

E-LEARNING MODULES
 TOPIC : CODE OF CIVIL PROCEDURE
 CLASS: LLB third year and BALLB fifth year
MODULE 1 Introduction

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	IMPORTANT CONCEPTS	NOTES
1	<p>DECREE: [S. 2(2)] "Decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include-</p> <ul style="list-style-type: none"> (a) Any adjudication from which an appeal lies as an appeal from an order, or (b) Any order of dismissal for default. <p>A decree is an essential part of civil proceedings. After pronouncing judgment, decree is prepared. A judicial decision i.e. judgment is not directly executable; but it is executed through decree.</p>	
1.1	<p>Essential elements for a decree: Every 'decree' is an 'order' of the Court. But it is different from 'order'. To constitute 'decree' is must fulfil following elements or conditions.</p> <ol style="list-style-type: none"> 1. There must be adjudication, 2. The adjudication must have been given in a suit before the Court, 3. The adjudication must have determined the rights of parties with regard to all or any of the matters in controversy in the suit, 4. Such adjudication must be conclusive, and 5. There must be formal expression of adjudication. 	
1.3	<p>Kinds/classes of decree:</p> <ol style="list-style-type: none"> a. Preliminary decree, b. Final decree, c. Partly preliminary and partly final decree. d. Order rejecting plaint, e. Determination of a question within section 144. 	

1.4	<p>Preliminary decree</p> <p>Where adjudication decides the rights of parties with regard to all matters in controversy in suit but does not dispose suit completely, will be 'preliminary decree'. A Court may pass preliminary decree as to rights of parties but wait to pass final decree until it reach to such position. In preliminary decree rights and liabilities of parties are declared while other matters to be worked out with final decree.</p>	
1.5	<p>Final decree:</p> <p>A final decree is one which completely dispose suit. Final decree fully determines the rights and liabilities of parties and leaves nothing for future. There remains nothing to be determined before the Court. A decree may become final in following two ways:</p>	
1.6	<p>Partly preliminary and partly final decree:</p> <p>A decree may partly preliminary and partly final. In such decree Court may dispose of some of issues and leaves other to be decided in future.</p>	
1.7	<p>Order rejecting plaint:</p> <p>An order rejecting plaint is deemed decree as it does not fulfil the requirements of a decree. But definition specifically includes 'order rejecting plaint' as a 'decree'.</p>	
1.8	<p>Determination of a question within section 144:</p> <p>It is also deemed decree. Determination of question under section 144 is specifically included in definition of decree. Under section 144, party can make application for restitution of property where decree is varied, modified, reversed or set aside in appeal.</p>	
2	<p>ORDER [S.2 (14)]</p> <p>"Order" means the formal expression of any decision of a Civil Court which is not a decree.</p>	
3	<p>DECREE HOLDER [S.2 (3)]</p> <p>"Decree-holder" means any person in whose favour a decree has been passed or an order capable of execution has been made.</p> <p>Generally decree is passed in favour of plaintiff who becomes decree holder. A decree holder may any person including defendant or other person who is entitled for certain right through such decree.</p>	

4	<p>GOVERNMENT PLEADER [S. 2(7)]</p> <p>"Government Pleader" includes any officer appointed by the State Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader.</p>	
5	<p>JUDGMENT [S.2 (9)]</p> <p>"Judgment" means the statement given by the judge of the grounds of a decree or order.</p> <p>After final hearing judgement is pronounced in open Court. Judge has to apply his mind to the nature of suit, matters and evidence before it for judgment. After pronouncing judgment it shall be signed by judge.</p>	
6	<p>JUDGMENT DEBTOR [S.2 (10)]</p> <p>"Judgment-debtor" means any person against whom a decree has been passed or an order capable of execution has been made.</p>	
7	<p>LEGAL REPRESENTATIVE [S.2 (11)]</p> <p>"Legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.</p>	
7.1	<p>The term 'legal representative' includes</p> <ol style="list-style-type: none"> 1. A person who in law represents the estate of a deceased. 2. A person who intermeddle with the estate of the deceased. 3. When a person sues or is sued upon in a representative capacity. 	
8	<p>MESNE PROFIT [S.2 (12)]</p> <p>"Mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received there from, together with interest on such profits, but shall not include profits due to improvements made but the person in wrongful possession.</p>	
8.1	<p>Object:</p> <p>Object of mesne profit, is to compensate the person who sustained unlawful loss due to dispossession from the person who has unlawful gain due to such unlawful possession.</p>	

9	<p>Jurisdiction Jurisdiction may be defined as power of Court to hear and determine a cause, to adjudicate and exercise any judicial power in relation to it. It is official power to make legal decisions and judgments.</p>	
9.1	<p>Jurisdiction can be classified into following categories:</p> <ol style="list-style-type: none"> i. Civil and criminal jurisdiction, ii. Original and appellate jurisdiction, iii. Jurisdiction over subject matter, iv. Local or territorial jurisdiction, and v. Pecuniary jurisdiction. 	
9.2	<p>Civil and Criminal jurisdiction: A Court may have civil or criminal jurisdiction. In civil jurisdiction Court is empowered to entertain disputes of civil in nature. Criminal jurisdiction related to with crimes and punishment of offenders.</p>	
9.3	<p>Original and appellate jurisdiction: Court with original jurisdiction can conduct trial of cases. Such Courts are Court of first instance. Courts with appellate jurisdiction can entertain appeals from the orders and judgments from lower Court.</p>	
9.4	<p>Jurisdiction over subject matter: The Court may have jurisdiction over certain subject matter of dispute. For example Family Court can entertain matrimonial disputes, Consumer Forum can entertain consumer disputes.</p>	
9.5	<p>Local or territorial jurisdiction: Civil Court of different grades can entertain suits for different geographical area. A District Court has jurisdiction over the District, a High Court has jurisdiction over the State.</p>	
9.6	<p>ecuniary jurisdiction: Civil Courts of different grades have jurisdiction to try suits and hear appeal of different pecuniary value. Every suit or appeal has pecuniary value and according to which suit is to be filed before appropriate Court.</p>	

Question for students:

1. What is 'decree'? State its essentials.
2. What is 'decree'? What are kinds of decree?
3. Who is 'decree holder'?
4. Explain 'mesne profit'.
5. What is a judgment?
6. What are types of jurisdiction of court?

Answers: