



# **RK JUDICIAL ACADEMY**

## **Institute for Judicial Services Exam**

### **Hyderabad**

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#### **TELANGANA -JUNIOR CIVIL JUDGE**

#### **MOCK TEST-05**

#### **MAINS EXAMINATION**

**TIME: 3:00 HRS**

**MARKS:100**

#### **Instructions:**

- 1) Attempt all the questions compulsorily
- 2) All questions carry Equal Marks
- 3) Write the answers as orders of the questions
- 4) Strict your answer to the Question only
- 5) Write your Answers in 300 words only

#### **QUESTION AND KEY PAPER**

#### **1. A. Interpleader Suit: Definition, Institution, and Purpose**

An **interpleader suit** is a type of legal action that allows a person or entity holding property or money (the stakeholder) to initiate a lawsuit to determine the rightful claimant when two or more parties make conflicting claims to the same property or money. The primary purpose of an interpleader suit is to protect the stakeholder from multiple liabilities and legal actions by compelling the claimants to litigate among themselves to determine who is entitled to the property or money in question.

#### **1. Relevant Provisions**

- **Order XXXV of the Code of Civil Procedure (CPC), 1908:** This order specifically deals with interpleader suits.
  - **Order XXXV, Rule 1:** This rule allows a person to file an interpleader suit when:
    1. He is in possession of property or money but does not claim any interest in it, except for charges or costs.
    2. There are two or more persons claiming adversely to each other the property or money in question.

- **Order XXXV, Rule 2:** The stakeholder must file the interpleader suit before being sued by any of the claimants.

## 2. Who Can Institute an Interpleader Suit?

- **Stakeholder:** The person or entity in possession of the property or money subject to the conflicting claims can institute an interpleader suit. The stakeholder must claim no interest in the property or money, other than for charges or costs, and must be neutral between the claimants.

## 3. When Can an Interpleader Suit be Instituted?

An interpleader suit can be instituted when the following conditions are met:

- The stakeholder is under the risk of facing multiple liabilities or lawsuits from different parties claiming the same property or money.
- The claims made by the parties are mutually exclusive and adverse to each other.
- The stakeholder does not claim any right or interest in the disputed property or money, apart from the costs of litigation.

## 4. Case Law:

- **Saraswathi Amma v. Laxmi Amma (1993):** The Kerala High Court held that the stakeholder, who has no interest in the property in dispute, is entitled to file an interpleader suit to have the conflicting claims adjudicated by the court.
- **Ahmed Moolla Dawood v. Haji Haroon Dawood (1913):** The Privy Council ruled that the stakeholder must be impartial and not have any interest in the subject matter other than for charges or costs.

## B. Principle of Res Judicata and Its Difference from Stay of Suit

### 1. Principle of Res Judicata

**Res Judicata** is a legal doctrine that prevents the same issue between the same parties from being litigated more than once. Once a court has adjudicated a matter and passed a final judgment, the same issue cannot be brought before the court again by either party. The principle aims to ensure finality in litigation, prevent harassment of parties, and maintain the consistency and integrity of judicial decisions.

- **Relevant Provisions:**

- **Section 11 of the CPC:** This section enshrines the doctrine of res judicata.
- **Explanation:** It applies to all suits and issues, including those decided in previous suits between the same parties or their representatives, provided the court of competent jurisdiction has passed a final judgment on the matter.



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- **Key Elements of Res Judicata:**

- The matter must have been directly and substantially in issue in the former suit.
- The matter must have been heard and finally decided by a court of competent jurisdiction.
- The parties in the subsequent suit must be the same as, or in privity with, the parties in the former suit.
- The former suit must have been between the same parties or their representatives.
- The issue in the subsequent suit must be the same as the issue in the former suit.

- **Case Law:**

- **Satyadhan Ghosal v. Smt. Deorajin Debi (1960):** The Supreme Court explained that res judicata is founded on the principle that a matter which has been decided by a competent court should not be re-agitated by the same parties.
- **Daryao v. State of U.P. (1962):** The Supreme Court held that res judicata applies not only to the decisions of the civil courts but also to writ petitions under Article 32 and Article 226 of the Constitution, ensuring finality in litigation.

## 2. Difference between Res Judicata and Stay of Suit

While both **Res Judicata** and **Stay of Suit** are mechanisms to prevent the multiplicity of proceedings, they serve different purposes and operate in distinct legal contexts.

- **Res Judicata (Section 11 CPC):**

- **Objective:** To prevent re-litigation of a matter that has already been adjudicated upon by a competent court.
- **Scope:** Applies after the matter has been finally decided.
- **Effect:** Bars the court from trying the same issue again, leading to the dismissal of the subsequent suit.

- **Finality:** It brings finality to the judicial decision, ensuring that the same issue cannot be litigated again.
- **Stay of Suit** (Section 10 CPC):
  - **Objective:** To prevent simultaneous proceedings of two suits involving the same matter between the same parties.
  - **Scope:** Applies when a previously instituted suit is pending before the same or a different competent court.
  - **Effect:** Temporarily halts the proceedings of the subsequent suit until the earlier suit is resolved.
  - **No Finality:** The stay is only temporary; the stayed suit may proceed after the earlier suit is resolved.
- **Case Law:**
  - **M. Nagabhushana v. State of Karnataka (2011):** The Supreme Court distinguished between res judicata and the stay of suit, emphasizing that while res judicata provides finality to a judgment, a stay of suit only suspends the proceedings of the subsequent suit.
  - **Chhajju Ram v. Neki (1922):** The Privy Council reiterated the purpose of res judicata as avoiding the waste of judicial resources and preventing the injustice of subjecting parties to repeated litigation.

## 2. A. Objection to the Jurisdiction of the Court under the Code of Civil Procedure (CPC), 1908

The Code of Civil Procedure (CPC) lays down specific provisions regarding the raising of objections to the jurisdiction of the court. Jurisdiction refers to the legal authority of a court to hear and decide a case. Objections to jurisdiction can be related to territorial, pecuniary, or subject matter jurisdiction.

### 1. Relevant Provisions

- **Section 21 of the CPC:** This section deals with objections to jurisdiction, specifically territorial and pecuniary jurisdiction.
  - **Section 21(1):** An objection to the place of suing (territorial jurisdiction) and pecuniary jurisdiction must be raised at the earliest possible opportunity and before settlement of issues, and if not raised at that stage, it will be deemed to have been waived.



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- **Section 21(2):** In cases where the objection relates to the competence of a court with respect to the subject matter (subject matter jurisdiction), it can be raised at any stage of the proceedings, including in appeal or revision, and it cannot be waived.
- **Section 9 of the CPC:** This section provides that courts shall have jurisdiction to try all suits of a civil nature unless expressly or impliedly barred.

### 2. Key Principles

- **Waiver of Jurisdictional Objections:** According to Section 21(1), objections to territorial or pecuniary jurisdiction must be raised at the earliest opportunity, typically at or before the framing of issues. If not raised timely, such objections are deemed to be waived.
- **Subject Matter Jurisdiction:** Unlike territorial or pecuniary jurisdiction, an objection regarding subject matter jurisdiction can be raised at any stage, as it goes to the root of the court's authority to hear a case.
- **Case Law:**
  - **Kiran Singh v. Chaman Paswan (1954):** The Supreme Court held that a decree passed by a court without jurisdiction is a nullity, and its validity can be challenged in any proceeding, including collateral proceedings. This applies particularly to subject matter jurisdiction.
  - **Hira Lal Patni v. Sri Kali Nath (1962):** It was held that objections regarding jurisdiction must be raised at the earliest opportunity, failing which they are deemed to be waived, except in cases involving inherent lack of jurisdiction.

### B. Representative Suit under the Code of Civil Procedure, 1908

A representative suit is a type of lawsuit where one or more persons sue or are sued on behalf of a larger group of persons who share a common interest in the subject matter of the suit. This provision allows for the collective redressal of grievances, thereby avoiding multiple suits on the same issue.

#### 1. Relevant Provisions

- **Order I, Rule 8 of the CPC:** This rule governs the filing of representative suits.

- **Order I, Rule 8(1):** When there are numerous persons having the same interest in a suit, one or more of them may, with the permission of the court, sue or be sued on behalf of all others. The court may grant this permission and order that notice be given to all interested persons, either by personal service, public advertisement, or other means, as the court deems fit.
- **Order I, Rule 8(2):** Any person on whose behalf or for whose benefit the suit is instituted or defended may apply to the court to be made a party to the suit.

## 2. Circumstances for Filing a Representative Suit

A representative suit can be filed in situations where:

- There are numerous persons with a common interest in the subject matter of the dispute.
- The matter involves public interest or a common grievance, such as issues related to property, community rights, or actions against public authorities.

## 3. Procedure and Requirements

- **Court's Permission:** The suit can be instituted only with the permission of the court, which will ensure that the interests of all affected persons are adequately represented.
- **Notice to Interested Persons:** The court must direct that notice of the suit be given to all persons who may be affected by the outcome, either through personal service, public notice, or advertisement.
- **Binding Effect:** The judgment or decree passed in a representative suit is binding on all persons represented in the suit, irrespective of whether they were individually made parties to the case.

## 4. Case Law:

- **Ramakrishna Mission v. Kago Kunya (2019):** The Supreme Court emphasized the importance of ensuring that the common interest of the represented group is protected in representative suits.
- **Kanpur Sugar Works Ltd. v. Lakshmi Sugar Mills Co. Ltd. (1983):** It was held that the procedure under Order I, Rule 8 is intended to prevent multiplicity of suits and to facilitate the adjudication of a common issue affecting a large number of people.

## 3. Distinguish between Appeal, Revision, Review, Review and Reference?

### 1. Appeal



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**Appeal** is a legal remedy provided under the CPC that allows an aggrieved party to challenge the decision of a lower court in a higher court. An appeal involves a re-examination of both the facts and the law applied in the original decision. The appellate court can either confirm, reverse, or modify the decision of the lower court.

- **Relevant Provisions:**

- Sections 96 to 99-A (First Appeal)
- Sections 100 to 103 (Second Appeal)
- Section 104 (Orders from which appeal lies)
- Order XLI to XLII (Procedure on appeal)

- **Key Features:**

- **First Appeal (Section 96):** Lies on a question of fact or law.
- **Second Appeal (Section 100):** Limited to substantial questions of law.
- **Appeal from Orders (Section 104):** Certain orders are appealable as specified in the CPC.

- **Case Law:**

- **Banarsi v. Ram Phal (2003):** The Supreme Court clarified that an appeal is a continuation of the original proceeding and that all questions related to the suit can be re-agitated before the appellate court.
- **Narendra Subramanian v. UoI (2020):** Emphasized that the appellate court has the power to review both facts and law.

## 2. Revision

**Revision** is a supervisory jurisdiction of the High Court under Section 115 of the CPC. It allows the High Court to examine the correctness of a decision made by a subordinate court where no appeal lies. Revision is primarily concerned with the jurisdictional errors of the lower court, rather than the merits of the case.

- **Relevant Provision:**

- Section 115 (Revision)

- **Key Features:**
  - It is invoked when there is no appeal available.
  - The High Court may interfere if the subordinate court has:
    - Exercised jurisdiction not vested in it.
    - Failed to exercise jurisdiction vested in it.
    - Acted in the exercise of its jurisdiction illegally or with material irregularity.
- **Case Law:**
  - **Amar Nath v. State of Haryana (1977):** The Supreme Court held that revision under Section 115 is not a right of the party, but a discretion of the court to ensure that the subordinate courts do not act in excess of their jurisdiction.
  - **Ajay Singh v. State of Chhattisgarh (2017):** Highlighted that revision can be used to correct a jurisdictional error but not to reappraise evidence.

### 3. Review

**Review** is the power of the court to re-examine its own judgment or order on specific grounds mentioned in the CPC. It is a limited remedy that can be invoked under certain conditions such as the discovery of new evidence, an error apparent on the face of the record, or any other sufficient reason.

- **Relevant Provision:**
  - Section 114 (Review)
  - Order XLVII (Procedure for review)
- **Key Features:**
  - A review is permissible on three grounds:
    1. Discovery of new and important matter or evidence.
    2. Error apparent on the face of the record.
    3. Any other sufficient reason.
  - The review is not an appeal in disguise and should not be used to rehear the matter on merits.
- **Case Law:**



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- **Lily Thomas v. Union of India (2000):** The Supreme Court reiterated that the scope of a review is limited, and it cannot be treated as an appeal where the parties can reargue their case.
- **Meera Bhanja v. Nirmala Kumari Choudhury (1995):** Clarified that an error apparent on the face of the record must be an obvious and patent mistake, not something that requires detailed examination.

#### 4. Reference

**Reference** is a procedure by which a subordinate court refers a question of law to the High Court for its opinion. This typically happens when the subordinate court is in doubt about a point of law that is essential for the case at hand. The High Court then decides the legal question and returns its decision to the subordinate court, which proceeds accordingly.

- **Relevant Provision:**

- Sections 113 (Reference)
- Order XLVI (Reference to High Court)

- **Key Features:**

- Reference can be made when the subordinate court entertains a doubt regarding a question of law.
- The High Court provides an authoritative decision on the legal question, which binds the subordinate court.

- **Case Law:**

- **State of UP v. Prem Lata Misra (1983):** It was held that a reference can be made only when a substantial question of law arises in the case.
- **Raja Soap Factory v. S.P. Shantharaj (1965):** The Supreme Court clarified that a reference is to be made on questions of law only, not on questions of fact.

#### 4. A. Preliminary Decree and Final Decree: Definition and Distinction

##### 1. Preliminary Decree

A **preliminary decree** is a decree that does not completely dispose of the suit. Instead, it determines the rights of the parties with regard to some of the matters in controversy, leaving further proceedings to work out these rights. It is an interim decision that is made when the court needs to settle certain issues before arriving at a final decision.

- **Relevant Provisions:**

- **Section 2(2) of the Code of Civil Procedure (CPC), 1908:** Defines a decree as a formal expression of adjudication that conclusively determines the rights of the parties in relation to all or any of the matters in controversy in the suit, but it does not include an order. A decree may be either preliminary or final.

- **Examples:**

- **Partition Suits:** In a partition suit, the court may pass a preliminary decree declaring the shares of the parties. The final decree is passed when the actual division of property takes place.
- **Mortgage Suits:** The court may pass a preliminary decree for the sale of mortgaged property. A final decree is passed after the sale, determining the rights of the parties with respect to the proceeds of the sale.

- **Case Law:**

- **Phoolchand v. Gopal Lal (1967):** The Supreme Court held that a preliminary decree is one that settles the rights of the parties in a suit, and it is not appealable unless it is followed by a final decree.
- **Rachakonda Venkat Rao v. R. Satya Bai (2003):** The court clarified that a preliminary decree is interlocutory in nature and is passed when further proceedings are necessary to completely resolve the dispute.

## 2. Final Decree

A **final decree** is a decree that completely disposes of the suit, resolving all the issues in controversy and leaving nothing further to be decided by the court. It is conclusive and executable, bringing the litigation to an end.

- **Relevant Provisions:**

- **Section 2(2) of the CPC:** The same provision that defines a decree also encompasses final decrees.

- **Examples:**

- **Partition Suits:** The final decree in a partition suit would be the one that actually partitions the property according to the shares determined in the preliminary decree.



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- **Mortgage Suits:** After the property is sold under a preliminary decree, the final decree would distribute the sale proceeds among the parties.
- **Case Law:**
  - **Venkata Reddy v. Pethi Reddy (1963):** The Supreme Court held that a final decree is conclusive and binding on the parties. It disposes of the suit in its entirety.
  - **Sathappa Chettiar v. Ramanathan Chettiar (1958):** The court explained that the final decree follows the preliminary decree and carries out the directions given in the preliminary decree.

### **3. Distinction Between Preliminary Decree and Final Decree**

- **Nature:**
  - **Preliminary Decree:** Determines the rights of the parties but does not dispose of the suit completely.
  - **Final Decree:** Completely disposes of the suit, resolving all issues.
- **Further Proceedings:**
  - **Preliminary Decree:** Necessitates further proceedings to implement the rights determined.
  - **Final Decree:** No further proceedings are required as it concludes the case.
- **Appealability:**
  - **Preliminary Decree:** Generally not appealable until the final decree is passed, except in specific cases where allowed by law.
  - **Final Decree:** Appealable as it finally decides the suit.
- **Examples:**
  - **Preliminary Decree:** In a partition suit, it declares the shares of parties.
  - **Final Decree:** The actual division of property based on the preliminary decree.

### **B. Essential Conditions Relating to the Jurisdiction of Civil Courts**

Jurisdiction refers to the legal authority of a court to hear and decide a case. For a civil court to have jurisdiction, certain essential conditions must be met. These conditions ensure that the court is the appropriate forum for resolving the dispute.

### 1. Relevant Provisions

- **Section 9 of the CPC:** Grants civil courts jurisdiction to try all suits of a civil nature unless their cognizance is expressly or impliedly barred.
- **Sections 15 to 20 of the CPC:** Deal with the place of suing, which includes provisions on territorial jurisdiction, pecuniary jurisdiction, and subject matter jurisdiction.

### 2. Essential Conditions for Jurisdiction

- **Territorial Jurisdiction:**
  - **Definition:** Refers to the geographical area within which a court has authority to adjudicate a case.
  - **Relevant Provision:** Sections 16 to 20 of the CPC.
  - **Case Law: Kusum Ingots & Alloys Ltd. v. Union of India (2004):** The Supreme Court held that territorial jurisdiction is essential and the suit must be filed in the court within whose territorial limits the cause of action arises or where the defendant resides.
- **Pecuniary Jurisdiction:**
  - **Definition:** Refers to the monetary limits within which a court can entertain suits.
  - **Relevant Provision:** Section 15 of the CPC mandates that every suit shall be instituted in the court of the lowest grade competent to try it.
  - **Case Law: Kiran Singh v. Chaman Paswan (1954):** The Supreme Court stated that a decree passed by a court without pecuniary jurisdiction is a nullity and can be challenged in any proceeding.
- **Subject Matter Jurisdiction:**
  - **Definition:** Refers to the types of cases a court is competent to hear based on the nature of the dispute.
  - **Relevant Provision:** Section 9 of the CPC, which provides that civil courts have jurisdiction over all suits of a civil nature unless expressly or impliedly barred.
  - **Case Law: Anwar Hussain v. Ajoy Kumar Mukherjee (1965):** The Supreme Court held that where a court has no jurisdiction over the subject matter of the dispute, any decree passed is void ab initio.



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- **Jurisdiction as to Parties:**

- **Definition:** The court must have jurisdiction over the parties involved in the suit.
- **Relevant Provisions:** Sections 19 and 20 of the CPC.
- **Case Law: Dhodu Pundlik v. Jankibai (1897):** The court ruled that jurisdiction over the parties must be established for a court to proceed with the suit.

### **3. Types of Jurisdiction and Their Application**

- **Exclusive Jurisdiction:** Certain courts have exclusive jurisdiction over specific matters, such as family courts for matrimonial issues, and company courts for corporate matters.
- **Concurrent Jurisdiction:** In some cases, more than one court may have jurisdiction over the matter, allowing the plaintiff to choose the forum.

### **4. Impact of Lack of Jurisdiction**

If a court lacks jurisdiction (territorial, pecuniary, or subject matter), any decree or order passed by it is void and cannot be enforced. A judgment delivered by a court without jurisdiction can be challenged at any stage of the proceedings.

## **5. A. Foreign Judgment: Definition, Conclusiveness, and Conditions**

### **1. Definition of Foreign Judgment**

A **foreign judgment** refers to the judgment or decree passed by a court in a country outside India. Under the Code of Civil Procedure (CPC), 1908, foreign judgments are recognized in India, and such judgments can be enforced through Indian courts, provided they meet certain criteria.

- **Relevant Provision:**

- **Section 2(6) of the CPC:** Defines "foreign judgment" as the judgment of a foreign court.

- **Section 13 of the CPC:** Governs the conditions under which a foreign judgment is considered conclusive.

## 2. When is a Foreign Judgment Deemed Conclusive?

A foreign judgment is generally deemed conclusive and can be enforced in India, except in specific circumstances outlined in Section 13 of the CPC. The general principle is that a foreign judgment is conclusive between the parties to the extent that it directly adjudicates upon any matter in controversy.

- **Section 13 of the CPC:** A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties, except:
  1. **Jurisdiction:** If the foreign court did not have jurisdiction according to Indian law.
  2. **Merits of the Case:** If the judgment was not given on the merits of the case (e.g., a default judgment without a proper trial).
  3. **Against Indian Law or Public Policy:** If the judgment is contrary to the principles of natural justice, Indian law, or the public policy of India.
  4. **Fraud:** If the judgment was obtained by fraud.
  5. **Contradiction with an Indian Judgment:** If the judgment sustains a claim founded on a breach of any law in force in India.
  6. **Sustaining an Illegal Claim:** If the judgment is based on a law that is inconsistent with Indian law.

## 3. Enforcement of Foreign Judgment

- **Section 14 of the CPC:** Presumes that a foreign judgment is pronounced by a court of competent jurisdiction unless proven otherwise.
- **Enforcement Procedures:**
  - A foreign judgment can be enforced in India by filing a suit under Section 44A of the CPC (if the judgment is from a reciprocating territory) or by treating it as evidence in a fresh suit.

## 4. Case Law:

- **Satya v. Teja Singh (1975):** The Supreme Court held that a foreign judgment that goes against the principles of natural justice or public policy is not enforceable in India.
- **Ramanathan Chettiar v. Kalimuthu Pillai (1914):** The Privy Council ruled that a foreign judgment obtained by fraud would not be considered conclusive and enforceable in India.



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#### **B. Provisions Governing the Determination of the Place of Suing**

The **place of suing** refers to the court in which a suit must be filed. The Code of Civil Procedure, 1908, lays down specific provisions to determine the appropriate jurisdiction or venue for filing a suit. These provisions ensure that suits are instituted in courts that have the proper authority and connection to the subject matter of the dispute.

##### **1. Territorial Jurisdiction**

- **Sections 16 to 20 of the CPC:** These sections collectively determine the territorial jurisdiction of the civil courts.
- **Section 16: Suits Relating to Immovable Property:**
  - Suits concerning immovable property must be filed in the court within whose jurisdiction the property is situated. This includes suits for recovery of immovable property, partition, foreclosure, sale, or redemption of a mortgage, and determination of any right or interest in immovable property.
  - **Exception:** If the immovable property is situated within the jurisdiction of multiple courts, the suit may be filed in any court within whose jurisdiction a portion of the property is situated.
- **Section 17: Suit Where the Immovable Property is Situated Within Jurisdiction of Different Courts:**
  - If immovable property is situated in multiple jurisdictions, the plaintiff can file a suit in any court where any portion of the property is situated, provided that the court has jurisdiction over the entire claim.
- **Section 18: Place of Institution of Suit Where Local Limits of Jurisdiction of Courts Are Uncertain:**
  - If there is uncertainty regarding the jurisdiction of the court where the immovable property is located, the plaintiff may file the suit in any court that appears to have jurisdiction.

##### **2. Suits Relating to Compensation for Wrong Done**

- **Section 19: Suits for Compensation for Wrong Done to Person or Movable Property:**

- Suits for compensation for a wrong done to a person (e.g., defamation, assault) or to movable property (e.g., theft, damage) can be filed either where the wrong was committed or where the defendant resides or carries on business.

### 3. Other Suits

- **Section 20: Other Suits:**

- Suits not covered under Sections 16 to 19 can be filed where the defendant resides, carries on business, or personally works for gain, or where the cause of action, wholly or in part, arises.
- If there are multiple defendants, the suit can be filed where any one of them resides or carries on business, provided the others consent or do not object to the jurisdiction.

### 4. Case Law:

- **Kusum Ingots & Alloys Ltd. v. Union of India (2004):** The Supreme Court held that the place of suing is determined based on the cause of action arising within the jurisdiction of the court or where the defendant resides.
- **Oil and Natural Gas Commission v. Utpal Kumar Basu (1994):** The court emphasized that the place where the cause of action, wholly or in part, arises is crucial in determining the place of suing.

## 6. A. Mis-Joinder or Non-Joinder of Parties

### 1. Mis-Joinder of Parties

- **Definition:** Mis-joinder of parties occurs when parties are wrongly joined together in a lawsuit, either as plaintiffs or defendants. This happens when unrelated parties with no common cause of action are joined in a single suit.
- **Relevant Provisions:**
  - **Order I, Rule 1 of the CPC:** Deals with the joinder of plaintiffs. All persons may be joined in one suit as plaintiffs if they have a common interest in the subject matter of the suit.
  - **Order I, Rule 3 of the CPC:** Relates to the joinder of defendants. All persons may be joined as defendants if the right to relief in respect of the same act or transaction is alleged to exist against them.
- **Effect:** Mis-joinder does not generally affect the validity of a suit. The court may order the misjoined party to be struck out, and the suit may proceed with the properly joined parties.



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- **Case Law:**

- **Mohan v. Mohan AIR 1971 SC 2171:** The Supreme Court observed that mis-joinder of parties is not a ground for dismissal of the suit and the defect can be cured.

## **2. Non-Joinder of Parties**

- **Definition:** Non-joinder occurs when a necessary party, whose presence is essential for the adjudication of the suit, is not joined.
- **Relevant Provisions:**
  - **Order I, Rule 9 of the CPC:** States that no suit shall be defeated by reason of mis-joinder or non-joinder of parties, and the court has the power to add or strike out parties at any stage of the proceedings.
  - **Order I, Rule 10 of the CPC:** Gives the court discretion to order the joinder of a party who ought to have been joined or whose presence is necessary for the effective and complete adjudication of the matter.
- **Effect:** If a necessary party is not joined, the decree may not be binding on that party, and in some cases, the suit may be dismissed.
- **Case Law:**
  - **R. M. V. Vellachi Achi v. R. M. A. Ramanathan Chettiar AIR 1973 SC 724:** The Supreme Court held that a suit is liable to be dismissed if a necessary party is not joined and the defect is not rectified.

## **B. "Pleading to State Material Facts and Not Evidence"**

- **Definition:** Pleadings refer to the written statements filed by the parties in a lawsuit, setting out their respective claims and defenses. The principle that pleadings should state material facts and not evidence means that only the essential facts upon which the party relies should be included in the pleadings, and not the detailed evidence by which those facts will be proved.
- **Relevant Provision:**

- **Order VI, Rule 2 of the CPC:** Provides that every pleading shall contain only a statement of the material facts on which the party relies for their claim or defense, but not the evidence by which those facts are to be proved.
- **Purpose:**
  - The purpose is to clearly define the issues between the parties and avoid any surprises during the trial. It ensures that both parties are aware of the essential facts that need to be proved without getting into the minutiae of evidence.
- **Case Law:**
  - **Udhav Singh v. Madhav Rao Scindia AIR 1976 SC 744:** The Supreme Court held that pleadings should not include the evidence but only the material facts necessary to support the claim or defense.
  - **Vasudev Ramchandra Shelat v. Pranal Jayanand Thakur AIR 1974 SC 1728:** The court emphasized that pleadings must state material facts but not the evidence.

## C. Inconsistent and Alternative Pleadings

### 1. Inconsistent Pleadings

- **Definition:** Inconsistent pleadings refer to situations where a party takes contradictory stands in its pleadings. Such pleadings are generally not allowed as they can cause confusion and are considered an abuse of the process of the court.
- **Relevant Provisions:**
  - **Order VI, Rule 7 of the CPC:** Prohibits a party from making inconsistent pleadings unless the alternative pleadings are permissible.
- **Effect:** Inconsistent pleadings can lead to the dismissal of the suit or defense if the court finds that the contradictions are deliberate and affect the merits of the case.
- **Case Law:**
  - **Sopan Sukhdeo Sable v. Assistant Charity Commissioner (2004):** The Supreme Court held that a party cannot blow hot and cold at the same time by making inconsistent pleadings.

### 2. Alternative Pleadings

- **Definition:** Alternative pleadings refer to the practice where a party pleads multiple and different sets of facts that are not necessarily inconsistent with each other but are presented in the alternative, allowing the court to choose which one applies.
- **Relevant Provisions:**



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- **Order VI, Rule 2 of the CPC:** Allows a party to plead in the alternative, provided that the pleadings are not mutually inconsistent.
- **Purpose:** Alternative pleadings are used to cover different factual scenarios, ensuring that the party's case is not defeated due to a technical error or unforeseen circumstances.
- **Case Law:**
  - **N. V. Srinivasa Murthy v. Mariamma (2005):** The Supreme Court upheld the validity of alternative pleadings, stating that a party can rely on more than one legal or factual basis for their claim or defense.

#### **D. Rejection of Complaint and Return of Complaint**

##### **1. Rejection of Complaint**

- **Definition:** The rejection of a complaint occurs when the court determines that the complaint does not meet the necessary legal requirements and therefore dismisses the suit without a trial.
- **Relevant Provisions:**
  - **Order VII, Rule 11 of the CPC:** Specifies the grounds for rejection of a complaint, which include:
    1. Failure to disclose a cause of action.
    2. The relief claimed is undervalued, and the plaintiff fails to correct it despite the court's direction.
    3. The complaint is insufficiently stamped, and the deficiency is not rectified within the given time.
    4. The suit is barred by any law.
    5. Non-compliance with the provisions of the law.
- **Effect:** When a complaint is rejected, the plaintiff may either file a fresh complaint or appeal against the order of rejection.
- **Case Law:**

- **Dahiben v. Arvindbhai Kalyanji Bhanusali (2020)**: The Supreme Court held that the rejection of a plaint under Order VII, Rule 11, is a drastic measure and should only be done when the case clearly falls under one of the specified grounds.

## 2. Return of Plaint

- **Definition:** The return of a plaint occurs when the court determines that it does not have jurisdiction to entertain the suit and therefore directs the plaint to be returned to the plaintiff for presentation in the proper court.
- **Relevant Provisions:**
  - **Order VII, Rule 10 of the CPC:** Provides for the return of a plaint to the plaintiff for filing in the appropriate court if the court where the suit was originally filed lacks jurisdiction.
- **Effect:** The plaintiff must present the plaint in the court having jurisdiction. The time spent in the wrong court is generally excluded from the limitation period for filing the suit.
- **Case Law:**
  - **K. N. D. Naidu v. P. V. Naidu (1994)**: The Supreme Court held that when a plaint is returned, the suit is deemed never to have been instituted in the court where it was initially filed.

## 7. A. Set-Off and Counterclaim

### 1. Set-Off

- **Definition:** Set-off is a legal defense available to a defendant in a suit for the recovery of money. It allows the defendant to claim a reduction or discharge of the plaintiff's claim by asserting that the plaintiff owes the defendant an amount that can be deducted from the plaintiff's claim.
- **Relevant Provision:**
  - **Order VIII, Rule 6 of the CPC:** Governs the concept of set-off. It allows a defendant to set off any ascertained sum of money legally recoverable by the defendant from the plaintiff, provided it is within the pecuniary jurisdiction of the court.
- **Types of Set-Off:**
  - **Legal Set-Off:** The amount claimed must be an ascertained sum and legally recoverable.



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- **Equitable Set-Off:** Not explicitly provided under CPC, but recognized by courts in equity. It allows set-off of unascertained sums or damages, provided both claims arise out of the same transaction.

- **Case Law:**

- **Mulraj Khatau v. Vishwanath Prabhuram Vaidya (1954):** The Bombay High Court recognized equitable set-off, even though not explicitly provided under the CPC.

## **2. Counterclaim**

- **Definition:** A counterclaim is a claim made by the defendant in a lawsuit against the plaintiff, which is not merely a defense but an independent cause of action. The defendant seeks relief against the plaintiff that is beyond just reducing or extinguishing the plaintiff's claim.
- **Relevant Provision:**
  - **Order VIII, Rule 6A of the CPC:** Allows the defendant to set up any right or claim against the plaintiff in respect of a cause of action accruing either before or after the filing of the suit.
- **Characteristics:**
  - A counterclaim is treated as a cross-suit.
  - It can exceed the amount claimed by the plaintiff.
  - It is decided along with the main suit, and a separate decree is passed.
- **Case Law:**
  - **Laxmidas v. Nanabhai (1976):** The Supreme Court clarified that a counterclaim is an independent claim and can be filed even after the defendant has filed the written statement, subject to the court's discretion.

## **3. Distinction between Set-Off and Counterclaim**

**Set-Off**

It is a statutory defense available to the defendant to extinguish or reduce the plaintiff's claim.

The amount claimed must be an ascertained sum.

It can only be for a liquidated amount legally recoverable.

Does not exceed the plaintiff's claim.

Arises from the same transaction as the plaintiff's claim.

**Counterclaim**

It is an independent claim by the defendant seeking relief against the plaintiff.

The claim can be for an unascertained sum or damages.

It can be for any cause of action, including unliquidated claims.

Can exceed the plaintiff's claim.

May arise from a different transaction.

**B. Ex-Parte Decree****1. Definition**

- **Ex-Parte Decree:** An ex-parte decree is a judgment passed by the court in favor of the plaintiff when the defendant fails to appear in court despite proper notice. It is a decree against a defendant who has chosen not to contest the suit.
- **Relevant Provisions:**
  - **Order IX, Rule 6 of the CPC:** Provides for the circumstances under which an ex-parte decree may be passed.
  - **Order IX, Rule 13 of the CPC:** Allows for the setting aside of an ex-parte decree if the defendant can show sufficient cause for non-appearance.

**2. Circumstances for Setting Aside an Ex-Parte Decree**

An ex-parte decree may be set aside under the following circumstances:

1. **Sufficient Cause for Non-Appearance:** If the defendant can prove that there was sufficient cause for not appearing in court, such as illness, misunderstanding of the court's notice, or other valid reasons.
2. **Fraud or Misrepresentation:** If the defendant can show that the ex-parte decree was obtained by fraud or misrepresentation.
3. **Non-Service of Summons:** If the defendant was not properly served with the summons or notice of the suit.
4. **Error on Part of the Court:** If the court erroneously proceeded ex-parte despite a valid appearance by the defendant.



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#### **Case Law:**

- **Sangram Singh v. Election Tribunal, Kotah AIR 1955 SC 425:** The Supreme Court observed that the provisions of Order IX, Rule 13 should be interpreted liberally to give the defendant an opportunity to present their case unless they have been grossly negligent.
- **G.P. Srivastava v. R.K. Raizada (2000):** The Supreme Court held that an ex-parte decree can be set aside if the defendant shows that they were prevented by any sufficient cause from appearing when the suit was called for hearing.

#### **C. Kinds of Issues**

##### **1. Definition of Issues**

Issues refer to the disputed points of fact or law that arise from the pleadings of the parties. The court frames issues to identify the precise matters in dispute, which must be decided upon in the course of the trial.

- **Relevant Provision:**
  - **Order XIV of the CPC:** Governs the framing of issues.

##### **2. Types of Issues**

1. **Issues of Fact:** These are issues that arise when there is a dispute between the parties regarding facts alleged in the pleadings. For example, whether a contract was executed or whether a payment was made.
2. **Issues of Law:** These are issues that arise when there is a dispute about the legal principles applicable to the facts of the case. For example, whether a claim is barred by limitation or whether a law applies to the facts in question.
3. **Mixed Issues of Law and Fact:** These issues involve both legal and factual disputes. For example, whether a contract is valid involves both the interpretation of law and the determination of facts related to the execution of the contract.

#### **Case Law:**

- **Makhan Lal Bangal v. Manas Bhunia (2001):** The Supreme Court held that issues must be framed with precision to ensure that the trial is confined to the real matters in dispute.

## D. Indigent Person

### 1. Definition

- **Indigent Person:** An indigent person is someone who is not financially capable of paying the court fees required to file a suit. The term "pauper" was historically used, but "indigent person" is now the preferred term.
- **Relevant Provisions:**
  - **Order XXXIII of the CPC:** Contains provisions regarding suits by indigent persons. It allows such persons to file suits without paying the requisite court fees, subject to certain conditions.

### 2. Conditions for Filing as an Indigent Person

To qualify as an indigent person, the following conditions must be met:

1. **Poverty:** The person must not possess sufficient means to pay the court fees prescribed by law for the suit. The property they own, except for necessary clothing and implements of trade, should not exceed a certain value (prescribed by the respective state).
2. **Verification by Court:** The court must conduct an inquiry to determine the person's indigency. If satisfied, the court permits the suit to be filed without payment of court fees.
3. **No Collusion:** The person must not have entered into any agreement with another party to share the proceeds of the suit, indicating that the suit is not being pursued in bad faith.

**Effect: If allowed to sue as an indigent person, the plaintiff is exempt from paying court fees initially. However, if they succeed in the suit, the court fees may be recovered from the amount awarded to them.**

#### Case Law:

- **Smt. J.K. Kashyap v. Union of India AIR 1982 SC 749:** The Supreme Court reiterated that the provisions regarding suits by indigent persons should be liberally construed to ensure access to justice for the poor.
- **K.L. Johar & Co. v. Deputy Commercial Tax Officer (1965):** The court emphasized the need for careful scrutiny in determining whether a person is genuinely indigent.

## 8. A. Attachment

### 1. Definition of Attachment



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Attachment is a legal process by which a court orders the seizure or taking into custody of a defendant's property to satisfy a judgment. This mechanism ensures that the property remains within the jurisdiction of the court and is available to satisfy the decree if the plaintiff succeeds in the suit.

### 2. Types of Attachment

- **Pre-Judgment Attachment (Attachment Before Judgment):**
  - **Relevant Provision:** Order XXXVIII, Rule 5 of the CPC allows the plaintiff to apply for attachment of the defendant's property before the judgment, to prevent the defendant from disposing of or concealing the property to frustrate the execution of any decree that may be passed.
  - **Purpose:** The aim is to prevent the defendant from defeating the plaintiff's claim by transferring or hiding assets before the court can adjudicate the dispute.
- **Post-Judgment Attachment:**
  - **Relevant Provision:** Order XXI of the CPC deals with attachment in the execution of a decree. Once a decree is passed, the decree-holder can seek the attachment of the judgment-debtor's property to satisfy the decree.
  - **Purpose:** To enforce the judgment by compelling the judgment-debtor to satisfy the decree, either by payment or by selling the attached property.

### 3. Procedure for Attachment

- **Application:** The decree-holder or plaintiff must apply to the court, specifying the property to be attached.
- **Order of Attachment:** The court issues an order, and a notice is served on the defendant or judgment-debtor.
- **Execution:** The court official, usually a bailiff, carries out the attachment. In the case of movable property, it may be physically taken into custody. For immovable property, a notice of attachment is typically affixed to the property and entered into the court's records.

### 4. Consequences of Attachment

- **Prohibition on Transfer:** The attached property cannot be sold or transferred by the judgment-debtor during the period of attachment.
- **Sale:** If the decree is not satisfied, the attached property can be sold by the court to satisfy the decree.
- **Release of Attachment:** If the judgment-debtor satisfies the decree or provides sufficient security, the attachment can be lifted.

#### Case Law:

- **Padam Sen v. State of Uttar Pradesh AIR 1961 SC 218:** The Supreme Court held that the power of attachment before judgment is a drastic remedy and should be used sparingly and only when the plaintiff genuinely fears that the defendant may dispose of or hide the property.
- **Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal AIR 1962 SC 527:** The Supreme Court emphasized that attachment before judgment should only be granted when there is a bona fide need and not as a matter of routine.

### B. Meaning of "Cause of Action"

#### 1. Definition

The term "cause of action" refers to a set of facts or circumstances that give rise to a legal right to sue. It is the bundle of facts that entitles the plaintiff to seek judicial relief from the court against the defendant. Without a cause of action, a suit cannot be filed or maintained.

#### 2. Elements of Cause of Action

A cause of action typically comprises the following elements:

- **Legal Right:** The plaintiff must have a legal right that has been violated.
- **Infringement:** The defendant must have committed an act or omission that infringes the plaintiff's legal right.
- **Relief Sought:** The plaintiff must be seeking a specific remedy for the violation of their right.

#### 3. Importance in Civil Suits

- **Foundation of Suit:** The cause of action is the foundation of every civil suit. It determines the jurisdiction of the court, the applicable law, and the limitation period.
- **Framing of Issues:** It helps in the framing of issues by the court, which are the specific points of dispute that need to be adjudicated.
- **Determination of Jurisdiction:** The place where the cause of action arises usually determines the territorial jurisdiction of the court.



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#### **Case Law:**

- **A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies, Salem AIR 1989 SC 1239:** The Supreme Court defined "cause of action" as every fact that would be necessary for the plaintiff to prove if traversed in order to support their right to the judgment of the court.
- **Bloom Dekor Ltd. v. Subhash Himatlal Desai (1994):** The court observed that the cause of action comprises the material facts on which the right to relief is founded, and it must be stated clearly in the plaint.

#### **C. Execution of a Decree for Injunction**

##### **1. Decree for Injunction**

An injunction is a court order directing a party to do or refrain from doing a particular act. Injunctions are of two types: **mandatory injunction** (directing a party to do something) and **prohibitory injunction** (restraining a party from doing something).

##### **2. Procedure for Execution**

- **Relevant Provision:** Order XXI, Rules 32 and 34 of the CPC deal with the execution of a decree for an injunction.
- **Mandatory Injunction:** If the decree is for a mandatory injunction, and the judgment-debtor fails to comply, the court may order that the act required by the injunction be done by the decree-holder or some other person at the expense of the judgment-debtor.
- **Prohibitory Injunction:** If the decree is for a prohibitory injunction and the judgment-debtor disobeys it, the court may enforce the injunction through its coercive powers, including arrest and detention of the judgment-debtor in civil prison or attachment of property.
- **Contempt of Court:** Disobedience of an injunction decree can also lead to proceedings for contempt of court, where the judgment-debtor may be punished for not complying with the court's order.

##### **3. Enforcement through Court Officers**

- The court may appoint an officer or commissioner to ensure that the terms of the injunction are complied with. In case of non-compliance, the court can take necessary steps, including imposing fines or ordering imprisonment.

#### 4. Consequences of Non-Compliance

- **Attachment of Property:** The court may order the attachment of the judgment-debtor's property as a means of compelling compliance with the decree.
- **Civil Imprisonment:** Persistent non-compliance with an injunction may result in the judgment-debtor being sent to civil prison until they obey the decree.

#### Case Law:

- **Hungerford Investment Trust Ltd. v. Haridas Mundhra AIR 1972 SC 1826:** The Supreme Court held that an injunction decree must be complied with strictly and that non-compliance can lead to severe consequences, including contempt of court.
- **State of Bihar v. Sonabati Kumari AIR 1961 SC 221:** The court emphasized that mandatory injunctions must be enforced promptly to prevent the irreparable harm that such injunctions are meant to prevent.

### 9. A. Inherent Powers of a Court

#### 1. Definition

Inherent powers are the powers that are not explicitly provided for in the statutory law but are inherent in the court to ensure justice is served and to prevent the abuse of the process of the court. These powers are derived from the necessity of the court to regulate its own procedure and to ensure that justice is administered effectively.

#### 2. Relevant Provision

- **Section 151 of the Code of Civil Procedure, 1908 (CPC):** This section codifies the inherent powers of the court, stating that "nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court."

#### 3. Scope of Inherent Powers

- **Ends of Justice:** The court can exercise inherent powers to make any order that may be necessary to achieve the ends of justice. This includes orders that are not specifically provided for in the CPC but are required to prevent a miscarriage of justice.
- **Preventing Abuse of Process:** The court can also use its inherent powers to prevent the abuse of its process. For instance, it can strike out frivolous or vexatious suits or prevent the enforcement of a decree obtained by fraud.

#### 4. Illustrations of Inherent Powers



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- **Granting Temporary Injunctions:** Although specific provisions exist for granting injunctions, the court can also use its inherent powers to issue injunctions in situations not covered by specific rules if it is necessary to prevent injustice.
- **Restoration of Suits:** If a suit is dismissed for non-appearance, the court may restore it using its inherent powers if the dismissal was due to some inadvertent mistake or other sufficient cause.
- **Correction of Clerical Errors:** The court can correct clerical or arithmetical errors in judgments, decrees, or orders using its inherent powers.
- **Consolidation of Suits:** The court may consolidate multiple suits that involve common questions of law or fact to avoid multiplicity of proceedings and to ensure consistency in decisions.

### 5. Limitations on Inherent Powers

- **Cannot Contradict Express Provisions:** The court's inherent powers cannot be used to override or contradict express provisions of the CPC or other statutory laws.
- **Cannot Create Rights:** Inherent powers cannot be used to create new rights or liabilities that are not recognized by law.

### Case Law:

- **Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal AIR 1962 SC 527:** The Supreme Court held that the inherent powers of the court under Section 151 are wide and undefined but should be used with caution and only where no specific provision in the CPC applies.
- **Padam Sen v. State of Uttar Pradesh AIR 1961 SC 218:** The court clarified that the inherent powers of the court are meant to prevent abuse of the process of the court and to meet the ends of justice, but they cannot be used to do something which is prohibited by the law or by the CPC.

### B. Setting Aside an Auction Sale of Immovable Property in Execution of a Decree

#### 1. Relevant Provisions

- **Order XXI, Rule 89 to Rule 92 of the CPC:** These provisions govern the setting aside of a sale of immovable property in execution of a decree.

## 2. Grounds for Setting Aside an Auction Sale

- **Payment by the Judgment-Debtor (Rule 89):**
  - The judgment-debtor can apply to have the sale set aside if they deposit the decretal amount along with 5% of the purchase money with the court within 60 days from the date of the sale. This amount is to be paid to the auction-purchaser.
- **Irregularity or Fraud (Rule 90):**
  - Any person whose interests are affected by the sale can apply to have it set aside on the grounds of a material irregularity or fraud in conducting the sale.
  - It must be shown that the irregularity or fraud resulted in substantial injury to the applicant.
- **Non-Payment of Purchase Money (Rule 86):**
  - If the auction-purchaser fails to pay the purchase money within the prescribed time, the sale may be set aside by the court.
- **Violation of Statutory Provisions:**
  - If the sale was conducted in violation of any mandatory provision of the CPC, such as notice requirements or procedures laid down for the sale, the sale can be set aside.

## 3. Persons Who Can Apply to Set Aside the Sale

- **Judgment-Debtor:** The primary party with the right to apply for setting aside the sale is the judgment-debtor, particularly under Rule 89 and Rule 90.
- **Auction Purchaser:** If the auction-purchaser faces any issues, such as non-receipt of the sale certificate or non-payment of purchase money by the judgment-debtor, they may also seek remedies.
- **Third Parties:** Any third party whose interests are prejudicially affected by the sale, such as mortgagees or persons holding a lien over the property, may also apply to set aside the sale.

## 4. Procedure for Setting Aside the Sale

- **Filing of Application:** The party seeking to set aside the sale must file an application in the executing court within the prescribed time limit, stating the grounds for setting aside the sale.
- **Hearing and Decision:** The court will hear the parties involved, consider the evidence of irregularity, fraud, or other grounds, and decide whether the sale should be set aside.



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- **Consequences:** If the sale is set aside, the property reverts to the state it was in before the sale, and a fresh auction may be ordered.

#### **Case Law:**

- **Lachhman Das v. DDA (2010):** The Supreme Court held that for an auction sale to be set aside on the grounds of material irregularity, it must be shown that the irregularity caused substantial injury to the applicant.
- **Balram v. Ilam Singh AIR 1996 SC 2781:** The court emphasized that a sale cannot be set aside merely on the grounds of procedural irregularity unless substantial injury is caused as a result of such irregularity.
- **Desh Bandhu Gupta v. N.L. Anand & Rajinder Singh AIR 1994 SC 1848:** The Supreme Court clarified that the power to set aside a sale should be exercised judicially, considering all relevant circumstances.

#### **10. A. Execution of a Decree Against Legal Representatives of a Deceased Judgment-Debtor**

##### **1. Relevant Provisions**

- **Section 50 of the Code of Civil Procedure, 1908 (CPC):** This section provides for the execution of a decree against the legal representative of a deceased judgment-debtor.

##### **2. Extent of Liability of Legal Representatives**

- **Execution Limited to Estate of Deceased:** A decree can be executed against the legal representative of a deceased judgment-debtor to the extent of the property of the deceased that has come into the hands of the legal representative. The liability of the legal representative is not personal but limited to the estate inherited from the deceased.
- **Personal Liability:** If the legal representative misappropriates or wastes the estate, they may be personally liable to the extent of the assets that were wasted or misappropriated.

- **Inquiry by the Court:** The court may conduct an inquiry to determine the extent of the estate of the deceased that has come into the hands of the legal representative and how much of it is liable to satisfy the decree.

### 3. Procedure for Execution

- **Substitution of Legal Representatives:** Upon the death of a judgment-debtor, the decree-holder must apply to the court to substitute the legal representatives of the deceased in place of the deceased judgment-debtor.
- **Notice to Legal Representatives:** The court issues a notice to the legal representatives, providing them with an opportunity to contest their liability or the extent of the estate that can be attached.
- **Attachment and Sale:** After the inquiry, if the court finds that the legal representative holds assets of the deceased, it may order the attachment and sale of those assets to satisfy the decree.

#### Case Law:

- **Kuzhiyan Kallyani v. Kuzhiyan Pokkri & Ors., AIR 1991 Ker 257:** The Kerala High Court held that a legal representative can only be held liable to the extent of the assets of the deceased that have come into their hands and cannot be held personally liable beyond that.
- **Jatinder Nath v. Chopra Land Developers Pvt. Ltd., AIR 2007 SC 1401:** The Supreme Court reiterated that the liability of a legal representative is limited to the estate of the deceased and that personal assets of the legal representative cannot be attached.

## B. Properties Not Liable to Attachment and Sale in Execution of a Decree

### 1. Relevant Provisions

- **Section 60 of the CPC:** This section specifies the properties that are liable to attachment and sale and those that are exempt from such processes in the execution of a decree.

### 2. Properties Exempt from Attachment

- **Tools of Trade:** Tools of artisans and other tools of trade, necessary for the livelihood of the judgment-debtor, are exempt.
- **Wages and Salary:** The wages of laborers and the salaries of public officers, employees of railway companies, and other government employees to the extent of the first ₹1,000 and two-thirds of the remainder are exempt from attachment.



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- **Stipends and Pensions:** Stipends and pensions granted by the government or payable to military/naval/air force personnel, including civilian pensions, are exempt.
- **Personal Necessities:** Clothing, bedding, cooking vessels, and other essential household items of the judgment-debtor and their family are exempt from attachment.
- **Agricultural Produce:** Agricultural produce or implements necessary for the cultivation and the actual use of the judgment-debtor or their family are exempt.
- **Right to Future Maintenance:** Any right to future maintenance, whether in money or kind, is exempt from attachment and sale.
- **Funds Protected by Law:** Provident funds, pension funds, and other funds protected by law are also exempt from attachment.

#### **Case Law:**

- **Union Bank of India v. Hardeep Singh AIR 1998 SC 1437:** The Supreme Court held that the provident fund, being a statutory benefit, is exempt from attachment under Section 60 of the CPC.
- **Radha Krishan v. Radha Rani AIR 1977 SC 694:** The Supreme Court ruled that agricultural implements used by the judgment-debtor for their livelihood cannot be attached in execution of a decree.

#### **C. Procedure for a Suit by an Indigent Person (Forma Pauperis Suit)**

##### **1. Relevant Provision**

- **Order XXXIII of the CPC:** This order provides the procedure for suits filed by indigent persons who are unable to pay the court fees required for the suit.

##### **2. Conditions to File as Indigent Person**

- **Indigent Person Defined:** An indigent person is one who does not possess sufficient means to pay the prescribed court fees or is not possessed of property worth ₹1,000 excluding the necessary wearing apparel and the subject matter of the suit.
- **Application to Sue as Indigent Person:** The applicant must file an application (in the form of a petition) before the court stating that they are an indigent person and

cannot afford the court fees. This application should be accompanied by a schedule of the applicant's assets.

### 3. Procedure

- **Preliminary Examination:** The court examines the application to ensure that it is in proper form and that the applicant's claim of indigence is genuine.
- **Notice to Opposite Party and Government Pleader:** If the court is satisfied with the preliminary examination, it issues a notice to the opposite party and to the Government Pleader for any objections they may have.
- **Inquiry into Indigence:** The court conducts an inquiry, often with the help of the Tahsildar or another government officer, to verify the applicant's financial status.
- **Hearing and Decision:** After hearing the objections (if any) and considering the evidence, the court decides whether the applicant qualifies to sue as an indigent person. If granted, the applicant can proceed with the suit without paying the court fees.
- **Rejection of Application:** If the court finds that the applicant is not indigent, the application is rejected, and the applicant must pay the court fees before proceeding with the suit.

### 4. Consequences of Decision

- **Proceeding as Indigent Person:** If the court allows the application, the suit proceeds as a regular civil suit, but without the requirement of court fees.
- **Recovery of Court Fees:** If the indigent person wins the suit, the court fees are recoverable from the amount or property decreed in favor of the plaintiff. If the plaintiff loses, the state may recover the court fees from the property of the plaintiff.

#### Case Law:

- **Gurpreet Singh v. Chatur Bhuj Goel AIR 1988 SC 400:** The Supreme Court held that the burden of proving indigence lies on the applicant, and the court must be satisfied about the veracity of the claim before granting permission to sue as an indigent person.
- **Santoshi Devi v. Jai Narayan AIR 1958 All 755:** The court held that the inquiry into the indigence of the applicant must be thorough and should cover all aspects of the applicant's financial status.