

301: Civil Procedure Code & Limitation Act

Objectives of the course:

Civil Procedure code is a subject daily use by the courts and lawyers and a student cannot afford to have scant knowledge of civil procedure when he goes out to practise as a lawyer. True that it is through expenses one gets expert knowledge of civil procedure. However, it is necessary to have good grounding in the subject before one enters the profession. While the substantive law determines the rights of parties. Procedural law sets down the norms for enforcement. Whenever civil rights of persons are affected by action, judicial decisions will supply the omissions in the law.

The Code of Civil Procedure in India has a chequered history and lays down the details of procedure for redressal of civil rights. Many questions may prop up when one goes to indicate one's civil rights. The courts where the suit is to be filed, the essential forms and procedure for institution of suit, the documents in support and against, evidence taking and trial, dimensions of an interim order, the peculiar nature of the suits, the complexities of executing a decree and provisions for appeal and revision are all matters which a lawyer for any side is to be familiar with.

A delay in filing the suit, besides indicating the negligence of the plaintiff in effectively agitating the matter on time, may place courts in a precarious situation. They may not be in a position to appreciate the evidence correctly. Evidence might have been obliterated. Hence the statute of Limitation fixes a period within which a case has to be filed.

Syllabus:

1. Introduction, Basic Principles and Jurisdiction of the Courts:

- 1.1 Concept, Complaint, Written Statement, Affidavit, Order, Judgment, Decree
- 1.2 Restitution, Execution, Decree-holder, Judgment-debter, Mesne Profits
- 1.3 Distinction between decree and judgment and between decree and order.
- 1.4 Kinds and Jurisdiction of Courts, Hierarchy of Courts:
 - 1.4.1 Suits of Civil Nature: Scope and limits, Place of Suing, Institution of Suit
 - 1.4.2 Parties to suit, Joinder, Non-Joinder and Mis-joinder of Parties, Representative Suit, Framing of Suit, Cause of Action,
 - 1.4.3 Res Judicata and Res Sub-judice, Foreign Judgment & its enforcement
 - 1.4.4 Provisions relating to ADR: Settlement of the Disputes outside the Courts (Sec.89) – object, purpose, background and procedure
 - 1.4.5 Issuance of Summons

2. Trial Procedure, Judgment, Suits in particular cases:

- 2.1 Appearance of parties, Ex-parte procedure, Effect of Death, Marriage & Insolvency of Parties
- 2.2 Attendance of witnesses, Adjournments, Set off and Counter Claims, Discovery, Inspection & Production of Documents
- 2.3 Trial procedure, Interim orders : Commission, arrest or attachment before judgment, injunction and appointment of receiver, Interest and costs
- 2.4 Suits in particular cases :
 - 2.4.1 Suits by or against Government/Public Officers (Sec. 79-82)
 - 2.4.2 Suits by aliens and by or against foreign rules or ambassadors (ss83-87A)
 - 2.4.2 Suits relating to Public nuisance (ss 91-93)
 - 2.4.3 Suits by or against firm
 - 2.4.4 Suit by Indignant persons(O. 33), Suit of Mortgage
 - 2.4.5. Interpleader suits
 - 2.4.6 Suits relating to public charities
 - 2.4.7 Summary Suits and other special suits
- 2.5 Execution: Concept, General Principles, Procedure & Powers Execution of Decree (Sec.52-54)
- 2.6 Enforcement, arrest and Detention (Sec. 55-59), Attachment (Sec. 60-64), Sale (Sec.65-97), Delivery of Property, Stay of Execution

3. Appeals, Review, Reference, Revision and Miscellaneous

- 3.1 Appeals: Concept and General Provisions
 - 3.1.1 Appeals from original decree
 - 3.1.2 Appeals from appellate decree
 - 3.1.3 Appeals from orders
 - 3.1.4 Appeal to the Supreme Court
 - 3.1.5 First Appeal and Second Appeal
- 3.2 Review, Reference and Revision
- 3.3 Miscellaneous Provisions:
 - 3.3.1 Transfer of cases
 - 3.3.2 Restitution
 - 3.3.3 Caveat
 - 3.3.4 Inherent powers of courts
- 3.4 Law Reform: Law Commission on Civil Procedure Amendments

4. Limitation Act:

- 4.1 Concept and object of the Act
- 4.2 law assists only vigilant and not those who sleeps over his rights
- 4.3 Distinction with laches, acquiescence, Prescription
- 4.4 Extension and suspension of Limitation, Liability of Govt. Departments for delay & Judicial pronouncements

4.5 Sufficient cause for not filling the proceedings :

4.5.1 Illness

4.5.2 Mistaken Legal Advice

4.5.3 Mistaken view of Law

4.5.4 Poverty , minority and Purdha Imprisonment Defective Vakalatnama,
Legal Liabilities

4.5.5 Foreign rule of limitation : contract entered into under a foreign law,
Acknowledgement - essential requisites

Suggested Readings:

1. Mulla, Code of Civil Procedure, Universal, Delhi.
2. C.K. Thakker, Code of Civil Procedure, Universal, Delhi.
3. M.R. Mallick (ed), B.B. Mitra on Limitation Act, Eastern Lacknow.
4. Majumdar P.K. and Kataria R.P. Commentary on the Code of Civil Procedure, 1908, Universal, Delhi .
5. Jain M.P., Code of Civil Procedure with Amendments, Wadhwa
6. Shah A.N. The code of civil procedure, Universal, Delhi.
7. Sarkar's Law of Civil Procedure, Vols, Universal, Delhi.
8. Sukumar Ray, Textbook on the Code of Civil Procedure, Universal Law Book Co.
9. Dr. Avtar Singh, Code of Civil Procedure, Central Law Publication
10. Universal's Code of Civil Procedure
11. Jain M P, The Code of Civil Procedure, Wadhwa Nagpur Publication
12. Avtar Singh, Code of Civil Procedure, Central Law Publication
13. Mathur D. N., The Code of Civil Proceudre, Central Law Publication
14. U. N. Mitra, Limitation and Prescription
15. AIR Commentaries on the Limitation Act
16. S. R. Myneni, Law of Limitation, Asia Law House, Hyderabad