



Chandrawat
& Partners

CIVIL MATTERS, CLAIM & COMPENSATION

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PREFACE

Civil law comprises of substantive and procedural law, Civil Court Cases, the Judicial & Quasi-Judicial Courts & Fora, the Petition and Documents comprising of Legal Notice, Police Complaint, Court Complaint, Suit, Plaint, Petition, Reply, Written Statement, Rejoinder, Replication, Affidavit, Application, Settlement, Agreement, Memorandum of Settlement (MOU), Family Settlement, Will, Gift Deed, Partition Deed, Adoption Document, Custody Settlement, etc.

The Civil Courts have ample power to adjudicate upon the matters of Civil nature, including inherent powers under Section-151 of the Code of Civil Procedure, 1908. The Courts try cases under Original Jurisdiction and entertain Appeal, Reference, Review and Revision under appellate jurisdiction.

Jurisdiction of a Civil Court depends on several factors, namely, where the cause of action arose, where the suit property is situated, the value of the suit property, etc. Jurisdiction can also be classified as Original Side, Appellate, Extra Ordinary, Constitutional & Inherent Jurisdiction.

The stages of the proceeding before the Court of law are well set in the Code of Civil Procedure, 1908 for the following tasks: Filing Of Documents, Framing Of Issues, filing List Of Witness, examination and cross examination of plaintiff witnesses ("PE"), examination and cross examination of Defendant witnesses (DE"), Final Hearing, etc, passing of final order and judgment.

Either of the parties- Plaintiff or Defendant could resort to the appellate avenues- Appeal, Reference, Review & Revision, all well laid down under the Code of Civil Procedure, 1908. There is a well-set procedure for filing of Appeal, Review and Revision, etc., like what should accompany an Appeal, Reference, Review & Revision.

Review & Revision,

Review & Revision, and in what time limit they got to be filed.

The law regarding the “Execution” of the Court Orders/ Judgments/ Decree is distinctly laid down in the Code of Civil Procedure, 1908.

Civil Claim means a claim, cause of action, lawsuit, judgment, court order, administrative order, government or agency order, fine, penalty, notice of violation, or other similar claim for civil relief with respect to damages or harm to persons, property or natural resources.

Compensation to victims is a recognized principle of law being enforced through the ordinary civil courts. Under the law of torts, the victims can claim compensation for the injury to the person or property suffered by them. It is taking decades for the victims to get a decree for damages or compensation through civil courts, which is resulting in so much hardship to them.

INDIAN ECONOMIC OVERVIEW

The State's primary task in the economic world is to formulate and enforce laws and rules which bolster the economic growth and development of a country, and the needs and values of the private sector drives the operation of the public sectors (Perry, 2002). Law has two roles to play in order to bring economic development in a country (Pistor and Wellons, 1998). First is the allocative dimension, through which the law determines what resources are to be placed where, where the resources would come from, what they would be used for etc.

The law determines if the state would allocate the resources or if the market forces would determine it itself. Next is the procedural dimension, which determines how efficient the legal enforcement is, and whether institutions of law are working in coherence with the objective to achieve economic growth and development.

The system could either be discretionary where the State might modify laws at their whims and fancy or rule-based where they would have to adhere to certain legal rules or principles.

These two aspects of laws and legal systems are broadly the determinants of economic development in a country, and it is preferred that there be a market determined allocative function and rule based procedural function for optimum economic development of a country.

In the case of India, the relationship between the law and legal systems, and the economic development can be drawn on two broad claims. The first claim is that 'law' determines the access of a firm to its finances and its ability to raise capital for its working; and the second that the legal system and legal origins of a country play a great role in determining the flexibility of a country to change, to adopt.

GOVERNING RULES AND LAWS

Acts governing civil laws in India-

- Bankers Book Evidence Act, 1891
- Code Of Civil Procedure, 1908
- Commercial Documents Evidence Act, 1939
- Contempt Of Court Act, 1971
- Evidence Act, 1872
- Easement Act- Indian Easements Act, 1882
- General Clauses Act, 1897
- Interpretation Of Statutes Act, 1957
- Limitation Act, 1963
- Powers of Attorney Act, 1882
- Provincial Insolvency Act, 1920
- Partition Act, 1893
- Registration Act, 1908
- Specific Relief Act, 1963
- Suits Valuation Act, 1887
- Transfer of Property Act, 1882

Licenses and registration

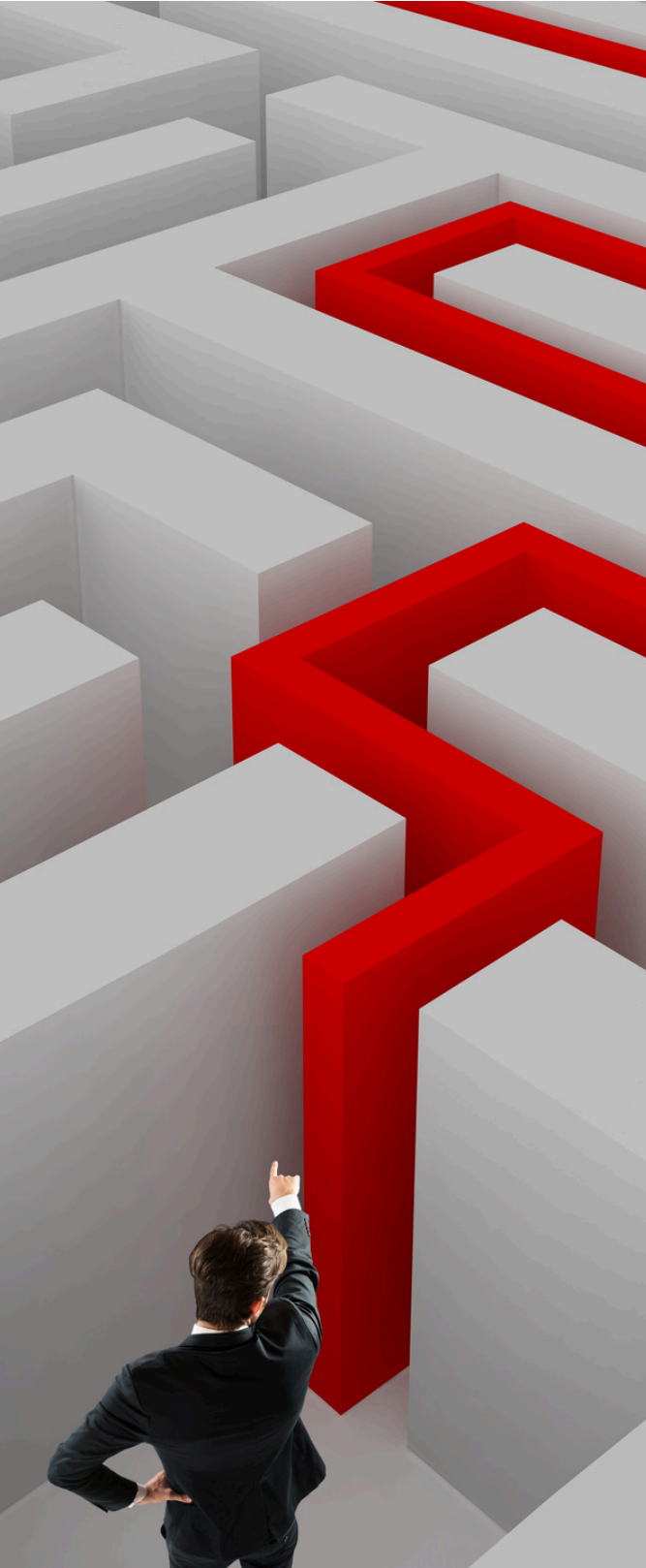
Section 52 of Indian Easement Act, 1882 defines license as something in which a person grants another or a certain number of other persons, the right to do or continue to do in or on the grantor's immovable property. This principle was incorporated into the Indian Easements Act of 1882. Section 52 till Section 64 of the Indian Easements Act, 1882 are concerned with licenses and their administration.

Unlike a Lease, a license is merely a right to allow the use of the subject land. Lease involves the transfer of possession of the property/land area to the lessee. A lease implies to give the lessee the possession of the premises/land area. The lessor shall retain only the right of possession of the subject land unless otherwise agreed. On the other hand, the license is merely given permission and that authorization does not require the full ownership right to the property in question. The licensor reserves the legal as well as the physical right of possession in a licence.

Essentials of a licence-

- Two different persons.
- There has to be a grant.
- License is always useful.
- License is granted to do something in or upon the grantor's immovable property.
- The license does not relate to ownership of any land but only creates a personal right or obligation.

DISPUTE RESOLUTION



The pendency of cases in India is in lakhs. The root cause behind such growing pendency of cases is the rise in the number of fresh suits filed every year which has surpassed the number of disposed of suits. Subsequently, this has led to an increase in the backlog of cases. The combined efforts of the Government of India and the Indian Judiciary has somehow resulted in bringing in a reduction in the number of pending cases. The proactive approach adopted by the Government included initiatives such as the establishment of specialized courts, speeding up the process, an increase in the number of judges.

Settlement of disputes outside the Court:
Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of the settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for-

- arbitration.
- conciliation.
- judicial settlement including settlement through Lok Adalat; or
- mediation.

PROCEDURE TO FILE CIVIL SUIT

Step 1 – Drafting of Complaint

The filing of a complaint is the initial step in commencing a civil suit. A complaint is, to put it simply, a formal complaint or allegation made by one party against another. The party who files it is referred to as the Plaintiff and the party it is filed against is referred to as the Defendant. Within the time established by the Limitation Act, a complaint must be filed.

The following information should be included in a complaint:

- Name of the Court
- Name, address and description of the plaintiff and the defendant
- Whether the plaintiff or defendant is not an adult i.e., he is a minor or is of unsound mind, a statement to such effect.
- The facts describing the cause of action and when it arose.
- A succinct description of the provisions or orders that invoke the Court's jurisdiction (subject)
- Plaintiff's Arguments
- The relief claimed by the plaintiff.
- Confirmation from the plaintiff that the information in the complaint is accurate and true.

Step 2 – Drafting A Vakalatnama

After drafting the plaint, the plaintiff must give his advocate authorization to take on the opposing party in court via a written document known as the Vakalatnama. A Vakalatnama is a formal letter allowing an advocate to represent a client in court. Vakalatnama is not required when one party is representing themselves in court without the assistance of an advocate.

Step 3 – Filing of Plaint

The next step is to submit or file the plaint before the Chief Ministerial Officer (Sheristadar) and to do so, you must pay the necessary court fees and processing fees. For various types of documents, a different court fee must be paid. A small portion of the overall claim or suit value is used as the court fee. Every civil suit requires a distinct sum of court fees and stamp duty and the Court Fees Act and Stamp Act make note of this.

Step 4 - Accept or Reject/Dismiss the Plaint

If the court decides after the plaintiff has filed his complaint that it does not have the requisite jurisdiction to hear this civil case, the court may return the plaint and notify the plaintiff so that he can file it in the appropriate court that has the correct jurisdiction.

Step 5 - Issuance or Service of a Summons

The court will serve a summons on the defendant to inform him that a suit has been filed against him, wherein a date is specified for the defendant to appear in court and respond to the allegations in the plaint.

HOW WE CAN HELP ?

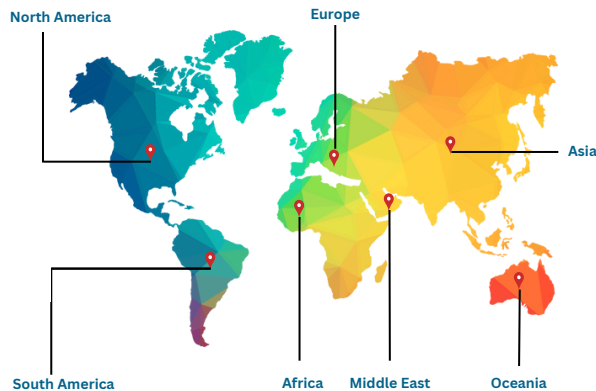


As we are supported by global resources, our experts use the combined knowledge, experience and judgment to support our clients in resolving their issues. We apply decades of practice and knowledge gained from thousands of cases at each stage of dispute involvement.

Our dispute consulting professionals work with our clients and outside expert witness testimony to address the challenging aspects of complex disputes. We seek to ascertain and comprehend each case's distinctive issues and facts to help our clients determine an effective response.

Our team collectively collaborate with your legal firm or in house law department to formulate an array of services that are suited to particular matters.

SERVING CLIENTS WORLDWIDE



The information contained herein is of a general nature. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. The information is not offered as an advice on any matter, and no one should act or fail to act based on such information without appropriate legal advice after a thorough examination of the particular situation. The information does not make us responsible or liable for any errors and/or omissions, whether it is now or in the future. We do not assume any responsibility and/or liability for any consequences.

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Chandrawat & Partners is a leading and rapidly growing full-service firm providing high quality professional and corporate services to foreign and local clients, representing companies and individuals in a wide range of sectors through separate entities established in various countries worldwide.

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