

***One Day Training Workshop
on Legal Drafting and Professional
Ethics for Lawyers***



**Report Prepared By:
Dr. Khurshid Iqbal,
Dean Faculty**

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Preface

Pleading is the foundation of civil litigation. A faulty pleading always leads to failure, not only of the case, but of the adjudicative process, with ultimate impact on the entire gamut of the civil justice system. Every code of civil procedure rules provide guidelines for content of pleading, reflecting the emphasis on purpose and function of pleading. In recent years, pleading has surfaced as a new subject of scholarly discourse because of introduction of new civil procedure codes, judicial verdicts and professional development. Australia, for example, has enacted Uniform Civil Procedure Rules in 2005.¹ The UK has formulated its civil procedure rules in 1998, in light of the famous Woolf Report.² Canada also introduced its new Rules of Civil Procedure in 1998.³

Recently, in the US, two rulings of the Supreme Court—*Bell Atlantic Corp. v. Twombly* (2007)⁴ and *Aschcroft v. Iqbal* (2009)⁵ have triggered a hectic academic debate. In both cases, the court gave a new interpretation to Rule 8 of the Federal Rules of Civil Procedure, 1938.⁶

Pleading is also part of professional development programmes for lawyers. The Ontario Bar Association, for example, organized a seminar on pleading, in 2007. The opening lines of the seminar's concept note read:

As important as a good frame is to a work of art, your pleading sets the tone for your entire case. Each pleading presents a fresh opportunity to demonstrate the strength of the case, highlight key issues and give the decision-maker a straight path to a favourable judgment or not. Come and hear seasoned speakers share their experiences in their ongoing quest to master the lost art of pleading beyond motor vehicle accidents.⁷

This one-day training workshop on pleading is part of the KP Judicial Academy's statutory mandate to impart training to lawyers. Given the central role the pleading play in civil litigation,

¹ Available at http://www.austlii.edu.au/au/legis/nsw/consol_reg/ucpr2005305/. (Accessed 3 March 2013).

² <http://www.legislation.gov.uk/ukxi/1998/3132/part/16/made>. See 16.2 (a) and (b). (Accessed 3 March 2013).

³ The Canadian Federal Court Rules, 1998. Available at <http://laws-lois.justice.gc.ca/eng/regulations/SOR-98-106/page-1.html#h-1>. See (17.4 & 17.5) (Accessed 3 March 2013).

⁴ 550 U.S. 544 (2007). Involving an action under the antitrust law, the plaintiff claimed that the defendants have agreed not to compete in certain products (services), which discouraged competition in the market.

⁵ 129 S. Ct. 1937 (2009). Iqbal—a Pakistani citizen—alleged that he was arrested a few weeks after the 9/11 attacks. He contended that his arrest was pursuant to a policy that was discriminatory on the ground of race, religion and national origin.

⁶ Rule 8 (a) (2).Text at http://www.law.cornell.edu/rules/frcp/rule_8. (Accessed 3 March 2013). Rule 8 requires that pleading must contain a short and plain statement of the claim showing that the pleader is entitled to relief.

⁷ http://www.oba.org/en/cle_pdf/07CIV1130C.pdf (Accessed 03 March 2103).

it was resolved that the first course for lawyers should be a basic one. There is no worthwhile training arrangement for those young law graduates who enter the bar to practice law. The pupillage that is obligatory under the regulatory framework is generally perceived to be not as much efficient as to enable fresh entrants to learn the necessary drafting skills. The target audience was thus junior lawyers, having no more than three years experience.

Before designing the course, the Academy conducted some basic research on the topic. The aims and objective of the course are reflected in the attached course description document. The Academy did its best to make the course a success, not only in itself, but also as a pilot-test for similar courses in future. Certain limitations were noted. One, the Academy's request for nomination of participants through Presidents of the District Bar Association was neither addressed on time, nor in a sound manner. As result, the District & Sessions Judges, involved for the purpose of better communication, had to be requested to help in finalizing the nominations. Second, the participants turned up for the training very late on the day fixed, compelling the Academy to start the proceedings late by more than hour. Third, despite invitation, many senior lawyers (with glaring exception of one—Barrister Zahoor-ul-Haq), did not attend the concluding ceremony. The Academy was expecting encouragement with their presence. The training manuals for lawyers have been developed in light of the recent Training Needs Assessment (TNA) exercise conducted by the Academy with the help of the UNPD and the Institute of Management Sciences, Peshawar. Despite problems, the Academy is committed to organize training courses for lawyers in future.

Dr Khurshid Iqbal
(LLM (Hull, UK); PhD (Ulster, UK)),

(District & Sessions Judge)/
Dean Faculty

Welcome Address by Director General

Ladies and Gentlemen!

The role of lawyers in a civilized society could hardly be emphasized. Lawyers are the first professionals who fight for justice in a conflict between good and evil. Law is their only weapon in their armory against evil. With their help, societies are able to establish the rule of law. Peace and prosperity could be achieved through the rule of law. Thus, lawyers play a significant role in peace building. But the question is: do they have the capacity to play such a role?

Given the deteriorating conditions of our education in general and legal education, in particular, the younger generation of our lawyers need continuous legal education to know, understand and learn how to respond to the challenges of their profession. The Khyber Pakhtunkhwa Judicial Academy has the statutory mandate to address the challenge of capacity building of our lawyers' community. This one-day training workshop is the first of its kind. Indeed, the Academy has to go a long way in this direction. We believe that we should start from the very basic problems the junior members of the legal profession come across. Among them, legal drafting is the foremost. Professional ethics is no less significant. So, this course seeks to combine both, albeit, with minimum content with a view to take a small step while we embark on our journey.

Drafting of pleadings is the first milestone on the way to a cumbersome process of litigation. If the direction is missed at this initial stage, the rest of the journey is most likely to end up in futility. Pleading is like stitching a suit from a cloth. If a tailor does not know how to take the measurement, how to cut the cloth according to the relevant measurements, how to sew the cloth, and so on, s/he will lose his means of livelihood, goodwill and also cause damage to property. The situation may further worsen, if the tailor does not know how to behave with his clients and how to protect the rights of his client.

This Academy is here to offer its services to you. It is now up to your willingness and spirit to learn. If we receive good response from you, we may enhance the duration of the course. Remember, you have heavy responsibility on your shoulders to deliver high quality services to your clients and thereby contribute to the rule of law. With this, I warmly welcome you all.

Hayat Ali Shah

Course Description

Reference	<i>T-1/2013/Bar-Pleadings/01 day</i>
Workshop	<i>Legal Drafting and Professional Ethics for Lawyers</i>
Duration	<i>One-Day</i>
Participants	<i>Lawyers, having less than three year's experience</i>
No. of participants	<i>25</i>
Method	<i>Participatory, practical</i>
Assessment	<i>Gradation and impact assessment</i>
Designed by	<i>Dr Khurshid Iqbal, Dean Faculty & Asghar Ali Salarzai, Admin officer</i>

Aims & Objectives

Pleadings and the conduct of a pleader play a significant role in the justice system. Good pleadings and a well-mannered pleader, always make an easy way to obtain the solicited relief. In recent years, there has been a growing concern about quality pleadings. Indeed, appreciable command on linguistics coupled with legal acumen of an advocate make good pleadings. The first casualty of bad pleadings is the litigant. The worst sufferer is justice. Bad pleadings never result in good judgment. They badly affect the integrity of the entire justice system. Good pleadings make the court understand the controversy, frame issues properly, appreciate evidence palpably and render judgment correctly. Perhaps John M. Duher Jr. an American Judge said this more aptly:

I am a busy judge... [t]ell me only what I need to know to reach the result you want--and do it in a soundly reasoned manner....[t]he brief-writer is most helpful to me when s/he tells me not only what decision to reach but how to get there” (Bryan A Garner, "Judges on briefing: A National Survey", 7 Journal of Legal Writing, 2002, p 1).

It appears that good legal writing should be clear, concise, coherent and well organized. For this purpose, lawyers need formal and proper training. However, with their entry into bar apprenticeship/pupilage, there is no arrangement for such training. Young legal professionals face a myriad of challenges—survival in an environment of cut throat competition; minimal know how of the most required skills—to name, but a few. Several legal skills are essential for young law graduates who want to become successful lawyers. Written communication is one of such skills. A lawyer' efficient written communication ranges from simple correspondence to drafting complex legal documents, court pleadings and opinion writing. A tool kit of necessary legal skills includes good knowledge of English grammar; well organized, simple and concise writing; the use of persuasive legal language; knowledge and understanding of substantive and procedural laws; and efficient use of the IT. These skills are, however, as much necessary for lawyers, having certain experience, as for those new in the profession. The skills of producing good quality pleadings rank on top of all. It greatly expected of lawyers to know writing of

pleadings and to recognize its importance. A practice of dependency on petition writers has developed. The petition writers are not well versed in the law relating to pleadings. This results in poor pleadings, which often cause many hardships during the course of judicial proceedings.

This workshop focuses on good pleadings. It also highlights the ethics of advocacy and its impact on justice service delivery. It covers drafting of pleadings, agreements, opinion writing and legal notice writing. The details are as follows:

01	Introduction to pleadings
Focus: Law of pleadings and common mistakes in drafting pleadings	
Skills: Sensitization to the relevant law; clarity and comprehension	
02	Writing agreements
Focus: Tools of agreement writing	
Skills: Effective agreement writing	
03	Opinion writing
Well- organized drafting of legal opinion	
Skills: conciseness, completeness, coherence	
04	Ethics
Conduct during judicial proceedings	
Skills:Etiquette & Mannerism	

Workshop Schedule

Activity	Timings
Registration of the Participants	8:30 AM
Recitation from the Holy Quran	8:45 AM
Dua	9:00 AM
Welcome Address by the Director General	9:10 AM
Instruction (Dean)	09:20 AM
Expectations	09:30 AM - 9-45 AM
Opinion Writing (Mr. Qazi Jawad Advocate)	9:45 AM - 11:15 AM
Tea break	11:15 AM - 11:45 AM
Introduction to Pleadings (Asghar Ali Salarzai)	11:45 AM - 1:00PM
Lunch + Prayer break	01:00 PM - 02:00 PM
Code of Conduct & Legal Ethics (Dr. Adnan Khan)	02:00 PM - 03:00 PM
Concluding Ceremony	03:00 PM - 04:00 PM

Presentations

Curriculum Vitae

Asgar Ali

Village & post office Sardheri, Dist Charsadda

Email: azansalarzai@gmail.com. Tel: 03018907706

DOB: 11/11/1979

Academic Qualification

- 2003 **LLB** Faculty of Law, University of Peshawar, Pakistan
- 2000 **BA (Law and Pol/Sc)** University of Peshawar, Pakistan

Present Position

Admin Officer Khyber Pakhtunkhwa Judicial Academy, Peshawar, Pakistan

Work Experience.

- Civil Judge-cum-Judicial Magistrate KPK Judiciary from February 2006 to May 2012
- Secretary Bench Bar Liaison Committee, Swat 2009--2011.
- Secretary Citizen- Court Liaison Committee, District Swat 2009--2011
- Secretary Purchase & Procurement committee, District Courts Swat
- Remain member of the Departmental Selection Committee, districts courts Swat 2009--2011
- Focal Person Judicial Officers Meeting, Swat 2009--2011
- Focal Person for the construction of official accommodation for Judicial Officers, Swat 2009--2011
- Secretary UNDP liaison committee, Swat
- Conducted workshop for process serving agency of district courts Swat
- Attended one day workshop as Resource person conducted for the process serving agency in Swat
- Attended one day workshop on " The Role of a Judge in the present scenario" as Speaker, at district Courts Peshawar 2007
- Organize one day Judicial Conference as Anchor Person at district Mardan when posted as judge camp court

Research and Publications

- Co-author of training manual on procedural and substantive laws

- Co-author of training manual on Court and Case Management
- Co-author of training manual on Court Staff Management
- Assisted Dean Faculty, KPJA in the preparation of Broucher and first News Letter of the Academy.
- Awarded Certificate as Master Trainer for Judiciary by the Institute of Management Sciences, Peshawar, Pakistan

Computer Skills:

Have a sound knowledge of MS Word, Excel, Power Point, Internet Programs, Search Engines, Windows and other software installations, Adobe etc.

Language Skills:

Proficiency in English, Urdu and Pashto

Present Responsibilities:

- Overall management of staff
- Overall management of official correspondence
- Preparation of schedules for trainings/workshop/seminars
- Preparation of Budget for trainings/workshop/seminars
- To assist Dean in Curriculum development
- Liaison with the Donors Agencies

Reference:

1. Hayat Ali Shah, District & Sessions Judge/DG Khyber Pakhtunkhwa Judicial Academy, Peshawar, Pakistan
2. Dr. Khursheed Iqbal, District & Sessions Judge/Dean Faculty, Khyber Pakhtunkhwa Judicial Academy, Peshawar, Pakistan.

Presentation slides

Introduction to pleadings

By
Asghar Ali Salarzai
Admin Officer KPJA

WHAT WE EXPECT TO LEARN TODAY?

PLEADINGS.....

- ◉ Statement in writing , drawn up by the parties, stating that his/their contention will be at the trial giving all the details which his opponent has to answer

WHY PLEADINGS ?

- ◉ Stance of the parties made known
- ◉ The matter in issue is shrinked
- ◉ Court is assisted and time is saved
- ◉ Conflict is restricted... cant go beyond without the leave of the court
- ◉ Prevent multiplicity of litigation
- ◉ Advance Justice

PLEADINGS

- ◉ Meaning.....
- ◻ Plaint and Written Statement.....
- ◻ Briefs?
- ◻ Contracts?
- ◻ Promissory notes?

LAW ON THE SUBJECT

- ◉ The law of pleadings and conveyancing ?
- ◉ The Civil Procedure Code
- ◉ The Criminal Procedure Code

ESSENTIALS

- ◉ Written
- ◉ Concise
- ◉ Contain a claim/defense.... Material facts(facta probanada)
- ◉ Paragraphed, dated, numbered
- ◉ Law should not be stated.....
- ◉ Shall contain no evidence(facta probanitia)
- ◉ Documents relied upon should not be reproduced
- ◉ If a fact presume in favor of the party should not be stated

PARTICULARS ... Details of the case set up

- ◉ Allegations to be particularly set up
- ◉ Fraud Kind and particulars of fraud should be stated
- ◉ Undue influence ...
- ◉ Particulars of item
- ◉ Defamation Particulars of every head
- ◉ Name of court, place, residence of the parties, relief claimed

STYLE ... KNOW YOUR AUDIENCE

- Know the court
- Be familiar with local Rules....
ZQ/IZQ/AIQ/IQ
- Notice
- Brief
- Plaintiff
- Bail application
- Complaint

FRONT LOAD YOUR DOCUMENT

- Ask yourself how much the audience already knows
- Put the important material up front
- Educate the reader what is coming
- Give a proper context
- Build on that context
- Build a container in readers mind
- Enable the container to hold the facts you are pouring

FRAME ISSUES

- What is the question you are putting
- What is the question which you have to answer
- What the court you want to decide
- You must be clear in your own mind

SEPARATE HEADINGS

- Heading tells the reader what is coming
- Headings should convey information
- The fire and the aftermath.... Guide the reader
- Headings gives a breath & break to the reader

DIVISIONS IN PARAGRAPHS

- Write in to paragraphs
- Paragraphs must be short
- Can easily be digested
- Must contain new idea..... Put forward the old one
- Build the new idea on the old(build on the context)

FORMAT

- Form is important
- Use standard fonts
- Use proper margins
- Proper align all the paragraphs
- Check the documents carefully
- Keep it short
- No talking footnotes
- Edit

STRUCTURE

- Short sentences
- Active voice
- Proper use of punctuation
- One word is usually enough...
- Avoid unnecessary preamble.. It may be recalled that....it is interesting to note that..
- Use names of the parties ... names remain the same

EXAMPLE

- Subject to division (B) (4) of this section, if, within six years of the offense, the offender has been convicted of or pleaded guilty to one violation of division (A) or (B) of section 4511.19 of the Revised Code, a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, a municipal ordinance relating to operating a motor vehicle with a prohibited concentration of alcohol in the blood, breath, or urine, section 2903.04 of the Revised Code in a case in which the offender was subject to the sanctions described in division (D) of that section, section 2903.06 or 2903.08 of the Revised Code, former section 2903.07 of the Revised Code, or a municipal ordinance that is substantially similar to former section 2903.07 of the Revised Code in a case in which the jury or judge found that the offender was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, or a statute of the United States or of any other state or a municipal ordinance of a municipal corporation located in any other state that is substantially similar to division (A) or (B) of section 4511.19 of the Revised Code, the judge shall suspend the offender's driver's or commercial driver's license or permit or nonresident operating privilege for not less than one year nor more than five years.³

POINTS TO REMEMBER

- ◉ Know the judge
 - Ruling in previous cases
 - Conduct in the court room
 - Review the judicial opinion before drafting
 - Know the judges preference

ARTICULATE YOUR POSITION

- ◉ Be clear and straightforward
- ◉ Be direct and upfront
- ◉ Powerful introduction and conclusion
- ◉ Be credible
- ◉ Maintain integrity
- ◉ Never exaggerate
- ◉ Know your boundaries
- ◉ Be reasonable
- ◉ Give a roadmap

SECUNDUM ALLEGATA ET PROBATA

Do's	Don'ts
Clear	Prolix
Concise	Protracted
Material facts	Wordy
Definiteness	Argumentative
Precise	Evidence
Claim ...specific	Law
Consistent	
Signed	
Verified	

Questions



Curriculum Vitae

Office: 17-A, the Mall Peshawar Cantt Peshawar Cantt	Residence: Shami Road
E-mail: jawadqazi01@gmail.com & J.E.Qazi.02@cantab.net	
Phone: 92-91-5287907 Mobile:03005956659 fax: 92-91-5287046	

Qazi Jawad Ehsanullah

Date of Birth;	April 18th, 1978
Education	
	<ul style="list-style-type: none"> • LL.M from University of Cambridge, St. Edmund's College (2002-03). Studied International Banking & Finance Law, Corporate Finance, Corporate Insolvency and International Sales. • LL.B (Hons.) with Distinction from Faculty of Law University of Peshawar (1998 – 2001) • Bachelor Of Arts (B.A) with Distinction from Edwardes College Peshawar University of Peshawar (1995 – 1997)
Work Experience	
	<ul style="list-style-type: none"> • Advocate High Court Peshawar w.e.f. January 23rd, 2004. • Advocate/Attorney at law District & Sessions Courts, Peshawar w.e.f. 29 Dec 2001 • Lectureship (Part time) Visiting Faculty Member, Law Department (University of Peshawar) since 2004, Visiting Faculty member Law Department Islamia College University.
Job description	
	<p>I do practice in the areas of Constitution (with particular reference to the fundamental rights), Contract, Labour & Service Laws, Banking and Corporate cases, Customs and Sales Tax, Accountability, Criminal cases relating to Anti-Corruption and Narcotics. These cases I practice both at the trial court level and in the High Courts.</p> <p>Habib Bank Ltd. Allied Bank Ltd. MCB Bank Ltd., Industrial Development Bank of Pakistan, Edwardes College Peshawar, Pakistan Air Force, Pakistan Match Factory, the Bank of Khyber, Afzal Motors Pvt. Ltd Karachi (manufacturers of Daewoo Buses in Pakistan), Pak Hino Peshawar are amongst my major clients.</p> <p>I am a part-time lecturer and a visiting Faculty member in the University of Peshawar and Islamia College University Peshawar in their respective</p>

	Law Departments. I have been teaching Law of Partnership, Corporate Law, Drafting Pleading and Conveyancing, Civil Procedure Code to the students of LL.B. and LL.M.
Awards received	
	<ul style="list-style-type: none"> • OSI Chevening Cambridge Scholarship by Open Society Institute to study LL.M. at Cambridge. (2002-03) • Certificate of merit from University of Peshawar for obtaining 3rd position in LL.B. Examination. (1999-2001)
Professional memberships	
	<ul style="list-style-type: none"> • Secretary General, Peshawar High Court Bar Association (2012-13) • Member Peshawar High Court Bar Association • Member District Bar Association Peshawar
Accreditations and licenses	
	<ul style="list-style-type: none"> • Advocate High Court, Peshawar • Attorney-at-Law, District & Sessions Courts KPK (NWFP).
Reported Cases and other publications	
	<ul style="list-style-type: none"> • <i>Abdul Rasheed case</i> reported in 2004 CLC 1633 and PLJ 2004 Peshawar 299. • <i>Muhammad Saleem case</i> reported in 2005 PCrLJ 225. • <i>Afsar Khan Case</i> reported in 2005 CLC 1392 • <i>IDBP vs Shaf Industries</i> reported in 2006 CLD 476 • <i>Muhammad Naushad case</i> reported in 2007 CLC 969 • <i>Shaheen Shah's case</i> reported in 2009 MLD 1418 • <i>Afzal Motors Pvt. Ltd. case</i> reported in PLD 2010 Peshawar 110 and 2010 CLD 1182 • <i>Zafar Iqbal case</i> reported in 2011 PLC (C.S.) 259 • <i>Sher Shah case</i> reported in PLD 2011 Peshawar 131 • <i>LAC vs Muqesha Begum</i> reported in 2011 CLC 1488 • <i>Rahim Gul case</i> reported in 2011 PCrLJ 1769 • <i>Gaggan Enterprises vs Balana and others</i> [2011 CLC 1985] and 2011 CLD 1774 • <i>Mst. Zareena Case</i> reported in 2012 MLD 360
Other courses & activities	

	<ul style="list-style-type: none"> • Participated in 12th Harvard Model UN Conference held in Heidelberg (Germany) [March 2nd-28th 2003] • Participated in VIII Cambridge University Model UN Conference (Nov 2nd-25th 2002) • Participated in a charity walk in Cambridge to raise funds for Leukaemia Care Centre at Cambridge. (March 2003) • Certificate Course on International Humanitarian Law Organized by International Committee of the Red Cross in Lahore (Oct 2000).
Legal Advisor/Panel Advocate to	
	The Bank of Khyber, Habib Bank Limited, Allied Bank Limited, Industrial Development Bank of Pakistan, Askari Commercial Bank Limited, MCB Bank Ltd. and remained Legal Advisor to Edwardes College Peshawar
Languages	
	English, Urdu (Read –Write & Speak fluently) Pushto, Hindko, & Siraiki (Speak fluently)
References	
	<ul style="list-style-type: none"> . Justice Imtiaz Ali Khan, former Judge Peshawar High Court, Peshawar . Mukhtar Aziz Kansi, Project Officer UNCF UNICEF Peshawar . Dr. David L. Gosling, former Principal Edwardes College Peshawar. ClareHallCollege, University of Cambridge (England)

Presentation slides



Writing Legal Opinion

1- Writing **legal opinion**, to a very large extent, is a skill learnt by practice and experience. It is, therefore, hard to develop and follow a particular curriculum or course to develop opinion writing skills.

2- What is **opinion writing**?

The work of a lawyer is mostly divided into court work and chambers / office work, depending of course the area you are practicing in mostly. Some have more to deal with litigation side i.e. court work and little of paper work, but none will get away from the paper work entirely. Paper work is relatively self contained aspect of a lawyer's desk work consisting research and then opinion writing, but there is much to be done prior to or in between thereto.

- 3- Opinion writing work emanates from receiving instructions from your client, and thus an opinion that you write could best be described as a *written response to an instruction / brief* that you got from your client.
- 4- Once you have had an instruction from your client, you have to go by a process which could be divided into three stages i.e.
 - I) The mental attitude,
 - II) The thinking process and
 - III) The writing stage.

I- Right Mental Attitude

- The correct mental attitude is relevant for effective opinion writing i.e. practical approach instead of academic approach. So thenceforth you shall have to abandon academic approach to an issue you are to opine on. And see the same with a practical frame of mind.

Keep in mind that firstly you are dealing with a real situation and not an imaginary one. Secondly, facts are more fundamental than law and the law is a means to achieve an end, and then answer the question.

II- Thinking process: preparing to write an Opinion

- a) Digest and understand the instructions / facts very carefully as they are. As I said earlier that facts are most important which you are being informed by your client. Organize the facts in sequence so as to avoid any confusion or mixing up. In this process you may discover that a portion or major portion of the instructions / facts is irrelevant and thus pick up only the relevant portion for advice.
- b) Having organized your facts in chronological order and having selected the material portion of instruction there from, you may now set out to construct a legal framework.
- c) The next step essentially involves identifying questions of law arising out of the facts, and undergoing the process of research.
- d) Once your research is complete and you have made up your mind to answer a particular question of law or fact you could conveniently step into the third process of writing your opinion.

III) Writing process: the opinion itself

You have now been through the thinking process. Everything is clear in your mind. You not only know the facts of your case, but you understand the questions you are asked, and what are the answers / advice you are going to render. But that simply does not mean that writing process is a mere formality. You have to know how to express yourself in an opinion, how to transfer thinking process on to a piece of paper. So this is the most important part of it, and we need to examine this process more closely as follows;

- a) As said earlier your opinion is your answer to a question or series of questions that your client has asked you. Therefore, every question must be identified and answered
- b) Your opinion is a kind of *interim judgment* on your client's present position in law. You should, therefore, be objective, *as a judge*. Tell him frankly where he stands and let him know even if he is at fault, unlike what do in the courts. At this stage you are not trying to win a case, so don't mislead your client about his *legal status*. Convey him honestly and openly if he doesn't have a case.
- c) Lastly what ever piece of advice you are providing to your client must be unambiguous, clear, complete, easy to read, easy to follow and an accurate representation of what you actually think with of course sound reasons and grounds.

IV) Some things that an opinion is not

- a) An opinion is not an *argument*. An argument seeks to persuade someone, but there is no element of persuasion in an opinion.
- b) An opinion is not an *essay*. An essay tends to discuss and explore. Your opinion should never look like an essay. It should be much shorter, definite and focused unlike an essay.
- c) An opinion is not a *submission*. When making a submission you are putting forward an argument or a theory for someone else's judgment. In an opinion you are exercising your own judgment, giving your own advice. So your opinion should never contain the phrases '*it is submitted*' or '*I submit that*'. Replace them by saying '*In my opinion*' or '*I think that*'.
- d) An opinion is just not an *instruction*. So do not tell your client to do a particular thing, just advise him that this is what one should do and this is something one may forbear and it is for him to decide what to do and what to abstain from in the light of your opinion. All that you are duty bound to do is to give him all the information and advice needed in order to reach to a right decision.

Having said that the last question comes as to how you express yourself in an opinion.

V) How the opinion should be set out

To tell you very frankly there is no correct or incorrect manner of writing an opinion. You may write it in any manner you decide. Nevertheless, there are good or bad opinions and a good opinion must always be in line with the fundamental principles that we have discussed above.

Before finally going on to write your opinion please consider

- Whom the opinion is written for?

Before you set out to transfer your thoughts on to a paper, you must know who is the person whom you are writing an opinion for? a fellow lawyer or a layman client. If he is fellow lawyer, then you may design your opinion by using legal jargon but if he is not then legal terminologies not known to a layman should be avoided.

Thus the most simplest format that could be given to an opinion is as below;

vi) Heading or subject:

It should state the title of the case if you are asked to give your opinion on a pending case like '*ABC vs XYZ*' or the client name incase it is not a pending in a court of law.

vii) The Opening Paragraph:

Should contain a brief statement of what the case is all about. It should identify and focus on fundamental facts of the case and the key issues that are needed to be addressed or answered. You need not to cut and paste all the facts in detail but the statement or introduction of facts must be concise and brief because your client knows all facts of the case and you need not repeat the same.

Reasons and conclusion

- Having identified the core issues of the case in the introductory paragraphs of the case you should now pick up the questions one by one and answer them in accordance with your legal research with reasons and grounds. And in the end give your advice based on the reasons that you have discussed.
- Cases could always be cited but by applying relevancy test i.e. where they are authority on a point of law or where they are part of your reasoning or where they help you to reach a conclusion or where they are source of a particular proposition.
- Do not cite all the cases that you have read on the subject. Cite the one that is most relevant.

ix) Dealing with the lack of information

It is very common that your client may furnish you incomplete or inadequate information. So by avoiding to state that in your opinion answer all possible eventualities arising out of the information that you have.

■ **DO NOT FORGET TO CHARGE**

Thank You



Curriculum Vitae

Adnan Khan

Kamarbagh, College Colony, Saidu Sharif, Swat

Email: akhan@lincoln.ac.uk. Tel: 03469415233

DOB: 10/01/1980

Academic Qualification

2012 **Bar Transfer Test**, Kaplan, UK

2012 **Qualified Lawyer's Transfer Test**, Kaplan, UK

2011 **PhD Law**, University of Lincoln, UK

2004 **LLM International Law**, University of Hull, UK

2003 **LLB (Hons) Shariah and Law**, International Islamic University Islamabad, Pakistan

2002 **MA Politics**, University of Peshawar, Pakistan

2001 **BA Law and Politics**, University of Peshawar, Pakistan

Present Position

Director Research & Publication, KP Judicial Academy

Work Experience

- Lecturer Business Law, National College of Business & Management Sciences Islamabad from Feb 2004 to Jan 2005.
- Advocate High Court registered with KPK Bar Council since 02/12/2004.
- Civil Judge-cum-Judicial Magistrate KPK Judiciary from March 2006 to Feb 2012
- Public Service Interpreter at police stations registered with Cintra Ltd. Cambridge since April 2009.
- Legal Executive, SABZ Solicitors Manchester since April 2012.

Membership of Professional Body

- Law Society of England and Wales as Solicitor of the Superme Court.
- KPK Bar Council as Advocate of the High Courts.
- In the process of registering as a Practicing Barrister with Bar Standard Board.

Research work

- Successfully completed PhD dissertation on Blasphemy laws.
- Successfully completed LLM dissertation on Corporate Laws.

- Passed all the module essays each of approx. 5000 words on Comparative Company Law, International Law of Trade and Development, Multinational Corporations and the Law, International Environmental Law, Public International Law Human Rights Law during LLM at Hull University.

Publications

- **“The Extent of Sovereign Immunity under our Legal Edifice”** in the process of publication.
- **2008“Movement for Restoration of Judiciary in Pakistan”** Conference Publication in annual research conference, University of Lincoln, Dec 2008.
- **2007 “Role of the Bench Bar Liaison Committee in the Administration of Justice”** Conference Publication at the annual conference of judges from NWFP Judiciary, Swat, Nov 2007.
- **2003“Climate Change Conventions: How effectively do they address the Issues?”** Conference Publication, University of Hull, Feb 2003.
- **2003“The Concept of Corporate Personality in Islamic Law”** Conference Publication, University of Hull, June 2003.
- Recently compiled Annual Report for the Peshawar High Court Peshawar.

Computer Skills:

Have a sound knowledge of MS Word, Excel, Power Point, Internet Programs, Search Engines, Windows and other software installations, Adobe etc.

Language Skills:

Proficiency in English, Arabic, Urdu and Pashto

Presentation Slides

Professional Responsibility & Code of Conduct

By
Dr. Adnan Khan, Barrister at Law,
Director Research & Publication

Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Client Lawyer Relationship

Communication

A lawyer shall:

- ▶ Reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- ▶ Keep the client reasonably informed about the status of the matter;
- ▶ Promptly comply with reasonable requests for information; and
- ▶ Consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- ▶ A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Fees

In fixing fees, advocates should avoid charges, which over-estimate their advice and services as well as those, which undervalue them. A client's ability to pay cannot justify charge in excess of the value of the service, though his property may justify a lesser charge, or even none at all. The reasonable requests of a brother advocate, should also receive special and kind consideration. In respect of widows and orphans of an advocate, all advocates shall assist them free of charge. (Section 154 Bar Council Act)

A lawyer shall not collect an unreasonable fee. The factors to be considered in determining the reasonableness of a fee include the following:

- ▶ The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- ▶ The fee customarily charged in the locality for similar legal services;
- ▶ The amount involved and the results obtained;
- ▶ The time limitations imposed by the client or by the circumstances;
- ▶ The nature and length of the professional relationship with the client;
- ▶ The experience, reputation, and ability of the lawyer performing the services; and
- ▶ Whether the fee is fixed or contingent.

Conflict Of Interest

*(An advocate shall not represent conflicting interests.
Section 148 Bar Council Act)*

A lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- ▶ The representation of one client will be directly adverse to another client; or
- ▶ There is a significant risk that the representation of one client will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
- ▶ However, a lawyer may represent a client if:
- ▶ The lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- ▶ Each affected client gives informed consent, confirmed in writing.

Duties Toward Courts

Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Candor (truthfulness) Toward The Court

A lawyer shall not knowingly:

- ▶ Make a false statement of fact or law to a court or fail to correct a false statement of material fact or law previously made to the court by the lawyer;
- ▶ A lawyer who represents a client in proceedings knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the court.
- ▶ In an ex parte proceeding, a lawyer shall inform the court of all material facts known to the lawyer that will enable the court to make an informed decision, whether or not the facts are adverse.

Impartiality And Decorum Of The Tribunal

It is the duty of an advocate to maintain towards the Court a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance, judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism. (Section 159 Bar council Act)

A lawyer shall not:

- ▶ Seek to influence a judge or other official by means prohibited by law
- ▶ Communicate ex parte with a judge during the proceeding unless authorized to do so by law or court order;
- ▶ Engage in conduct intended to disrupt a court.

Trial Publicity

An advocate shall not communicate about a subject of controversy with a party represented by an advocate in the absence and without the consent of such advocate (Section 137 Bar Council Act).

A lawyer who is participating or has participated in the litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will have a likelihood of materially prejudicing proceedings in the matter.

However, a lawyer may state:

- ▶ Information contained in a public record;
- ▶ That an investigation of a matter is in progress;
- ▶ A warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest
- ▶ In a criminal case, if the accused has not been arrested, information necessary to aid in arrest of that person

Transactions With Persons Other Than Clients

Truthfulness In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

- ▶ Make a false statement of material fact or law to a third person; or
- ▶ Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client

Dealing With Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, when the lawyer knows that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

Respect For Rights Of Third Persons

In representing a client, a lawyer shall not use means that aim at embarrassing, delaying, or burdening a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

Concluding Ceremony

Address of the Chairman

*Justice Dost Muhammad Khan,
Chairman/Chief Justice,
Peshawar High Court*

Gentlemen from Bar; Director General, Khyber Pakhtunkhwa Judicial Academy and his team; Resource persons; Esteemed guests and Media persons!

It is indeed moment of pleasure for me to see you in this Judicial Academy. At the time of establishment of this Academy, I was mindful of the need of training of our new lot in legal practice. This Judicial Academy is not only meant for imparting training upon judicial officers but all stakeholders related to justice sector would be benefited, as I got endorsed in Act of Khyber Pakhtunkhwa Judicial Academy. Today's workshop is step towards achieving the noble goal. Bench and Bar are inseparable limbs of judicial system. Not only the member of judiciary but members of bar as well have to observe certain Code of Conduct.

A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice. As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonest, fraud, deceit or misrepresentation.

In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure in required or permitted by the Rules of Professional Conduct or other law.

A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should

demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyers' duty to uphold legal process.

As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients; employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation.

Your role during historic lawyer's movement remained laudable. You are unpaid army of Judiciary. We expect same zeal and spirit, if need arise, in future as well.

Thank you.

Director General Remarks

Hayat Ali Shah
DG KPJA

It was the direction of the HCJ that we should organize a course for lawyers on pleading. We were apprehensive about designing a course worth presentation. I am happy to know that the participants have shown their satisfaction. The presentations of Asghar and Jawad are also laudable. Dr. Adnan, a young barrister is with us; he shared valuable information and knowledge about mannerism with participants. Next time, we will enhance the duration.

In the morning we were disturbed as only a 7/8 turned up. However, the number of participants increased with the passage of time. I hope next time things will improve.

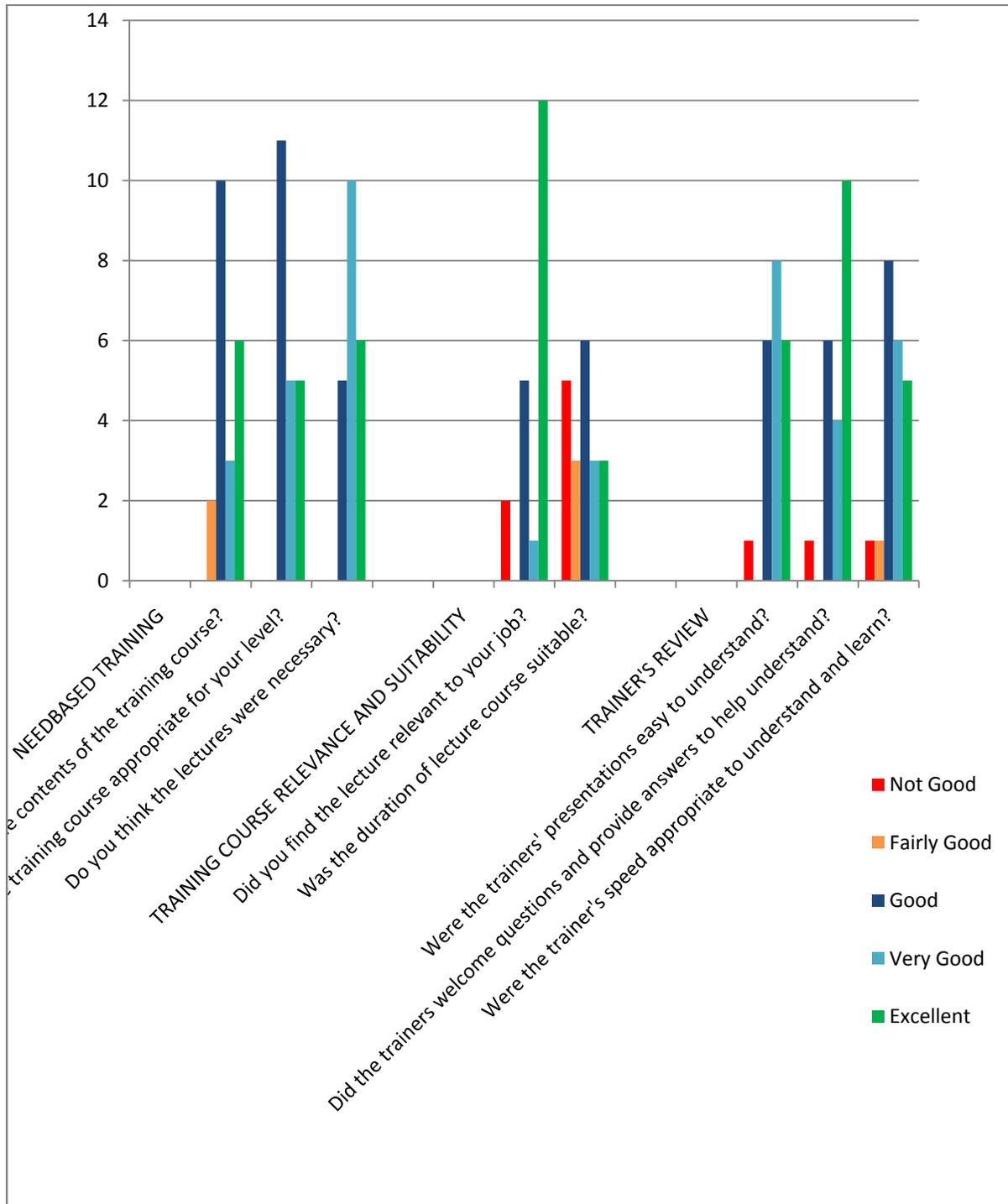
The Academy is happy to know that the course has gone successfully. Indeed, bar is a part of the justice system. Lawyers are the soldiers of the justice system.

CR Remarks

Saima Anwar
Advocate,
District Swat

As junior lawyers we do not know the difference between theory and practice in law. Through this one-day workshop we learnt a lot about legal drafting, its kinds, importance and their requirements. The most interesting aspect of pleadings is framing of issues, which, hitherto, we considered as the duty of the court. We also learnt a lot about legal opinion writing and agreement writing. Similarly, a lot was told to us about professional ethics: how to behave with clients, how to address court and what traits are required to be observed as etiquette and mannerism.

Overall Evaluation of the Workshop



List of Participants

S/No	Name	District
1	Mr. Faridullah Shah	Lakki Marwat
2	Mr. Farid Gul	Lakki Marwat
3	Mr. Arshad Saeed	Buner
4	Mr. Ihtisham Anwar	Kohat
5	Mr. Qamar Zaman	Abbottabad
6	Mr. Awais Abbasi	Abbottabad
7	Miss. Noor zarmina Khattak	Nowshera
8	Mr. Shah Fahad	Nowshera
9	Miss. Shandana	Swabi
10	Mr. Ahmad Hussain	Swat
11	Miss. Saima Anwar	Swat
12	Mr. Arif Mehmood	Mardan
13	Mr. Muhammad Nisar	Mardan
14	Mr. Muhammad Abdullah	Malakand
15	Miss. Sidra Gul	Peshawar
16	Mr. Muhammad Aamir	Hangu
17	Mr. Akbar Ali	Peshawar
18	Mr. Asif Ullah	Peshawar
19	Miss. Huma Gul	
20	Mr. Muhammad Tariq Khan	
21	Miss. Rizwana Naz	
22	Mr. Yousaf Ali Khan	

GROUP PICTURE



KHYBER PAKHTUNKHWA JUDICIAL ACADEMY
One Day Training Workshop on Legal Drafting and Professional Ethics for Lawyers
(06 February, 2013)

