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FACULTY OF JURIDICAL SCIENCES

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Rules

of

Pleadings

For the proper understanding of rules of pleadings it may be divided into two heads:-

(A) Fundamental or Basic Rules; and (B) Particular or Other Rules

(A) Fundamental or Basic Rules of Pleadings:- Sub-rule (1) of Rule 2 of Order VI of the Code of Civil Procedure, 1908, lays down the fundamental principles of pleadings. It reads as under:-

“Every pleading shall contain, and contain only a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.”

From the above provision it can be said that following are the fundamental or basic rules of pleadings:-

(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.

Now these rules are discussed in details one by one:-

(1) Pleadings should state facts and not law:- It is the first fundamental rule of pleadings. It says that pleadings should state only facts and not law. In the case of *Kedar Lal v. Hari Lal*, AIR 1952 SC 47 it was held that it is the duty of the parties to state only the facts on which they rely upon their claims. It is for the Court to apply the law to the facts pleaded. In the case of *Gouri Dutt Ganesh Lal Firm v. Madho Prasad*, it was held that the law of pleading may be tersely summarized in four words; “Plead facts not law.”

In Ram Prasad v. State of M.P., AIR 1970 SC 1818 it was held that a mixed question of law and fact, however, should be specifically pleaded. Again in Union of India v. Sita Ram Jaiswal, the Court held that a point of law which is required to be substantiated by facts should be pleaded with necessary facts.

(2) The facts stated in pleadings should be material facts:- It is the second fundamental rule of pleadings. It says that pleadings should contain a statement of material facts and material facts only. Here one most important question is arose i.e. what is the meaning of the term

“material facts”. This term has not been defined in the Code of Civil Procedure, 1908. But the

Court defined this term in many judicial pronouncements. Like in the case of Union of India v. Sita Ram, the court said that “material facts” means all facts upon which the plaintiff’s cause of action or the defendant’s defence depends, or in other words, all those facts which must be proved in order to establish the plaintiff’s right to relief claimed in the plaint or the defendant’s defence in the written statement. Again in the case of Udhav Singh v. Madhav Rao Scindia, the Supreme Court said that the term material fact means “All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence are

material facts.” Again in Virender Nath v. Satpal Singh, the Supreme Court held that:- “The phrase ‘material facts’ may be said to be those facts upon which a party relies for his claim or defence. In other words, ‘material facts’ are facts upon which the plaintiff’s cause of action or the defendant’s defence depends. What particulars could be said to be ‘material facts’ would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by as the party.” In the same case the Supreme Court also said:- “A distinction between ‘material facts’ and ‘particulars’, however, must not be overlooked. ‘Material facts’ are primary or basic facts which must be pleaded by the plaintiff or by the

defendant in support of the case set up by him either to prove his cause of action or defence. 'Particulars', on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. 'Particulars' thus ensure conduct of fair trial and would not take the opposite party by surprise." The Supreme Court further said that whether a particular fact is or is not a material fact which is required to be pleaded by a party depends on the facts and circumstances of each case.

(3) Pleadings should not state the evidence:- It is third fundamental rule of pleadings. It says that pleadings should contain a statement of material facts on which the party relies but not the evidence by which those facts are to be proved. The facts are of two types:-

(a) Facta probanda- the facts required to be proved (material facts); and

(b) Facta probantia- the facts by means of which they are to be proved (particulars or evidence).

The pleadings should contain only facta probanda and not facta probantia. The material facts on which the plaintiff relies for his claim or the defendant relies for his defence are called facta probanda, and they must be stated in the plaint or in the written statement, as the case may be. But the facts or evidence by means of which the material facts are to be proved are called facta probantia and need not be stated in the pleadings.

(4) The facts in pleadings should be stated in a concise form:- It is the fourth and last fundamental rule of pleadings. It says that the statements in pleadings should be stated in a concise and in brief form. In *Virendra Kashinath v. Vinayak N. Joshi*, AIR 1999 SC 162 The words "in a concise form" are definitely suggestive of the fact that brevity should be adhered to while drafting pleadings. Of course, brevity should not be at the cost of excluding necessary facts, but it does not mean niggling in the pleadings. If care is taken in syntactic process, pleadings can be saved from tautology.

(B) Particular or Other Rules of Pleadings:- Besides the fundamental or basic rules of pleadings, there are other or particular rules of pleadings which are as follows:-

(1) Wherever misrepresentation, fraud, breach of trust, willful default or undue influence are pleaded in the pleadings, particulars with dates and items should be stated.

(2) The performance of a condition precedent need not be pleaded since it is implied in the pleadings. Non-performance of a condition precedent, however, must be specifically and expressly pleaded.

(3) Generally departure from pleading is not permissible, and except by way of amendment, no party can raise any ground of claim or contain any allegation of fact inconsistent with his previous pleadings.

(4) A bare denial of a contract by the opposite party will be construed only as a denial of factum of a contract and not the legality, validity or enforceability of such contract.

(5) Documents need not be set out at length in the pleadings unless the words therein are material.

(6) Wherever malice, fraudulent intention, knowledge or other condition of the mind of a person is material, it may be alleged in the pleading only as a fact without setting out the circumstances from which it is to be inferred. Such circumstances really constitute evidence in proof of material facts.

(7) Whenever giving of notice to any person is necessary or a condition precedent, pleadings should only state regarding giving of such notice, without setting out the form or precise term of such notice or the circumstances from which it is to be inferred, unless they are material.

(8) Implied contracts or relations between persons may be alleged as a fact, and the series of letters, conversations and the circumstances from which they are to be inferred should be pleaded generally.

(9) Facts which the law presumes in favour of a party or as to which the burden of proof lies upon the other side need not be pleaded.

(10) Every pleading should be signed by the party or one of the parties or by his pleader.

(11) A party to the suit should supply his address. He should also supply address of the opposite party.

(12) Every pleading should be verified on affidavit by the party or by one of the parties or by a person acquainted with the facts of the case.

(13) A Court may order striking out a pleading if it is unnecessary, scandalous, frivolous, vexatious or tends to prejudice, embarrass or delay fair trial of the suit.

(14) A Court may allow amendment of pleadings.

(15) Forms in Appendix A of the Code should be used wherever they are applicable. Where they are not applicable, forms of like nature should be used.

(16) Every pleading should be divided into paragraphs, numbered consecutively. Each allegation or averment should be stated in a separate paragraph. Dates, totals and numbers should be written in figures as well as in words.

MCQ

1. The husband may impugn the legitimacy of his child but not on the ground that:

- a) the wife is suspected of infidelity.
- b) the husband had a serious illness that prevented him from engaging in sexual intercourse.
- c) they were living apart.
- d) he is physically incapable of sexual intercourse.

2. A marriage is void if:

- a) solemnized with a marriage license issued without complying with the required 10-day posting.
- b) solemnized by a minister whom the parties believe to have the authority.
- c) between parties both 23 years of age but without parental advice.
- d) none of the above

3.. In legal separation, which is not correct?

- a) The aggrieved spouse may file the action within five (5) years from the time of the occurrence of the cause.
- b) No trial shall be held without the 6-month cooling off period being observed.

c) The spouses will be entitled to live separately upon the start of the trial.

d) The prosecuting attorney has to conduct his own investigation.

4.. A husband by chance discovered hidden treasure on the paraphernal property of his wife.
Who owns the discovered treasure?

a) The half pertaining to the husband (finder) belongs to the conjugal partnership.

b) The half pertaining to the wife (as owner) belongs to the conjugal partnership.

c) One half shall belong to the husband as finder and the other half shall belong to the wife as owner of the property.

d) a and b

5.. Which of the following marriages is void for reasons of public policy?

a) Between brothers and sisters, whether of the full or half blood.

b) Between step-parents and step children.

c) Between parents-in-law and children-in-law.

d) b and c