

City Academy Law College
LL.B. HONS. 5TH SEMESTER
CODE OF CIVIL PROCEDURE I-
UNIT-I

<u>Syllabus</u>	Definition: Decree, Judgment, Order, Foreign court, Foreign Judgment, Mesne Profit, Affidavit, Plaint, Written Statement, Legal Representative, Suit of civil nature, Important concepts: Res subjudice, Resjudicata.
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Lecture 1	Definition: Decree, order.
Lecture 2	Judgment
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Lecture -1
Decree and Order

Previous year Questions

Long Questions:

Q1. Define the term decree? What are the essentials of a Decree? Discuss (2013) (2014, 2015)

Q2. Define decree? What are the differences between the judgment and the decree? (2019)

Q3. What do you mean by decree? What the differences between the preliminary and final decree? Discuss (2017)

Short Questions

Q 4 Preliminary decree (2014)

Q 5 Contents of a decree (2015)

Notes:

Definition of Decree [Section 2(2)]

Section 2(2) of the code defines the term 'decree'.

- A decree means the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy the suit.
- A decree is deemed to include [deemed decree];
 - Rejection of plaint [order VII, R. 11]
 - Determination of any question with regard to section 144 of the code.
- A decree does not include the following:-
 - Any adjudication from which an appeal lies as an appeal from order
 - Dismissal in default

Essential elements of decree

1. There must be an adjudication by court

2. such adjudication must be formally expressed
3. such adjudication must have been given in a suit
4. the adjudication must have determined the rights of the parties regarding matter in controversy
5. the adjudication must be conclusive and final

Section 2(2) of the Code provides that a decree may be ‘preliminary’, final ,or partly preliminary and ‘partly final’.

- **Preliminary decree:** such decree determines the rights of the parties with regard to some or one of the matters in controversy but does not completely dispose of the suit. Further proceedings are to be taken up before finally deciding the suit.
- **Final decree:** A final decree is one which completely disposes of the suit and settles all the questions in controversy. Nothing further remains to be decided.

Final decree is depended on the preliminary decree and not vice versa.

Difference between preliminary and final decree

Preliminary decree	Final decree
IT does not completely dispose of the suit	IT completely disposes of the suit a
It comes before the final decree	It comes after final decree
It is independent	It is dependent upon the preliminary decree

Partly preliminary and partly final: Such kind of decree is passed in certain cases for example suit for possession and mesne profit. In Such cases the court directs the possession of land and order enquiry into the profits. The first part of the decree is final whereas the second part is preliminary. Since the decree is one it is partly preliminary and partly final.

Supreme court in **Shankar v. Chandrakant, (1995) 3 SCC 413** held that a preliminary decree is one which declares the rights and liabilities of the parties leaving the actual result to be worked out in further proceedings. As a result of the further enquires pursuant to preliminary decree rights of the parties are fully determined and final decree is passed.

Order

Sec 2(14) defines the term “Order”

Order means formal expression of any decision of a civil court which is not a decree

Differences between order and decree

Order	Decree
formal expression of any decision of a civil court which is not a decree	the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy the suit.
It can be passed in a suit, application or petition.	It can be passed in a suit.
There can be many orders in a suit.	Generally, There is only one decree in a suit.
Generally no appeal lies against the order except section 104 read with Order 43 of CPC	Generally, appeal lies against it.
No second appeal lies against appealable order	Second appeal lies against appealable decree on ground of question of law.

Assignment:

1. Which section of civil procedure code, 1908 defines the term 'Decree?'

2. What do you understand by decree?

3. A decree becomes final when
 - a) If conclusively determined the rights of the parties.
 - b) No appeal has been preferred against the decree.
 - c) Both a and b
 - d) Neither a nor b

4. Which of the section defines order?

- a) Section 2(2)
- b) Section 2(9)
- c) Section 2 (14)
- d) Section 2 (15)

Q5. Write down three differences between decree and order.

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Lecture 2

Judgment

Previous year Questions:

Q.1) Define Judgment. What are the ingredients of judgment? When Judgment can be pronounced by the court? Discuss. (2014, 2017, 2018).

NOTES:

Definition of Judgment Section 2 (9) –

“Judgment” means the statement given by the Judge of the grounds of a decree or order. In the words of Vivian Bose, J., a judgment may be said to be “the final decision of the court intimated to the world at large by formal ‘pronouncement’ or ‘delivery’ in open court”.

After the hearing has been completed, the court shall pronounce the judgment in open court, either at once or on some future day, after giving due notice to the parties or their pleaders.

Essential of Judgment-

The essential element of a judgment is that there should be a statement for the grounds of the decision. Every judgment other than that of a Court of Small Causes should contain

- (i) a concise statement of the case;
- (ii) the points for determination;
- (iii) the decision thereon; and
- (iv) the reasons for such decision.

A judgment of a Court of Small Causes may contain only points (ii) and (iii) points.

Pronouncement of Judgment: Rule 1 of Order 20

After the hearing has been completed, the court shall pronounce the judgment in open court, either at once on some future day, after giving due notice to the parties or their pleaders.

The pronouncement of the judgment should be pronounced within thirty days from the date on which the hearing of the case was concluded but in exceptional and extraordinary circumstances of the case, the Court shall fix a future day for the pronouncement of the judgment, and such day shall

not ordinarily be a day beyond sixty days from the date on which the hearing of the case was concluded.

Copy of Judgment--

After the judgment is pronounced, copies of the judgment should be made available to the parties immediately by the payment of charges.

Distinction between Judgment and decree –

Decree	Judgment
Decree follows the judgment	The judgment contains the grounds of decree
A decree can be appealed	A judgment is not appealable
A decree is passed in a civil suit	Judgment can be passed both in civil and criminal cases
A decree is capable of execution	A judgment is not capable of execution

Assignment

Q.1) Judgment under section 2 (9) means

- a) A decree
- b) Dismissal of appeal summarily
- c) Statement of grounds of an order or decree
- d) All the above

Q.2) what are the essentials of the judgment?

Q3. Write down short note about pronouncement of judgment?

Q.4) what are the essentials of the judgment of court of small causes?

Q.5) Judgment is pronounced in camera proceedings, whether the statement is -?

a) true

b) false

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Lecture 3

Plaint

Previous Year Questions

Q.1) what are the provisions under CPC regarding plaint? Discuss. (2013, 2015, 2016)

Notes

Plaint: order VII

The term Plaint has not been defined in the Code. However, it can be defined as a statement of claim by presentation of which the suit is instituted. It is pleading of the plaintiff.

Order VII lays down rules relating to plaint. Rules 1-8 of Order VII deals with particulars required in a plaint.

Meaning: Plaint means a statement in writing of a cause of action in which the relief is claimed is set out in detail or a document by presentation of which a suit is to be instituted. Thus, plaint is a pleading that contains all such contents as are provided under this rule, as a frame of such plaint. However, substantially a plaint is the expression of the cause of action of the party presenting it and the relief he claims.

Rule 1 of Order VII contents that a plaint must contain certain particulars required to be stated in the plaint:

Rule 10: Return of Plaint- Order VII Rule 10-10 B deal with the return of plaint.

According to Rule 10, where at any stage of the suit the court finds that the court has no jurisdiction whether territorial or pecuniary or as to the subject matter, it shall return the plaint to be presented in the proper court in which the suit ought to have been instituted. The court shall intimate its decision to the plaintiff before returning the plaint when defendant has appeared and the court of Appeal or Revision has the power to return the plaint under this rule after setting aside the decree.

Order 7 Rule 11 provides various grounds on which the plaint can be rejected. They are as follows:

- (a) When it does not disclose cause of action;
- (b) When the relief claimed is undervalued and the plaintiff on being required by the court to correct it fails to do so within the time fixed by the court
- (c) Where the plaint is written on insufficiently stamped paper .i.e. court fee is not properly the on being required by the court to correct it fails to do so within the time fixed by the court.
- (d) Where the suit appears from the statement made in the plaint to be barred by any law.
- (e) When the plaint is not filed in duplicate [read with Order 4 Rule 1];
- (f) Where the plaintiff fails to comply with the provisions of Order 7 Rule 9.

Power to reject the plaint can be exercised at any stage of the suit.

Madhav Prasad Agarwal vs. Axis Bank (2019), Supreme Court held that plain rejected as a whole or not at all. It is not permissible to reject plaint qua any particular portion against some of the defendant(s) and continue the same against the others.

Order 7 rule 13 lays down that if the plaint is rejected then the plaintiff can file a fresh plaint in respect of same cause of action.

- Order rejecting a plaint is a deemed decree.
- Order 7 rule 14 provides that plaintiff should produce at the time of presentation of plaint copies of all documents on which he sues or seeks to rely upon.

Assignment

Q.1) Order 7 Rule 1 of CPC, 1908, is related to.....?

Q.2) Order 7 rule 10 of CPC provides for.....?

Q.3) Write down four grounds on which plaint can be rejected by the court?

Q.4) who files the plaint before the court?

Q.5) what are the remedies available against the order of rejection of plaint?

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Lecture 4

Written Statement

Previous Year question

Q.1) Define written statement. What are the provisions under CPC regarding written statement? Discuss. (2014, 2017)

Note

Order 8 deals with rules relating to written statement. The term written statement has not been defined in the code. However, it means the pleadings of the defendant wherein defendant deals with the facts alleged in the plaint. In it he also pleads new facts and sets up counter-claim and set-off.

Time limit for filing written statement

Order 8 Rule 1 provides that defendant shall, within thirty days from date of service of summons file a written statement.

- Proviso to O. 8 R. 1 inserted vide Amendment Act of 2002) states that if the defendant fails to file a written statement within a period of thirty days from date of service of summons then he shall be allowed to file the same within a time period of ninety days from the date of service of summons.
- Therefore, the outer limit of filing the written statement according to O. 8 R. 1 is 90 days from date of service of summons.
- All the general rules of pleadings mentioned in O. 6 apply to written statement.

Set-off [Rule 6]

Set-off is a cross-claim which partly offsets the original claim. Provisions relating to set-off have been provided in O. 8 R. 6.

Essential conditions for set-off are as;

- Suit must be for recovery of money;
- The sum of money must be ascertained;
- The sum must be legally recoverable;
- It must not exceed the pecuniary jurisdiction of the court;

- Both the parties must fill in same character

Illustrations-

- A' sues 'B' on a bill of exchange for Rs 1000/-. 'B' holds a judgment against 'A' for Rs 500/-. Both sums are definitive, pecuniary demands may be set-off.

Equitable set-off

Order 8 Rule 6 deals with legal set-off. O. 20 R. 19(3) of the Code recognizes equitable set-off.

Equitable set-off were allowed by Courts of Equity in England. Equitable set-off can be claimed even for unascertained sum of money provided that both the demands should arise out of same transaction.

Illustration

A' sues 'B' to claim Rs 50000/- under a contract. 'B' may claim a set-off towards the damages sustained under the contract.

Counterclaim [Rules 6-A to 6-G]

Counterclaim' is a claim made by defendant in a suit against plaintiff. It is independent and separable from the claim of plaintiff. It can be set-up in respect of a claim for which a defendant may file a separate suit.

Provisions relating to counterclaim were inserted by Amendment Act of 1976 by adding Rules 6-A to 6-G in Order 8,

- Order 8 Rule 6-A provides that defendant may set up, by way of counterclaim against the claim of plaintiff, any right or claim in respect of cause of action accruing to the defendant against the plaintiff.
- Time of filing counterclaim: Counterclaim can be filed either before or after filing of the suit but before the defendant has delivered his defense or before the time limited for delivery of defense has expired
- Counterclaim should not exceed the pecuniary jurisdiction of the court.
- Counterclaim shall have the effect of cross suit and it will enable to court to pronounce the judgment both in the original claim as well as counterclaim. [Rule 6-A(2)]

The plaintiff shall be at liberty to file the written statement in reply to the counterclaim within the time fixed by the court. [Rule 6-A(3)]

Rules relating to written statement by a defendant shall apply to a written statement filed in an answer to the counterclaim. [Rule 6-G]

Counterclaim shall be treated as plaint and shall be governed by the rules of the plaint. [Rule 6-A(4)]

Effect of discontinuance of suit [Rule 6-E]: If the suit of plaintiff is dismissed, discontinued or stayed the counterclaim may nevertheless be proceeded with.

Assignment

Q.1) The provision relating to particulars of the written statement and counter claim is in?

Q.2) Set off can be claimed

- a) In any suit
- b) In a recovery of money suit
- c) In a suit for possession

Q.3) What is the time limit for the filing of written statement?

Q.4) Write down the essential conditions for set-off?

Q.5) which provision of CPC deals with the counter claim?

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Lecture 5

Suit of civil Nature

Previous year questions:

Q.1) Discuss the concept of suits of a civil nature with the help of suitable examples. [2013 ,2019,2021]

Notes:

Suits of Civil Nature [Section 9]

Jurisdiction of courts unless its cognizance is expressly or impliedly barred. This is based on the fundamental maxim ubi jus ibi remedium. i.e. where there is a right there is a remedy.

A person having a grievance of civil nature has a right to institute a civil suit in a competent civil.

Meaning of jurisdiction: The term is not defined in the Code. It means the power and authority of the court to hear and determine the matter litigated before it.

Kinds of jurisdiction

- Territorial / Local jurisdiction
- Pecuniary jurisdiction
- Subject matter jurisdiction
- Civil and criminal jurisdiction
- Original and appellate jurisdiction

Section 9 of the Code lays down that the Court shall have jurisdiction to try all suits of civil nature excepting the suits of which their cognizance is either expressly or impliedly barred.

- This provision shows that every person has an inherent right to institute a suit of civil nature in case of any grievance.
- What is a suit of civil nature?

The term 'civil nature' has not been defined in the Code. The suit is of a civil nature if the principal question relates to the determination of civil rights and enforcement. Civil rights means private rights and remedies as distinguished from criminal, political etc.

- Subject matter of suit and not the status of parties determine whether the suit is of civil nature or not.
- Explanation I of Section 9 lays down that a suit in which a right to property or to an office is contested is a suit of civil nature notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.
- Political or religious questions are not covered in the expression 'suits of civil nature'. A suit in which principal question relates to caste or religion is not a suit of civil nature. But if the adjudication of matter incidentally involves the determination relating to caste or political question then it does not cease to be a suit of civil nature.

Explanation II of Section 9 [added by Amendment Act of 1976] lays down that a suit relating to an office is maintainable whether or not any fees is attached to the office or whether or not it is attached to a particular place.

Supreme Court in **Most Rev. P.M.A. Metropolitan v. Moran Marthoma, AIR 1995 SC 2001** has held that no court can refuse to entertain a suit if it is of the description mentioned in the Section 9

Expressly and impliedly barred

Expressly barred: A suit is said to be expressly barred when it is barred by any enactment for the time being in force. It is open to the legislature to bar jurisdiction of civil courts with respect to a particular class of matters. Matters falling within the exclusive jurisdiction of Election Tribunal, Income Tax Tribunal, Motor Accidents Claim Tribunal, Revenue Courts etc. are expressly barred from the cognizance of civil courts.

Impliedly barred: A suit is said to be impliedly barred when it is barred by general principles of law. When a specific remedy is given in a statute, it deprives the person from instituting a civil suit. Certain suits are also barred on the basis of public policy.

Following are the suits of civil nature

- Suits relating to rights to properties.
- Suits for damages for civil wrong
- Suits for breach of contract.
- Suits for accounts.

Following are not suits of civil nature

- Suits involving mainly caste questions

- Suits against public policy
- Suits relating to purely religious rights or ceremonies.
- Suits relating to political questions

Assignment:

Q.1) Suit of civil nature is given under which section of the code?

Q.2) Write down five examples of suits of civil nature?

Q.3) Write down three examples which are not suits of civil nature

Q.4) when the Explanation II of section 9 has been added in the code?

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Lecture 6

Res-subjudice and Res-judicata

Previous year Questions

Q.1) Define Res judicata. What are the provisions under CPC regarding written statement? Discuss [2014, 2016 2017, 2019, 2021]

Notes:

RES SUBJUDICE [Section 10]

Section 10 deals with stay of civil suit. The principle incorporated in section 10 is also called res subjudice.

Section 10 provides that No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other court in India having jurisdiction to grant the relief claimed, or in any court beyond the limits of India established or constituted by the Central Government and having like jurisdiction, or before the Supreme Court.

Essential conditions

For the application of Section 10, the following conditions must be fulfilled

- (1) There must be two suits, one previously instituted and the other subsequently instituted.
- (2) The matter in issue in both suits must be directly and substantially the same.
- (3) Both the suits must be between the same parties or their representatives
- (4) The Court in which the previous suit is pending must have jurisdiction to grant the relief claimed in the subsequent suit.

The previously instituted suit must be pending in any of the following Courts-

- (a) In the same Court in which the subsequent suit is brought, or
- (b) Any other Court in India; or

- (C) Any Court beyond the limits of India, but established by the Central Government, or
- (d) Before the Supreme Court of India.

Pendency of a suit in a foreign court does not prevent the courts in India from trying the suit founded on the same cause of action.

Object: The object of the Section 10 of the Code is to prevent a Court of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two or more parallel litigations upon same cause of action, same subject-matter and same relief thereon. It is intended to prevent multiplicity of proceedings and avoid conflict of decisions

The provision of Section 10 is mandatory. As soon as the essential elements are fulfilled the court cannot proceed with the suit.

Section 10 does not bar institution of suits, but it bars trial of the suit.

Res Judicata [Section 11]

Section 11 of the Code incorporates the doctrine of res judicata. It is also called rule of conclusiveness.

Res' means dispute or subject matter and Judicata means decided. Thus, res judicata means matter adjudicated. It means that once the matter is finally decided by the court no one can reopen it in a subsequent litigation.

Supreme Court in **Satyadhyan Ghosal v. Deorijin Debi, AIR 1960 SC 941** held that principle of res judicata is based on the need of giving finality to judicial decisions. Primarily it applies between past litigation and future litigation.

Object

The doctrine of res-judicata is based on the following maxims:

- (1) **Interest Republicac est sit finis litium**-It is in the interest of State that litigation should not be pro-tracted but finished.
- 2) **Nemo debt bis vexari pro una et eadem causa**-No man ought to be vexed twice for one and the same cause.
- 3) **Res judicata pro veritate occipitur** – A judicial decision must be accepted as correct.

Essential conditions

- The former suit must have been a suit between the same parties or between parties under whom they or any of them claim. [read explanation VI with this condition]

- The parties must have been litigating under the same title in the former suit.
- The Court which has decided the former suit must be competent to try the subsequent suit. [read explanation II and IV with this condition]
- The matters directly and substantially in issue in the subsequent suit must have been heard and finally decided in the former suit.

Illustration

'A' sues 'B' for damages for breach of contract. Suit is decided in favour of 'B'. Here, 'A' cannot bring another suit for damages for breach of same contract.

Explanations appended to Section 11

Section 11 incorporates following eight explanations:-

- Explanation I: Former suit' means a suit which has been decided prior to the suit in question, whether or not it was instituted prior thereto.
- Explanation II: The competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.
- Explanation III: The matter in the former suit must have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.
- Explanation IV: Any matter which might and ought to have been made ground of defenses or attack such suit. in such former suit shall be deemed to have been a matter directly and substantially in issue. [Constructive Res Judicata)
- Explanation V: Any relief claimed in the plaint, which is not expressly granted by the decree, shall be deemed to have been refused.
- Explanation VI: Where persons litigate bonafide in respect of a public right or of a private right, claimed in common for themselves and others, all persons interested in such right shall be deemed to claim under the persons so litigating,
- Explanation VII: The provisions of this section shall apply to a proceeding for execution of a decree
- Explanation VIII: An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res-judicata in subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.

Assignment:

Q.1) The rule of re sub judice is provided under which section of CPC?

Q.2) whether the pendency of a suit in a foreign court will preclude the courts in India from trying a suit founded on the same cause of action?

- a) Yes
- b) No
- c) It will depend on the nature of the suit
- d) Finding will be said on valuation of the suit

Q.3) Provision of section 10 of CPC are-

- a) Directory
- b) Mandatory
- c) Discretion
- d) None of the above

Q.4) What so you understand by Res judicata?

Q.5) Principle of res judicata is-

- a) Mandatory
- b) Directory
- c) Discretionary

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Lecture 7

Foreign court, Foreign Judgment, Mesne profit, Affidavit and Legal representative

Previous year Questions

Short Questions

- 1. Mesne profit [2013, 2014, 2017, 2018]**
- 2. Legal Representative [2013, 2014, 2017, 2018]**
- 3. Affidavit [2014,]**

Notes:

Section 2 (5) "Foreign Court" means a Court situate outside India and not established or continued by the authority of the Central Government;

Section 2 (6) "Foreign judgment" means the judgment of a foreign Court;

Sections 13 and 14 incorporate the principle of private international law. They enact the rule of res judicata in case of foreign judgments.

A judgment delivered by a foreign court of competent jurisdiction is enforceable in India. Supreme Court in **Satya v. Teja Singh, AIR 1975 SC 105 held** that the rules of private international law of each State vary on different things in different sense but by the comity of nations certain rules are recognized as common to civilized jurisdiction. Such recognition is accorded on the considerations of justice, equity and good conscience.

Foreign judgment when not conclusive [Section 13]

Section 13 of the Code provides that a foreign judgment will be conclusive as to any matter directly adjudicated between the parties except under the following circumstances. In other words foreign judgments shall not be conclusive if the following circumstances exist:-

- (a) Where it has not been pronounced by a Court of competent jurisdiction;
- (b) Where it has not been given on the merits of the case;
- (c) Where it is founded on an incorrect view of International Law or a refusal to recognize the Indian Law;

- c) Section 2(14)
- d) Section 2 (15)

4. What do you mean by the term Mesne profit?

5. Legal representative means/includes

- a) Person who is law represents the estate of a deceased person
- b) Any person who intermeddles with the estate of the deceased
- c) The person on whom the estate devolves on the death of the party
- d) all of the above