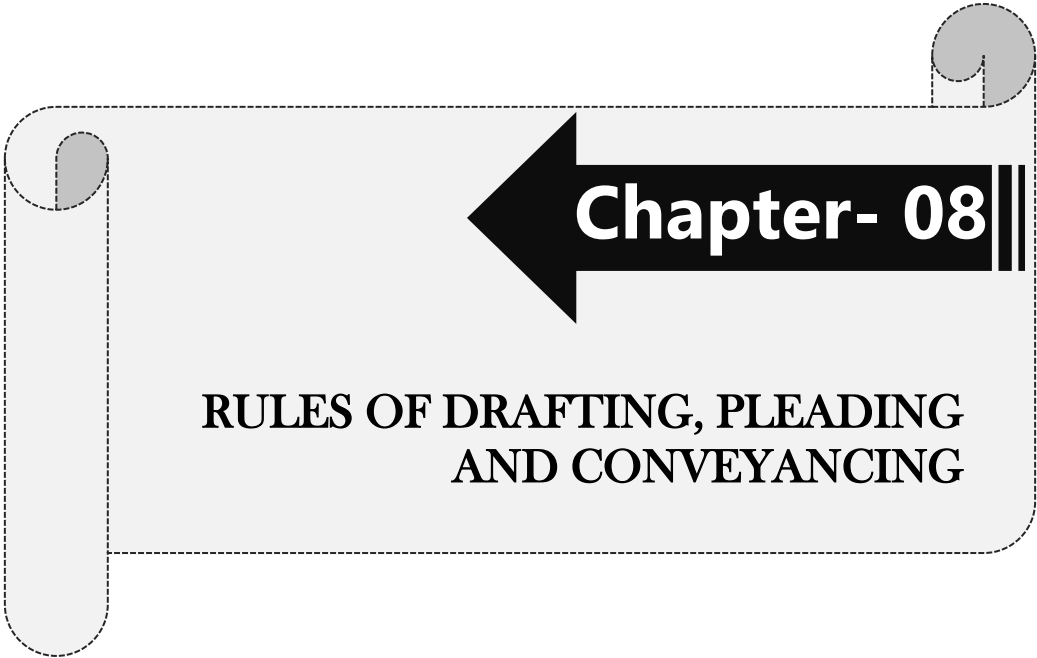




Chapter- 08

RULES OF DRAFTING, PLEADING AND CONVEYANCING

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INTRODUCTION

According to Lord Halsbury - "Where system of pleading may exist, the sole object of it is that each side may be fully alive to the questions that are about to be argued in order that they have an opportunity of bringing forward such evidence as may be appropriate to the issue".

Mogha has elaborated this definition when he remarked that "pleadings are statements, written, drawn up and filed by each party to a case, stating what his contentions will be at the trial and giving all such details as his opponent needs to know in order to prepare his case in answer".

Additional Pleading: Under the English Law, pleading has been defined as follows: "pleading includes any petition or summons and also include the statement in writing of the claim or demand of any plaintiff and of the defence of any defendant thereto and of reply of the plaintiff to nay counter-claim of a defendant."

Custom and Usage of Trades: Custom and usage of any trade and business shall be pleaded like any other facts, if a party wants to rely on them. But a custom repeatedly brought before Court and recognised by them regularly is deemed to have acquired the force of law and need not be pleaded.

The facts of negligence, right or liability, unlawful or wrongful act should be specifically pleaded. Every plea of fact should be specifically raised and proved.

The following points should be kept in mind while drafting a pleading: -

- a) The plaintiff and the defendant should be referred not only by their names. It is better to use the word "plaintiff" or "defendant".
- b) Things should be mentioned by their correct names and the description of such things should be adhered to throughout. For ex., if a piece of land has been referred to as a "garden with trees" it should not be described later as "a land with trees".
- c) Where an action is founded on some statute, the exact language of the statute should be used. For ex., where a policy provides that "it shall become void, if the assured died by his own hand", then in the pleading it should be stated that "the assured died by his own hand", and not such language as "the assured committed suicide" or that "he killed or shot himself".
- d) In any pleading, the use of "if", "but" and "that" should be, as far as possible, avoided. Such words tend to take away the "certainty" and can cause ambiguity.

- e) Necessary particulars of all facts should be given in the pleading. If such particulars are quite lengthy, then they can be given in the attached schedule, and a clear reference made in the pleading. For example, in an action for special damages, it may be stated in the body of the pleading that the details of special damages are given in the attached schedule.
- f) Pleading should be divided into paragraphs and such paragraphs should be numbered consecutively. The division of the pleading into paragraphs should be so done as to endure that each paragraph deals with one fact. At the same time, the entire pleading should appear a running and well knit matter, must not look like isolated fact placed together. Inter-relationships of paragraphs must seem to exist. Very often, pleadings are full of repetitions. Such a tendency makes the pleadings not only lengthy, but also results in confusion.