

**LL.B**

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# **Code of Civil Procedure**

Short notes  
Essay Type Answers  
Solved Problems: IRAC Method  
Recent Cases  
Glossary  
Important Questions  
Reference Books

Solved Problems  
**IRAC Method**  
Internationally Recognised  
Method of Legal Analysis



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# **Jurisdiction of the Civil Courts**

## **Suits of Civil Nature**

### **Sections 9**

**J**URISDICTION means power or legal authority. The word jurisdiction is derived from Latin terms juris and dicto which means I speak by the law. Jurisdiction generally describes any authority over a certain area or certain persons. It is the practical authority granted to a formally constituted legal body to deal with and make pronouncements on legal matters and, by implication, to administer justice within a defined area of responsibility. It can be defined as ‘the authority, which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision’. The term is also used to denote the geographical area or subject-matter to which such authority applies.

1. Authority to hear and decide legal controversy
2. Power to hear and determine the issues of law and facts
3. Power to adjudicate and exercise judicial power
4. Authority to take cognizance of and decide causes
5. Power to determine the causes and to carry the judgment into effect
6. Power to determine and pronounce judgment on the issues
7. Power to inquire into the facts and apply the law

### **Suits of civil nature**

Section 9 provides that the Courts have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. It is evident that every Court while entertaining suit must be cautious that it should entertain only those suits which are of civil nature and have the characteristic of affecting one's rights of civil nature. Thus it is

clear that no suit shall be entertained if barred by any law or statute in force. This gives rise to a presumption that the civil Courts are competent to decide all civil matters unless their jurisdiction is barred or excluded. The following two elements are essential to have jurisdiction. They are;

- a. The suit must be of civil nature
- b. Its cognizance must not be expressly or impliedly barred

**Examples of suits of civil nature: Section 9**

- Suits relating to rights to property
- Suits for rents
- Suits relating to damages for civil wrongs
- Suits for damages for breach of contract
- Suits for dissolution of marriages
- Suit for injunction
- Suits for a specific relief
- Suits for negligence
- Suits for accident compensation
- Suits for dissolution of partnership

**Examples of suits not of civil nature: Section 9**

- Suits involving principally caste questions
- Suits relating to political questions
- Suits involving purely religious rites or ceremonies
- Suits for upholding mere dignity or honour
- Suits for recovery of voluntary payments or offerings
- Suits challenging disconnection of electricity
- Suits against expulsions from caste, etc.

***Dwarka Prasad Agarwal and another v. Ramesh Chandra Agarwala and others*** AIR 2003 SC 2696 the Supreme Court held that the normal rule of law is that Civil Courts have jurisdiction to try all suits of civil nature except those of which cognizance by them is either expressly or impliedly excluded as provided under Section 9 of the Code of Civil Procedure but such exclusion is not readily inferred and the presumption to be drawn must be in favour of the existence rather than exclusion of jurisdiction of the Civil Courts to try civil suit.

***State of Andhra Pradesh v. Manjeti Laxmi Kantha Rao*** AIR 2000 SC 2220 the Supreme Court held that the jurisdiction of Civil Court must be expressly excluded by Legislature or by Special Acts to deal with special subject matters.

Therefore the Code of Civil Procedure defines the matters for adjudication and prescribes basic rules for fixing jurisdiction, in particular territorial jurisdiction, of Civil Courts. The Civil Courts are permitted to entertain all suits of civil nature if, in the first place, the cause of action of the suit has arisen within the territorial limits of the Courts; secondly, suit value falls within the pecuniary limits of the Courts and, finally, assumption of jurisdiction over the suit by the civil Courts is not barred by any statute.

#### **Evaluation**

1. Write an essay on the suits of civil nature and the suits of not civil nature?
2. Explain the law relating to suits of civil nature as per section 9 of CPC
3. Write an essay on jurisdiction of civil courts?

#### **Problem Question**

**A filed a suit against B for declaration that the religious rites performed by B during the Seva Puja of the deity were not proper. B contends that he has been performing the Seva Puja as per the Hindu religious rites. Is the suit maintainable by a civil Court? Decide.**

#### **Issue**

1. Whether the right to worship in a temple is a civil right?
2. Whether the Court has jurisdiction to entertain the suit?
3. Whether the suit filed by A is a suit of civil nature or not?
4. Whether the suit is barred by Section 9 of the Civil Procedure Code?
5. To what relief, if any, the plaintiff is entitled?

#### **Rule**

Section 9 of CPC: Suits of civil nature/jurisdiction of the Civil Courts, Article 25(2) and 26(b) of Constitution: Activities associated with religious practice.

#### **Application**

According to Section 9(vi) of CPC suits involving purely religious rites or ceremonies are 'not suits of civil nature'. According to the conditions prescribed under this section a Civil Court can try suits related to civil cases provided the two conditions are satisfied: a) Suit should of civil nature and b) Cognizance of such a suit should not have been expressly or impliedly barred.

Kanbi Manji Abji and Others v. Kanbi Vaghji Mavji and Others AIR 1993 SC 1163, Sarda Syedna Taher Saifuddin v. State of Bombay AIR 1962 SC 853 etc.

#### **Conclusion**

The cognizance of suit relating to the declaration that the religious rights performed by B during the Seva Puja of the deity were not proper is impliedly barred by Section 9 of the Code of Civil Procedure. Hence in the instant case the suit involves purely religious rites and the same is not a suit of civil nature. Therefore the suit filed by A is not within the jurisdiction of civil Court and the same is not maintainable.

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## Shortnotes

**Adjournment:** Adjournment means postponement or recess or break. As a general rule, after the hearing of a suit is commenced, it shall continue without break till the suit is finally disposed of. But adjournment is an exception to such general rule. An adjournment is a suspension of proceedings to another time or place. To adjourn means to suspend until a later stated time or place. Once the hearing of evidence has begun, the hearing has to continue from day to day till all the witnesses have been examined.

**Admissions:** Admission means acceptance. It is an acknowledgment or declaration of a fact or truth. In civil suits, each party is permitted to submit a written list of alleged facts and request the other party to admit or deny whether each is true or correct. Admission may be made before the suit or after the filing of the suit. When a party accepts certain facts stated in the pleadings of the opposite party, it is said to have admitted those facts.

**Affidavit:** Affidavit is a sworn statement in writing made under oath or on affirmation before an authorized Magistrate or officer. It is a written statement of fact made voluntarily, and signed before an authority empowered to administer such oaths. Affidavits generally name the place of execution and certify that the person making it states certain facts and appeared before the officer on a certain date and subscribed and swore to the statement. The person who makes an affidavit is called *deponent* or *affiant*.

**Amendment of pleadings:** The Court may at any stage of the proceedings allow either party to alter or amend his pleadings

in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. No application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

**Amendment of written statement:** According to Order 6 Rule 17 the Court may at any stage of the proceedings allow either party to alter or amend his pleadings. A defendant can be allowed to amend the written statement to enable him to raise an additional ground of defence even if he failed to raise that ground in the first instance if an additional ground is not inconsistent with the original case. Where right of plaintiff is going to be jeopardized by the amendment of written statement it should not be allowed.

**Appeal against ex parte decree:** Appeal against ex parte decree Appeal is a judicial re-examination or review of the decision by a higher court of the decision of a lower Court. An appeal is a petition for review of a case that has been decided by a court of law. The petition is made to a higher court for the purpose of overturning the lower court's decision. The memorandum of appeal contains the grounds on which the judicial examination is invited. An appellate court is a court that hears cases on appeal from another court

**Arrest and detention:** Arrest and detention Arrest and detention is one of the most important means of execution



# Glossary

<b>Abatement:</b> cessation, closing	<b>Contention:</b> agreement
<b>Absolute:</b> unconditional	<b>Contingency:</b> unforeseen event
<b>Acknowledgement:</b> accepting the truth	<b>Counsel:</b> advise
<b>Acquiescence:</b> agreement, consent	<b>Counter affidavit:</b> opposing statement
<b>Adjective law:</b> procedural law	<b>Covenant:</b> agreement
<b>Adjournment:</b> postponement or break.	<b>Cross suits:</b> opposite litigation
<b>Adjudge:</b> decide	<b>Decree:</b> ruling, judgment
<b>Adjudicate:</b> giving a decision	<b>Deponent:</b> one who makes an affidavit
<b>Adjudication:</b> settlement	<b>Diligence:</b> carefulness
<b>Admission:</b> acceptance	<b>Domestic courts:</b> matrimonial courts
<b>Adversary:</b> opponent	<b><i>Dominus litis:</i></b> person to whom a suit belongs
<b>Adversely:</b> unfavourably	<b>Envoys:</b> representatives
<b>Affidavit:</b> sworn statement	<b>Equitable jurisdiction:</b> impartial authority
<b>Alienation:</b> separation, transfer	<b>Equitable remedy:</b> impartial solution
<b>Aliens:</b> strangers	<b>Estoppel:</b> to stop
<b>Allegation:</b> claim, charge	<b>Eviction:</b> expulsion
<b>Analogous:</b> similar	<b>Execution:</b> implementation
<b>Apparent error:</b> visible mistake	<b><i>Ex-parte:</i></b> one sided
<b>Appearance:</b> presence	<b><i>Ex-parte decree:</i></b> one sided judgment
<b>Appellant:</b> petitioner	<b>Extinction:</b> loss, destruction
<b>Appendix:</b> supplement, addition	<b>Frivolous:</b> playful, silly
<b>Apprehension:</b> fear	<b>Frustrate:</b> discourage
<b>Arbitration:</b> mediation	<b><i>Garnir:</i></b> to warn or to prepare
<b>Arbitrator:</b> mediator	<b>Garnishee:</b> a judgment-debtor's debtor
<b>Attorney:</b> Govt. legal representative	<b>Hearing:</b> trial, inquiry
<b>Award:</b> decision, settlement	<b>Impeached:</b> put on trial
<b>Bias:</b> unfairness	<b>Impleading:</b> adding
<b><i>Bona fide:</i></b> genuine, legal	<b>Indigent Person:</b> poor or insolvent
<b>Breach of duty:</b> breaking duty	<b>Inferred:</b> indirect
<b>Capriciously:</b> erratically	<b>Infringement:</b> breach, violation
<b>Cardinal canon:</b> basic rule	<b>Ingenious:</b> original
<b>Caveat:</b> beware	<b>Inherent:</b> natural, inborn
<b>Caveator:</b> person filing caveat	<b>Inherent power:</b> natural authority
<b>Claim:</b> right or entitlement	<b>Injunction:</b> ban, command
<b>Coercion:</b> force	<b>Insolvency:</b> bankruptcy
<b>Cognizable:</b> serious	<b><i>Inter alia:</i></b> in the mean while
<b>Collateral:</b> security	<b>Interim:</b> temporary, provisional
<b>Collision:</b> conflict	<b>Interlocutory:</b> intermediate
<b>Computation:</b> calculation	<b>Interpretation:</b> understanding
<b>Concealed:</b> hidden	<b>Interrogatories:</b> questions
<b>Conciliation:</b> pacification, reunion	<b>Invoke:</b> bring into play
<b>Condition precedent:</b> pre-clause	<b><i>Ipsa facto:</i></b> by the fact itself
<b>Condoned:</b> excuse, forgive	<b>Issues:</b> questions
<b>Conspicuous place:</b> noticeable location	<b>Jeopardized:</b> put at danger

## Important Questions

- 1 Write an essay on the suits of civil nature and the suits of not civil nature?
- 2 Write an essay on jurisdiction of civil courts?
- 3 Explain the different kinds of jurisdiction?
- 4 Explain the rule of Res-judicata and 'constructive resjudicata' with illustrations?
- 5 Explain the procedure of enforcement of foreign judgment?
- 6 *Every suit shall be instituted in the court of the lowest grade competent to try it-*  
Comment
- 7 Discuss the law relation to Second Appeal under CPC?
- 8 What are the revisional powers and which court can exercise those powers?
- 9 Under what circumstances court can't invoke their inherent powers under s.151 ?
- 10 Define Summons. What are the different modes for serving summons under CPC?
- 11 Explain the general rules of pleadings?
- 12 What is meant by a plaint? What are the contents of a plaint?
- 13 What is written statement? What is the procedure for amendment it?
- 14 Explain the consequences if both parties to the suit are absent on first hearing?  
What are the exemptions under Section 133 of the Act?
- 15 Explain essentials of Degree and various modes of execution of decree?
- 16 Discuss briefly the important provisions governing execution of decrees.
- 17 What is the procedure for arrest of a judgment-debtor? Explain the exceptions, if any.
- 18 What is attachment of property? What are the properties can be attached and what properties cannot be attached in a civil suit?
- 19 Discuss the law relating to suit by or against the government? Is there any exemption from arrest and personal appearance?
- 20 Discuss the law relating to suits by or against the firms?
- 21 What are the provisions relation to suits against minors, persons with unsound mind and indigent persons?
- 22 Who is an indigent person? What is the procedure to be followed in the case of suits filed by such persons?
- 23 Define inter-pleader suit. Explain its conditions and procedure.
- 24 Define 'Injunction' Explain the grounds to grant temporary injunction ?
- 25 Law of Limitation bars the remedy and does not extinguish the right-Explain
- 26 Elucidate the general principles of limitation under the Limitation Act, 1963 ?
- 27 Write an essay on computation of Limitation? When exclusion of time is permitted while computing the period of limitation? What are the exclusions?

**Model Question Paper**  
**THE CODE OF CIVIL PROCEDURE AND LIMITATION ACT**

Maximum : 100 Marks

Time : Three Hours

**Part A: SHORTNOTES**

*(Write any 6 of the following. Each question carries 4 Marks) 6 x 4 = 24*

- |                    |                     |
|--------------------|---------------------|
| 1. Adjournment     | 6. Foreign Judgment |
| 2. Caveat          | 7. Precepts         |
| 3. Acknowledgment  | 8. Second Appeal    |
| 4. Garnishee Order | 9. Summons          |
| 5. Inherent Powers |                     |

**Part B: ESSAY TYPE QUESTIONS**

*(Write any 2 of the following. Each question carries 18 Marks) 2 x 18 = 36*

10. Give a brief account of different kinds of jurisdictions under the CPC.
11. Define res-judicata and state the conditions that are necessary to satisfy for the application of the doctrine of res-judicata.
12. Discuss the law relating to suits by or against indigent person.
13. Law of Limitation bars the remedy and does not extinguish the right-Explain

**Part C**

**PROBLEMS AND SOLUTIONS**

*(Write any 2 of the following. Each question carries 20 Marks) 2 x 20 = 40*

14. A filed a suit against B for declaration that the religious rites performed by B during the Seva Puja of the deity were not proper. B contends that he has been performing the Seva Puja as per the Hindu religious rites. Is the suit maintainable by a civil Court? Decide. *(For solution refer page number 8)*
15. 'A' files a suit against 'B' for recovery of possession of a house situated at New Delhi on the basis of a sale deed executed by 'B'. The suit is heard and dismissed by a court of competent jurisdiction. 'A' after two years again files a suit against 'B' for the same house, on the same ground, which he had asserted in the previous suit in the same Court. Can the Court try the subsequent suit filed by 'A' against 'B'? Decide. *(For solution refer page number 19)*
16. A is a tradesman in Calcutta. B carries on business in Delhi. B by his agent in Calcutta buys goods of A and requests A to deliver them in East India Railway Company. A delivers the goods accordingly in Calcutta. B has not paid the amount for the goods. Advise A. *(For solution refer page number 26)*
17. A borrowed a sum of money from B. The last date for filing the suit fell on Sunday. On Monday, the next working day A gives a written acknowledgement to B. Advise B whether he should file the suit immediately or he can do so after sometime. *(For solution refer page number 201)* Discuss the law relating to suits by or against indigent person.

## Reference Books

<b>Author</b>	<b>Title, Edition, Publisher</b>
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<b>Bhagat Y.P.</b>	<b>Code of Civil Procedure with Exhaustive Case Law,</b> 2012, Universal Law Publishing Co. Pvt. Ltd., Delhi
<b>Jain M.P</b>	<b>The Code of Civil Procedure</b> LexisNexis Butterworths, Gurgaon
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<b>Mallick M.R (ed)</b>	<b>B.B.Mitra on Limitation Act</b> Eastern Book Co, Lucknow
<b>Mathur D.N</b>	<b>The Code of Civil Procedure, 1908 with Latest Amendment of July 2002,</b> Central Law Publications, 2009
<b>Mulla Dinshaw Fardunji</b>	<b>The Key to Indian Practice, A Summary of the Code of Civil Procedure,</b> LexisNexis, Butterworths, Nagpur (2012)
<b>Saha.A.N</b>	<b>The Code of Civil Procedure</b> (2000), Universal Law Publishing Co. Pvt. Ltd. , Delhi.
<b>Salil K. Roy Chowdhury</b>	<b>Civil Procedure &amp; Practice</b> LexisNexis Butterworths, Gurgaon
<b>Shrinivas Gupta</b>	<b>Mulla The Key to Indian Practice - A Summary of the Code of Civil Procedure,</b> LexisNexis Butterworths, Gurgaon
<b>Takwani C. K.(Thakker)</b>	<b>Civil Procedure Code</b> Eastern Book Company, Lucknow
<b>Tandon M.P,</b>	<b>The Code of Civil Procedure</b> Revised by Shailender Malik Allahabad Law Agency
<b>Viswanatha Aiyer B. V</b>	<b>The Code of Civil Procedure</b> Asia Law House, Hyd, 1995
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