



Drafting

APPEARANCES AND ART OF ADVOCACY

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RIGHT TO LEGAL REPRESENTATION

		NCLT	CCI	SAT	TRAI
	<u>NAME OF THE ACT</u>	<u>APPELLATE AUTHORITY</u>	<u>TYPE OF APPEAL OR WHO CAN APPEAL</u>	<u>TIME LIMIT WITHIN WHICH THE APPEAL IS TO BE FILED.</u>	
1	COMPANIES ACT	NCLT	<ul style="list-style-type: none"> REFUSAL BY THE PUBLIC COMPANY TO REGISTER THE TRANSFER OR TRANSMISSION OF ITS SHARE OR DEBENTURE WITHIN A PERIOD OF 30 DAYS. 	<ul style="list-style-type: none"> WITHIN 60 DAYS OF THE RECEIPT OF NOTICE OF SUCH REFUSAL. WHERE NO NOTICE HAS SENT BY THE COMPANY WITHIN 90 FROM THE DATE ON WHICH THE INSTRUMENT OF TRANSFER WAS DELIVERED TO THE COMPANY. 	
2	TRAI	SUPREME COURT	ANY PERSON AGGRIEVED BY ANY ORDER OF THE APPELLATE TRIBUNAL MAY APPEAL TO SUPREME COURT	WITHIN 90 DAYS FROM THE DATE OF THE ORDER APPEALED AGAINST. THE SUPREME COURT MAY CONDONE THE DELAY IN APPEAL.	
3	SEBI ACT 1992	SAT	ANY PERSON AGGRIEVED BY AN ORDER OF THE SEBI OR ADJUDICATING AUTHORITY.	Within 45 DAYS OF THE RECEIPT OF THE COPY OF THE SAID ORDER.	
		SUPREME COURT	ANY PERSON AGGREIEVED BY ANY ORDER OF SAT.	WITHIN 60 DAYS FROM THE DATE OF THE COMMUNICATION OF THE SAID ORDER. THE SUPREME COURT MAY CONDONE THE DELAY IN FILING APPEALS	
4	COMPETITION ACT 2002	APPELLATE TRIBUNAL	ANY PERSON AGGRIEVED BY THE ORDER OF THE CCI.	WITHIN 60 DAYS OF THE RECEIPT OF THE COPY OF THE SAID ORDER . THE TRIBUNAL MAY CONDONE THE DELAY IN FILING APPEAL.	
		SUPREME COURT	ANY PERSON OF THE CCI AGGREIVED BY THE ORDER OF THE APPELLATE TRIBUNAL.	WITH IN 60 DAYS OF THE RECEIPT OF THE COPY OF THE SAID ORDER . THE SUPREME COURT MAY CONDONE THE DELAY IN FILING APPEALS	

Real Estate (Regulation and Development) Act, 2016

- A PCS can appear before Adjudicating officer or appellate tribunal:
- Hence a Company Secretary holding certificate of practice can –
 - ◻ Represent a person (promoter) before any real estate regulatory authority for registration of real estate project,
 - ◻ Represent a person before real estate appellate tribunal.
 - ◻ Represent a person before Adjudicating Officer

AFFIDAVIT IN EVIDENCE

- The following must be kept in mind while preparing the affidavit-in-evidence by the parties –
- (i) The best evidence is that of a person who was personally involved in the whole transaction. In case, that person is not available for any reason, then any other person who has joined in his place to make deposition by way of his affidavit.
- (ii) In case, the petitioner himself was involved in the execution of a contract, he should file affidavit-in-evidence.
- (iii) The allegations or charges or grounds relating to facts should be re-produced duly supported by documentary evidence. It may be noted that in the affidavit in evidence, the position of law or legal provisions or principle of law are not reproduced because the position of law or settled principles of law are not required to be proved by any party and they are deemed to exist and any party can argue and take help of those settled position of law while arguing their case before the Court or Tribunal or Forum and need to be proved by filing an evidence. [Section 5, Indian Evidence Act.]
- (iv) In case, the point or issue pertains to engineering, medical, technology, science or other complex or difficult issues, then the evidence of expert is to be filed in the form of his Affidavit. If necessary, the said witness has to appear before the Forum for the purpose of cross-examination by the counsel for the other party. For example, hand-writing or finger print experts etc.
- (v) Besides the leading evidence on the points raised by the petitioner or by the opposite party in his written statement/reply, if possible, the party who is filing the affidavit-in-evidence should also file documents, papers or books or registers to demolish the defence or case set up by the opposite party.
- (vi) It is also permissible for any party to bring any outside witness (other than the expert witness) in support of his case if the facts and circumstances of the case so warrant and permitted by the Court/ Tribunal.
- (vii) At the time of tendering affidavit-in-evidence, the party must bring alongwith it either the original of papers, documents, books, registers relied upon by it or bring with it the carbon copy of the same. It may be noted that only photocopy of any paper or document (in the absence of its reply, original or carbon copy) can not be relied upon and tendered as an evidence.

- 1. Argument on preliminary submissions: Preliminary submissions should primarily confine to the true and correct facts regarding the issue involved and which have been suppressed or not disclosed by the other side in the pleadings. Thus, for eg., if a claim being opposed by a lawyer/authorized representative is evidently barred by limitation, such an objection should be taken in the preliminary submissions/objections.
- 2. Argument on merits: Such arguments as relate to the facts pleaded by the parties are termed as arguments on merits. While addressing arguments on merits, a lawyer/authorized representative should carefully point out the pleadings of the parties and the relevant evidence in support thereof, lead by the parties, both oral as well as documentary. □ INSTANCES □ Thus, where an agreement/contract of service is pleaded and there is no evidence either oral or documentary on record in support of such an agreement/contract, it should be specifically pointed out.
- 3. Rule of adverse inference: It is incumbent upon a party in possession of best evidence on the issue involved, to produce such evidence and if such party fails to produce the same, an adverse inference is liable to be drawn against such party. □ The Court will be justified in drawing an adverse inference against that party

Points to draft written pleadings

- – Quote relevant provisions in the petition and excerpts of observations made by the Courts relevant to the point;
- – Draft prayers for interim relief in such a manner which though appears to be innocuous but satisfy your requirements;
- – Do not suppress facts;
- – Highlight material facts, legal provisions and Court decisions, if any;
- – State important points at the outset together with reference to relevant provisions/judgements

Points to draft Oral pleadings

- – Preparation before presentation of the case–
- ; – Carefully read your petition, provisions of law and judgements;
- – Jot down relevant points on a separate sheet of paper together with relevant pages of the compilation;
- – Keep copies of judgements to be relied ready for the Court and for your opponent(s).
- **WHILE PRESENTING YOUR CASE**
- Refer to the order sought to be challenged or reliefs sought to be prayed;
- – State brief facts;
- – Formulate issues/points, categorise them and address them one by one;
- – Take each point, state relevant facts, provisions of law and relevant binding decisions;
- – Hand over xerox copies of binding decisions to the Court Master while placing reliance;
- – Refer to relevant pages of the compilation, provisions of law and judgements;
- – Complete all points slowly but firmly;

ADVOCACY TIPS

- (i) Clarity: The judge's time is limited, so make the most of it.
- (ii) Credibility: The judge needs to believe that what you are saying is true and that you are on the right side.
- (iii) Demeanour: We don't have a phrase "hearing is believing". The human animal which includes the human judge, is far more video than audio. The way we collect most of our information is through our eyesight.
- (iv) Eye contact: While pleading, maintain eye contact with your judge.
- (v) Voice modulation: Voice modulation is equally important. Modulating your voice allows you to emphasize the points you want to emphasize. Be very careful about raising your voice. Use your anger strategically. But use it rarely. Always be in control of it.
- (vi) Psychology: Understand judge's psychology as your job is to make the judge prefer your version of the truth.
- (vii) Be likeable. At least be more likeable than your opponent. If you can convert an unfamiliar Bench into a group of people who are sympathetic to you personally, you perform a wonderful service to your client.
- (viii) Learn to listen. (ix) Entertain your judge. Humour will often bail you out of a tough spot

Dressing etiquettes

With every organization program comes the inevitable question: What do I wear? Knowing what to wear, or how to wear something, is key to looking great in any event.

- Always wear neat and nicely pressed formal clothes. Choose corporate shades while you are picking up clothes for your office wear.
- Ties for men should compliment.
- Women should avoid wearing exposing dresses and opt for little but natural make-ups. Heels should be of appropriate or modest height.
- Men need to keep their hair (including facial hair) neatly trimmed and set.
- Always polish your shoes.
- Keep your nails clean.
- Wear clothes which you are comfortable in and can carry well.

COMPANY
SECRETARY

- (a) The professional dress for male members will be Navy Blue suit and white shirt with a tie (preferably of the ICSI) or navy blue buttoned-up coat over a pant or a navy blue safari suit.
- (b) The professional dress for female members will be saree or any other dress of a sober colour with a navy blue jacket.
- (c) Members in employment may wear the dress/uniform as specified by the employer for all employees or if allowed the aforesaid professional dress.
- (d) Practising Company Secretaries appearing before any tribunal or quasi-judicial body should adhere to dress code if any prescribed for appearing before such tribunal or quasi-judicial body or if allowed the aforesaid professional dress.

It may be pointed out that any person whether a lawyer, pleader or authorized representative representing a litigant before any Court of law or a Tribunal or any other authority discharging the functions of a Court/a quasi judicial authority, should comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community and a gentleman

HANDSHAKE ETIQUETTES

Etiquette begins with meeting and greeting. A handshake is a big part of making a positive first impression. A firm shake is an indication of being confident and assertive. The following basic rules will help you get ahead in the workplace:

- Always rise when introducing or being introduced to someone.
- Shake hands with your right hand.
- Shake hands firmly (but not with a bone crushing or fish-limp grip), and with only one squeeze.
- Hold it for a few seconds (only as long as it takes to greet the person), and pump up and down only once or twice.
- Make eye contact while shaking hands

COMMUNICATION ETIQUETTES

- Show interest in what other people are doing and make others feel good.
- Stand about an arm's length away while talking to others.
- Question another person in a friendly, not prying, manner.
- Make eye contact when talking to others.
- Be polite. Avoid foul language, unkind statements, and gossip.
- Keep your conversations short and to the point.
- Maintain your sobriety and politeness even if the client speaks something offensive or rude and avoid replying back in harsh tone/words

Dining Etiquettes

- Always be courteous while official dinners. Offer the seat to your guest first. If you are the guest, be punctual and thank the host for the dinner.
- Wait until you receive your host's signal.
- Initiate conversations while waiting for the food.
- Never begin eating any course until everyone has been served or the host/hostess has encouraged you to do so.
- Chew quietly; don't speak with your mouth full.
- Avoid pointing the knife or fork towards the other person while eating and speaking.
- Allow your guest to select the menu and wine.
- If something unwanted has gone to your mouth, place the napkin in front of your mouth tactfully and bring it out instead of putting your hand inside the mouth to get rid of it.
- Learn the basic table manners before you go out to dine with a potential client or an important business meet