

FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B./BBA.LLB/LL.B.

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Lecture-18



Evidentiary value of affidavits

Affidavit evidence is not admissible unless the law specifically permits it. For example, real possession under Section 145(4) of the Criminal Procedure Code cannot be established with an affidavit.

The Indian Evidence Act does not apply to affidavits presented to any court or officer. An affidavit is not evidence under the Indian Evidence Act, 1872. If a fact is allowed to be proved by an affidavit by the C.P.C., Cr.PC or any other law, it can be proved by affidavit notwithstanding the provision of the Indian Evidence Act vide the order Sheoraj v. A.P. Batra 1955. This case also noted that the affidavit is worthless if the deponent refuses to appear for cross-examination in response to a demand from the opposing party.

The Court in the case of Premlal v. Kunti Bai, 2019, believed that a close reading of Section 3 of the Indian Evidence Act, 1872, would demonstrate that the affidavit is not covered by the definition of ‘evidence’ and can only be used if the court grants permission for good cause. Only when an affidavit is filed in court or at the court’s request, or when the law specifically allows for the use of affidavits as proof of anything, can it be said to be ‘evidence’ within the meaning of Section 3 of the Code. Therefore, any court cannot consider the submission of an affidavit or one’s own declaration in one’s own favour. According to the High Court, it is now “clearly established that an affidavit is not ‘evidence’ within the meaning of Section 3 of the Evidence Act unless an opportunity is afforded to the opposite side as provided in Order 18 Rule 4(2) of the CPC to successfully cross-examine the person(s) interrogated.”

Additionally, Order XIX and Section 139 of the Code of Civil Procedure, 1908, as well as Order XI of the Supreme Court Rules, provide the legal requirements for affidavits. According to Order XIX of the Code of Civil Procedure, 1908, the court has the authority to order the affidavit proof of any specific fact or facts at any moment. However, if it appears to the court that either party wishes the production of a witness for cross-examination and that such a witness can be provided, the court shall not issue such an order.

The process of drafting an affidavit

Write the name of the court or tribunal where the affidavit will be filed, along with the assigned case or suit number, at the top of the document.

- Briefly mention each party's name.
- Mention "AFFIDAVIT" in bold and italics as the document's heading or title.
- Then, after saying "Do solemnly swear and declare as under," provide the deponent's information (the person who is testifying as to the veracity of the claims he made in the main petition). This information includes the deponent's name, the name of his father, his age, and his residential address.
- The deponent must declare that he or she is the plaintiff or defendant (as applicable) in the lawsuit for which the affidavit is being submitted in the first paragraph following the introduction and that he or she is fully aware of and conversant with the facts of the case and is qualified to testify regarding them.
- Mention in the second paragraph that the deponent's attorney authored the petition or submission made in the petition and that the contents were read over in simple English with a comprehensive explanation given to the deponent, as well as the ramifications of the same.
- Briefly describe the details of the lawsuit or the deponent's submission. If the information is included in the main petition, it is not necessary to repeat it in the affidavit; instead, one can state that "the contents of the petition are not being reproduced here for the sake of brevity and one shall treat the same as a part of this affidavit."
- Finally, add a sentence that says, "This is the deponent's true and correct declaration," then a section concerning verification that says, "To the best of the deponent's knowledge, the contents of the affidavit are true and correct, and nothing material has been withheld."

Sample affidavit

If ID proof has a single name for the applicant.

I ____ (Applicant Name as per id proof), residing at _____(Address as per address proof) do solemnly affirm and stated as under:

I am _____ and my name _____, appearing on the enclosed ID proof, is a single name. My father's name is _____. For applying my DIN application, I am mentioning my father's name "_____" as my last name, as this is a mandatory requirement for applying DIN. Both names denote one and the same person.

I solemnly declare that the information in this affidavit is accurate to the best of my knowledge and belief, that it contains no false information, and that it contains nothing to be concealed.

Affidavit for name change

I Mr/Ms _____S/o/D/o_____, aged around _____years, resident of _____, do hereby solemnly affirm and declare as under:

That, my name as per the records in my educational institution is _____ (ABC)

That, by the virtue of this affidavit, I changed my name as _____ on (date of change of name).

Currently, all the records have my changed name _____.

That, I shall at all times, in all dealings and proceedings, sign the name _____ as my name, thereby substituting my former name.

I am getting a public notice published to this effect in the newspaper.

Also, I state that (earlier name) and that (present name) are the names of the same person, and that is myself.

This declaration is hereby executed and submitted to the concerned authorities to accomplish the change of name.

I hereby state that whatever is stated herein is true to the best of my knowledge.

Solemnly affirmed at _____)

On this ____ day of _____ 20)

(Signature of the Applicant).

Deponent

Note: The above-mentioned affidavit is for reference purposes only, and it is always advised to seek legal assistance while making any such affidavit.

Conclusion

Affidavits are crucial in legal work because they are a legally binding version of the oath that a person has taken. Affidavits are used by people to resolve issues and stay clear of legal snares. However, those who submit or support the fraudulent affidavit are subject to severe sanctions. You must also comprehend the meaning of an affidavit, how to use one, the many kinds of affidavits, and many other things