



**LL.B. IV Term**

**LB-4034-Legislative Drafting**

**Cases Selected and Edited by**

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*(For private use only in the course of instruction)*

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## Course Objective

This course aims at providing a practical guidance of the principles and techniques of legislative drafting. It also aims to provide a thorough analysis of the nuances involved in drafting of a legislation. The course lays down a methodical study of the manner in which the drafter should proceed with the drafting. It further explores the pre-requisites which a draftsman needs to equip himself with. It highlights the problems and challenges faced by a draftsman in carrying out the task of drafting a legislation.

It is expected that the students will acquire analytical skills and knowledge to analyse the tools and techniques employed by the draftsman.

## UNIT 1: The Basics of Legislative Drafting

### Topic 1: What is legislative drafting all about?

- a. Drafting and legislative Counsel
- b. Legislative expression

### Topic 2: What is legislation?

- a. Types of legislation
- b. Classification of primary legislation (Bills and Acts)
- c. Structure and format Bills and Acts
- d. Conventional structure of Bills and Acts

### Topic 3: Why do we draft as we do in parliamentary systems?

- a. Historical development of legislative drafting
- b. Theoretical foundations of this form of drafting
- c. Principle characteristics of this form of drafting
- d. Drafting objectives

### Topic 4: Preparation of legislative scheme

- a. Clear concept of the legislative proposals; Preparation of conceptual outline
- b. Check the existing law
- c. Importance and preparation of skeleton legislation and legislative scheme

### Topic 5: Basic Techniques of Legislative Drafting

- a. Style
- b. Simplicity of Language
- c. Over Drafting
- d. Vagueness

## UNIT 2: Structure and style

### Topic 1: Grammar and punctuation marks

- a. Why is grammar important for drafting?
- b. What grammatical terms do we need to know?
- c. What common grammatical mistakes should we watch for?
- d. How do we punctuate and capitalize

### Topic 2: How do we put together the components of legislative sentences?

- a. Principal subject

- b. Principal predicate
- c. Predicate modifiers

### **Topic 3: Main parts of legislation**

### **Topic 4: Common phrases and their significance**

### **Topic 5: How should we structure a legislative text?**

- a. General considerations
- b. Drafting sections
- c. Drafting sentences in sections
- d. Paragraphing
- e. Numbering
- f. Ordering and linking sentences in a section
- g. Linking sections
- h. Incorporation by reference
- i. Grouping Section

### **Topic 6: How should we organise a legislative text?**

- a. General considerations
- b. Preparing an outline
- c. Factors influencing an outline for a Bill

### **Topic 7: How can we develop good legislative style?**

- a. General considerations
- b. Developing good legislative style
- c. Gender-neutral drafting
- d. Some additional matters of style

## **UNIT 3: WORKING WITHIN LIMITS**

### **Topic 1: How do we work with interpretive approaches and rules?**

- a. General considerations
- b. Judicial approaches to interpretation
- c. Interpretive assumptions and presumptions
- d. Aids to interpretation

### **Topic 2: How do we work with Interpretation Acts?**

- a. Importance of Interpretation Acts
- b. Application of Interpretation Acts
- c. Using Interpretation Acts to facilitate drafting

## **UNIT 4: DRAFTING CONSTITUTIONS**

### **Topic 1: How do we work with the Constitution?**

- a. The Constitution and the legislative counsel
- b. Particular constitutional constraints

### **Topic 2: How do we work with fundamental rights and freedoms?**

- a. Drafting under a bill of rights
- b. International standards

**Prescribed Legislation:**

General Clauses Act, 1897

**Prescribed Books:**

1. B.R. Atre, *Legislative Drafting (Principles and Techniques)*, Universal Law Publishing- An Imprint of LexisNexis, 5<sup>th</sup> edn. (2017).
2. Arthur J. Rynearson, *Legislative Drafting Step-by-Step*, Carolina Academic Press (2013).
3. Nirmal Kanti, R. Cambray's *Principles of Legislation and Legislative Drafting*, (2017).
4. T. K. Viswanathan, *Legislative Drafting: Shaping the Law for the New Millennium*, Indian Law Institute, 2<sup>nd</sup> edn., (2007).
5. V.P. Sarathi, *Interpretation of Statutes*, Eastern Book Company, 4<sup>th</sup> edn., (2003).
6. *Lectures on Constitutional Law and Legislative Drafting*, Vol. I, Institute of Judicial Training and Research, Uttar Pradesh, (1989).

**Suggested Readings:**

1. P.M. Bakshi, "The Discipline of Legislative Drafting", Vol. 34, No.1, *JILLI*, p. 1 (1992).
2. O.P. Motiwal, "The Principles of Legislative Drafting", Vol.16, No.1, *JILLI*, p. 11 (1974).
3. P.M. Bakshi, "Proviso in Legislative Drafting", Vol. 34, No. 2, *JILLI*, p. 179 (1992).
4. S. K. Hiranandani, "Legislative Drafting: An Indian View", Vol. 27, No.1, *The Modern Law Review*, p. 1 (1964).
5. Namrata Mukherjee, Shankar Narayanan, *et al.*, "Manual on Plain Language Drafting", Vidhi Centre for Legal Policy, (2017).
6. Law Commission of India, 60<sup>th</sup> Report (1974) and 183<sup>rd</sup> Report (2002) on General Clauses Act, 1897.