

CITY ACADEMY LAW COLLEGE

LL.B. HONS. 5TH SEMESTER

Code of Civil Procedure I-

UNIT-II

Syllabus	<ul style="list-style-type: none">• Jurisdiction and place of suing• Pleading: Meaning, Object, General Rules, Amendment of Pleading, Plaint and Written statement• Parties to a Suit• Discovery, Inspection and Production of Documents• Appearance and Non-Appearance of Parties, First Hearing
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Lecture 1	Jurisdiction and place of suing
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Lecture 5	Discovery, Inspection and Production of Documents

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Lecture -1

Jurisdiction and place of suing

Previous year Questions

Long Questions:

Q1. What is the provision relating to place of suing? Discuss them briefly.

Q2. Discuss in detail the provisions relating to place of filing a suit.

‘A’ a resident of Sitapur, publishes a defamatory paper at Jodhpur on B, a resident of Faridabad. The paper was written and printed at Noida. ‘B’ wants to file a civil suit for damages against ‘A’. Decide place of filing the suit.

NOTES

Jurisdiction the word is derived from Latin terms **juris** and **dicto** which means I speak by the law.

The expression ‘jurisdiction’ has not been defined in the Code of Civil Procedure. In simple words, it can be described as the power of the court to settle the matter which is in controversy.

Kinds of jurisdiction

Territorial jurisdiction-

- It is also known as local jurisdiction.
- Under this jurisdiction, the geographical limits of a court’s authority are clearly delineated and specified by law.
- Moreover, Section 16 of the CPC explains the territorial jurisdiction on the grounds of the location of the immovable property.

Pecuniary jurisdiction-

- The word pecuniary means money. Hence it refers to the power of courts to decide cases that are within monetary limits.
- For example, the court of Civil Judge Junior Division has a pecuniary jurisdiction limit of Rs. 50,000. Hence, the said court cannot try suits whose value (value of the property) exceeds Rs. 50,000.

- Section 15 of the Code refers to the pecuniary jurisdiction of the court. Therefore, it directs that every suit must be instituted in the court of the lowest grade which is competent to try it.

Jurisdiction as to the subject matter

- It refers to the power of courts to try the cases related to a particular subject. The courts cannot try those cases whose subject is beyond their power of jurisdiction.
- For instance, suits related to insolvency matters, probate proceedings, divorce cases, etc. cannot be adjudicated by a Court of Civil Judge of junior division.

Original Jurisdiction

- Original jurisdiction refers to the power of courts to take judicial note of any matter in the first instance.
- For example, the family court has the power to try cases related to family disputes. Hence, the family court has original jurisdiction over the matter.

Appellate Jurisdiction

- This jurisdiction refers to the power of courts to decide the appeals of cases that the subordinate courts have already decided.
- For example, the High Court of the State has appellate jurisdiction over all the District Courts of the State.

Place of Suing

According to Section 15, every suit shall be instituted in the court of the lowest grade competent to try section 16 to 18 deal with suits relating to immovable property. S-19 applies to suits for compensation for wrong to a person or to movable property. S-20 is a residuary section and covers all cases not dealt with S-15 to 19.

Sno.	Nature of Suit	Place of Suing
1.	Every suit	Court of the lowest grade competent to try it (Section 15)
2.	Suit for i) Recovery of ii) Partition of; iii) Foreclosure, sale or redemption of mortgage of or charge upon; iv) Determination of any other right to or interest in; v) Compensation for wrong to immovable property-	Court within whose jurisdiction the immovable property is situate [Section 16(a) to (e)]

3.	Recovery of movable property under actual distraint or attachment.	Court within whose jurisdiction the immovable property is situate [Section 16(f)]
4.	i. Relief respecting; or ii. Compensation for wrong to – - immovable property held by or on behalf of the defendant; where the relief sought can be entirely obtained through his personal obedience –	Court within whose jurisdiction – i. the property is situate; or ii. the defendant resides, or carries on business or personally works for gain (proviso to Section 16) [equitacts in personam]
5.	i. Relief respecting; or ii. Compensation for wrong to – immovable property situate within the jurisdiction of different courts –	Court within whose jurisdiction any portion of the property is situate, provided that the entire claim is within the pecuniary jurisdiction of such court (section 17)
6.	Where it is uncertain within the jurisdiction of which of two or more courts any immovable property is situate –	Any of those courts, provided that the court has pecuniary jurisdiction and jurisdiction as regards the subject matter of the suit. (Section 18)
7.	Compensation for wrong to – i. Person, or ii. Movable Property – if the wrong is done within the jurisdiction of one court and the defendant resides or carries on business or personally works for gain within the jurisdiction of another court –	In either of the courts at the option of the plaintiff (Section 19)
8.	Any other suit – (Section -20)	i) Where the cause of action wholly or partly arises; or ii) The defendant resides, carries on business or personally works for gain; or iii) Where there are two or more defendants, where any one of them resides, carries on business or personally works for gain, provided that – a) either the leave of the court is obtained b) the defendants, who do not reside, carry on business or personally work for gain acquiesce (Section-20)

Assignment

Q1. What do you understand by the expression 'jurisdiction'?

Q2. Write about Pecuniary jurisdiction?

Q3. Which section is a residuary section and covers all cases not dealt with S-15 to 19.

Q4. Suit for Recovery of immovable property is filed in which court?

Q5. Compensation for wrong to Person is filled in which court?

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Lecture 2

Pleading

Longs Questions

Q1. Define pleadings. What are the fundamental rules of pleadings? Discuss (2017)

Q2. The material facts should be stated in the pleading “In a concise form” but with precision and certainty. Discuss. (2018)

Q3. What is meaning of ‘Pleading’? Discuss the objects and importance of pleading.(2016)

Q4. “Objects of pleadings is to bring the parties to a suit to definite issues.” Explain. Why pleadings must state only the material facts and not the law? (2019)

Short Questions

Q1. Object of Pleadings (2016)

NOTE

Fundamental Rules of Pleadings: - Some fundamental rules of pleadings have been prescribed in civil procedure code (Act V of 1908). They are as follows:-

- A pleading must state facts and not law;
- A pleading must state all the material facts and material facts alone;
- A pleading must state only the fact on which the party pleading relies and not evidence by which they are to be proved.
- A pleading must state facts concisely but in a precise form with certainty.

1. A Pleading must state facts and not law: - One of the fundamental rules of pleadings is that “Every pleading must state facts and not law” This rule has following two aspects:-

- a. **Alternative aspects:-** Alternative aspect of this rule directs that the pleadings must state only the facts.
- b. **Negative aspects:-** Negative aspect of this rule directs that law must not be stated in the pleadings. It includes –
 - I. The provisions of law
 - II. Conclusions of law and

III. Conclusions of mixed facts and law

Exceptions:-

- a. **Custom** – If a plaintiff asserts his right or claim on the basis of a custom, he will have to plead it.
- b. **Legal pleas** – The general rules does not deprive a plaintiff to mention legal pleas like ‘the suit is barred by the res judicata or by limitation etc. such pleas can appropriately be stated in the pleadings by the plaintiffs.
- c. **Inference of law** - Where the object of stating inference of law is to throw light upon the facts so as to make them more intelligible and understandable, such inference or law can be stated in the pleading in exception of the general rule.

2. A pleading must State Material Facts only – Material facts means all facts upon which the plaintiff’s cause of action or the defendants’ defense depends.

In **Udhav Singh v. Madhav Singh AIR 1976**, the Supreme Court has defined the expression “All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defense are material facts.

Material facts are primary and basic facts which must be pleaded by the party in support of the case set up by it. Since the object and purpose is to enable the opposite party to know the case it has to meet, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state material facts, hence, will entail dismissal of the suit.

3. Plead facts not Evidence: - The pleading should contain a statement of material facts on which the party relies but not the evidence by which those facts are not proved.

- a. **Facta Probanda :-** The facts required to be proved (Material facts) and;
- b. **Facta Probandia :-** the facts by means of which they are to be proved (particulars or evidence).

The pleadings should contain only facta probanda and not facta probantia.

Exception: - Facta probantia may be stated in writ petitions and suit relating to election.

4. Concise Form: - The fourth and the last general principle of pleadings is that the pleadings should be drafted with sufficient brevity and precision. The material facts should be stated precisely and coherently.

The words in a “concise form” are definitely suggestive of the fact that brevity should be adhered to while drafting pleading.

All material facts must be stated in a summary form, as briefly as the nature of the case requires. Immaterial averments and unnecessary details must be omitted and material allegations and not necessary particulars must be included.

Assignment

Q1. What do you mean by pleadings?

Q2. Write exception of the rule “a Pleading must state facts and not law”?

Q3. What do you understand by Facta Probanda?

Q4. Mention any three Fundamental Rules of Pleadings.

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Lecture 3

Parties to a Suit

Long Questions

Q1. What are the provisions under C.P.C. 1908, regarding parties to a suit? Discuss.

Short Questions

Q1. Parties to suit

Parties to Suit [Order 1]

Order 1 deals with the parties to the suit. It also deals with joinder, mis-joinder, non-joinder of parties, addition, deletion of parties, and also representative suit.

Joinder of plaintiffs [Order 1, Rule 1]

• The question of joinder of parties arises when an act is done by two or more persons or it affects two or more persons.

Order 1, Rule 1 prescribes following condition for joinder of plaintiff:-

All persons may be joined in one suit as plaintiffs where-

- a. Any right to relief in respect of or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons; whether jointly, severally or in the alternative; and
- b. If such persons brought separate suits, any common question of law or fact would arise.

Joinder of defendants [Order 1, Rule 3]

Order 1, Rule 3 lays down following conditions for joinder of defendants:-

- a. Any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions alleged to exist against such persons, whether jointly, severally or alternatively, and
- b. If separate suits were brought against such persons, any common question of law or fact would arise.

Necessary and proper parties

- **Necessary Party:** A necessary party is one against whom a relief is sought and in whose absence no decree or effective order can be passed.
- **Proper Party:** A proper party is one in whose absence effective order can be passed but whose presence is necessary for complete and final decision of the case.

Test for determination whether a party is a necessary party

Supreme Court in **Kasturi v. Iyyamperumal, AIR 2005 SC 2813** laid down following two tests to determine whether a party is necessary party:-

- I. There must be right to some relief against such party in respect of the matter involved in the proceeding in question; and
- II. It should not be possible to pass effective decree in absence of such a party.

Non-joinder and Mis-joinder of parties

- **Non-joinder:** Where the person is a necessary or proper party to the suit and he has not been joined as a party then it is a case of non-joinder of parties.
- **Mis-joinder:** If two or more persons are joined as a party to the suit in contravention of Order 1 R. 1 and 3 and where they are neither necessary party nor proper party then it is a case of mis-joinder of parties.

Order 1, R. 9 lays down general rule for non-joinder and mis-joinder of parties. It lays down that suit cannot be defeated only on the ground of non-joinder or mis-joinder of parties. However, proviso of O. 1, R. 9 states that this rule is not applicable in case of non-joinder of necessary party.

Objections as to Non-joinder or Mis-joinder [Order 1, Rule 13]

Order 1, Rule 13 provides for objections as to non-joinder or mis-joinder of parties. It provides that-

- a. All objections on the ground of non-joinder or mis-joinder of parties shall be taken at the earliest possible opportunity; and
- b. In all cases, where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen.
- c. Any such objection not so taken shall be deemed to have been waived.

Assignment

Q1. Which order of CPC provides about parties to a suit?

Q2. When persons may be joined in one suit as plaintiffs?

Q3. What do you mean by the Necessary and proper parties?

Q4. Write about Non-joinder and Mis-joinder of parties.

Q5. Which rule of CPC deals with Objections as to Non-joinder or Mis-joinder.

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Lecture 4

Appearance and Non-Appearance of Parties

Previous Questions

Q1. What are the provisions under the Code of Civil Procedure, 1908, regarding appearance and non-appearance of the parties, at the call of the court? Discuss. (2017)

Order IX of the Code of Civil Procedure lays down the laws regarding the appearance of the parties and the consequences if they do not appear.

The Appearance of the Parties to a suit

As stated under Rule 1 of Order IX of the Code of Civil Procedure, once the summons have been received by the parties and they have been intimated about the day and the date on which the suit is to be conducted, they are required to appear in the court in person or through an advocate on the fixed day.

If the plaintiff or the defendant fail to appear in the court and furthermore also fail to produce any sufficient cause for their absence the court is empowered under Rule 12 of Order IX as follows:

- If the plaintiff continuously fails to appear, to dismiss the suit.
- If the Defendant fails to appear, to pass an ex-parte order.

If both the parties do not appear

- When neither the Plaintiff nor the Defendant appears before the court and the suit is called for hearing then the court is empowered to dismiss the suit under Rule 3 of Order IX of the Code of Civil Procedure.
- Rule 4 states that the dismissal of the suit under this rule does not put a bar on filing a fresh suit on the same cause of action.

When the Defendant does not appear

In a case where the Defendant has been duly served with the summons and has still not appeared in the court on the given date but the plaintiff is present in the court then an ex-parte order may

be passed against the Defendant provided that it has been proved by the Plaintiff that the Defendant had received the summons.

Once an ex-parte order has been passed, then the Court proceeds to pass a decree in favor of the Plaintiff.

If the service of the summons is proved then the court has the power to pass an ex-parte order against the defendant and further pass a final decree in favor of the plaintiff.

Ex-Parte Decree

An ex-parte decree is passed in the absence of the Defendant. Such a decree has all the force of any other valid decree that may be passed by the court unless it has been challenged.

Rule 6(1)(a) of Order IX of the Civil Procedure code empowers the court to pass any judgment ex parte in case the defendant part does not appear in the proceedings on the date that has been allotted for the same in the summons that have been duly served on him in the case.

Remedies against an ex-parte decree

When an ex-parte decree has been passed against a Defendant, the following remedies can be made available to him:

- The person may apply to set aside the ex-parte decree under Rule 13 of Order IX
- The person can appeal against the decree under Section 96(2) of the code or for revision under Section 115 in a case where an appeal does not lie.
- He can apply for a review under Order 47 Rule 1
- A suit may be filed on the grounds of fraud.

When the Plaintiff does not appear

When only the defendant appears in the matter then the provisions under Rule 11 of Order IX are followed. When the defendant appears but the plaintiff does not then there can be two situations:

- The Defendant does not admit the claim of the plaintiff either wholly or any part of it.
- The Defendant admits the claim of the Plaintiff.

If the Defendant does not admit to the claims made by the Plaintiff then the court has the power to dismiss the suit. If the Defendant admits to part or all of the claims made by the plaintiff then the court has the power to pass a decree against the Defendant on the grounds of such admission and the suit may stand dismissed for the claims that have not been admitted by the Defendant.

Assignment

Q1. Which order of CPC deals with the appearance of the parties and the consequences if they do not appear?

Q2. What is the procedure If both the parties do not appear?

Q3. What do you understand be the expression “Ex-Parte Decree”.

Q4. Write about remedies against an ex-parte decree?

Q5. What will happen when the Plaintiff does not appear?

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Lecture 5

Discovery, Inspection and Production of Documents

Discovery (Order 11)

Under Civil Procedure Code, 1908 discovery basically means a pre-trial procedural aspect wherein each party is given an opportunity to obtain evidence from the opposite party or parties.

The main purpose of discovery is to make the parties aware of the case that means there shall not be any ambiguity between parties while the trial is going on.

There are various types of discovery:-

1. interrogatories;
2. requests for production of documents and inspection;
3. requests for admissions;
4. depositions;
5. subpoenas duces tecum;
6. physical and mental examinations.

Interrogatories

- Section 30 and Order XI Rule 1 to 11, 21 and 22 of CPC covers interrogatories.
- When, with the leave of the Court, parties administer a set of questions on the other party then it is called 'Interrogatories'. Interrogatories shall be confined to the facts; it shall not be conclusions of law, construction of words or documents, or inference from facts.
- Under CPC, this is known as the 'right to obtain information' by the parties. The party to whom the set of questions were administered shall give reply to another party in writing and under oath.

Objective

The objective of the interrogatories are:-

1. To determine the nature of the case when it is not clear from the suit filed.
2. To make own case stronger by making the other party do admissions.
3. To destroy the case of the opponent.

Against whom interrogatories may be allowed?

As per Rule 5 of Order XI, any party to a suit which can be a:-

- I. Corporation; or
- II. Body of persons;

which may be incorporated or not incorporated; empowered by the law to sue or to be sued; on its own name or giving any other person responsibility to sue or any officer, against whom interrogatories can be filed.

Appeal and revision

There is no appeal allowed in the cases where an order for granting or rejecting prayer to administer interrogatories to the other parties pronounced by the trial court. The order which is granted or rejected under this provision is not considered as 'decree' and therefore, is not appealable.

Who may seek discovery?

Any party to a suit under oath may apply for an order from the court for the discovery of documents which are related to the matter in question of the suit from the adversary party.

Production, impounding and return of documents- Order 13

Production of documents

As per Rule 1 of Order XIII, the parties or their pleaders shall produce the documents at or before the settlement of disputes.

Admission of documents

Subject to the provisions of the Code the admission of the documents are allowed as evidence in the suit when the following particulars are made:

1. The number and title of the suit,
2. The name of the person producing the document,
3. The date on which it was produced, and
4. A statement of it having been so admitted;

The endorsed documents shall be signed by the Judge.

Rejection of documents

Rule 3 gives the discretion to the court to reject the documents on the basis of inadmissibility or irrelevance of the document. The court while rejecting the documents shall also mention the grounds of such rejection.

Impounding of documents

The court can order the parties in the suit to produce any documents or book before the court as per Rule 8 notwithstanding Rule 5 or Rule 7 of Order 13 or Rule 17 of Order 7 of the code.

The documents or books impounded by the court shall be in the custody of an officer of the court, for such period with subject to conditions if required.

Assignment

Q1. Which order of CPC provides about discovery?

Q2. Write any four types of discovery?

Q3. Who may seek discovery?

Q4. Which rule gives the discretion to the court to reject the documents on the basis of inadmissibility or irrelevance of the document?

Q5. Which order provides about Production, impounding and return of documents?