

## CIVIL PROCEDURE CODE FOR JUDICIAL SERVICES EXAMS

### MODULE 7 : PRINCIPLES OF PLEADINGS

**PLEADINGS :** Order 6 deals with pleadings in general.

#### SIMPLE OVERVIEW OF ORDER 6

- Rule 1 defines pleading,
- Rule 2 lays down the fundamental principles of pleadings.
- Rules 3 to 13 require the parties to supply necessary particulars.
- Rules 14 and 15 provide for signing and verification of pleadings.
- Rule 16 empowers a court to strike out unnecessary pleadings.
- Rules 17 and 18 contain provisions relating to amendment of pleadings.

#### DEFINITION OF PLEADINGS | RULE 1

“Pleading” is defined as plaint or written statement.

Pleadings of plaintiff consists of a statement of claim in which the plaintiff sets out his cause of action with all necessary particulars

Pleadings of defendant is his written statement consists of every material fact alleged by the plaintiff in the plaint and also states any new facts which are in his favour, adding such legal objections as he wishes to take to the claim.

**RATIONALE:** The object of the pleadings is to ensure each side may be fully alive to the questions that are about to be argued in order that they may have opportunity of bringing forward such evidence as may be appropriate to the issues. Other settled objectives are

- to prevent surprise at the hearing.
- to give to each side intimation of the case of the other / to ascertain the real disputes between the parties.
- to narrow down the area of conflict / bring about definitive issues.
- to enable courts to determine what is really at issue between parties<sup>1</sup>
- to prevent deviations from the course which litigation on particular causes of action must take.<sup>2</sup>
- to prevent miscarriage of justice.
- to diminish expense and delay

<sup>1</sup> Virendra Kashinath v. Vinayak N. Joshi

<sup>2</sup> Ganesh Trading Co. v. Moji Ram.

**RULE 2 | BASIC RULES OF PLEADINGS**

2. Pleading to state material facts and not evidence.—(1) 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.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each

allegation being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

Rule 2(1) of Order VI contains the fundamental principles of pleadings. The principles emerge from the R.2(1) is that

<b>4 ESSENTIALS</b>	<p><b>(i) Pleadings should state facts and not law;</b>  <b>(ii) The facts stated should be material facts;</b>  <b>(iii) Pleadings should not state the evidence; and</b>  <b>(iv) The facts should be stated in a concise form.</b></p>
<b>FACTS, NOT LAW</b>	<ul style="list-style-type: none"> <li>• “Plead facts, not law”</li> <li>• Parties state facts only, not law. Example ; Existence of a custom or usage, intention, negligence, waiver – Questions of fact.</li> <li>• Court will apply law to the facts pleaded. Maintainability of the suit – is a question of law.</li> <li>• Legal consequences flow from the facts need not be stated. (Pious obligation of son to pay debt of father in Hindu law)</li> <li>• Interpretation of a document is a point of law.</li> <li>• Mixed question of fact and law must be specifically pleaded.</li> </ul>
<b>MATERIAL FACTS</b>	<p>All material facts must appear in the pleadings and the necessary particulars must be there so as to enable the opposite party to know the case he is required to meet and to put him on his guard. Non-mention of material facts amounts to non-pleading and, therefore, no cause of action arises in favour of such party.</p> <p>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. <sup>3</sup> 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.<sup>4</sup></p>

<sup>3</sup> Udhav Singh v. Madhav Rao Scindia<sup>25</sup>

<sup>4</sup> Virender Nath v. Satpal Singh

	<p><b>MATERIAL FACTS V. PARTICULARS</b> : . Material facts are primary and basic facts which must be pleaded by the party in support of the case set up by it whereas <i>Particulars</i> are the <b>details of the case</b>. They amplify, refine and embellish material facts. They give the finishing touch to the basic contours of a picture already drawn so as to make it full, more detailed and more informative.<sup>5</sup></p>
<b>FACTS, NOT EVIDENCE</b>	<p>The pleadings should contain only <i>facta probanda</i>— the facts required to be proved (material facts); and <i>not facta probantia</i>.— the facts by means of which they are to be proved (particulars or evidence). The material facts on which the party relies for his claim are called <i>facta probanda</i> and they must be stated in the pleadings. But the fact or facts by means of which <i>facta probanda</i> (material facts) are proved and which are in the nature of <i>facta probantia</i> (particulars or evidence) need not be set out in the pleadings. They are not ‘fact in issue’, but only relevant facts required to be proved at the trial in order to establish the fact in issue.<sup>6</sup></p>
<b>CONCISE FORM</b>	<p>The material facts should be stated precisely succinctly and coherently. The pleading must be precise, specific and unambiguous. If care is taken in syntactic process, pleadings can be saved from tautology. L</p> <p>R2(2) Every pleading should be divided into paragraphs and sub-paragraphs. Each allegation should be contained in a separate paragraph.</p> <p>R2(3) Dates, totals and numbers must be mentioned in figures as well as in words</p> <p>R3 specifies that <i>forms in Appendix A</i> of the CPC should be used where they are applicable; and where they are not applicable, forms of like character should be used.</p>

### PLEADINGS V. WRIT PETITION

In a writ petition under Article 32 or 226 of the Constitution, the petitioner, or in a counter-affidavit, the respondent, should state state material facts + evidence in support and proof of such facts by annexing necessary orders and documents whereas pleadings, as discussed earlier, should contain only material facts and not evidence.

<sup>5</sup> Ibid.

<sup>6</sup> Virender Nath v . Satpal Singh<sup>37</sup>

OTHER RULES OF PLEADINGS (RULE 4-17)	
RULE 4	<p>Particulars with dates and items relating to <i>misrepresentation, fraud, breach of trust, wilful default, or undue influence</i> should be mentioned if relied on by the parties.</p> <p>In <i>Bishundeo Narain v. Seogeni Rai</i>, the supreme court held that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid and general allegations are insufficient.</p>
RULE 5	omitted by Act 46 of 1999, s. 16 (w.e.f. 1-7-2002).
RULE 6	When the performance or occurrence of any condition precedent is intended to be contested, such condition precedent shall be distinctly and expressly specified.
RULE 7	No party can raise any ground of claim or contain any allegation of fact inconsistent with his previous pleadings. It will be considered to be a <b>departure</b> , and is not permitted, except by way of amendment.
RULE 8	A bare denial of a contract by the opposite party will be construed only as a <b>denial of express/implied facts of a contract</b> and <i>not the legality, or sufficiency in law of such contract</i>
RULE 9	When the contents of a document are material but not precise words thereof it shall state the effect thereof briefly without setting out the document.
RULE 10	When malice, fraudulent intention, knowledge, or other condition of the mind of a person is material, the pleading shall allege it only as a fact without setting out the circumstances from which it is to be inferred
RULE 11	When it is <b>material</b> to <i>allege</i> notice to any person of any fact, matter or thing, pleading shall <b>only allege the fact that notice has been given</b> , without setting out the form or the precise terms of such unless it is material.
RULE 12	When any contract or any relation between persons is to be inferred from a series of letters or conversation or circumstances, the pleading shall allege only <i>such contract or relation as fact and refer generally to them without setting them in detail.</i>
RULE 13	Neither party is to allege any matter of fact which the law presumes in his favour unless the same has first been specifically denied, (0.g., consideration for a bill of exchange).
RULE 14	Every pleading should be signed by the party or one of the parties or by his pleader

RULE 14-A	A party to the suit should supply his address. He should also supply address of the opposite party
RULE 15	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
RULE 15-A	Rule 15-A is added by 2016 amendment regarding the Verification of pleadings in a commercial dispute.
RULE 16	The power of court to strike out a pleading if it is unnecessary, scandalous, frivolous, vexatious or tends to prejudice, embarrass or delay fair trial of the suit
RULE 17	A court may allow amendment of pleadings

**OBJECTION TO PLEADINGS:** An objection to pleading should be taken at the earliest, if not raised, it is deemed to have been waived.

### ALTERNATIVE AND INCONSISTENT PLEADINGS

Alternative means one or the other of two things.

Inconsistent means mutually contradictory, destructive, irreconcilable or repugnant.

#### ALTERNATIVE PLEADINGS

- The CPC does not prevent the plaintiff or defendant from relying upon several different reliefs/defences in the alternative. [lawxpertsmv](http://lawxpertsmv.com)
- WHY IS IT ALLOWED? to decide the entire controversy in one litigation only without need for another litigation.

EXAMPLES OF ALTERNATIVE PLEADINGS	Suit for possession of property	In a suit relating to Agreement	In suit for eviction
	on the basis of title OR lease.	Specific performance OR damages	personal requirement or non-payment of rent

#### INCONSISTENT PLEAS

Inconsistent pleas can be raised by the parties and if relief could be founded on the alternative plea it could be granted.

Even **inconsistent facts as a matter of law, are not prohibited** but inconsistent claims or inconsistent pleas which are based on facts, which are so inconsistent that *the evidence*

required to prove one fact is destructive of the other fact, should be discouraged except when the facts are not within the personal knowledge of the party pleading them.<sup>7</sup>

Further it should not prejudice or embarrass fair trial of the suit, the court will strike out such matter under Rule 16 of Order 6. Evidence should not be adduced in a which would be contradictory and mutually destructive.

**AMENDMENT TO DO THIS :** It is well settled law that an amendment of a written statement introducing new and inconsistent plea cannot be allowed so as to convert the claim into another of a different and inconsistent character.<sup>8</sup>

## CONSTRUCTION OF PLEADINGS

- The pleadings should not be scrutinized with such meticulous care so as to result in genuine claims being defeated on trivial grounds.<sup>9</sup>
  - The pleadings should receive a liberal construction; no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.<sup>10</sup>
  - It is not desirable to place undue emphasis on form, instead the substance of the pleading should be considered.<sup>11</sup>
  - Pleadings have to read in context, instead of culling out a passage in isolation.

WHY? A code of procedure is designed to facilitate justice and further its ends and too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to 'both' sides) lest the very means designed for furtherance of justice be used to frustrate it.<sup>12</sup>

## SIGNING AND VERIFICATION OF PLEADINGS: RULES 14-15

**PLEADING TO BE SIGNED :** *Every pleading shall be signed by the party and his pleader (if any) : Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf. [Rule 14]*

Rule 14-A as added by the Amendment Act of 1976 requires a party to the suit to supply the **“registered address”** for service of notice.

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<sup>7</sup> Damomal v. Union of India, AIR 1967 Bom 355, Rajamal v. Union of India, AIR 1955 Punj 83 ; Rai's case, AIR 1967 SC 1878.

<sup>8</sup> Charan Singh v. Kulvinder Kuer, 1976 Rev. LR 364.

<sup>9</sup> Madan Gopal v. Mamraj Maniram

<sup>10</sup> Ram Sarup v. Bishnu Narain Inter College

<sup>11</sup> Ram Sarup v. Bishnu Narain Inter College

<sup>12</sup> Sangram Singh v. 203 Election Tribunal 99

- If the same is *incomplete, false or fictitious*, the the Court may, either on its own motion, or on the application of any party, order— (a) in the case where such registered address was furnished by a plaintiff, stay of the suit, (b) in the case where such registered address was furnished by a defendant, *his defence be struck out and he be placed in the same position as if he had not put up any defence.* (R14-A (5))
- This order can be applied to the court for setting aside for “sufficient cause”. [R14-A(6-7)]
- Further, the Court has the power to direct the service of a process at any other address other than “registered address”. (R14-A (8))

#### **RULE 15 : VERIFICATION OF PLEADINGS :**

- Every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.
- The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.
- The verification shall be signed by the person making it and shall state the date on which and the place. at which it was signed.
- The person verifying the pleading shall also furnish an affidavit in support of his pleadings.

#### **WHY ?**

- to fix upon the party verifying for the statement that it contains, and
- to prevent as far as possible disputes as to whether the suit was instituted or defended with the knowledge or authority of the party, who has signed the verification or on whose behalf it has been signed.

**EFFECT ON NON-SIGNING OR NON-VERIFICATION :** Defect in signing and verification of pleadings cannot be ground for dismissal, rather it is a **mere irregularity** and can be corrected at a later stage of the suit with the permission of the court.

**Rule 15-A is added by 2016 amendment regarding the Verification of pleadings in a commercial dispute.**

#### **RULE 16 | STRIKING OUT PLEADINGS**

A Court does not involve itself in the drafting of the pleadings, however when the parties offend the fundamental rules of pleadings, it has to step in. It is based on *ex debito justitiae* (in the interest of justice) The power to strike out pleadings is extraordinary in nature and

must be exercised by the court sparingly and with extreme care, caution and circumspection.<sup>13</sup>

Rule 16 : The Court may at *any stage of the proceedings* order to be struck out or amended any matter in any pleading—

- (a) which may be unnecessary, scandalous, frivolous or vexatious, of
- (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or
- (c) which is otherwise an abuse of the process of the Court.

## VARIANCE BETWEEN PLEADING AND PROOF

A party can only succeed on the basis of what he has pleaded and proved. No amount of proof can substitute pleadings which are the foundation of the claim of a litigating party.

One cannot be permitted to change his case at the stage of trial if it is inconsistent with his pleadings. If permitted, it would defeat the objectives of the pleadings as such variations would take the other party in surprise and eventual confusion and is fatal.

However those variations which

- do not prejudice to the other side
- do not take the other side by surprise

is NOT fatal.

## RULES 17-18 | AMENDMENT OF PLEADINGS

17. Amendment of pleadings.—

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties : Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

Rule 17 of Order 6 confers wide discretion on a court to allow either party to alter or amend his pleading at any stage of the proceedings on such terms as it deems fit. The proviso as inserted by the Amendment Act, 2002, however, puts further restrictions on the power of the court in allowing amendment. This rule is not exhaustive, and section 151 can be resorted for complete justice. The power to allow an amendment is undoubtedly wide

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<sup>13</sup> Sathi Vijay Kumar v. Tota Singh



and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding.<sup>14</sup>

**AMENDMENT BY WHOM?** The plaintiff or the defendant who may apply for amendment of his pleading, i.e. plaint or written statement. Trial court/ appellate / revisional court have the power to grant amendment.

**AMENDMENT AT WHAT STAGE?** Amendment can be granted before, or at, or after the trial, however now the Proviso to Rule 17, as inserted by the Amendment Act of 2002, now restricts the power of the court and it should not allow such amendment *after the commencement of the trial* unless it comes to the conclusion that in spite of due diligence, the matter could not have been raised by the party before the commencement of the trial. Similarly, leave to amend may be or in First Appeal, or in Second Appeal, or in Revision, or even in execution proceedings.

**APPLICABILITY :** In addition to civil suits, it is applicable to several other proceedings such as, claim petitions, election matters, insolvency proceedings, arbitration proceedings, execution proceedings, , proceedings under the Land Acquisition Act, etc.

#### **WHY AMENDMENT SHOULD BE ALLOWED IN PLEADINGS :**

- The courts should try cases based on merits, and if, amendments to pleadings is required to determine real question in controversy between the parties, then it should be allowed. As this would serve larger interest of doing full and complete justice to the parties.
- Amendment is not allowed when it would cause injustice or prejudice to the other side or if the same is mala fide or unnecessary.
- Such amendment should be
  - ✓ bona fide,
  - ✓ legitimate,
  - ✓ honest and
  - ✓ necessary
- All amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties<sup>15</sup>
- Amendments are allowed for accommodating subsequent events

#### **WHEN THE AMENDMENT IS REFUSED**

1. If it tries to introduce totally different, new and inconsistent case or changes the fundamental character of the suit or defence.
2. If the same is not necessary to determine the “real controversy” between the parties.
3. If it tries to forego the right accrued on the other party.

<sup>14</sup> Ganga Bai v. Vijay Kumar<sup>156</sup>

<sup>15</sup> Kisandas v. Rachappa Vithoba<sup>135</sup>

#### 4. If the same is not made in good faith

**NOTICE AND REASONS:** If the amendment is formal or technical, notice to opposite party is not required. Whereas in other case, if amendment is allowed without notice, then it is illegal. And reasons to be recorded by the court for allowing or not allowing the amendment.

**EFFECT OF AMENDMENT :** When an amendment is allowed, it relates back (doctrine of relation back) to the pleading. This doctrine is not absolute, unqualified or of universal application.

**OTHER CONSIDERATIONS :**

- it is well-settled that ordinarily, an amendment of pleading is allowed “at any stage” of the proceedings and not allowed, if the effect of such amendment is to *deprive a party of a right which he has acquired by virtue of the law of limitation*.
- DRJ is not applicable to amendment of pleadings.
- If application of amendment is rejected on merits, second application will not lie.
- Amendment will be allowed on payment of costs, which is reasonable and not exemplary, to the opposite party by the party amending his pleadings
- When the party has accepted the costs as a condition precedent to the amendment, then he cannot be allowed to challenge an order of amendment.<sup>16</sup>
- An order allowing or disallowing an application for amendment is NOT a decree/order appealable. However, it is revisable under Section 115 of CPC.
- *Rule 18 Failure to amend after Order.*— Within 14 days of the order allowing amendment, it should be done. If not amendment shall not be done, unless the time is extended by the court.

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<sup>16</sup> Bijendra Nath v. Mayank Srivastava200