

E-LEARNING MODULES
 TOPIC : CODE OF CIVIL PROCEDURE
 CLASS: LLB third year and BALLB fifth year
MODULE 3 Pleading

Submitted by:
 Dr. Khakare Vikas
 Asso. Prof.
 Narayanrao Chavan Law College, Nanded
 SRTMUN College code127

	CONTENTS	NOTES
1	<p>PLEADING: [Order VI, Rule 1 to 18]</p> <p>Pleading means, the formal statement of cause of action or defence. Civil Procedure Code defined pleading as ‘pleading means plaint and written statement’.¹</p>	
1.1	<p>Object</p> <ul style="list-style-type: none"> i. To give information to both sides as to the case. Both parties are entitled to know case against them. ii. To bring parties to definite issues. iii. To avoid unnecessary pleadings and thereby reduce time of litigation and expenses. 	
1.2	<p>Rules of pleading</p> <ol style="list-style-type: none"> 1. Pleading to state material facts and not evidence. 2. Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively. 3. Dates, sums and numbers shall be expressed in a pleading in figures as well as in words. 4. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading. 5. If there is any condition precedent which plaintiff or defendant wants to be contested must be distinctly specified in the pleading. 6. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof. 7. Wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred. 8. Wherever it is material to allege notice to any person of any fact, mater or thing, it shall be sufficient to allege such notice as a fact. 9. Wherever any contract or any relation between any persons is 	

¹ Order VI, Rule 1

	<p>to be implied from a series of letters or conversations or otherwise from a number of circumstances it shall be sufficient to allege such contract or relation as a fact.</p> <p>10. Neither party need in any pleading allege any matter of fact which the law presumes in his favour.</p> <p>11. Every pleading shall be signed by the party and his pleader. Pleading may be signed by person duly authorised by party to suit.</p> <p>12. Every pleading shall be verified at the foot by the party.</p>	
1.3	<p>Striking out pleading</p> <p>The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading.</p>	
1.4	<p>Amendment of pleading:</p> <p>The Court may at any stage of the proceeding allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment shall be made if it is necessary for the purpose of determining the real question in controversy between the parties.</p>	
2	<p>PLAINT: [Order VII, Rule 1 to 18]</p> <p>A suit is instituted by presentation of plaint before the Court. A ‘plaint’ is written application made by plaintiff against defendant seeking relief from the Court.</p>	
2.1	<p>Particulars to be contained in plaint</p> <p>The plaint shall contain the following particulars:²</p> <ol style="list-style-type: none"> a. The name of the Court in which the suit is brought; b. The name, description and place of residence of the plaintiff; c. The name, description and place of residence of the defendant, so far as they can be ascertained; d. Where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect; e. The facts constituting the cause of action and when it arose; f. The facts showing that the Court has jurisdiction; g. The relief which the plaintiff claims; h. Where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and i. A statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of Court fees, so far as the case admits. 	

² Order VII, Rule 1

2.2	<p>Defendant's liability and interest:</p> <p>The plaintiff shall show that the defendant is or claims to be interested in the subject matter, and that he is liable to be called upon to answer the plaintiff's demand.³</p>	
2.3	<p>Relief</p> <p>Every plaintiff shall state specifically the relief claimed. Relief may be claimed either simply or in the alternative.</p>	
2.4	<p>Admission of plaintiff:</p> <p>Plaintiff shall submit plaintiff along with the necessary documents accompanied with a list of documents.</p>	
2.5	<p>Return of plaintiff:</p> <p>If Court where suit is filed does not have jurisdiction; the plaintiff at any stage of the suit be returned to be presented in the Court having jurisdiction.</p>	
2.6	<p>Rejection of plaintiff:</p> <p>The plaintiff shall be rejected in the following cases:</p> <ol style="list-style-type: none"> a. Where it does not disclose a cause of action; b. Where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so; c. Where the relief claimed is properly valued, but the plaintiff is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so; d. Where the suit appears from the statement in the plaintiff to be barred by any law; e. Where it is not filed in duplicate; 	
3	<p>WRITTEN STATEMENT, SET OFF AND COUNTER CLAIM [Order VIII Rule 1 to 10]</p> <p>Written statement is pleading on behalf of defendant wherein he gives his defence or reply to the allegation made by plaintiff. Defendant shall within 30 days from date of service of summons, present written statement in the Court. (may be extended upto 90 days)</p>	
3.1	<p>Contents of written statement</p> <ol style="list-style-type: none"> i. New facts: New facts must be specifically pleaded. The defendant must raise by his pleading all matters which <ol style="list-style-type: none"> a. Show the suit not be maintainable, or b. Show that the transaction is either void or voidable in point 	

³ Order VII Rule 5

	<p>of law,</p> <p>c. And all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality.⁴</p> <p>ii. Denial: Denial to be specific. Defendant should not deny generally. But he must deal each allegation of fact to which he does not admit the truth. If is not so denied specifically, it shall be taken to be admitted.⁵</p> <p>iii. Denial should not be evasive. It should answer the point of substance.⁶</p>	
3.2	<p>Set-off Set- off is a reciprocal acquittal of debt. It can be availed in money suit. Where in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, presents a written statement containing the particulars of the debt sought to be set-off.⁷</p>	
3.3	<p>Counter claim A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired. Whether such counter-claim is in the nature of a claim for damages or not.⁸</p>	
3.4	<p>Difference between counter claim (C.C.) and set-off (S.O.) 1. C.C. it is a cross action. 1. S.O.It is statutory defence.</p>	

⁴ Order VIII Rule 2

⁵ Order VIII Rule 3, 5

⁶ Order VIII Rule 4

⁷ Order VIII Rule 6

⁸ Order VIII Rule 6A

	<p>2. C.C. is a weapon of offence.(Like a sword) 2. S.O.It is a ground of defence. (Like a shield) 3. C.C.Where plaintiff's suit is stayed, discontinued or dismissed; counter claim proceeds. 3. S.O.Where plaintiff's suit is stayed, discontinued or dismissed; set-off also extinguished. 4. C.C.This is not arising out of same transaction. 4. S.O.This is arising out of same transaction. 5. C.C.It can be availed in any type of suit. (money and other suit) 5. S.O.It can be availed in money suit only.</p>	

Questions for practice.

1. What is pleading? Write rules of pleading.
2. When pleading can be amended?
3. State contents of a plaint.
4. When plaintiff can claim counter claim?
5. State content of written statement.
6. What is counter claim and set off? Distinguish between counter claim and set off.

Further study:

For more information and study read Code of Civil Procedure 1908 with commentary and case laws.