



Basic	Review	Revision
<p>1. Meaning</p> <p>2. Court</p> <p>3. By Whom</p> <p>4. Appeal</p> <p>5. Grounds</p>	<p>A person considering himself aggrieved by a Decree or Order may apply for a Review of judgement to the Court which passed the decree or Order.</p> <p>Any Court which passed the decree or made Order, can Review the Case.</p> <p>The Review can be made only on <u>apparent</u> by aggrieved party.</p> <p>Review can be made even when no Appeal lies to High Court.</p> <p><u>Grounds for Review are</u> -</p> <ol style="list-style-type: none"> <li>discovery of new &amp; imp. matter or evidence</li> <li>Mistake or error in Record</li> </ol>	<p>The High Court may call for the Record of any case which has been decided by any Court Subordinate to such High Court &amp; in which no appeal lies.</p> <p>The High Court can only do revision of any case which has been decided by any Subordinate Court.</p> <p>Revision power can be exercised by the High Court on <u>an application or even suo moto.</u></p> <p>Revision power can be exercised by the H.C. only in the case no Appeal lies to the High Court.</p> <p><u>Conditions for Revision</u></p> <ol style="list-style-type: none"> <li>A case must have been Decided</li> <li>The Court which have decided must be subordinate to HC</li> <li>Order should not be appealable.</li> </ol>

**Discovery** - finding out material facts & documents from an adversary / (opponents) in order to know & ascertain the nature of the case or in order to support his own case.

Includes:
 

- Discovery by interrogatories
- Discovery by Documents

**Discovery by Interrogatories**

Any party to suit, by leave of the Court, may deliver in writing for the examination of the opposite party.

Interrogatories will not be allowed in following cases -

- for the discovery of facts to evidence of adversary
- To interrogate any confidential witness of the opponent adversary & his
- To obtain disclosures injurious to the party
- Interrogatories that are of fact

**Defence** :- Defendant to open defence he file written statement

Statement -> 30 days after summons  
 90 days as prescribed by Court.

Agar defence me document dikho h to us written statement me he has to write a list of documents & copy of documents dena hoga.

Agar nhi diya koi document to defendant us hearing ke tym show nhi kar sakti.

**Discovery by Documents** - All Documents in the possession of any adversary inspected by the means of Discovery.

Any Party may apply to the Court order directing other party to write on oath the Docs. which are in relation to the matter in issue.

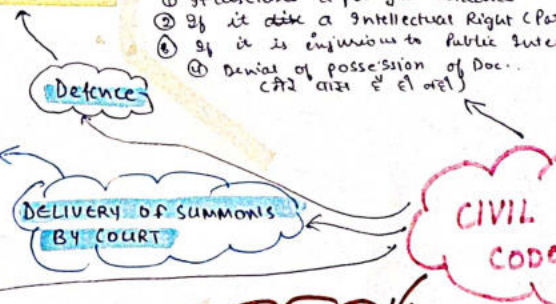
A Party may Refuse to produce documents if it discloses a party's evidence

- If it discloses a party's evidence
- If it discloses a Intellectual Right (Patent)
- If it is injurious to Public Interest
- Denial of possession of Doc. (CPC order 10)

- If court me suit file kia jata h, the summons shall unless the court otherwise directs, will be sent to proper officer of the court other than in which the suit is filed.
- To post man h vo post (summon) dete sign karwayega defendant se ya uske agent se (CA/CS/Adv)
- Ya Fir Documents to kisi or medium se transmitt karoga Court (For message ya email se) jiski cost petitioner pay krega.

- If defendant / Agent refuse kr deta h delivery hene se then the court shall declare that the summons have been duly served on the defendant.
- Agar court ko lgata h ki defendant ghr delivery ghr vapas nhi aa rha h ki summons us tak na phuncha or any other reason to summons ki ek copy us court me affix kr di jaygi jha uske house hai or ek copy uske house pe -> last valid cause of business ya koi or reason.

- Agar defendant resides in another state then the summons will be sent to court of that state for service.
- Agar defendant govt. job wala h to uske head office me summons bhejdo.
- Agar Co. to summons bhejna h to uske Director/CS/Principle officer ko ya fir Reg. Office ke address pe post krdo.
- Agar Partnership Firm ko summons bhejna h to -> 1. on more partners place jha firm h.



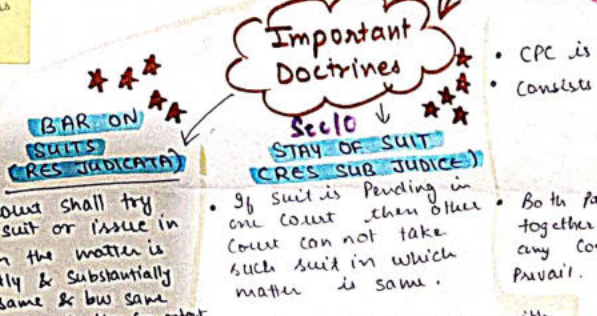
**Temporary Injunction**: The Court may grant temporary injunction to restrain any such act or make such other order for the purpose of preventing the wasting, damaging, alienation (transfer) sale, disposal of property or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit.

The Court may grant temporary injunction order on the following grounds

- That any property in dispute in suit is in danger of being wasted, damaged or transfer by any party in suit.
- That the defendant threatens or intends to remove/dispose off this property in the view of defrauding creditors.
- That the defendant threatens to cause injury to the plaintiff in relation to property.

**Conditions for Set off**

- It would be necessary for Plaintiff to satisfy Court that -
- Substantial & irreparable harm/injury would be suffered by him if such Temp. Injunc. is not granted
  - Such loss / Damage / harm cannot be compensated by damages



**BAR ON SUITS (RES JUDICATA)**

No Court shall try any suit or issue in which the matter is directly & substantially the same & b/w same parties and the competent Court in which such issue has been raised & has been heard and finally decided by such Court.

Once a matter is decided by a competent Court, No Party can be permitted to Reopen with subsequent litigation.

**STAY OF SUIT (RES SUB JUDICE)**

If suit is pending in one Court then other Court can not take such suit in which matter is same.

No Court shall proceed with trial of any suit in which matter in issue is directly & substantially same in a previously instituted suit b/w same parties or under same title, where such suit is still pending.

BASIS	SET OFF	EQUITABLE SET OFF
1. Sum	Applied in the case of ascertained sum of money.	Unascertained sum.
2. Claim	Need not to originate from same transactions	Must originate from same transactions
3. Rights	Can be claimed as Right by the defendant.	Cannot be claimed as Right but by Court's Discretion
4. Limitation	Set off amt. claimed must not be time barred	Can be time barred.
5. Court Fee	Court fee must be paid on Set off Amt	No Court fee Required.

- Conditions**
- 2 Suits at 2 diff times
  - Both the matters are substantially same
  - Parties are same.
  - The Court was competent Court.
  - Previously constituted suit is conclusively decided.

- Object**
- To avoid wastage of time.
  - To avoid wastage of Resources
  - To Avoid conflicting Decisions

BASIS	Set off	Counter Claim
When Passed	Set off is a reciprocal acquittal of Debt b/w Defd. & Plaintiff	A Claim made by defendant in a suit against plaintiff is called Counter Claim.
Name	It is a Statutory Defence of Plaintiff. Plea claim of Set off need not originate from same transaction. However, claim of Set off must arise from same transaction.	It is a Cross act.
Transaction	Claim of Set off must arise from same transaction.	Claim of Counter claim need not originate out of same transaction.
Set off	defendant's claim generally don't exceed Plaintiff's claim.	MAY EXCEED.

- Based on full Public Policy**
- There should be an end to litigation
  - Parties shall not be harassed for same matters
  - Time of Court should not be wasted.

- Imp. stages in Progress of a Suit**
- Filing of Plaintiff in Court based on cause of action.
  - Court issues summons
  - Defendant file Apply
  - Court start cross exam & take notice the evidence
  - Court decides the matter based on written statement & evidence.
  - Court Passes Decree & Judgment

**Jurisdiction**

A plaintiff may file case in any Court on the following grounds

- Where wrong is committed
- Where Defendant resides
- Where Defendant carry on Business
- Where defendant personally works for gain

- ① If suit me file ki jata h, the summons shall, unless the court otherwise directs, will be sent to proper officer of the court other than in which the suit is filed.
- ② Jo post man h vo post (summon) dekh sign karwayega defendant se ya uske agent se (CA/CS/Adv.)
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→ carried business  
→ ya koi or manse.

- Agar def State th Sent to a Service.
- Agar defend uske Head
- Agar Co to Director/CS Reg. Office
- Agar Post bhejro h to

**Temporary Injunction**: The Court may grant temporary injunction any such act or make such other order of preventing the wasting, damaging, alienation (transfer) or of property or otherwise causing injury to the plaintiff in relation to the suit.

- Conditions for Setoff:-**
- ① Suit must be for recovery of Money
  - ② Sum of money must be ascertained
  - ③ Such sum must be legally recoverable by the defendant from Plaintiff.
  - ④ It must not exceed the preliminary limits of the Court in which suit is brought.

- Temporary injunction order on the following dispute in suit is in danger of being lost by any party in suit.
- Defrauding Creditors.
  - Threatens to cause injury to the defendant in relation to Property.
- It would be necessary for Plaintiff to show that -
- ① Substantial & irreparable harm / injury is suffered by him if such Temp. Injunction granted
  - ② Such loss / Damage / harm cannot be compensated by dam

BASIS	SET OFF	EQUITABLE SET OFF
① Sum	• Applied in the case of ascertained sum of money.	• Unascertained sum.
② Claim	• Need not to originate from same transactions	• must originate from same transaction
③ Right	• Can be claimed as Right by the defendant.	• Cannot be claimed as Right but by Court's Discretion
④ Limitation	• Set off amt. claimed must not be time barred	• Can be time barred.
⑤ Court Fee	• Court fee must be paid on Set off Amt	• No Court fee Required.

Counter Claim



**Interrogations**

Suit, by leave (Permission) may deliberate interrogatories for the examination of witnesses will not be allowed in every case.

Discovery of facts related to adversary's case. Confidential Communication to lawyer & his advocate. Injunction to Public Int. are of Fishing Nature.

All Docs. relating to the matter in issue adversary can be used in Discovery by Doc. in the Court for an party to make discovery with an in his possession in issue.

produce docs if - evidence that Right (Patent) Public Interest of Doc.

**SUITS BY OR AGAINST MINORS**

**Minor is a Person who** -  
 → has not completed the age of 18 y.  
 → for whose property a Guardian has been appointed by Court, the age of majority will be completed at 21 y.

**Plaintiff is a Minor**  
 Every Suit by a Minor shall be instituted in his name by a Person who in such suit called the 'next friend of Minor'. Next friend must be of Sound Mind & Major.

**Defendant is Minor**  
 The Court on being satisfied of the fact of his minority, shall appoint a proper Person to be guardian for such minor.

In guardianship to continue throughout all the Proceedings including Proceedings in Appellate & Revisional Courts.

**When minor attains majority**  
 He may elect to proceed with the suit or applicant or elect to abandon it.  
 If he elects to proceed he shall apply for an order discharging the next friend & to proceed in his own Name.

**LEAVE TO DEFEND**

The Defendant is not entitled to defend the suit unless he enters an appearance within 10 days from the service of Summons. Such leave to defend may be granted unconditional or upon such terms as the Court or the Judge may think fit.

**APPEALS**

The word appeal is not defined in the CPC but generally it means Application by an aggrieved party to a higher Court, asking it to set aside or reverse a decision of a lower Court.

**4 Kinds of Appeals**

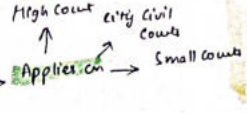
- Appeal from original decree** - appeal may lie from an original decree passed ex Parte, where the Decree has been passed with consent of the Parties. No Appeal lies.
- Second Appeal** - An appeal lies to High Courts from a decree passed in appeal in a Subordinate Court if High Court is satisfied that the case involves a substantial question of law.
- Appeals from orders** - Order is generally non-appealable unless specifically provided.
- Appeal in the Supreme Court** - lies in the following cases:  
 a) when special leave is granted  
 b) from any judgement, order, decree or appeal by HC or any other court.

**SUMMARY PROCEDURE**

**Object** -> To summarize or shorten the procedure of Suit in those cases where the defendant does not have any defence. It is to avoid unnecessary obstruction (obstacles) by the Defendant.

**Applies on** -> Bills of Exchange, Hundi, Promissory Notes

However such leave shall not be granted where -  
 The Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence.



**CIVIL PROCEDURE CODE (CPC) 1908**

CPC is Procedural Law.  
 Consists of 2 Parts -> 1st Part (Sections) and 2nd Part (Rules).  
 Both parts should be read together in case of any conflict 1st Part will prevail.

**Cause of Action**

means every fact that would be necessary for Plaintiff to prove, in order to support his right to Judgment of the Court.  
 It means all essential facts constituting the right & their infringement.

**Based on 2 Factors** -> A right for which right is claimed.

**Decree** 2(2)

Formal expression of a decision which determines the right of the Parties with regard to all or any of matters in controversy.  
 every decree is appealable unless specifically based. 2nd Appeal is also possible.

- Decree does not include:**
- If it is appeal from an order.
  - Any order of dismissal of appeal coz right create ni Mora.

**Types of Decree**

**Preliminary** - A Decree that has to be set aside.  
**Final** - Dependent on the result of the appeal.

**Order**

Formal expression of any decision of a Civil Court which is not a Decree.  
 No Appeal lies against order unless specifically provided.  
 Can be passed by Court at any time during existence of the suit.  
 There can be many orders in a suit.

**Interlocutory Order**

given in an intermediate stage b/w the commencement & termination of a suit.  
 Used to provide a temporary decision to an issue.

**Judgement**

The statement given by a judge based on Decree/Order.

**Essential Elements of Judgement**

- Concise statement of the case
- The Decision of the Decision
- Reasons of the Decision

**Institution of Suit**

Suit is a Civil action started by presenting a Plaint to the Court.  
 Plaint contains material facts on which the party pleading relies for his claim or Defence.  
 In every Plaint facts must be proved by Affidavit.

**Essentials of Suit**

- Opposing Parties
- Subject matter of the Suit
- Relief Claimed
- Cause of Action

**Misjoinder of Parties**

When more than one person joined in one suit as plaintiff or defendant and there is no common question of law or facts, it is case of misjoinder.

**To Avoid misjoinder 2 factors are essential.**

- Right to Relief must arise out of the same act or transactions means there should be common ques of law or facts.
- It is not necessary that all the ques of law or fact should be common. If there is 1 common Ques, that will be sufficient.

**Jurisdiction of Courts**

means authority of the Court to decide the matters which are brought before it.

**Jurisdiction of Courts is decided on the following Basis:**

- Jurisdiction over the subject matter** - Powers to try certain matters by certain Courts are limited by Statute.
- Place of Suing / Territorial Jurisdiction** - Authority of Courts to decide cases according to their territorial Jurisdiction. Fixed by the Govt.
- Jurisdiction over Persons** - Courts can take cases of any type of persons... but except a foreign state, its ruler or its representative... except with the consent of Govt.

**ADDITIONAL GROUNDS**

- Original Jurisdiction** - A Court tries & decides suits filed b/w it.
- Appellate Jurisdiction** - A Court hears Appeals against decisions or decrees passed by subordinate Courts.
- Original & Appellate Juris.** - SC, HC & District Court have both.

**EFFECT OF NON APPEARANCE**

**Non Appearance of Defendant** - Case may decide against the defendant.

- Defendant has to appear against ex parte**
- He may file an application for review of the ex parte order.
  - may apply to the ex parte order.
  - A suit can be obtained by an ex parte order but it is subject to the order of Summons.

**Non Appearance of Plaintiff**

if the defendant accepts the claim against him, defendant will require to meet the claim.

**Pecuniary Jurisdiction**

Courts can take (try) any of those cases which do not exceed their allotted Pecuniary Value. There is no pecuniary limit of SC & HC.

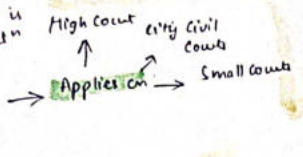
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The Defendant is not entitled to defend the suit unless he enters an appearance within 10 days from the service of summons. Such leave to defend may be granted unconditional or upon such terms as the Court or the Judge may think fit.

However such leave shall not be granted when -  
The Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defense.



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The word appeal is not defined under the CPC but generally it means an Application by an aggrieved party to an appellate Court, asking it to set aside or reverse a decision of Subordinate Court.

**4 kinds of Appeals**

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  - When Special leave is granted by SC itself.
  - From any judgement, order, decree passed in appeal by HC or any other Appellate.
  - From any Judgement, decree passed by HC in his own right.

**Issues** - Issues arise when a material proposition of fact or of law is affirmed by one Party & denied by the other. Issues may be either of fact or of law.

**Affidavit** - written statement of the Deponent (jo affidavit page) on oath duly affirmed before any Court / magistrate / Oath Commissioner. Can be used in full case.

- The Court may at any time summon or by applicat<sup>n</sup> of any party order that any fact may be proved by affidavit.
- The Court may at anytime order that the affidavit of any witness may be read at Hearing.

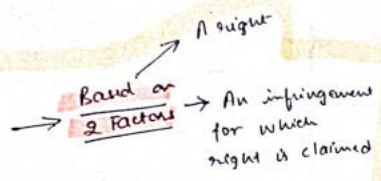
**Execution** - enforcement of Decrees or Orders of the Court.

**Reference** - whenever a Subordinate Court has a Reasonable Doubt on any question of law, it can make reference to higher Courts.

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fact that would be necessary in order to prove, in order to his right to Judgment.  
all essential facts constituting & their infringement.

**Decree does not include**

- If it is appeal from an order.
- Any order of dismissal of Defiant coz Right cure ni Mora.

**Types of Decree**

**Preliminary** - A Decree is preliminary when have to be taken before the suit can be completely disposed off. It is not dependent on the final.

**Final** - Dependent & Subordinate to the Preliminary Decree.

**Decree Holder** - any person in whose favour a decree has been passed (Jiske against me judgement Distar)

**Decree**

- Can only be passed in a suit originated by the Presentation of Plaint.
- Contains conclusive determination of Rights.
- may be final, preliminary or partly preliminary partly final.
- there can be only one decree in a suit.
- Appellable unless expressly Banned.
- second appeal is possible.

**Order**

- Can be passed in a Suit originated by Presentation of Plaint, applicat<sup>n</sup>, partition.
- May or may not finally determine a Right.
- Cannot be a Preliminary order.
- there can be any no. of orders in a suit.
- Not Appellable unless expressly provided.
- Not possible.

**Interlocutory Order**

- given in an intermediate stage b/w the commencement & termination of a suit.
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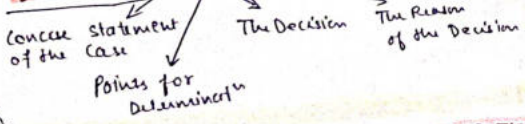
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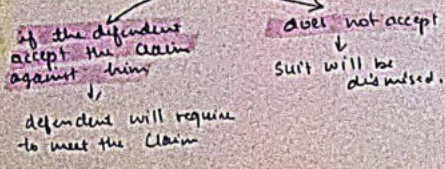
**EFFECT OF NON APPEARANCE OF PARTIES**

**Non Appearance of Defendant** - Court may decide the order ex parte.

**Defendant has 4 Remedies available against ex parte Decree**

- He may file an appeal against the ex parte Decree.
- may file an applicat<sup>n</sup> for review of the judgement.
- may apply to set aside the ex parte Decree.
- A suit can be filed to set aside an ex parte Decree obtained by fraud but no suit shall lie for non service of summons.

**Non Appearance of Plaintiff**



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(Appeal from Orders from Book)