

CRIMINAL DRAFTING

1. Draft a bail petition in a non-bailable case for your client who has been arrested and brought before judicial magistrate.

In the court of S.D.J.M. (P) at Uditnagar
G.R. Case No. 986/08
State of Orissa

Vs.

Sandeep Dash, aged about 38 yrs.
S/o. - P.Dash, of Deogan, Rourkela,
PS:- Tangarpali, Dist-Sundargarh, Orissa. Accused.

Petition U/S 437 Cr.P.C.

The petition on behalf of above named Accused person most respectfully begs to state as under:-

1. That the above named accused is arrested by police under alleged sections of 380 IPC and is produced today in the court.
2. That the police has not been able to make out a prima facie case under alleged section against the accused.
3. That no incriminating objects or any such property is seized from the possession of the accused to connect him with the alleged crime.
4. That the alleged section does end with capital punishment or imprisonment of life.
5. That the accused had not been convicted of any offence punishable with death previously or with imprisonment for life or more than seven years.
6. That the accused has never been convicted nor does he have any antecedent of crime.
7. That the accused is not so influential to temper with the evidence on his release.
8. That the accused is ready to furnish sufficient surety for the entire satisfaction of the court on his release on bail and shall also be abided the any such condition of imposed on him.

It is therefore prayed that your honour may be kind enough to enlarge the accused on bail. And for which the accused as in duty bound shall ever pray.

Date:

Place:

Advocate for the accused.

2. Your client 'A' apprehends his arrest by police of plant site police station on alleged offence of a non bailable section of IPC. Draft a petition before Sessions Judge that on event of arrest by police. He will be granted bail by police.

CIVIL DRAFTING

1. Rama Sahoo is the owner of the Plot No-520 of khata No-12. He negotiated with Gobinda to sale his said property at the consideration amount of Rs.2,00,000/-. Draft one sale deed.

DEED OF SALE

<u>Name and Address of the parties</u>	<u>Signatures of the parties</u>	<u>Photographs of the parties</u>
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(Rama Sahoo)

(Gobinda)

Name and address of the Vendor :

Rama Sahoo, aged about 87 years, S/o Late Bidyadhar Sahoo, resident of Main Road, Rourkela, P.S. :- Plantsite, Dist. :- Sundargarh, by Caste:- Teli (Non S.C./S.T.), by occupation- business.

Name and address of the Purchaser:

Gobind, aged about 50 years, S/o Late Radheshyam Pattnaik, resident of Main Road, Rourkela, P.S. :- Plantsite, Dist. :- Sundargarh, by Caste:- Karan (Non S.C./S.T.), by occupation- business.

Nature of document : SALE DEED

Consideration Amount : Rs. 2,00,000/- (Rupees Two Lacs Only)

Date of Execution : 25th day of January 2008

Short Description of the Property Sold:-

An area of land measuring Ac 0.25 res, (Acre Zero point two five decimals), bearing Plot No.520, Khata No. 12 Kism-Gharabari of Mouza Rourkela Town Unit No. 34, Rourkela, P.S. :- Plantsite, Tahasil - Rourkela, Dist. :- Sundargarh, (Orissa).

Brief Statement of Sale

Whereas the seller is the absolute owner in possession and title holder of the schedule land described herein below and is in exclusive physical possession and peaceful enjoyment.

And Whereas the seller due to his legal necessity in order to meet his day to day expenses and for his treatment due to his various ailments and in order to lead an independent and peaceful comfortable life as having no independent source of income has agreed with the said purchasers to transfer the schedule land, area measuring Ac 0.25 res, (Acre Zero point two five decimals), for the consideration amount of Rs.2, 00,000/- (Rupees Two Lacs only) as mutually agreed.

Hence This Deed of Sale.

Now this deed of sale witnesses as under:-

1. That in pursuance of the said agreement and in consideration of the sum of Rs. 2,00,000/- (Rupees Two Lacs only) paid by the purchase to the seller/vendor, which the seller/vendor hereby acknowledges to have received in full and final in presence of witnesses and the seller as its sole and absolute owner does hereby transfer by way of sale the schedule land, area measuring Ac 0.25 res, (Twenty Five decimals), free from all encumbrances, more particularly described in the schedule give below and delineated in red colour in the trace map annexed hereto in duplicate and to hold the same to the purchasers as its absolute owner for ever.
1. That the possession of the property sold herein under has already been delivered by the seller to the purchasers prior to this registration.
2. That the seller hereby covenants with the purchasers that the purchase shall hereinafter for all times, hold possess and enjoy the said property without any disturbances or obstruction by the seller or successors-in-interest.
3. That the seller covenants to save harmless and keep indemnified the purchasers from or against all encumbrances, charges and equities whatsoever.
2. That the seller further covenants that the or any person claiming through or under him shall at the request and cost of the purchasers execute and do all acts and deeds reasonably required for effectively assuring the sold property to the purchasers and further the seller declares that he or any person claiming through or under him would have no right whatsoever and shall execute all acts and deeds reasonable required for effectively assuring the said property to the purchasers.
3. That the words The Seller and the Purchasers herein used will mean and include their heirs, legal representatives, successors and assignees of the parties hereto.

SCHEDULE

An area of land measuring Ac 0.25 res, (Acre Zero point two five decimals), Kisam-Gharabari-1, recorded under Khata No. 12 (Twelve), bearing Plot No. 520 (Five Hundred twenty), situated at Mouza-Rourkela, Town Unit No. 34.

(Thirty Four), Rourkela, P.S. :- Plantsite, Tahasil :- Rourkela, Sub-Registry Office
Panposh at Uditnagar, Dist. :- Sundargarh, Orissa.

Declaration :-

1. That the land Transferred is not a Government lease hold land nor ceiling surplus land
2. That the seller and the purchasers do not belong to member of Schedule Caste/Scheduled Tribe.
3. That the properties transferred in this deed does not belong to or given or endowed for the purpose of any public religious institutions.
4. We the seller and the purchasers do hereby declare that there is no structure / house on the schedule property transacted in this document. If existence of any structure / house is detected at a later stage, this document would be treated as invalid.

In witness whereof the seller signed this deed on this the 25th day of January 2008.

Witnesses :-

1.

The Seller

2.

Drafted by me as per the instruction of the executant and typed to my dictation. Read over and explained the contents to the executant, who admitted the same to be true and signed.

Typed by me.

Advocate

2. Harschandra pattanalk has three sons and two daughters. He is staying with one of his son Radha pattanalk. He has two acers of land at Rourkela and has ten lacs of rupees in the bank. He wanted to execute one 'will' in favour of his son Radha Pattanalk in respect of his property eliminating all other sons and daughters. Draft one 'Will'.

W I L L

I Sri Haris Chandra Pattnaik, aged about 82 years, S/o Late Hemaraj Pattnaik, resident of Kacheri Road, Rourkela-12, P.S. :- Uditnagar, Tahasil/Munsif :- Rourkela, Sub-Registrar :- Panposh Dist.:- Sundargarh by cast:- Karan, by

MOOT COURT PROBLEMS - CIVIL

PROBLEM - 1

"A" patient suspected case of typhoid came to Dr. B who is a Homeopath for treatment of the same and the doctor prescribed allopathic medicines, capsule ampicillien and tablet paracetamol believing it to be a case of viral fever prevailed in the locality, but after administering the same the condition of the patient deteriorated and the doctor further requested the patient to get pathology investigation done for blood count, ESR and widal test, subsequently the patient died due to wrong application of medicine. Now the wife of the deceased patient files a case claiming compensation from the said Dr. B for deficiency of service. Argue on behalf of the complainant as well as on behalf of Dr. B in his defence.

Argument on behalf of the Complainant:

The wife of the deceased patient died of wrong application of medicine is the complaint in the present case and has filed case against Dr. B, a Homeopath but was practicing on allopathic medicines applied allopathic capsules like ampicillien and tablet paracetamol to save the life of deceased patient and has rendered his duty to his utmost best to save the patient from danger but the patient died due to bodily reaction, for which the condition became very serious and ultimately he expired.

First of all in this case the O. P. doctor being a homeopath is not supposed to give treatment on allopathic and if he is practicing on allopathic medicines, it is a case of negligence and deficiency on service on the part of the doctor, that accordingly for the wrong treatment, it done by unqualified medical practitioner who happens to be a doctor of homeopathic stream is not entitled to practice on allopathic, accordingly for dereliction of duty on the part of the doctor amounts to deficiency in service, for which certainly the O. P. doctor is liable under law to pay compensation to the complainant who has filed the case for consumer forum.

Argument on behalf of the O. P. (Dr. B):

In this case the Dr. B even though he is a homeopath to save the life of the patient who was in imminent danger to life applied medicines on allopathic origin though he is not competent under law to practice the

same, but due to seriousness of the patient he applied the allopathic medicines like capsule ampicillien and tablet paracetamol believing it to be a case of viral fever though the patient was suffering from Typhoid.

Here the doctor has applied the medicines diligently with bonafide intention only to save the life of the patient and from the long experience in practice he was well aware of many allopathic medicines like paracetamol, ampicillien, accordingly he applied the same with sole intention to save the life of the patient, but to his bad luck the patient died for wrong application of medicine, so in this case as there was no malafide intention on the part of the O. P. Dr. B, no negligence or deficiency of service can be attributable to him and as the same is not coming under the scope of negligence and deficiency in service, the case of the complainant is not entitled for any compensation to be paid by O. P. Dr. B, accordingly the case is liable to be dismissed.

PROBLEM - 2

One married lady namely Suprave lodged a F.I.R. against her husband Kishore stating therein her husband is asking for Rs. 20,000/- to bring from her father to purchase a piece of land. When she expressed inability to bring the money the in-laws of Suprava started torturing her, when the torture became severe the lady was forced to lodge report with the police. Investigation was started by the police and after completion of investigation charge sheet was submitted against the husband Kishore U/s. 498 A of I.P.C. and 4 D. P. Act. Argue the case on behalf of the prosecution whether initiation of proceeding under section 498 A of I.P.C and 4 D. P. Act was justified or not, argue the case on behalf of the defence.

Argument on behalf of the Prosecution:

It is a case U/s. 498 A of I.P.C and U/s. of 4 D.P. Act. The case of the prosecution the complainant Suprabha lodged a complaint against her husband for demand of Rs 20,000/- to be brought from her father to buy a piece of land, thereafter when her father expressed his inability to pay, the in-law of Suprabha started torturing her. So when the in-laws have tortured her for demand downing of Rs 20,000/- it is a clear case of doing demand as described U/s. 498 A of I.P.C and due to torture given by her husband Kishore police has submitted charge sheet against the husband U/s. 498 A of I.P.C and U/s. 4 of D.P. Act. So even though she has not lodged report against her in-laws in the F.I.R, as because F.I.R in not a substance piece of evidence the allegation of torture can also be raised by her during the investigation stage, accordingly when prime facie case was made out against the husband, police has rightly submitted charge sheet U/s. 498 A of I.P.C and U/s. 4 of D.P. Act., and the accused is entitled for punishment as per law.

Argument on behalf of the defence (Accused):

In this case the husband of the informant has been charge sheeted U/s. 498 A of I.P.C and U/s. 4 of D.P. Act. for causing torture and cruelty to his wife for the alleged demand of Rs 20,000/- for purchase of a piece of

land. First on analysing the ingredients of U/s. 498 A of I.P.C it says any demand made by husband or in-laws to a married woman for a demand of dowry coupled with cruelty and harassment with a view to coerce her to meet any unlawful demand by himself or through the in-laws, then it is a case of dowry demand. In the section the term cruelty has been elaborated as all harassment or torture to a married woman may not tantamounts to dowry demand, but that demand or harassment must be having direct bearing with the future and basing on that torture she was forced to do some illegal act, so in this case the F.I.R has been lodged by the informant Suprabha against her husband only, but during her statement U/s. 161 Cr. P .C. recorded by I.O. she has stated her in-laws have tortured her contradicting her own statement given in the FIR. So this contradiction in the FIR with that of U/s. 161 Cr. P. C. statement before police will go root in the case, accordingly her statement before police regarding torture given by her in laws is an improvement in the statement and this improvement in the statement amount to omission and exaggeration of version, for which the case of the prosecution suffers inherently for the lack of consisting and corroboration. Accordingly the submission of charge sheet by the police U/ s. 498 A of I.P.C and U/s. 4 of D.P. Act. is an erroneous one, and for this glaring inconsistency in the statement given to police and the statement given in the F.I.R the root of the prosecution case suffers, accordingly the benefit of doubt should have been intended to accused Kishore and he is entitled for an acquittal.

Q 1 . Write an essay on professional ethics.

The dictionary meaning of the word 'Ethics' is the science of morals. It is a branch of philosophy which concerns with human character and conduct. The legal ethics in fact, is that branch of moral science which a member of a legal profession owes towards public, court professional brethren and his clients. Ethics, in its wider sense is an idea of what is right and what is wrong in the course of conduct. Such ideas are known as norms of ethics. Such norms are learned by a person first of all in his own family and then in the society, trade or profession. The observance of those norms not only save him from civil habits and practices but also help in the maintenance of honesty, dignity of the profession in which he is engaged.

Legal practice is an honored profession. Such recognition has been given by the society itself since long. It is considered one of those careers which are meant for the service of the community. It is a fact that there is no such career or profession as this profession which touches various aspects of human life. The lawyers are considered as the guardian and vindicators of two most important thing; i.e. i) liberty and ii) justice. They can do very well only when they maintain certain ethical intellectual standard so that not only the high dignity of the profession will be maintained but also better quality of service would be available to the public. On the other hand legal practice is not a trade or business but a profession. It is an institution meant for public good.

A lawyer is confronted with numerous legal and ethical problems everyday during the course of his professional duties. He is responsible to promote the administration of justice and uphold the honour of the profession. It is, therefore, one of the foremost duties to abide by the rules of the profession. It is said that "no advocate should be forged though he is representing a particular client, that he is an officer of the court and owes duty to it. His office is one of the

exceptional kind, whose responsibility is not only towards his client, whose fortune, interest, reputation and secrets are confirmed to his case but also to the public. He occupies the forgiver position towards all people who appear as witnesses. His privilege in examining them is extremely wide and his liberty of speech is practically unlimited.

The above ideas can be achieved only when certain rules of professional ethics are followed by all advocates. Some of those rules are as follows:-

- △ An advocate should uphold high moral character. He should keep on enhancing his learning and make honesty his best principle.
- △ He should not report to self advertisers for his advertisement. It comes automatically with the professional qualities developed in him.
- △ The duty must prevail, in the case of conflict between interest and duty.
- △ He should not become a tool in the hands of clients.
- △ He should avoid engagement in a trial in which he himself is a witness.
- △ He should be fair to his opponent and the court as well.
- △ He should tell the blank and weak points of the case to his client.
- △ He should do utmost for his client by fair means.
- △ He should not plead the case for both the parties.
- △ He should maintain minimum standards of behavior.

By observing these rules an advocate should maintain the professional ethics and conduct.

Q.1. Write an essay on Alternative dispute resolution systems in India.

Alternative dispute resolution in India is not new and it was in existence even under the previous Arbitration Act, 1940. The Arbitration and Conciliation Act, 1996 has been enacted to accommodate the harmonisation mandates of UNCITRAL Model. To streamline the Indian legal system the traditional civil law known as Code of Civil Procedure, (CPC) 1908 has also been amended and section 89 has been introduced. Section 89 (1) of CPC provides an option for the settlement of disputes outside the court. It provides that where it appears to the court that there exist elements, which may be acceptable to the parties, the court may formulate the terms of a possible settlement and refer the same for arbitration, conciliation, mediation or judicial settlement.

Due to extremely slow judicial process, there has been a big thrust on Alternate Dispute Resolution mechanisms in India. While Arbitration and Conciliation Act, 1996 is a fairly standard western approach towards ADR, the LokAdalat system constituted under National Legal Services Authority Act, 1987 is a uniquely Indian approach.

Arbitration and Conciliation Act, 1996

Part I of this act formalizes the process of Arbitration and Part III formalizes the process of Conciliation. (Part II is about Enforcement of Foreign Awards under New York and Geneva Conventions.)

Arbitration

The process of arbitration can start only if there exists a valid Arbitration Agreement between the parties prior to the emergence of the dispute. As per Section 7, such an agreement must be in writing. The contract regarding which the dispute exists, must either contain an arbitration clause or must refer to a separate document signed by

the parties containing the arbitration agreement. The existence of an arbitration agreement can also be inferred by written correspondence such as letters, telex, or telegrams which provide a record of the agreement. An exchange of statement of claim and defense in which existence of an arbitration agreement is alleged by one party and not denied by other is also considered as valid written arbitration agreement.

Any party to the dispute can start the process of appointing arbitrator and if the other party does not cooperate, the party can approach the office of Chief Justice for appointment of an arbitrator. There are only two grounds upon which a party can challenge the appointment of an arbitrator - reasonable doubt in the impartiality of the arbitrator and the lack of proper qualification of the arbitrator as required by the arbitration agreement. A sole arbitrator or a panel of arbitrators so appointed constitute the Arbitration Tribunal.

Except for some interim measures, there is very little scope for judicial intervention in the arbitration process. The arbitration tribunal has jurisdiction over its own jurisdiction. Thus, if a party wants to challenge the jurisdiction of the arbitration tribunal, it can do so only before the tribunal itself. If the tribunal rejects the request, there is little the party can do except to approach a court after the tribunal makes an award. Section 34 provides certain grounds upon which a party can appeal to the principal civil court of original jurisdiction for setting aside the award.

The period for filing an appeal for setting aside an award is over, or if such an appeal is rejected, the award is binding on the parties and is considered as a decree of the court.

Conciliation

Conciliation is a less formal form of arbitration. This process does not require an existence of any prior agreement. Any party can request the other party to appoint a conciliator. One conciliator is preferred

but two or three are also allowed. In case of multiple conciliators, all must act jointly. If a party rejects an offer to conciliate, there can be no conciliation.

Parties may submit statements to the conciliator describing the general nature of the dispute and the points at issue. Each party sends a copy of the statement to the other. The conciliator may request further details, may ask to meet the parties, or communicate with the parties orally or in writing. Parties may even submit suggestions for the settlement of the dispute to the conciliator.

When it appears to the conciliator that elements of settlement exist, he may draw up the terms of settlement and send it to the parties for their acceptance. If both the parties sign the settlement document, it shall be final and binding on both.

LokAdalat

Etymologically, LokAdalat means "people's court". India has had a long history of resolving disputes through the mediation of village elders. The current system of Lok Adalats is an improvement on that and is based on Gandhian principles. This is a non-adversarial system, whereby mock courts (called Lok Adalats) are held by the State Authority, District Authority, Supreme Court Legal Services Committee, High Court Legal Services Committee, or Taluk Legal Services Committee, periodically for exercising such jurisdiction as they think fit. These are usually presided by retired judge, social activists, or members of legal profession. It does not have jurisdiction on matters related to non-compoundable offences.

While in regular suits, the plaintiff is required to pay the prescribed court fee, in LokAdalat, there is no court fee and no rigid procedural requirement (i.e. no need to follow process given by Civil Procedure Code or Indian Evidence Act), which makes the process very fast. Parties can directly interact with the judge, which is not possible in regular courts.