

# FACULTY OF JURIDICAL SCIENCES

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# Lecture-16



## **What is an affidavit**

As per Merriam Webster, the term ‘affidavit’ stands for a sworn statement which is made in writing and necessarily under an oath or affirmation before an authorised officer or magistrate.

A written promise is referred to as an affidavit, and according to its Latin roots, it is related to another type of promise in English. An affidavit, which means “he or she has made a commitment” in Latin, is derived from the past tense of the verb *affidare*, which means “to pledge.”

Affidavits can also be thought of as a form of written court testimony. In a court of law, you are required to swear that you are telling the truth and take an oath on a holy book. In an affidavit, you do the same thing verbally. Although your testimony is on paper, you are sworn in. They are essential because, without them, an affidavit can be used in place of the oral submission, testimony, or evidence that can only be admitted in court.

If the promise turns out to be untrue, then the maker has to face prosecution. When a person cannot testify in person, affidavits are usually used in court. To get a search warrant, police officers typically need to file an affidavit with a court. Affidavits are typically made without the presence of opposing counsel and without the opportunity for questioning (unlike comparable signed declarations known as depositions).

In simpler words, it can be said that ‘a written declaration signed by a person who implements, swears, verifies, and affirms under oath’ is known as an affidavit. Additionally, this individual declares that nothing has been omitted or misrepresented and that the proclamation’s contents are truthful and accurate. He also attests to the document’s veracity.

An affidavit is a legally binding declaration of a person’s oath that cannot be refuted. Affidavits are a crucial component of court proceedings since they offer a written description

of the facts surrounding the incident, which can facilitate judges' decision-making. They are useful for keeping records as well.

In India, the provisions of the Code of Civil Procedure, 1908, on the subject of affidavits, are contained in Section 139 and Order XIX of the Code.

### **Essential features of an affidavit**

The following are the essential features of an affidavit:

- An affidavit must be in writing.
- It needs to be a declaration by the deponent.
- The facts mentioned in an affidavit must be true to the best knowledge of the deponent.
- In order to make it valid, it needs to be sworn in under oath before an authorised officer or magistrate.
- An affidavit is never made on behalf of some other person.

### **When are affidavits used**

Affidavits are used when there is a need to take an oath of any kind. Some common uses of affidavits are as follows:

- Divorce cases,
- Property disputes,
- Disputes about debt,
- Confirmation of received legal documents,
- Name change verification,
- Residential address verification,
- Firstborn child certificate,
- Marriage registration.

### **Who is authorised to draft an affidavit**

Affidavits can be drafted by anyone. However, one has to fulfil some basic requirements in order to write an affidavit, such as an individual must be of legal age and fully understand the nature of the components. In other words, the person must not be insane or rendered unconscious for failing to understand the significance of the claims made in the affidavit.

An affidavit that claims to have been made by a female declarant who has appeared before the court, magistrate, or other officers in question while wearing a veil is not valid until she has been properly identified and an affidavit confirming that identity has been made by the person identifying her and certified by the court, magistrate, or other officers.

### **Types of affidavits**

**There are two types of affidavits. These are as follows:**

#### **Judicial affidavit**

Judicial affidavits are written on judicial paper and properly stamped with court fees. The judicial affidavits must be submitted for a variety of reasons, including but not limited to serving as proof or as application support. A judicial affidavit needs the Oath Commissioner's attestation to be considered valid.

#### **Non-judicial**

Affidavits that are not legally binding are written on non-judicial stamp paper. States have different stamp paper values. In most cases, it is at least Rs. 10/-. The non-judicial affidavits are typically used in administrative or business contexts. The affidavit needs to be attested by a Notary Public with a valid licence in order to be considered valid. The attestation must be signed by the notary with both his seal and a notary stamp, and it 'shall be entered in the Notarial Registration Book.'