

The logo of Galgotias University is a stylized circular emblem. It features a central white circle surrounded by three curved, overlapping bands in shades of yellow, blue, and red. The entire emblem is set against a light pinkish-red circular background.

Legal Drafting

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Topics Covered

1. Knowledge of Law
2. Sketch or Scheme of the Draft
3. Principles of Drafting
4. Skeleton Draft
5. Fowler's Five Rules of Drafting
6. Further Principles of Drafting
7. Contents of the Draft
8. Qualities of Good Writing
9. Precautions to be Observed by the Draftsman
10. Indian Registration Act & Indian Stamp Act

Knowledge of Law

- The duty of a draftsman is to express the intentions of the parties clearly and concisely in technical language.
- First form a clear idea of intentions.
- Consider as to whether those intentions can be given effect to without offending against any provisions of law.
- A knowledge of law is essential for a draftsman, at least the law pertaining to the subject of the draft.
- It is sometimes said that the business of a draftsman is very simple; he has to hunt up a similar draft from a book of Precedents and copy it out.

Sketch or Scheme of the Draft

- When a draftsman has formed a clear idea as to what the intentions of the parties are and how far they can be given effect to without doing violence to any provision of law, he is in a position to prepare the draft.
- But before he begins to write out his draft, he must frame in his mind a sketch of the intended draft. This is the most important rule which should be observed even by practiced draftsman. If he omits to observe this rule he may omit to mention many important matters or insert many unnecessary details in his draft.
- This rule is suggested by Mr. Davidson, high authority on Conveyancing in his book on 'Conveyancing', 4th Edn., Vol. I, p. 20, where the learned author says as follows:

- “The first rule on which a draftsman must act is this that before his draft is commenced, the whole design of it should be conceived, for if he proceeds without any settled design, his draft will be confused and incoherent, many things will be done which ought not to be done and many left undone which ought to be done. He will be puzzled at every step of his progress in determining what ought to be inserted and what is to be omitted and will have no clue to guide him is his decision because he does not know what his own object is.”
- The importance of the above rule cannot be over-emphasized and it should be observed by every draftsman who cares for his reputation and for the interest of his client.

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Principles of Drafting

- (a) Before commencing the draft, the draftsman should conceive the whole design of it.
- (b) Nothing is to be omitted or admitted at random. In the application of forms attention should be given to see that the inferences formerly stated have not since been rendered superfluous by judicial decision. The statements of negatives should generally be avoided.
- (c) The order of the draft should be strictly logical.
- (d) The ordinary and accustomed forms of instruments and technical language should be employed.
- (e) Legal language should be, to the utmost possible extent, precise and accurate.

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(f) The draft must be readily intelligible to laymen. Sir Ernest Gowers states that the inevitable peculiarities of legal English are caused by the necessity of being unambiguous. It is the duty of a draftsman to try to imagine every possible combination of circumstances to which the words might apply, every conceivable misinterpretation that might be put on them and to take precaution accordingly. He must avoid all graces, not to be afraid of repetition, or even of identifying them by aforesaid, he must limit by definition words with penumbra dangerously large, or amplify with a string of near synonymous words with a penumbra dangerously small, he must eschew all pronouns when there are antecedents might possibly be open to them and generally avoid every potential grammatical ambiguity. All the time he must keep his eye on the rules of legal interpretation and the case-law on the meaning of particular words and choose his phraseology to fit them. [Piesse and Gilchrist Smith Book on “The Elements of Drafting” 2nd Edn., Pp. 7 to 12].

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Skeleton Draft

- After the general scheme of the draft has been conceived, the draftsman should note down briefly the matters or points which he intends to incorporate in his intended draft.
- Frame what is called a "Skeleton draft" which should be filled in or elaborated as he proceeds with his work.
- An illustration will bring out the importance and significance of this rule. Suppose a lawyer is entrusted with the responsible duty of preparing a Will. After having digested the facts and consulted the law on the point as to how far the intention of the testator can be given effect to, he should settle the general scheme of his draft. After having done so far, he should form his Skeleton of the Will as follows:
Commencement, Appointment of Executors & Trustees, Legacies, Specific devise of Immovable Property, Annuities, General devise & bequest, Testimonium.

Fowler's Five Rules of Drafting

- “Anyone who wishes to become a good writer should endeavour, before he allows himself to be tempted by more showy qualities, to be direct, simple, brief, vigorous and lucid.”
- This general principle may be translated into general rule in the domain of vocabulary as follows:
 - (a) Prefer the familiar word to the far-fetched.
 - (b) Prefer the concrete word to the abstract.
 - (c) Prefer the single word to the circumlocution.
 - (d) Prefer the short word to the long.
 - (e) Prefer the Saxon word to the Roman.

- Cultivate the habit of reserving adjective and adverbs to make your meaning more precise and suspect those that you find yourself using to make it more emphatic.
- Use no more words than are necessary to express your meaning, for if you use more you are likely to obscure it and to tire your reader.
- In particular do not use superfluous adjectives and adverbs and do not use round about phrases where single words would serve.

Further Principles of Drafting

- (i) A well-drafted document should be clear to any person who has a competent knowledge of the subject-matter.
- (ii) A draftsman should therefore begin by satisfying himself that he appreciates what he means to say, what he does not mean to say, and what he need not say.
- (iii) A frequent source of ambiguity is the fact that a draftsman is thinking that he is saying one thing when he is really saying more than one, or that he is dealing with a simple thing when it is really complex or subject to unsuspected qualifications or exceptions. The opposite state of affairs may also cause ambiguity.
- (iv) As far as possible a document should be self-explanatory.
- (v) Where the subjects are completely distinct, or the rules of law respectively applicable differ, then probably it will be found that it is better to have separate documents. They can, if need be, refer to one another.
- (vi) A schedule is useful for matters which cannot be omitted, but which, if inserted in the body of the document, tends to obscure the sense of the document.

- (i) The order should be logical. A logical arrangement minimises the risk of omission or repetition.
- (ii) Sentences should be as short as is compatible, and with clarity.
- (iii) Words should always be used in the same sense. If the meaning is changed, the word should be changed or the change of the meaning clearly stated.
- (iv) Before finally passing a draft the draftsman should reconsider it. He must satisfy himself, before it is too late, that the draft means what he intends. and that its terms are clear and definite, that it does not say anything more or less than what is intended, that it takes into the account al the circumstances that ought to be contemplated and that requirements of the law has been properly observed.
- (v) The active voice is preferable to the passive, unless the passive voice in a particular connection makes the meaning more clear.

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Contents of the Draft

- (a) Commencement of a Deed
- (b) Parties to a Deed
- (c) Recitals
 - (1) Narrative Recitals
 - (2) Introductory Recitals
- (d) Parcels
- (e) Operative Part
- (f) Arrangement
- (g) Testimonium
- (h) Attestation

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Qualities of Good Writing

- Clearness
- Accuracy
- Happy Tone
- Completeness
- Conciseness

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Precautions to be observed by the Draftsman

- Status quo
- Locus Standi
- Authority
- Legal Developments
- Comprehensive Details

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References

- Hargopal, *Legal Draftsman*, Universal Law Publishing Company (2013).
- De Souza, revised by C.R. Datta & M.N. Das, *Forms and Precedents of Conveyancing*, JBA, (2014).
- *Drafting Rules & Skills*,
http://lawfaculty.du.ac.in/files/course_material/Old_Course_Material/LB%20502%20Drafting,%20Pleadings,%20Full%20Material%20.pdf

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