

UNIT – 2

Institution Pleadings and Parties

Institution • Summons • Costs • Pleadings • Complaint • WS • Set-off • Counter-claim • Parties • Joinder

Civil Procedure Code & Limitation Act – Expanded

Unit Overview

This expanded unit covers institution of suits, issue and service of summons, interest and costs, fundamental rules of pleadings, detailed rules on plaint and written statement, return and rejection of plaint, set-off and counter-claim, and the complete law of parties including joinder, misjoinder, non-joinder and multifariousness. Practical drafting points and important cases are included.

What You Will Learn

01 Institution

Master the procedure of instituting a suit and serving summons

02 Costs

Apply ss.34, 35, 35A, 35B on interest and costs

03 Pleadings

Follow the fundamental rules of pleadings strictly

04 Plaint WS

Handle return/rejection of plaint and drafting of WS

05 Set-off CC

Distinguish and apply set-off and counter-claim

06 Parties

Correctly join parties and cure defects of non-joinder

INSTITUTION

Institution of Suit – Section 26 & Order 4

How Instituted	By presenting a plaint to the court or such officer as it appoints
Particulars	Plaint must comply with O.7; otherwise it may be rejected or returned
Registration	Suit is numbered and registered after scrutiny
Limitation	Suit must be filed within the prescribed period of limitation

SUMMONS

Summons to Defendant – Order 5

Purpose	To give the defendant notice of the suit and opportunity to appear and answer
Contents	Name of court, parties, day and time of appearance, nature of claim
Modes of Service	Personal service, service on agent, service by post, substituted service (O.5 R.20)
Substituted Service	When defendant is keeping out of the way or cannot be found

INTEREST

Interest – Section 34

Power	Court may award interest at a reasonable rate on the principal sum adjudged
Pre-suit / Pendente lite / Future	Interest for three periods can be awarded
Rate	Usually not exceeding the contractual rate; courts often award 6%–9% in absence of contract
Commercial Transactions	Higher rate may be awarded in commercial cases

COSTS

Costs – Sections 35, 35A, 35B

Section 35

Costs shall follow the event unless the court otherwise orders for reasons recorded

Section 35A

Compensatory costs for false or vexatious claims or defences (up to prescribed limit)

Section 35B

Costs for causing delay – can be made a condition for further prosecution

Object

Discourage frivolous litigation and delay

Fundamental Rules of Pleadings (O.6)

Pleadings shall contain only a statement in a concise form of the material facts on which the party relies, but not the evidence by which they are to be proved.

Material Facts

Facts necessary to constitute the cause of action or defence

No Evidence

Do not plead the evidence

Particulars

Fraud, undue influence, misrepresentation, breach of trust need particulars

Alternative Pleadings

Permitted if not mutually destructive

PLAINT CONTENTS

Plaint – Necessary Contents (O.7 R.1)

Name of Court	In which the suit is brought
Parties	Name, description and place of residence of plaintiff and defendant
Cause of Action	Facts constituting the cause of action and when it arose
Jurisdiction	Facts showing that the court has jurisdiction
Relief	Relief which the plaintiff claims
Valuation	Statement of the value of the subject-matter for jurisdiction and court fees

RETURN REJECTION

Return and Rejection of Plaintiff

Return (O.7 R.10)

When court lacks jurisdiction – plaintiff returned for presentation to the proper court

Rejection (O.7 R.11)

(a) No cause of action (b) Relief undervalued (c) Court fee insufficient (d) Suit barred by law (e) Plaintiff not filed in duplicate (f) Non-compliance with statutory requirements

Appeal

Order rejecting plaintiff is a decree and is appealable

WRITTEN STATEMENT

Written Statement – Order 8

Time	30 days from service of summons; extendable up to 90 days for reasons recorded
Specific Denial	Every allegation of fact must be specifically dealt with; general denial is insufficient
New Facts	Defendant may raise new grounds of defence
Set-off & Counter-claim	Can be raised in the written statement

SET OFF

Set-off – Order 8 Rule 6

Legal Set-off

Ascertained sum of money legally recoverable by defendant from plaintiff

Conditions

Same character, ascertained sum, recoverable at the date of the suit

Equitable Set-off

Allowed even for unascertained sums when the claim arises from the same transaction

Effect

Treated as a cross-claim; court can pass a net decree

COUNTER CLAIM

Counter-claim – Order 8 Rules 6A to 6G

Meaning	A claim by the defendant against the plaintiff that can be the subject of an independent suit
Scope	Can be for any right or claim in respect of a cause of action accruing before or after filing of the suit but before defence is filed
Treated as Plaintiff	Counter-claim is treated as a cross-suit; plaintiff must file written statement to it
Difference from Set-off	Set-off is defensive; counter-claim is aggressive and independent

PARTIES 1

Parties to the Suit – Necessary and Proper Parties

Necessary Party

A party without whom no effective decree can be passed

Proper Party

A party whose presence enables the court to completely and finally decide the dispute

Test

Whether the presence is required for an effective and complete adjudication

O.1 R.10

Court may add or strike out parties at any stage on such terms as it thinks just

JOINDER

Joinder of Parties and Causes of Action

Joinder of Plaintiffs	Persons may be joined as plaintiffs when right to relief arises from the same act or transaction
Joinder of Defendants	Same principle applies
Joinder of Causes	Plaintiff may unite several causes of action against the same defendant
Multifariousness	Misjoinder of causes of action – court may order separate trials

MISJOINDER NONJOINDER

Misjoinder and Non-joinder – Effect

Misjoinder	Wrong persons joined – suit shall not be defeated by reason of misjoinder (O.1 R.9)
Non-joinder	Non-joinder of a necessary party can be fatal; non-joinder of proper party is not fatal
Cure	Court can add parties under O.1 R.10; amendment can be allowed
Objection	Should be taken at the earliest opportunity

PRACTICAL

Practical Drafting & Exam Tips – Unit 2

Plaint	Always plead jurisdictional facts, cause of action and exact relief
WS	Deny specifically; never rely on general denial
Set-off vs CC	Use set-off for money claims arising from same transaction; counter-claim for independent claims
Parties	Identify necessary parties before filing; add them early
Rejection	O.7 R.11 is a powerful tool – use it when plaint is defective

SUMMARY POINTS

Must-Remember Points

- Suit is instituted by presenting a plaint; summons must be properly served.
- Costs follow the event; compensatory and delay costs can be imposed.
- Pleadings must contain material facts only, not evidence.
- Plaint can be returned (lack of jurisdiction) or rejected (O.7 R.11 grounds).
- Set-off is a defence; counter-claim is a cross-suit.
- Necessary parties must be joined; misjoinder is not fatal, non-joinder of necessary party can be.
- Specific denial in WS and early objection to defects are essential practice points.