

SUBJECT : LEGISLATIVE DRAFTING
SUBJECT CODE : HTG

Objectives of the Course :

Probably, no exercise initiates a student into the complexity of law than that of legislative drafting. Contrary to the prevalent belief, the draftsman is no more technicians transmuting some one else's policies into law: He is also a co-architect of policies. For how policies get written into law decides the career and fate of the policy: how laws are drafted also affect the destiny of law.

With a minimum grounding in theory, students should be assigned drafting of whole statute. The following drafting exercises ought to be assigned:

(a) Definition of key words (b) sections creating offences of various kind (strict, Joint, vicarious Liability) (c) a charging section (for fiscal laws) (d) a penal clause (e) sections prescribing powers and functions of an authority under the Act. (f) an amending section (g) a repealing section (h) a preamble and long title.

UNIT – I: Forms of Legislative Instrument

- 1.1 Bills
- 1.2 Acts
- 1.3 Orders
- 1.4 Rules
- 1.5 Schedule
- 1.6 Ordinance

UNIT - II: Ideals of Drafting

- 2.1 Simplicity
- 2.2 Preciseness
- 2.3 Consistency
- 2.4 Alignment with existing law
- 2.5 Brevity

Unity – III: General Rules of Drafting

- 3.1 Summary of the Rules of Drafting
- 3.2 Subsidiary Rules of Drafting

Unit – IV: Legislative Process

- 4.1 Preparatory Process
- 4.2. Conceptual Process
- 4.3. Consultative process
- 4.4 Green & White Papers
- 4.5 Cabinet control

Unit –V : Different Parts of a Statute

- 5.1 Long Title and Preamble
- 5.2 Enacting Formula
- 5.3 Short Title, Extent and Application
- 5.4 Definitions and Principle Provisions
- 5.5 Administrative Machinery, if any, contemplated by Statute
- 5.6 Penal Provisions, Rule and Regulation Making Power
- 5.7 Temporary Provisions
- 5.8 Repeal and Savings
- 5.9 Punctuation and Marginal Notes
- 5.10 Provisions, Illustrations and Presumptions
- 5.11 Use of non-obstante clauses
- 5.12 Retrospective Effect
- 5.13 Henry VIII clause
- 5.14 Exceptions
- 5.15 Fictions
- 5.16 Explanations

Suggested Readings :

Indian Law Institute, the Drafting of Laws (1980)

Viswanthan, T.K., Legislative Drafting

Vepa P. Sarathi, Interpretation of Statutes (1981)

Allen, Law in the making (Sweet and Max Well)

Thomson G.C., Legislative Drafting, (Butterworths, London)

Zander, M. The Law Making Process, (Widenfeld & Icholson, England)

Renton C' Hee Report, Preparation of Legislation, Sweet and Max Well
