellate court dispenses there with, of the judgment on which it is founded. The word 'copy' means a certified copy. This is a mandatory requirement, in the sense that an appeal filed without a certified copy of the decree makes the appeal incompetent, defective and incompetent. But where the circumstances require it, the court has power to treat the appeal as competent and maintainable even in the absence of a copy of the decree attached. (Phool Chand V. Gopal Lal, AIR 1967 SC 1470)

The term 'appeal' means the judicial examination by a higher court of the decision of inferior court while the memorandum of appeal contains the grounds on which the judicial examination is invited (Lakshmi Ratan Engineering Works, Ltd. V. Asst. Commissioner of sales Tax, AIR 1968 SC 488) An appeal in legal parlance is held to mean the removal of a cause from an inferior or subordinate to a superior tribunal or forum in order to test and scrutinise the correctness of the impugned decision. It amounts in essence and pith to a complaint to a higher forum that the decision of a subordinate tribunal is erroneous and, therefore liable to be rectified or set right. There is a basic distinction between the right of suit and the right of appeal.

There is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, however, frivolous the claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeal is quite the opposite. The right of appeal inheres in no one and, therefore, an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute. Under the code of civil procedure an appeal lies only as against a decree or as against an order passed under rules from which an appeal is expressly allowed by order XVI, Rule 1. No appeal can lie against a mere finding for the simple reason that the code does not provide for any such appeal and if it is directed against a mere finding recorded by the trial court, it is not maintainable. (Gangabai V. Vijay Kumar AIR 1974 SC 1126). The right of appeal is not a guaranteed or a constitutional right. There is nothing whatsoever in the constitution which may even remotely vest any such inalienable right in the citizens. The right of appeal is not a fundamental right nor a constitutional one. It has been repeatedly held that the right of appeal is the mere creature of the statute. The creator that is the

legislature which confers such right can equally take the same away, if necessary. It inevitably follows there from that if the whole right can be thus taken away it can equally be impaired, regulated or burdened with condition either onerous or otherwise.

MCQs-

- i. The term '.....' means the judicial examination by a higher court of the decision of inferior court
 - a. appeal'
 - b. memorandum
 - c. revision
 - d. review
- ii. appeal is the judicial examination of the decision of igher vcourt by inferior court?
 - a. yes
 - b. no
 - c. partially yes
 - d. partially no
- iii. the memorandum of appeal contains what?
 - a. grounds on which the Judicial examination is invited
 - b. claims on which the Judicial examination is invited
 - c. grounds on which the Judicial scrutiny is invited
 - d. all of the above
- iv. identify which amongst the following which is NOT the essentials of an affidavit
 - a. written statement
 - b. affirmation of oath
 - c. plaint
 - d. none of the above