

E-LEARNING MODULES
 TOPIC : CODE OF CIVIL PROCEDURE
 CLASS: LLB third year and BALLB fifth year
MODULE 2 Jurisdiction

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	CONTENTS	NOTES
1	<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>	
2	<p>Heirarchy of courts 1. Supreme Court of India 2. High Court 3. District and Sessions Court 4. Civil Judge Senior Division 5. Civil Judge Junior Division 6. Metro Politan Magistrate</p>	
3.	<p>Suits of civil nature “the Court shall have jurisdiction to try all suits of a civil nature.” [Sec. 9] There is a presumption that the civil Courts shall have jurisdiction to try all suits of civil nature. Whether a suit is ‘of civil nature’ is the principal question in the suit relates to the ‘determination of a civil right’.</p>	
3.1	<p>When Court shall have no jurisdiction: A civil Court shall have no jurisdiction when suit is either: i. Expressly barred or ii. Impliedly barred.</p>	
3.4	<p>Suits expressly barred: When any statute contains provision which bars jurisdiction to civil Court or provides for exclusive jurisdiction to specific Court; then civil Court don not have jurisdiction over disputes covered by such statute.</p>	
3.5	<p>Suits impliedly barred: Jurisdiction to civil Court is impliedly barred in two situations: i. Barred by general principles of law and ii. Barred on grounds of public policy.</p>	
3.6	<p>Objection to jurisdiction: If a suit is instituted in a Court not having jurisdiction, is liable to be rejected. The opponent should raise such plea/defence as soon as possible.</p>	

4	<p>Res subjudice Stay of suit:[sec. 10]</p> <p>No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.</p>	
4.1	<p>Object of this section is as under:</p> <ol style="list-style-type: none"> i. To prevent Courts of concurrent jurisdiction for simultaneous entertaining and adjudicating two parallel litigation for same cause, same subject matter or for same relief. ii. To prevent unnecessary parallel litigations and to prevent time and energy. iii. To prevent possibility of two conflicting/contradicting judgments. If this happens there will be difficulty as to enforcement of judgment. 	
4.2	<p>Conditions for application of <i>Res-subjudice</i></p> <ol style="list-style-type: none"> i. There must be two suits ii. The suits must be between same parties iii. The matter in issue in later suit must be directly and substantially the same in the previous suit iv. Both the suits must be pending in a Court of law v. The parties must be litigating under the same title 	
5	<p>Res-judicate <i>Res-judicata</i> in Latin means ‘a matter judged’.</p> <p>No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.</p>	
5.1	<p>Object of <i>res-judicata</i>:</p> <ol style="list-style-type: none"> i. Give finality to the judgment of the Court, ii. Protect a person from endless proceedings and iii. Avoid re-determination of same issues which have already been adjudicated upon. 	

5.2	<p>Principles</p> <ol style="list-style-type: none"> i. “<i>Ex captio res judicata</i>” which means, one suit and one decision is enough for any single dispute; ii. “<i>Nemo debet bis vexari pro una et eadem causa</i>” which means, no one ought to be vexed twice for one and the same cause. 	
5.3	<p>Essential condition for <i>res-judicata</i></p> <ol style="list-style-type: none"> 1. Same parties- In both suits i.e. the suit which is pending before the Court and the suit which has been decided (former suit) should be same. 2. Matter in issue- Subject matter in later suit (which is pending) must be directly and substantially same in the earlier suit (which was decided). 3. Same title- The party must be litigating in the both suit must have litigated under the same title. 4. Concurrence of jurisdiction- The Court who decided the former suit must have been competent to try the subsequent suit in which the issue has been subsequently raised. 5. Final decision- The matter in subsequent suit must have been ‘heard and decide’ by the former suit. 	
5.4	<p>Difference in <i>res subjudice</i> and <i>res judicate</i></p> <ol style="list-style-type: none"> 1. Object of Res subjudice is to prevent two parallel litigations and avoid conflict of judgments. 1. Object of Res judicata is to give finality to decision given by Court. 2. By Res subjudice, trial of subsequent suit is stayed. 2. By Res judicata, trial of subsequent suit is barred. 3. It is applicable where two suits are pending in the Court of law for same matter of controversy. 3. It is applicable where a suit is pending and matter in controversy is already decided in a former suit. 	
6	<p>Place of suing</p> <p>Very first rule is that, every suit shall be instituted in the Court of the lowest grade competent to try it [Sec. 15]</p>	
6.1	<p>Suits to be instituted where subject matter-situate [S.16]</p> <p>Subject to the pecuniary or other limitations prescribed by any law, suits –</p> <ol style="list-style-type: none"> a. For the recovery of immovable property with or without rent or profits, b. For the partition of immovable property, c. For foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property, d. For the determination of any other right to or interest in immovable property, e. For compensation for wrong to immovable property, f. For the recovery of movable property actually under distraint or attachment, 	

	shall be instituted in the Court within the local limits of whose jurisdiction the property is situate.	
6.2	<p>Suits for immovable property situate within jurisdiction of different Courts [S.17]</p> <p>Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Court, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate.</p>	
6.3	<p>Place of institution of suit where local limits of jurisdiction of Courts are uncertain [S. 18]</p> <p>Where immovable property is situated within jurisdiction of two or more Court; and it is uncertain which Court has jurisdiction; then any of those Courts may proceed to entertain and dispose of any suit relating to that property.</p>	
6.4	<p>Suits for compensation for wrongs to person or movable [S. 19]</p> <p>Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.</p>	
6.5	Other suits to be instituted where defendants reside or cause of action arises [S.20]	
7	<p>Parties to suit [Order I]</p> <p>Parties to suit are plaintiff and defendant.</p>	
7.1	<p>Plaintiff:</p> <p>Plaintiff is the person whose legal right has been infringed and who has filed suit for its enforcement.</p> <p>Defendant:</p> <p>Defendant is the person who has infringed the legal rights of plaintiff.</p>	
7.2	<p>Joinder of plaintiff</p> <p>Joinder of plaintiff means where more than one plaintiff in a suit. All persons can be joined in one suit as plaintiff where:</p> <ol style="list-style-type: none"> a. Any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and b. If such persons brought separate suits, any common question of law or fact would arise. 	

7.3	<p>Joinder of defendant:</p> <p>Joinder of defendant means where more than one defendant in a suit. All persons can be joined in one suit as defendant where:</p> <ol style="list-style-type: none"> a. Any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and b. If separate suits were brought against such persons, any common question of law or fact would arise. 	
7.4	<p>Nonjoinder and Misjoinder of parties</p> <p>A suit will not be defeated by nonjoinder or misjoinder of parties. And Court may proceed in the matter in respect of rights of parties present before Court.</p>	
7.5	<p>Representative suit</p> <p>Under Order I, Rule 8 a representative suit can be instituted. When one or more person, on behalf of themselves and others, files a suit is called as ‘representative suit’. Generally in a suit, all persons interested should be joined as party i.e. as plaintiff or defendant. But in representative suit, it is not so necessary and one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.</p>	
8	<p>Cause of action</p> <p>In a suit cause of action is considered in two senses:</p> <ol style="list-style-type: none"> 1. It is the actual date on which plaintiff gets cause of action to institute suit against defendant. If suit instituted before it will be considered as premature suit. 2. It includes every fact which, if traversed would be necessary for the plaintiff to prove in order to support his right to the judgment of the Court. It includes every fact which is necessary to be proved to entitle the plaintiff to a decree. 	
9	<p>Summons [Section 27 to 29; Order V]</p> <p>Where a suit is duly instituted, a summons may be issued to defendant to appear and answer the claim on a day specified in the summons. Summons is not defined in the Code.</p>	
9.1	<p>Form of summons</p> <p>A summons should state title of Court issuing summons; name, description and place of residence; name of person instituting suit, purpose for which it is issued; date and time for appearance. It shall state that, in case of failure to appear, suit will be heard and determined in his absence.¹ A summons to appear and answer shall order the defendant to produce all documents or</p>	

¹ Appendix B for Summons for disposal of suit.

	copies thereof in his possession upon which he intends to rely in support of his case.	
9.2	<p>How defendant may appear in Court</p> <p>i. In person;</p> <p>ii. By a pleader duly instructed and able to answer all material questions relating to the suit;</p> <p>iii. By a pleader accompanied by some person able to answer all such questions.</p>	
9.3	<p>Mode of service of summons</p> <p>ervice of summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of Court.</p> <p>If there are more defendants, summons shall be served on each defendant.</p> <p>Defendant, after receiving copy of summons, he shall required to sign acknowledgement on original summons.</p>	
9.4	<p>Delivery of summons by court</p> <p>Where defendant is resides within the jurisdiction of the Court or he has an agent empowered to accept summons, summons shall be served by the proper officer of the Court or by courier approved by the Court. On application, Court may in addition to the service by Court, permit such plaintiff to effect service of summons on defendant.</p>	
9.5	<p>Personal service</p> <p>Wherever it is practicable service shall be made on the defendant in person, unless he has an agent empowered to accept service.</p>	
9.10	<p>Service on agent</p> <p>Where suit is in relation to business or work against person who does not reside within the local limits of the Court from which summons is to be served; service may be made on his manager or agent, who is actually working at that time.</p> <p>Where suit is to obtain relief respecting or compensation for wrong to immovable property, service of summon cannot be made on defendant in person; service may be made on agent of the defendant in charge of the property.</p>	
9.11	<p>Service on adult member of family</p> <p>Where defendant is absent at the time when service of summons is to be effected and there is no likelihood of his being found at the residence within a reasonable time and he has no agent; then service may be made on any adult member of the family, whether male or female. A servant is not considered as family member.</p>	
9.12	<p>By affixing</p> <p>This process of service of summons is followed when defendant refuses to accept service, or cannot be found. Service of summons by affixing is made when:</p> <p>where defendant or his agent or such other person refuses to sign acknowledge; or</p> <p>where the serving officer after due diligence cannot find defendant and</p>	

	<p>there is no agent to accept summons; nor any other person on whom service can be made, then serving office shall affix a copy of the summons on the:</p> <p>a.outer door; or b.some other conspicuous (noticeable) part of the house in which defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued.</p>	
9.13	<p>Substituted service Where Court is satisfied that there is reason to believe that, the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way; the Court shall order the summons to be served by affixing a copy thereof: in some conspicuous place in the Court house, and also upon any conspicuous part of the house in which the defendant is known to have last resided or carried on business or personally worked for gain or in such other manner as the Court thinks fit. Court acting under this provision, order service of summons by an advertisement in a news paper circulating in the locality in which the defendant is last resided or carried on business or personally worked for gain.</p>	

Questions for practice.

1. Explain res-subjudice.
2. What is res-judicate? State essentials for application of res-judicata.
3. Where a suit can be instituted?
4. Who can be parties to suit? State effect of mis-joinder and non-joinder of parties.
5. State different modes of service of summons.

Further study:

For more information and study read Code of Civil Procedure 1908 with commentary and case laws.