

Summons Order V

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Summons: Meaning

- Where the plaintiff files a suit, the defendant has to be informed that, the suit has been filed against him, and that he is required to appear in the court to defend it.
- The intimation which is sent to the defendant by the court is technically known as “Summons”
- Though the word summons has not been defined in the code, as per dictionary it means “A summons is a document issued from the office of a court of justice, calling upon the person to whom it is directed to attend before a judge or officer of the court for a certain purpose

Object of issuing summons

- “*Audi alteram Partem*” one of the principle of natural justice assures that, no one can be condemned unheard.
- So when a relief is claimed against the defendant, law expects him to be heard.
- By this, the defendant will get a fair chance of submit his version of statements against plaintiff’s claim.
- If a summons is not served on the defendant, the decree passed against him will not bind him.

Essentials and form of summons

- Every summons shall be signed by judge or such officer appointed by him and shall be sealed with the seal of court, and must be accompanied by a plaint. (R. 1)
- Section 27. Summons to defendants— Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed.
- Forms of summons: Every summons should be in the forms prescribed in appendix B to the first schedule of the code.

Summons to defendant Rule 1

- When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified:
- Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim :
- Provided further that where a summons has been issued, the Court may direct the defendant to file the written statement of his defence, if any, on the date of his appearance and cause an entry to be made to that effect in the summons.]
- (2) A defendant to whom a summons has been issued under sub-rule (1) may appear—
- (a) in person, or
- (b) by a pleader duly instructed and able to answer all material questions relating to the suit, or
- (c) by a pleader accompanied by some person able to answer all such questions.
- (3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.

Appearance in person (Rule 3 & 4)

- **Rule 3. Court may order defendant or plaintiff to appear in person—** (1) where the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.
- (2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.
- **Rule 4. No party to be ordered to appear in person unless resident with certain limits—** No party shall be ordered to appear in person unless he resides—
 - (a) within the local limits of the Court's ordinary original jurisdiction, or
 - (b) without such limits but at place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the Court-house.

Contents of Summons (Rules 5 to 8)

- **5. Summons to be either to settle issues or for final disposal—** The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly : Provided that, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit.
- **6. Fixing day for appearance of defendant—** The day for the appearance of the defendant shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.
- **7. Summons to order defendant to produce documents relied on by him—**
- **8. On issue of summons for final disposal, defendant to be directed to produce his witnesses—**

Mode of service of summons (Rules 9 to 30)

- 1. Service by court (R. 9)
 - Delivery or transmission of summons for service (Through bailiff or post)
- 2. Service by plaintiff (R. 9A) (Hamdast)
- 3. Personal or direct service (R. 10 to 16, & 18)
 - Personal service(R. 12)
 - Service on agent (R. 13,14)
 - Service on adult member of family (R. 15)
- 4. Substituted service (R. 17, 19, 20)
 - By affixing (R. 17)
 - By advertisement
- 5. Service by post.

Refusal of summons or objection for service of summons

- On refusal presumption of acceptance is there (section 27 of General Causes Act) and Rule 9.
- An objection as to service of summons must be raised at the earliest possible opportunities.

Service of summons in other cases. (Rule 21 to 30)

- 21. Service of summons where defendant resides within jurisdiction of another Court
- 22. Service within presidency-towns of summons issued by Courts outside
- 23. Duty of Court to which summons is sent
- 24. Service on defendant in prison
- 25. Service where defendant resides out of India and has no agent
- 26. Service in foreign territory through Political Agent or Court
- 27. Service on civil public or on servant of railway officer or on servant of railway company or local authority
- 28. Service on soldiers, sailors or airmen
- 29. Duty of person to whom summons is delivered or sent for service
- 30. Substitution of letter for summons