





1 JUDICIAL AND ADMINISTRATIVE FRAMEWORK

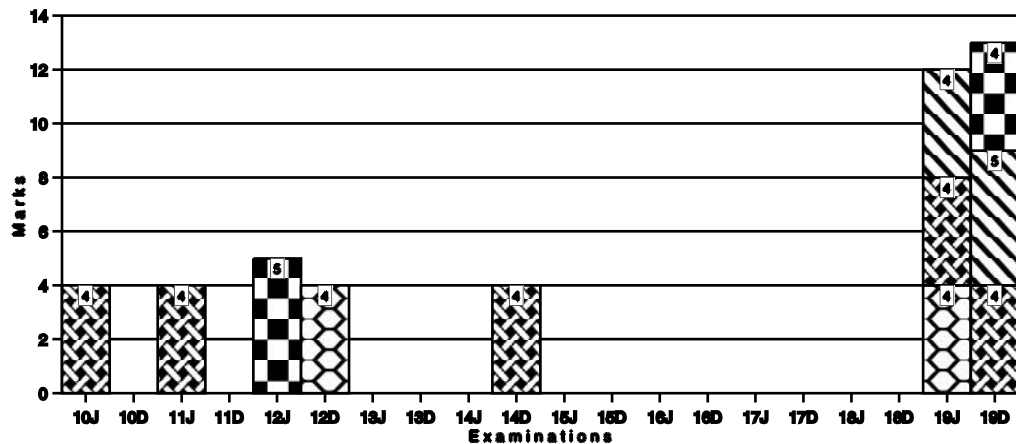
THIS CHAPTER INCLUDES

- Legislative Functions of Administration
- Types of Tribunals/ Quasi-Judicial Bodies
- Types of Courts
- Supreme Court
- High Court
- Civil Court
- Revenue Court
- Procedural aspects of working of Civil Courts
- Procedural aspects of working of Criminal Court
- Appellate forum
- Reference, Review and Revisions under CPC

Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions

Legend

 Objective
  Short Notes
  Distinguish
  Descriptive
  Practical



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CHAPTER AT A GLANCE

Constitutionality

- The power of Legislature to delegate its legislative power is not prohibited in the Constitution.
There are risks inherent in the process of delegation. An overburdened legislature or one controlled by a powerful executive may unduly overstep the limits of delegation. It may:
 - (a) not lay down any policy at all;
 - (b) declare its policy in vague and general terms;
 - (c) not set down any standard for the guidance of the executive;
 - (d) confer an arbitrary power to the executive to change or modify the policy laid down by it without reserving for itself any control over subordinate legislation.

Types of delegation of legislative power:

1. **Skeleton delegation:** In this type of delegation of legislative power, the enabling statutes set out broad principles and empowers the executive authority to make rules for carrying out the purposes of the Act.
2. **Machinery type:** This is the most common type of delegation of legislative power, in which the Act is supplemented by machinery provisions, that is, the power is conferred on the concerned department of the Government to prescribe:
 - (i) The kind of forms
 - (ii) The method of publication
 - (iii) The manner of making returns, and
 - (iv) Other administrative details

Modes of control over delegated legislation

The control of delegated legislation may be one or more of the following types:

- (i) Procedural:
- (ii) Parliamentary; and
- (iii) Judicial

(i) Procedural

Control of delegated legislation by procedure: From the citizen's point of view the most beneficial safeguard against the dangers of the misuse of delegated legislation is the development of a procedure to be followed by the delegates while formulating rules and regulations. The Acts of Parliament delegating legislative power to other bodies or authorities often provide certain procedural requirements to be complied with by authorities while making rules and regulations etc.

(ii) Parliamentary

Parliamentary control in India over delegation: Discretion as to the formulation of the legislative policy is prerogative and function of the legislature and it cannot be delegated to the executive. Discretion to make notifications and alterations in an Act while extending it and to effect amendments or repeals in the existing laws is subject to the condition precedent that essential legislative functions cannot be delegated.

(iii) Judicial

Judicial control over delegated legislature can be exercised at the following two levels:

1. Delegation may be challenged as unconstitutional; that is the delegation can be challenged in the courts of law as being unconstitutional, excessive or arbitrary or
2. That the Statutory power has been improperly exercised.

Some of the important Tribunals are as follows**1. Debt Recovery Tribunal (DRT)**

The Debt Recovery Tribunals have been constituted under Section 3 of the Recovery of Debts Due to Banks and Financial Institutions (RDDBFI) Act, 1993. The original aim of the Debts Recovery Tribunal was to receive claim applications from Banks and Financial Institutions against their defaulting borrowers. (DRT) was established for expeditious adjudication and recovery of debts due to banks and financial institutions in order to reduce the non-performing assets of the Banks and Financial Institutions.

2. National Company Law Tribunal

National Company Law Tribunal (NCLT) is a quasi-judicial body exercising equitable jurisdiction, which was earlier being exercised by the High Court or the Central Government. It has been established by the Central Government under section 408 of the Companies Act, 2013 with effect from 1st June 2016. The Tribunal has powers to regulate its own procedures.

The establishment of the National Company Law Tribunal (NCLT) consolidates the corporate jurisdiction of the following authorities:

- (i) Company Law Board
- (ii) Board for Industrial and Financial Reconstruction.
- (iii) The Appellate Authority for Industrial and Financial Reconstruction
- (iv) Jurisdiction and powers relating to winding up restructuring and other such provisions, vested in the High Courts.

3. Consumer Forum

- To protect the rights of the consumers in India and establish a mechanism for settlement of consumer disputes, a three-tier redressal forum containing District, State and National level consumer forums has been set up.
- The District Consumer Forum deals with consumer disputes involving a value of upto Rupees twenty lakh.
- State Commission has jurisdiction in consumer disputes having a value of upto ₹ 1 crore.

- The National Commission deals in consumer disputes above ₹ 1 crores, in respect of defects in goods and or deficiency in service.
- It is important to note that consumer courts do not entertain complaints for alleged deficiency in any service that is rendered free of charge or under a contract of personal service.

4. Motor Accident Claims Tribunal (MACT)

The Motor Accidents Claims Tribunal deals with matters related to compensation of motor accidents victims or their next of kin. Victims of motor accident or legal heirs of motor accident victims or a representing Advocate can file claims relating to loss of life/property and injury cases resulting from Motor Accidents. Motor Accident Claims Tribunal are presided over by Judicial Officers from the State Higher Judicial Service and are under direct supervision of the Hon'ble High Court of the respective state.

5. Central Administrative Tribunal (CAT)

An administrative Tribunal is a multi-member body to hear on cases filed by the staff members alleging non-observation of their terms of service or any other related matters and to pass judgments on those cases. For adjudication of disputes with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or other local authorities within the territory of India or under the control of Government of India and for matters connected therewith or incidental thereto.

6. National Green Tribunal (NGT)

National Green Tribunal was established for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation of damages to persons and property and for related matters.

Types of Courts**(i) Supreme Court of India**

The Supreme Court exercises original jurisdiction exclusively to hear the cases of disputes between the Central Government and the State Governments or between the States. The Supreme Court has original but not exclusive jurisdiction for enforcement of Fundamental Rights as per the provision of Constitution of India through the way of writs. This court is also an appellate court.

(ii) High Courts of India

Article 226 of Constitution of India has given the power to the High Courts to issue different writs for the enforcement of Fundamental Rights guaranteed under the Constitution. High Courts also hear appeals against the orders of lower courts. Article 227 of Indian Constitution has empowered all High courts to practice superintendence over all the courts of tribunal effective within the regional jurisdiction of the High Court.

(iii) Lower Courts of India

The District Court in India are established by the respective State Government in India for every district or more than one district taking into account the number of cases, population distribution in the district. These courts are under administrative control of the High Court of the State to which the district concerned belongs.

(iv) Revenue Courts

There is a government apparatus to deal with revenue matters. These are 'courts' but are not a part of Judiciary because they come under the administration of the State governments. Revenue courts deal with matters pertaining to stamp duty, registration etc.

Procedural aspects of working of Civil Courts**1. Jurisdiction**

The Civil Procedure Code, 1908 stipulates that the courts shall have jurisdiction to try all suits of a civil nature excepting suits of which cognizance is either expressly or impliedly barred.

The jurisdiction is basically of three types.

- (a) Pecuniary
- (b) Territorial: The purpose of territorial jurisdiction is to ensure smooth and speedy trial of the matter with least inconvenience to the affected parties.
- (c) As to subject matter: For example, Motor Vehicles Act provides for special tribunal for matters under it. Similarly disputes relating to terms of service of government servants go to Administrative Tribunals.

2. Stay

With the object of preventing courts of concurrent jurisdiction simultaneously trying two parallel suit in respect of the same matter in issue, Civil Procedure Code has vested inherent power in the court to stay the suit.

3. *Res Judicata* and bar to further Suits

The principle of *res judicata* aims at bringing finality to the litigation. The basic principle is that a final judgement rendered by a court of competent jurisdiction is conclusive on merits as to rights of the parties and constitutes an absolute bar against subsequent action involving the same claim.

4. Plaint

The entire legal machinery under the Civil Law is set in motion by filing of plaint and hence plaint is the actual starting point of all pleadings in a case. Though the law has not laid down any tight jacket formats for plaints, its minimum contents have been prescribed.

5. Summons

When the suit is duly instituted summons may be issued to Defendant to appear and answer the claim. Summons is an instrument used by the court to commence a civil action or proceedings and is a means to acquire jurisdiction over party. It is a process directed to a proper officer requiring him to notify the person named, that an action has been commenced against him, in the court from where process is issued and that he is required to appear, on a day named and answer the claim in such action.

6. Appearance of Parties

On the day fixed in the summons the Defendant is required to appear and answer and the parties shall attend the court unless the hearing is adjourned to a future day fixed by the court. If the Defendant is absent court may proceed ex-parte. Where on the day so fixed it is found that summons has not been served upon Defendant as consequence of failure of Plaintiff to pay the court fee or postal charges the court may dismiss the suit.

7. Adjournments

Courts have the power to adjourn a case and take it up on a future date. Adjournments frequently sought by the parties contribute significantly to the delays caused in deciding the matters. The granting of adjournments is at the discretion of the court. The rules governing adjournments are considerably strict if applied in their true spirit.

8. Ex-parte Decrees

A decree against the Defendant without hearing him or in his absence/in absence of his defence can be passed under the following circumstances:

- (i) Where any party from whom a written statement is required fails to present the same within the time permitted or fixed by the court, as the case may be the court shall pronounce judgement against him, or make such order in relation to the suit as it thinks fit and on pronouncement of such judgement a decree shall be drawn up.
- (ii) Where Defendant has not filed a pleading, it shall be lawful for the court to pronounce judgement on the basis of facts contained in the plaint, except against person with disability.

9. Interlocutory Proceedings

The period involved between initiation and disposal of litigation is substantially long. The intervention of the court may sometimes be required to maintain the position as it prevailed on the date of litigation. In legal parlance it is known as "status quo". It means preserving existing state of things on a given day. In that context interlocutory orders are provisional, interim, temporary as compared to final.

10. Written Statement

The Defendant is required to file a written statement of his defence at or before the first hearing or such time as may be allowed along with the list of documents relied upon by him. If Defendant disputes maintainability of the suit or takes the plea that the transaction is void it must be specifically stated. A general denial of grounds alleged in the plaint is not sufficient and denial has to be specific.

11. Examination of Parties

Examination of parties is an important stage after appearance. At first hearing of the suit the court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement. Such admissions and denials shall be recorded. The examination may be an oral examination.

12. Production of documents

The parties or their pleaders shall produce at or before the settlement of issues, all documentary evidence of every description in their possession or power, on which they intend to rely, and which has not been filed in the court or ordered to be produced.

13. Framing of Issues

The court shall at first hearing, after reading the plaint and written statement ascertain upon what material propositions of facts or law parties are at variance.

14. Affidavits

The court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit or affidavit of any witness may be read at hearing, on such condition, as court thinks reasonable.

15. Final Argument

Once the documents have been exhibited in the court and the witness(es) of both the sides examined and cross-examined, the stage is set for 'final arguments'.

16. Judgement

Judgement means the statement given by the judge on ground of which a decree is passed. The court after the case has been heard shall pronounce judgement in open court either within one month of completion of arguments or as soon thereafter as may be practicable, and when the judgement is to be pronounced judge shall fix a day in advance for that purpose.

17. Decree and Execution

After the decree is passed the process of execution which involves actual implementation of the order of the court through the process of the court starts the entire process of executing of decree.

Types of Criminal Trial**1. Warrant Cases**

According to Section 2(x) of Code of Criminal Procedure, 1973 a warrant case is one which relates to offences punishable with death, imprisonment for life or imprisonment for a term exceeding two years. The trial in warrant cases starts either by the filing of FIR in a police station or by filing a complaint before a Magistrate. Later, if the Magistrate is satisfied that the offence is punishable for more than two years, he sends the case to the Sessions court for trial.

Important features of a warrant case are:

- Charges must be mentioned in a warrant case
- Personal appearance of accused is mandatory
- A warrant case cannot be converted into a summons case
- The accused can examine and cross-examine the witnesses more than once.

2. Summon Cases

According to Section 2(w) of Code of Criminal Procedure, 1973, those cases in which an offence is punishable with an imprisonment of fewer than two years is a summon case. A summon case doesn't require the method of preparing the evidence. Nevertheless, a summon case can be converted into a warrant case by the Magistrate if after looking into the case he thinks that the case is not a summon case.

Important points about summons case

- A summons case can be converted into a warrant case.
- The person accused need not be present personally.
- The person accused should be informed about the charges orally. No need for framing the charges in writing.
- The accused gets only one opportunity to cross-examine the witnesses.

Stages of Criminal Trial in a Summons Case

- (i) Pre-trial
- (ii) Charges
- (iii) Plea of guilty
- (iv) Plea of guilty and absence of the accused
- (v) Prosecution and defense evidence
- (vi) Judgement

Summary Trial

Cases which generally take only one or two hearings to decide the matter comes under this category. The summary trials are reserved for small offences to reduce the burden on courts and to save time and money. Those cases in which an offence is punishable with an imprisonment of not more than six months can be tried in a summary way. The point worth noting is that, if the case is being tried in a summary way, a person cannot be awarded a punishment of imprisonment for more than three months.

Stages of Criminal Trial in Summary Cases

- The procedure followed in the summary trial is similar to summons-case.
- Imprisonment up to three months can be passed.
- In the judgement of a summary trial, the judge should record the substance of the evidence and a brief statement of the finding of the court with reasons.

Appellate Forum

Any society that claims to uphold the supremacy of law will definitely have an elaborate provision for appeal under its various laws. This is because the majesty of judiciary notwithstanding, at the end of the day, judges are human beings and they can also be at fault just like any other individual. It is a fundamental tenet of a just society that the shortcomings of men should not operate to the disadvantage of fellow human beings in the courts of law.

Reference

Section 395 of Code of Criminal Procedure, 1973 (Cr.P.C.) empowers a Court subordinate to the High Court to make a reference to the High Court under sub-section (1) if following conditions exist:

1. The case pending before it must involve a question as to validity of any Act, Ordinance or Regulation. A mere plea raised by a party challenging the validity of an Act is not sufficient to make a reference to the High Court unless the Court itself is satisfied that a real and substantial question as to validity of the Act is actually involved for the disposal of the case.
2. Secondly, the Court should be of the opinion that such Act, Ordinance Regulation, as the case may be, is invalid or inoperative but has not been so declared by High Court or by the Supreme Court.
3. While making a reference to the High Court, the Court shall refer to the case setting out its opinion and reasons for making a reference.

Revision

- Sections 397 to 401 of the Code deal with the revisional jurisdiction of the High Court and the Sessions Court.
- Revision lies both in pending and decided cases and it can be filed before a High Court or a Court of Session.
- Very wide discretionary powers have been conferred on the Sessions Court and the High Court.

- The object of the revision is to confer upon superior criminal courts a kind of paternal or supervisory jurisdiction in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions of apparent harshness of treatment which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand in some undeserved hardship to individuals.

Interlocutory Order

Sub-section (2) section 397 bars the exercise of revisional power in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding. The statutory bar on the power of revision in relation to interlocutory orders is intended with the object of eliminating inordinate delay in the disposal of criminal cases and to ensure expeditious trials.

Illegally or with material irregularity

The words 'illegally' and 'material irregularity' in Section 115 do not cover either error of fact or of law. These words do not refer to the decision arrived at but to the manner in which it is reached. The errors as contemplated relate to material defects of procedure.

Section 115 empowers the High Court to satisfy itself upon three matters, viz., (a) that the order of the subordinate court is within its jurisdiction, (b) that the case is one in which the court ought to exercise jurisdiction, and (c) that in exercising jurisdiction the court has not acted illegally that is in breach of some provision of law, or with material irregularity.

SHORT NOTES

2012 - Dec [4] Write note on the following:

- (i) Affidavits

(4 marks)

Answer:

An affidavit being a statement or declaration on oath by the deponent, is an important document. Therefore, great care is required in drafting it. The consequences of a false affidavit are serious. The following rules should be remembered when drawing up an affidavit:

1. Not a single allegation more than is absolutely necessary should be inserted;
2. The person making the affidavit should be fully described in the affidavit;
3. An affidavit should be drawn up in the first person;
4. An affidavit should be divided into paragraphs, numbered consecutively and as far as possible, each paragraph should be confined to a distinct portion of the subject;
5. Every person or place referred to in the affidavit should be correctly and fully described, so that he or it can be easily identified;
6. When the declarant speaks of any fact within his knowledge he must do so directly and positively using the words "I affirm" or "I make oath and say";
7. Affidavit should generally be confined to matters within the personal knowledge of the declarant and if any fact is within the personal knowledge of any other person and the petitioner can secure his affidavit about it, he should have it filed. But in interlocutory proceedings, he is also permitted to verify facts on information received, using the words "I am informed by so and so" before every allegation which is so verified. If the declarant believes the information to be true, he must add "and I believe it to be true".

_____ Space to write important points for revision _____

2019 - June [2] Write note on the following:

(a) Applicability of principle of *res judicata*.

(4 marks)

Answer:

The principle of *res judicata* aims at bringing finality to the litigation. The basic principle is that a final judgement rendered by a court of competent jurisdiction is conclusive on merits as to rights of the parties and constitutes an absolute bar against subsequent action involving the same claim. In other words, a matter once litigated, when it is adjudicated on merits, the same matter must not be agitated in another court.

The principle of *resjudicata* applies only under following circumstances:

- The matter directly and substantially in issue has been directly and substantially in issue in a former suit between same parties or between whom they claim litigation under the same title.
- The matter is in the competent court to try such subsequent suit or the suits in which such issue has been subsequently raised and has been heard and finally decided.

The word former suit means suit decided prior, irrespective of the date of institution.

The matter must be decided on merits i.e. the issue was alleged by one party and denied by the other. The principle of res-judicata is one of convenience and not one of absolute justice and it should not be unduly conditioned and qualified by technical interpretations.

— Space to write important points for revision —

DISTINGUISH BETWEEN

2003 - Dec [4] Distinguish between the following:

- (i) 'Summons' and 'warrant cases'.

(4 marks) [CSIG - I]

Answer :

A 'summons case' is one that is punishable with imprisonment upto and including two years. The procedure for the trial of these cases is as per Chapter XX of the Code of Criminal Procedure, 1973. They normally relate to minor offences, and are heard or resolved not through the normal route but using the summary procedure. This remains, as of today, the judge's discretionary power though.

'Warrant cases' are those punishable with an imprisonment of more than two years or with a life sentence or a death sentence. Chapter XIX of the Code of Criminal Procedure, 1973, covers the trial of warrant cases.

— Space to write important points for revision —

2005 - Dec [4] (b) Differentiate between the following in the context of the Code of Civil Procedure, 1908:

(ii) 'Reference', 'review' and 'revision'.

(4 marks) [CSIG - I]

Answer:

'Reference' implies a case being sent to the High Court for its opinion in the form of an order. This is normally done in case the lower court needs guidance or when the case has the possibility of setting a precedent.

'Review' means a reconsideration of the judgement given by a court in the form of a decree or an order. This is usually done when the person aggrieved with the judgement feels that the court has not given due consideration to the facts of the case, or when new facts are discovered, or when there is some obvious mistake in the records.

'Revision' is when the High Court calls for the records of a case in which no appeal lies and if it feels that the lower court has passed a judgement which it is not entitled to pass for want of jurisdiction, or did not use its valid jurisdiction, or used it illegally or improperly.

2006 - Dec [2] (c) Distinguish between the following :

(i) 'Summons cases' and 'warrant cases'.

(4 marks) [CSIG - I]

Answer :

Please refer 2003 - Dec [4] (i) on Page no. 29

— Space to write important points for revision —

2008 - Dec [4] Distinguish between the following:

(iii) 'Appeal', 'revision' and 'review'.

(4 marks) [CSEP - I]

Answer:

'Appeal', 'revision' and 'review' – An 'appeal' is filed to a higher court if either the plaintiff or the defendant is not satisfied with the decision passed by the lower court. Appeals can lie from decrees or orders of the court. Sections 96 to 109 of the Code of Civil Procedure, 1908 cover appeals.

'Revision' is when the High Court calls for the records of a case in which no appeal lies and if it feels that the lower court has passed a judgement which it is not entitled to pass for want of jurisdiction, or did not use its valid jurisdiction, or used it illegally or improperly.

‘Review’ means a reconsideration of the judgement given by a court in the form of a decree or an order. This is usually done when the person aggrieved with the judgement feels that the court has not given due consideration to the facts of the case, or when new facts are discovered, or when there is some obvious mistake in the records.

— Space to write important points for revision —

2009 - Dec [3] Distinguish between the following:

(iv) ‘Review’ and ‘revision’ in civil law.

(4 marks) [CSEP - I]

Answer :

Review: Section 114 of the Civil Procedure Code provides that subject to prescribed provision any person considering himself aggrieved by a decree or order from which an appeal is allowed by this Code but from which no appeal has been preferred, by a decree or order from which no appeal is allowed by this court or by a decision on a reference from a Court of Small Causes, may apply for a review of the judgment to the court which passed the decree or made the order and the court may make such order thereon as it thinks fit.

Revision: Section 115 of the Civil Procedure Code provides that the High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto and if such subordinate court appears to have a jurisdiction not vested in it by law or to have failed to exercise a jurisdiction so vested or to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit. High Court shall not vary or reverse any order made or any order deciding an issue in the course of a suit or other proceeding except where the order if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

— Space to write important points for revision —

2010 - June [3] Distinguish between the following :

(i) ‘Summons cases’ and ‘warrant cases’.

(4 marks) [CSEP - I]

Answer :

Please refer 2003 - Dec [4] (i) on Page no. 29

— Space to write important points for revision —

2011 - June [7] (b) Distinguish between the following :

(ii) 'Revision' and 'review' applications in a High Court. **(4 marks)**

Answer :

Revision: According to **Section 115 of the Code of Civil Procedure, 1908** provides that the reversionary jurisdiction of the High Court. The aggrieved party can file a revision application before the High Court and no other Court in a case where an appeal does not lie against a final order, if such subordinate Court appears.

- (a) to have exercised a jurisdiction not vested in it by law or
- (b) to have failed to exercise a jurisdiction so vested; or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity.

Review: According to **Section 114 of the Code of Civil Procedure, 1908** provides that any person considering himself aggrieved by a decree or order, may apply for a review of judgement to the Court which passed the decree or made the order on any of the grounds as mentioned in order XLVII, **Rule 1**, namely:

1. discovery by the applicant of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made; or
2. on account of some mistake or error apparent on the face of the record; or
3. for any other sufficient reason and the Court may make such order there on as it thinks fit.

— Space to write important points for revision —

2014 - Dec [2A] (Or) Distinguish between the following:

(iii) 'Revision' and 'appeal'.

(4 marks)

Answer:

Difference between Revision and Appeal

| Revision | Appeal |
|--|---|
| Application for revision can be made only to the High Court. | Appeal can be preferred to any Court superior to one from whose decree or order appeal is sought to be preferred. That superior court need not necessarily be a High Court. |
| Application for revision can be made to the High Court only when relief by way of appeal is not available . | Appeal lies only from appealable decrees and orders. |
| Revision cannot be applied for as a right. | Right of appeal is substantive, given by law. |
| The power of the High Court to exercise revisional jurisdiction either of its own motion or on the request of a party is discretionary. | The Court to which an appeal has been preferred is bound to consider it according to the procedure prescribed. |
| If a party is dead and his legal representatives are not brought on the record within the prescribed time, the revision does not abate the High Court has power to bring the party to the Court. | In the event of the death of a party if his legal representatives are not brought on the record within the time prescribed by law, the appeal abates. |
| Revision can be applied for only on grounds of jurisdiction and not on the question of law or fact. | In an appeal the appellate Court has power to consider both the question of law and fact. |

2019 - June [3A] (Or) (iii) Distinguish between “Summons and Warrant”.
(4 marks)

Answer:

Summons:

Summon is a legal notice, issued both in case of civil and criminal proceeding, in which a court orders an individual either to appear or to produce a document before the court, at a stipulated time and place. According to **Section 2(w) of Code of Criminal Procedure, 1973**, those cases in which an offence is punishable with an imprisonment of fewer than two years is a summons case. A summons case doesn't require the method of preparing the evidence. Nevertheless, a summons case can be converted into a warrant case by the Magistrate if after looking into the case he thinks that the case is not a summon case. The different stages of criminal trial in a summon case are given from **Section 251 to Section 259** of the Code of Criminal procedure.

Warrants:

Warrant is described as a legal document issued by a judge or magistrate, which empowers a police officer to make an arrest, search or seize premises or undertake any action, concerning the administration of justice. According to **Section 2(x) of Code of Criminal Procedure, 1973** a warrant case is one which relates to offences punishable with death, imprisonment for life or imprisonment for a term exceeding two years. The trial in warrant cases starts either by the filing of FIR in a police station or by filing a complaint before a Magistrate. Later, if the Magistrate is satisfied that the offence is punishable for more than two years, he sends the case to the Sessions court for trial. The process of sending it to Sessions court is called “committing it to Sessions court”. The stages of trial in warrant cases are given from **Section 238 to Section 250 of the Code of Criminal Procedure, 1973**.

Key Differences Between Summon and Warrant :

- Summon can be understood as the legal order issued by the presiding officer to defendant or witness or any other person involved in a case. On the contrary, a warrant is described as a written authorization, issued by a judicial officer, i.e. a judge or magistrate, which authorizes the police officer to perform an act, for the regulation of justice.

- A summon contains a judicial order to appear or produce a document or thing before the court, whose non-compliance will result in the issuance of warrant against that person. Conversely, a warrant is an official authorization to the law enforcement officer to arrest the accused and produce before the court.
- A summons addresses the defendant or witness or any other person related to the case, whereas warrant addresses the police officer.
- Summons aims at notifying the person of the legal obligation to appear in the court. Unlike, a warrant is issued with an objective of bringing accused to the court, who've not appeared to the court, even after he/she is summoned.

— Space to write important points for revision —

2019 - Dec [3A] (Or) Distinguish between the following :

- (ii) Summons case and warrants case.

(4 marks)

DESCRIPTIVE QUESTIONS

1999 - Dec [4] (b) Discuss the procedure for 'summary trial'.

(8 marks) [CSIG - I]

Answer :

A 'summary trial' is a fast-track procedure that provides for speedy trial of cases. Under Section 260 of the Code of Criminal Procedure, 1973, any Magistrate of First Class or a Metropolitan Magistrate or a Chief Judicial Magistrate can hear cases of offences not punishable with death, life imprisonment or even imprisonment of more than two years in a summary trial. Included would be offences like petty theft (where the value of the stolen property does not exceed rupees two hundred), assisting in such theft or in keeping its proceeds hidden, acquiring or keeping such stolen property, trespass, breaking into a house, insulting someone with the intention of provoking him to a violent act, and helping anyone in the performance of these crimes.

Section 261 covers the conduct of a summary trial by a Magistrate of second class.

Section 262 provides the procedure involved in a summary trial. These cases are also known as summons cases, since they do not normally make use of warrants. Moreover, the maximum punishment that can be pronounced in such cases is of imprisonment upto three months.

— Space to write important points for revision —

2001 - June [4] (a) Under what circumstances a review of judgement of a court is permissible? How is a review different from 'revision' and 'appeal'?

(8 marks) [CSIG - I]

Answer :

'Review' means a reconsideration of the judgement given by a court in the form of a decree or an order. This is usually done when the person aggrieved with the judgement feels that the court has not given due consideration to the facts of the case, or when new facts are discovered, or when there is some obvious mistake in the records.

'Revision' is when the High Court calls for the records of a case in which no appeal lies and if it feels that the lower court has passed a judgement which it is not entitled to pass for want of jurisdiction, or did not use its valid jurisdiction, or used it illegally or improperly.

An 'appeal' is filed to a higher court if either the plaintiff or the defendant is not satisfied with the decision passed by the lower court. Appeals can lie from decrees or orders of the court. Sections 96 to 109 of the Code of Civil Procedure, 1908 cover appeals.

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2002 - Dec [4] (a) Explain the provisions relating to reference, review and revision under the Code of Civil Procedure, 1908? **(8 marks) [CSIG - I]**

Answer :

'Reference' implies a case being sent to the High Court for its opinion in the form of an order. This is normally done in case the lower court needs guidance or when the case has the possibility of setting a precedent.

‘Review’ means a reconsideration of the judgement given by a court in the form of a decree or an order. This is usually done when the person aggrieved with the judgement feels that the court has not given due consideration to the facts of the case, or when new facts are discovered, or when there is some obvious mistake in the records.

‘Revision’ is when the High Court calls for the records of a case in which no appeal lies and if it feels that the lower court has passed a judgement which it is not entitled to pass for want of jurisdiction, or did not use its valid jurisdiction, or used it illegally or improperly.

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2019 - June [6] (d) Summary trial.

(4 marks)

Answer:

Summary trial is the name given to trials where cases are disposed of speedily and the procedure are simplified and the recording of such trials are done summarily. Summary trials provide to procure justice even for small offences that may otherwise have taken years to complete legal proceedings. Those cases in which an offence is punishable with an imprisonment of not more than six months can be tried in a summary way. Summary trials may be conducted in High Courts, City Civil Courts or Courts of Small Causes. It may also be conducted in certain other courts. However, the High Court may by notification in the Official Gazette order that only a particular category of suits may be tried by such court.

The trial procedure is provided from **Section 260 to Section 265 of the Code of Criminal Procedure, 1973**. The procedure followed in the summary trial is similar to summons case. In the judgement of a summary trial, the judge should record the substance of the evidence and a brief statement of the finding of the court with reasons. Imprisonment up to three months can be passed.

Stages of Criminal Trial in Summary Cases:

- The procedure followed in the summary trial is similar to summons-case.
- Imprisonment up to three months can be passed.

- In the judgement of a summary trial, the judge should record the substance of the evidence and a brief statement of the finding of the court with reasons.

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2019 - Dec [1] (a) 'Limited judicial control over delegated legislation can be exercised by the courts'. Discuss and cite leading case law, if any.

(5 marks)

PRACTICAL QUESTIONS

2012 - June [8] (b) Sohan is tried summarily by the Metropolitan Magistrate on the charge of committing theft and is sentenced to undergo imprisonment for a period of six months. Can Sohan challenge this decision? If so, on what grounds? **(5 marks) [CSEP - I]**

Answer :

Sohan can challenge the decision of the court.

A 'summary trial' is a fast-track procedure that provides for speedy trial of cases. Under Section 260 of the Code of Criminal Procedure, 1973, any Magistrate of First Class or a Metropolitan Magistrate or a Chief Judicial Magistrate can hear cases of offences not punishable with death, life imprisonment or even imprisonment of more than two years in a summary trial. Included would be offences like petty theft (where the value of the stolen property does not exceed rupees two hundred), assisting in such theft or in keeping its proceeds hidden, acquiring or keeping such stolen property, trespass, breaking into a house, insulting someone with the intention of provoking him to a violent act, and helping anyone in the performance of these crimes.

Section 261 covers the conduct of a summary trial by a Magistrate of second class.

Section 262 provides the procedure involved in a summary trial. These cases are also known as summons cases, since they do not normally make use of warrants. Moreover, the maximum punishment that can be pronounced in such cases is of imprisonment upto three months.

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2019 - Dec [4] (c) Rush Bank, a banking company, wants to take action against the defaulting borrower, being Company Secretary advise the appropriate forum to file the petition. Suggest, whether THFL, and MBFC (not a banking company) can file the petition against the defaulting borrower before the same forum ? Give a reasoned reply. **(4 marks)**

TOPIC NOT YET ASKED BUT EQUALLY IMPORTANT FOR EXAMINATION

SHORT NOTES

Q.1 Write short note on Interlocutory order.

Answer:

Sub-section (2) section 397 bars the exercise of revisional power in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding. The statutory bar on the power of revision in relation to interlocutory orders is intended with the object of eliminating inordinate delay in the disposal of criminal cases and to ensure expeditious trials.

What is an interlocutory order has always been a debatable issue, more so, because it has not been defined anywhere in the Code of Criminal Procedure. An order which is not final but merely provisional or temporary is generally called an interlocutory order. But the true test of determining whether or not, an order is interlocutory in nature is whether the order in question finally disposes of the rights of the parties or leaves the case still alive and undecided. For instance, grant or cancellation of bail, adjournment of cases, etc. are interlocutory orders.

The Supreme Court has, however, held that the term 'interlocutory order' as used in Section 397(2) should be given liberal construction in favour of the accused in order to ensure fairness of the trial and the revisional power of the High Court or the Sessions Judge could be attracted to 'intermediate' or 'quasi-final' orders which are not purely interlocutory in nature.

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Q.2 Write short note Debt Recovery Tribunal.

Answer:

The Debt Recovery Tribunals have been constituted under Section 3 of the Recovery of Debts Due to Banks and Financial Institutions (RDDBFI) Act, 1993. The original aim of the Debts Recovery Tribunal was to receive claim applications from Banks and Financial Institutions against their defaulting borrowers. (DRT) was established for expeditious adjudication and recovery of debts due to banks and financial institutions in order to reduce the non-performing assets of the Banks and Financial Institutions.

Prior to the introduction of Debt Recovery Tribunal, petitions had to be filed separately for adjudication of cases and execution proceedings in different courts depending upon their jurisdiction. DRT acts as a single judicial forum for adjudication of cases as well as execution of the decrees passed for recovery of debts due to banks and financial institutions under RDDBFI Act and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests (SARFAESI) Act, 2002.

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Q.3 Write short note Ex-parte Decree.

Answer:

A decree against the Defendant without hearing him or in his absence/in absence of his defence can be passed under the following circumstances:-

- (i) Where any party from whom a written statement is required fails to present the same within the time permitted or fixed by the court, as the case may be the court shall pronounce judgement against him, or make such order in relation to the suit as it thinks fit and on pronouncement of such judgement a decree shall be drawn up.

- (ii) Where Defendant has not filed a pleading, it shall be lawful for the court to pronounce judgement on the basis of facts contained in the plaint, except against person with disability.
- (iii) Where the Plaintiff appears and Defendant does not appear when suit is called up for hearing and summons is properly served the court may make an order that suit will be heard ex parte.

If an ex parte decree is passed and the Defendant satisfies that he was prevented by sufficient cause then he has the following remedies open:

- (i) Prefer appeal against decree.
- (ii) Apply for Review.
- (iii) Apply for setting aside the Ex-parte Decree.

The words "Sufficient Cause" has not been defined and it will depend on facts and circumstances of each case.

The Defendant is not entitled to approach the court to set aside the ex parte decree as a matter of right. An ex parte decree is an equally effective decree unless set aside in appeal or by the same court. The court, which passed ex parte decree, has the power to set aside the decree.

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DESCRIPTIVE QUESTIONS

Q1. Discuss modes of control over delegated legislation.

Answer:

Modes of control over delegated legislation: The practice of conferring legislative powers upon administrative authorities though beneficial and necessary is also dangerous because of the possibility of abuse of powers and other attendant evils. There is consensus of opinion that proper precautions must be taken for ensuring proper exercise of such powers. Wider discretion is most likely to result in arbitrariness. The exercise of delegated legislative powers must be properly circumscribed and vigilantly scrutinized by the Court and Legislature. The control of delegated legislation may be one or more of the following types:

1. Procedural;
 2. Parliamentary; and
 3. Judicial
1. **Procedural:** Control of delegated legislation by procedure – From the citizen's point of view the most beneficial safeguard against the dangers of the misuse of delegated Legislation is the development of a procedure to be followed by the delegates while formulating rules and regulations. The Acts of Parliament delegating legislative powers to other bodies or authorities often provide certain procedural requirements to be complied with by such authorities while making rules and regulations etc. These formalities may consist of consultation with interested bodies, publication of draft rules and regulations, hearing of objections, considerations of representations etc.
 2. **Parliamentary:** Parliamentary control in India over delegation: Discretion as to the formulation of the legislative policy is prerogative and function of the legislature and it cannot be delegated to the executive. Discretion to make notifications and alterations in an Act while extending it and to effect amendments or repeals in the existing laws is subject to the condition precedent that essential legislative functions cannot be delegated. In order to avoid the dangers, the scope of delegation is strictly circumscribed by the Legislature by providing for adequate safeguards, controls and appeals against the executive orders and decisions.
 3. **Judicial:** Judicial control over delegated legislature can be exercised at the following two levels:
 1. Delegation may be challenged as unconstitutional; that is the delegation can be challenged in the courts of law as being unconstitutional, excessive or arbitrary or
 2. That the Statutory power has been improperly exercised.
 3. The scope of permissible delegation is fairly wide. Within the wide limits delegation is sustained if it does not, otherwise, infringe the provisions of the Constitution. Article 13(3)(a) of the Constitution of India lays down that law, which includes any ordinances, order, by-law, rule, regulation, notification, etc. if found in violation of

fundamental rights would be void. The limitations imposed by the application of the rule of ultra vires are quite clear. If the Act of the Legislature under which power is delegated is *ultra vires*, the power of the legislature in the delegation can never be good.

4. The court can inquire into whether delegated legislation is within the limits laid down by the statute. The validity of the rules may be assailed as the stage in two ways:-
 - (i) That they run counter to the provisions of the Act; and
 - (ii) That they have been made in excess of the authority delegated by the legislature.

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Q2. Discuss procedural aspects of working of Civil Courts.

Answer:

Procedural aspects of working of Civil Courts:

1. **Jurisdiction:** The Civil Procedure Code, 1908 stipulates that the courts shall have jurisdiction to try all suits of a civil nature excepting suits of which cognizance is either expressly or impliedly barred.

The jurisdiction is basically of three types.

- (a) Pecuniary
- (b) Territorial: The purpose of territorial jurisdiction is to ensure smooth and speedy trial of the matter with least inconvenience to the affected parties.
- (c) As to subject matter: For example, Motor Vehicles Act provides for special tribunal for matters under it.

Similarly disputes relating to terms of service of government servants go to Administrative Tribunals.

2. **Stay:** With the object of preventing courts of concurrent jurisdiction simultaneously trying two parallel suit in respect of the same matter in issue, Civil Procedure Code has vested inherent power in the court to stay the suit.

3. **Res Judicata and bar to further Suits:** The principle of res judicata aims at bringing finality to the litigation. The basic principle is that a final judgement rendered by a court of competent jurisdiction is conclusive on merits as to rights of the parties and constitutes an absolute bar against subsequent action involving the same claim.
4. **Plaint:** The entire legal machinery under the Civil Law is set in motion by filing of plaint and hence plaint is the actual starting point of all pleadings in a case. Though the law has not laid down any tight jacket formats for plaints, its minimum contents have been prescribed.
5. **Summons:** When the suit is duly instituted summons may be issued to Defendant to appear and answer the claim. Summons is an instrument used by the court to commence a civil action or proceedings and is a means to acquire jurisdiction over party. It is a process directed to a proper officer requiring him to notify the person named, that an action has been commenced against him, in the court from where process is issued and that he is required to appear, on a day named and answer the claim in such action.
6. **Appearance of Parties:** On the day fixed in the summons the Defendant is required to appear and answer and the parties shall attend the court unless the hearing is adjourned to a future day fixed by the court. If the Defendant is absent court may proceed ex-parte. Where on the day so fixed it is found that summons has not been served upon Defendant as consequence of failure of Plaintiff to pay the court fee or postal charges the court may dismiss the suit.
7. **Adjournments:** Courts have the power to adjourn a case and take it up on a future date. Adjournments frequently sought by the parties contribute significantly to the delays caused in deciding the matters. The granting of adjournments is at the discretion of the court. The rules governing adjournments are considerably strict if applied in their true spirit.
8. **Ex-parte Decrees:** A decree against the Defendant without hearing him or in his absence/in absence of his defence can be passed under the following circumstances:-

- (i) Where any party from whom a written statement is required fails to present the same within the time permitted or fixed by the court, as the case may be the court shall pronounce judgement against him, or make such order in relation to the suit as it thinks fit and on pronouncement of such judgement a decree shall be drawn up.
 - (ii) Where Defendant has not filed a pleading, it shall be lawful for the court to pronounce judgement on the basis of facts contained in the plaint, except against person with disability.
- 9. Interlocutory Proceedings:** The period involved between initiation and disposal of litigation is substantially long. The intervention of the court may sometimes be required to maintain the position as it prevailed on the date of litigation. In legal parlance it is known as “status quo”. It means preserving existing state of things on a given day. In that context interlocutory orders are provisional, interim, temporary as compared to final.
- 10. Written Statement:** The Defendant is required to file a written statement of his defence at or before the first hearing or such time as may be allowed along with the list of documents relied upon by him. If Defendant disputes maintainability of the suit or takes the plea that the transaction is void it must be specifically stated. A general denial of grounds alleged in the plaint is not sufficient and denial has to be specific.
- 11. Examination of Parties:** Examination of parties is an important stage after appearance. At first hearing of the suit the court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement. Such admissions and denials shall be recorded. The examination may be an oral examination.
- 12. Production of documents:** The parties or their pleaders shall produce at or before the settlement of issues, all documentary evidence of every description in their possession or power, on which they intend to rely, and which has not been filed in the court or ordered to be produced.
- 13. Framing of Issues:** The court shall at first hearing, after reading the plaint and written statement ascertain upon what material propositions of facts or law parties are at variance.

14. **Affidavits:** The court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit or affidavit of any witness may be read at hearing, on such condition, as court thinks reasonable.
15. **Final Argument:** Once the documents have been exhibited in the court and the witness(es) of both the sides examined and cross-examined, the stage is set for 'final arguments'.
16. **Judgement:** Judgement means the statement given by the judge on ground of which a decree is passed. The court after the case has been heard shall pronounce judgement in open court either within one month of completion of arguments or as soon thereafter as may be practicable, and when the judgement is to be pronounced judge shall fix a day in advance for that purpose.
17. **Decree and Execution:** After the decree is passed the process of execution which involves actual implementation of the order of the court through the process of the court starts the entire process of executing of decree.

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Q3. The summary trials are reserved for small offences to reduce the burden on courts and to save time and money. Discuss Briefly.

Answer:

Cases which generally take only one or two hearings to decide the matter comes under this category. The summary trials are reserved for small offences to reduce the burden on courts and to save time and money. Those cases in which an offence is punishable with an imprisonment of not more than six months can be tried in a summary way. The point worth noting is that, if the case is being tried in a summary way, a person cannot be awarded a punishment of imprisonment for more than three months.

Stages of Criminal Trial in Summary Cases

- The procedure followed in the summary trial is similar to summons-case.
- Imprisonment up to three months can be passed.
- In the judgement of a summary trial, the judge should record the substance of the evidence and a brief statement of the finding of the court with reasons.

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