



HARYANA

Judicial Services Exam

CIVIL JUDGE (Junior Division)

Haryana Public Service Commission (HPSC)

Paper - 1

Civil Law - 1



HARYANA JUDICIAL SERVICES

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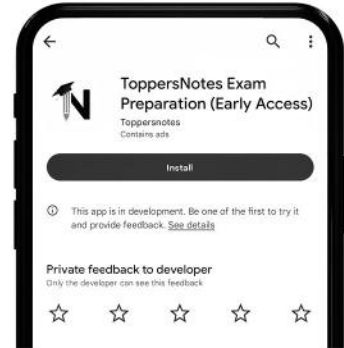
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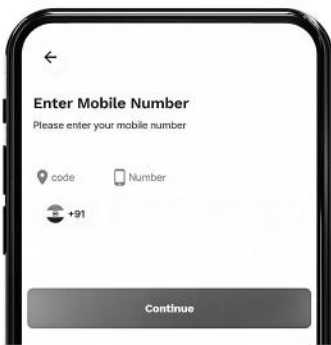
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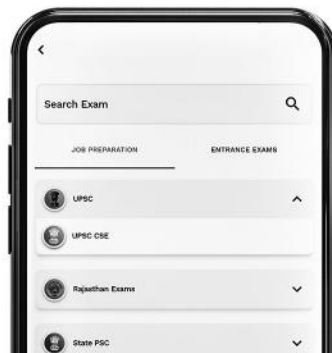
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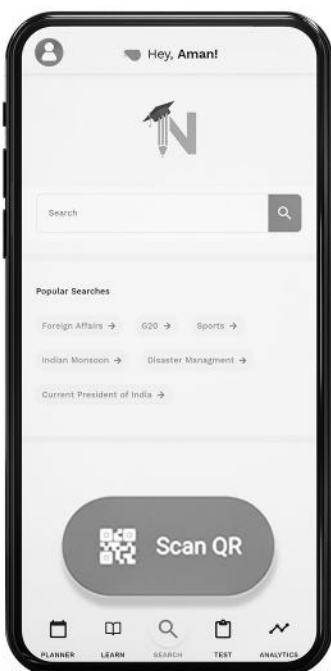
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The Code of Civil Procedure, 1908

- Act No. 5 of 1908
- Assent: 21st March, 1908
- Enforce: 1st January, 1908

CPC	
Sections (158)	Orders (51)

Sections Part-I Suits in General (1-35 B)		
Preliminary (1-8)	Res Judicata and Jurisdiction (9-14)	Place of Suing (15-25)
Institution of Suit (26)	Summon and Discovery (27-32)	Judgment and Decree (33)
Interest (34)	cost (35-35B)	

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Orders

Part-I (O1-20A)

- O1 = Name of Parties
- O2 = Frame of Suit
- O3 = Recognized Agents and Pleadings
- O4 = Institution of suits
- O5 = Issue and service of Summons
- O6 = Pleadings
- O7 = Plaint
- O8 = Written Statement
- O9 = Appearance of Parties and Consequences of Non appearances
- O10 = Examination of Parties
- O11 = Discovery and Inspection
- O12 = Admission
- O13 = Production, Impounding and Return of Documents
- O14 = Settlement of Issues and Determination of suit or issues of law or issues agreed upon
- O15 = Disposal of the suit of the 1st hearing
- O16 = Summon of Witness
- O16A = Attendance of witnesses confirmed or detained in prisons
- O17 = Adjournment
- O18 = Hearing
- O19 = Affidavit
- O20 = Judgment and Decree
- O20A = Cost

Part-II [Execution (O21)]

Part-III [Incidental Proceedings (O22-51)]

- O22 = Death, marriage and Insolvency
- O23 = Withdrawal and Adjustment
- O24 = Payment in Court
- O25 = Security of Cost
- O26 = Commission

Suits (O27-35)

- O27 = Govt.
 - O27A = Constitution
 - O28 = Army
 - O29 = Corporation
 - O30 = Firm/Hindu Undivided Family
 - O31 = Trustee, Executor and Administrator
 - O32 = Minor/Unsound Mind
 - O32A = Family
 - O33 = Indigent
 - O34 = Mortgage
 - O35 = Inter-pleader
 - O36 = Special Case
 - O37 = Summary Procedure
-

Supplemental Proceedings (O38-40)

- O38 = Arrest and Attachment before Judgment
- O39 = Temporary Injunction and Interlocutory orders
- O40 = Appointment of Receiver

Appeal (O41-45)

- O41 = Appeals from original decrees
- O42 = Appeals from Appellate decrees
- O43 = Appeals from orders
- O44 = Appeals by Indigent persons
- O45 = Appeals to the Supreme Court

Reference, Review

- O46 = Reference
- O47 = Review
- O48 = Miscellaneous
- O49 = Chartered High Court
- O50 = Provincial Small cause court
- O51 = Presidency Small Cause Courts

Part-A		
Sec	Mix	Order
1-6		
	7 + O50	
	8 + O51	
9-14		
15-25		1, 2, 3
	26 + O4	
	27 - 29 + O5	
		6 – 10
	30 + O11	
		12 - 15
	31 – 32 + O16	
		16 A, 17, 18, 19
	33 – 20	
34		
	35 + 20A	
35 A, B		
	Part-B	
	36 – 74 + O21	
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		22 – 25
	75 – 78 + O26	
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		27A, 28 – 34
83 – 87A		
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	88 + O35	
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Q. What is the object of CPC?

Ans. An Act to consolidate and amend the laws relating to the procedure of the courts of civil Judicature.

There were many amendments, so there is a history of CPC also.

Act no. 8, 1859

Act no. 10, 1877

Act no. 14, 1882

Presently Act no. 5, 1908

In present CPC also has various amendments including Mali math Committee.

- i. Act no. 104, 1976
- ii. Act no. 46, 1999
- iii. Act no. 22, 2002
- iv. Act no. 4, 2016 (Commercial courts for Rs. 1 Cr. Or more)
- v. Act no. 28, 2018 (Amendment in commercial courts)
 - Now CPC apply in J and K also Schedule 5 entry 8 of J and K reorganization Act, 2019.
 - It has prospective effect and not retrospective effect.

Q. Where CPC doesn't apply?

Ans. Sec 1 Not apply on J and K (Now apply refer J and K reorganization Act, 2019)

- Not apply to the tribal areas and Nagaland
- Tribal area = such area which before 31 Jan, 1992 was tribal area of Assam, as referred in Para 20 of the sixth Schedule of the constitution.

Wherever following matter there CPC shall apply along with local laws:

- a. Amindivi Island
- b. East Godavari
- c. West Godavari and Vishakhapatnam agencies.
- d. In state of AP (Andhra Pradesh)
- e. Lakshadweep
 - Consent of Governor General 21 Mar 1908
 - Came into force 1 Jan 1908.

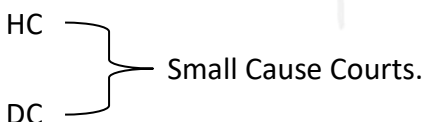
Sec 4: wherever special law, local law or special proceedings CPC shall not apply.

- Wherever any landholder or landlord receives rent from the produce of land then CPC shall not apply for his remedies.

Sec 5: wherever matter certain to revenue courts then CPC shall apply only when special procedures (Act) are silent.

- SC can issue notification that the provisions of CPC apply with or without modification.
- Revenue court does follow; court having jurisdiction under any local law to entertain suit or other proceedings relating to the rent revenue or profits of land used for agriculture purposes but does not include a civil court having original jurisdiction under this code. (CPC does not apply)
- If provisions of revenue courts are silent then CPC apply.
Revenue court-Raj Land Revenue Act, Raj, Tenancy Act.

Sec 3: District court is subordinate to HC and every civil court of inferior grade i.e., small because court subordinate to DC & HC. 4 other courts are also subordinate to DC or HC.



Tribunals are created to reduce the burden of courts, they perform the quasi-judicial function and can exercise only certain powers under CPC & CrPC. They are headed by judicial officer which doesn't make it a Court.

Q. What do you understand by jurisdiction?

Ans.

- a. Subject Wise: (Family Courts, Raj Appellate Tribunal)
- b. Territorial Jurisdiction (15-25)
- c. Pecuniary Jurisdiction (Sec 6)
 - i. Civil Judge- O – 2 Lakh
 - ii. Senior Civil Judge – 2 – 5 Lakh
 - iii. District Judge – 5 Lakhs or more
- d. Original or Appellate Jurisdiction

Sec 2: Definitions

- i. Code
- ii. Decree
- iii. Decree holder
- iv. District
- v. Foreign Court
- vi. Foreign Judgment
- vii. Govt. Pleader
- viii. A. High Court
- ix. B. India
- x. Judge
- xi. Judgment
- xii. Judgment Debtor
- xiii. Legal Representative
- xiv. Mesne profit
- xv. Moveable Property
- xvi. Order
- xvii. Pleader
- xviii. Prescribed
- xix. Public Officer
- xx. Rules
- xxi. Share in-incorporation
- xxii. Signed
- xxiii. Public officer: means an person falling under any of the following descriptions namely.
 - a. Every Judge
 - b. Every member of all India Service.
 - c. Army
 - d. Officer of Court
 - e. Confine person (Police)
 - f. Information of offence and Protect health safety (CID/Doctor)
 - g. Revenue
 - h. Any person who is in pay or remuneration by govt. or perform public duty.

Legal Representative		
De Jure Such person who is law represents the estate of a deceased person.	De Facto Such person who intermeddles (interfere) with the property of the deceased.	National LR Such person where suit is of representative character then to whom estate evolves. Eg: Labor Union Vice President.

Mesne Profit: Such benefit which was received by person having wrongful possession.

- Such property actually received, or person could have received by ordinary diligence.
 - Different from sec 144; there possession is rightful. (Lower court gave different judgment.)
- It doesn't include improvements (MP = Profit + Interest – Improvements.)

Decree: Formal expression of adjudication

- Which conclusively determine the rights of parties.
- With regard to all or any matter of controversy in a suit.
- It is preliminary or final.
- It includes following things 'Dined Decree'.
 - a. Rejection of Plaint (O7, R11)
 - b. Question under sec 144
 - c. It excludes following things:
 - (i) Appeal from orders (O43, sec 104-106)
 - (ii) Order of dismissal for default.

Formal Expression: Court shall specifically state whether relief is granted or not.

Adjudication: Court has used its discretion, where there is discretion there are following things: -

- (a) Heard both the parties.
 - (b) Judgment is on merit.
 - Decision: May be on merit or may not be on merit.
- Adjudication –Decree
Decision – Order
- Conclusively Determines: That judgment is final. (If aggrieved, go to higher authorities)
 - Suit: Decree on suit and not on application, but there are exceptions:
 - i. By indigent person
 - ii. Where application of arbitration is rejected.
 - iii. Order 36 Rule 3 (Special matter)
 - Hansraj Gupta Vs official liquidator Dehradun
 - General rule is that civil proceedings are instituted by presentation of plaint.
 - Venkata Reddyvs Patties Reddy
 - Wherever in decree there is adjudication then there pleading of parties shall be seen and proceedings of court.

Decree is of two types

Preliminary Decree	Final Decree
a. Wherever shares of parties are determined b. Further proceedings are required. c. Preliminary decree can be more than one. d. Preliminary not dependent on final decree.	a. Wherever rights of parties are determined completely. b. Finally decided. c. Final decree is only one. d. Dependent on preliminary decree i.e., if preliminary is to set aside then final decree also set aside.

Sec 97: Appeal from final decree where no appeal from preliminary decree:

- If preliminary decree is not appealed, then later on an appeal of final decree there shall be no objection.

Shankar Vs Chandrakant

- In preliminary decree right and duties of parties are determined but further proceedings are required.

Signed: Save in the case of a judgment or decree, includes stamp.

Pleader: Means any person entitled to appear and plead for another in court, and includes an advocate, a Vakil or an attorney of high court.

Prescribed: Means prescribed by rules.

Code: includes rules

District: Means the local limits of the jurisdiction of a principal civil court or original jurisdiction (DC) and includes the local limits of the ordinary original civil jurisdiction of a HC.

Foreign Court: Means

A court situated outside India and not established or continued by the authority of the central govt.

Foreign: Judgment: Means the judgment of a foreign court.

Government Pleader: Includes any officer appointed by the state govt. to perform all or any of the function expressly imposed by this code & also any pleader acting under the direction of the govt. pleader.

High Court: In relation to Andaman and Nicobar Islands means the High Court in Calcutta

India: Means the territory of India excluding J and K.

Judge: Means the presiding officer of a civil court.

Movable property: Includes growing crops.

Q. What do you understand by civil nature suits?

Ans. Sec 9: Courts to try all civil suits unless barred except

- a. Expressly barred (Refer Sec 4 and 5)
- b. Impliedly barred (Refer Arbitration clause which is by consent of parties).

Explanation 1: Wherever matter is of right of property or office then it shall be of civil nature then although such right is based on religious rites and ceremonies.

Explanation 2: It is immaterial that such post is attached with fees or particular place.

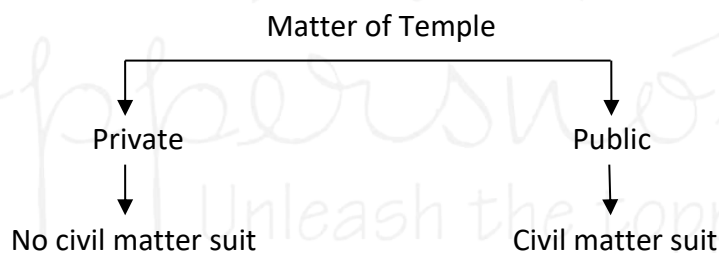
- Wherever matter is of civil nature or not then we have to see rights and liabilities.
If matter is of civil nature and rights are infringed then compensation shall be given.
 - A.R Anatulay Vs R.S. Nayak
By consent of parties nobody can be given jurisdiction.
 - Most Rev. PMA Metropolitan Vs Moran Mar Marthoma
In sec 9, the civil nature given is both positive as well as negative.
 - Firm Seth Radha Krishan Vs Administrator Municipality Committee Ludhiana
In sec 9, all types of matters shall be considered civil matters except impliedly or expressly barred.
 - Dhulabhai Vs State of M.P.
Civil courts are exclusively barred by special tribunals and special provisions in enactment and special lights.
 - Premier Automobile Vs Kamlakar Shautarm
 - RSRTC Vs Krishnakant
 - Chandrakant Vs Municipal Corporation of Ahmadabad
In all the three cases matter pertain to Industrial Dispute Act and Jurisdiction of civil Court.
Court held ID Act is a special provision and civil courts have no jurisdiction.
-

Following things considered in civil matter-

1. Where main question relates to civil nature (rights) although it depends on religious question.
2. Injuria sine Damnam (Injury without damage)
3. Right to property.
4. On breach of contract.
5. Compensation
6. Right to Worship
7. Right to divorce
8. Right to procession
9. Right to specific performance
10. Right to Brig Gij Mani
11. Right to divisible of property inheritance.

No civil nature suit-

1. Purely religious matter.
2. Purely custom
3. Caste related question
4. Personal matter
5. Political matter
6. Internal question (indoor management)
7. Wherever matter is of priest, pujari



Sec 10: Res Subjudice

- Directly and Substantial Same
(100%) (99.99%)
- Same title or litigating under the same title.

A vs. B

B is dead

A vs. LR of B

Res Subjudice	Res Judicata
<ol style="list-style-type: none"> 1. Sec 10 <ul style="list-style-type: none"> • Pending in court 2. 1st case is pending 2nd case stay i.e., proceeding stops. 3. Here institution is seen for that order sheet shall be seen. 4. Not apply to foreign judgment. 	<ul style="list-style-type: none"> • Sec 11 • Sec 12 (In orders) Sec 13, 14 foreign judgments <ol style="list-style-type: none"> 1. 1st case is decided 2nd case is dismissed i.e., matter ends. 2. Judgment is seen. 3. Apply (Sec 13, 14)

E.g.: Res Subjudice

A vs. B (divorce case)

Kota
Case filed 10-6-2020

Jaipur
15-6-2020
Notice and Then reply.

In practical res subjudice and res judicata is taken as objection.

Reply + annexure (order sheet) that case is first instituted in Kota.

Res Subjudice: No court shall proceed (stay) with the trial in any suit If;

- a. Matter in issue is directly and substantially same.
 - b. Between the same parties or parties litigating under the same title.
 - c. If there is a previous suit instituted and suit is pending.
 - (i) In the same court
 - (ii) Other court within jurisdiction in India.
 - (iii) Any other court beyond the limits of India but established or continued by CG or Supreme Court.
- Not apply on foreign court.
 - This is mandatory i.e. court must adapt it there is no discretion.
 - Life Pharmaceuticals Ltd vs. Bengal Medical Hall.
The application u/s 10 can be in any stage.
 - V. P. Samnathi (RE)
It applies or applicable in appeal or revision also.

Sec 11: Res Judicata

No court shall try any suit or issue if

- a. Matter in issue is directly or substantially same.
- b. Between the same parties or parties litigating under the same title.
In any former suit.

Court is competent to try such subsequent suit or in former suit the matter was heard and finally decided by such court.

Ex. 1: Former Suit

Such suit which is first decided irrespective of when instituted.

Ex. 2: Wherever there is competence of court then it shall be determined that right to appeal is immaterial.

Ex. 3: Wherever matter that shall be alleged by one party and denied or admitted by another.

Ex. 4: Might or Ought (Constructive Res Judicata)

If any matter might and ought to be made a ground of defense or attack, then it shall be deemed too that it was made.

Ex. 5: Deemed to have been refused:

Wherever any relief is not given expressly then it shall be considered that is refused.

Ex. 6: Representative suit

Wherever any person litigate bonafidely for public or private right and right is common for several people and all persons are interested then it shall be deemed that suit is by person claiming under litigation. If representative suit, then on all person's res-judicata shall apply.

Ex. 7: Execution

Apply on execution proceedings also.

Ex. 8: Limited Jurisdiction

Wherever any matter is finally heard or decided by court of limited. Jurisdiction then res judicata applies in subsequent suit although court of limited jurisdiction is not competent to hear subsequent suit.

We must go in past tense to see jurisdiction.

Section 12: Bar to further suit

Where a plaintiff is precluded by rules from instituting suit in respect of a particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any court (res Judicata or Other places):

- a. Section 21A
- b. Section 47 (1)
- c. Section 95 (2)
- d. Section 144 (2)
- e. O2 R2
- f. O9 R9
- g. O11 R21
- h. O22 R9
- i. O23 R1 (1)
- j. O23 R1 (3)
- k. O23 R3A

Q. The general rule is res judicata applies on foreign judgment? Is there any exception?

Ans. Sec 13: Foreign judgment shall not be conclusive if:

- a. Not by competent court
- b. Not on merit
- c. Incorrect view of International law or refuse to recognize law of India.
- d. Fraud
- e. Opposed to natural justice
- f. Founded on breach of law of India.

Sec14: Presumption as to foreign judgment.

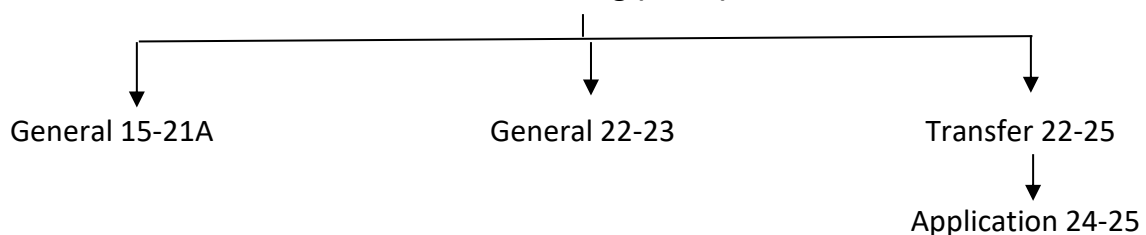
Wherever certified copies of foreign judgment are given then court shall presume that it was presented by court of competent jurisdiction.

- Res Judicata is mandatory.
- The Principle of Res Judicata is based on 3 Latin Maxims:
 - a. Nemo Debit VisVexari Pro Una ET Eadam Causa which means no person shall be vexed te for the same cause.
 - b. Res Judicata Pro Vitiante Occipitur which means judicial division is always considered correct.
 - c. Interest Republicae ut sit Finis Litium which means it is in the interest of state.

Duchess of Kingston

- The principal of res judicata came into existence.
- Sir William de Grey propounded this principle that concurrent court should not have adverse finding.
- V. Rajeshwari Vs P.C. Sarwanbhawa
The rule of res judicata is related to the rule of record in estoppels.
- T.V. Sheshyya Vs T. K. Rao
Section 11 is Mandatory.
- Narayan Chettyar Vs Anamalaya Chettiar
This law is not extensive i.e., it can be extended.
- S. Singh Vs Ramanand Singh
It can be extended in public interest No strict interpretation shall be there.
- Amalgated cold field Ltd Vs Janapada
Matter should be directly and substantially same.
- Workmen Vs Board of Trustee
- State of UP Vs Nawab Hussain
In both the cases constructive res judicata was explained.
- Ganga Bai Vs Chabubai
Directly and substantially was explained.
- Pandit Exhwar Dat Vs State of MP
It is not necessary that parties must be same if they are litigating under the same title then also considered party.
- Munnibibi Vs Triloki Nath
Res judicata applies on codefendant also, if conditions are fulfilled.
- Gulab Chand Chotelanl Pareek Vs State of Gujarat.
In this case, decision of constructive res judicata in writs.
- Devi Lal Vs Sale Tax officer
- Daryav Vs State of UP
Now in writs, also principal of re judicata apply.
- Mohan Lal Goenka Vs Binoy Krishan
In execution proceedings also res judicata apply.
- Forward Constructive co Vs Prabhat Mandal
Apply in PIL also.
- Carter of Indian Trade Union Vs UOI
- Bhakta Ram Vs state of Rajasthan
The principal of res judicata is universal.

Place of suing (15-25)



Q. What do you understand by place of suing?

Ans.

IS (Court of lowest Grade)			
16	17	18	19
Immoveable property	Different Jurisdiction	Uncertain	Person/Moveable Property
20		21	21A
Various Defendant		Objection	Res Judicata

Sec 15: Every suit shall be instituted in court of lowest jurisdiction which is competent to try.

- If court of higher jurisdiction did then irregular.
- If Court of lower jurisdiction did trial, then it shall be void.

Sec 16: Wherever matter of Immoveable property.

- a. Restoration of property with or without rent or profit.
- b. Partition of Immoveable property.
- c. Mortgage, foreclosure, redeems sale and charge.
- d. Other right which is in immoveable property.
- e. Any wrong to immoveable property.
- f. Recovery of moveable property which is in distraint or attachment.

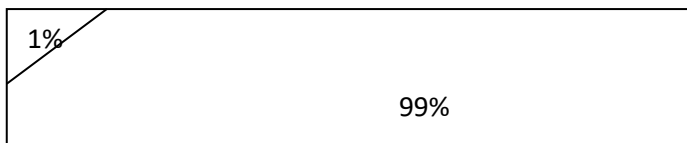
Then jurisdiction of that court where property is situated

Wherever matter is of personal obedience then following jurisdiction.

- a. Where property is situated.
- b. Where defendant resides, carries on business or personally works for gain.

Sec 17: Wherever immoveable property in various jurisdiction.

Alwar



Then any court can hear the matter which has jurisdiction.

Section 18: Wherever it is uncertain that which court shall have jurisdiction then any court after asserting reason can try the suit.

- Wherever there is any objection in appellate and revision court then such court shall see following things:
 - a. What is the uncertainty?
 - b. Whether there is failure of justice?

Sec 19: Wherever matter is of body or any wrong done to the moveable property then following court shall have jurisdiction.

- a. Where wrong has been committed.
- b. Where defendant resides, does business, or personally works for gain.

Sec 20: Wherever there is other matter:

- a. There was one or more defendant then where defendant resides, carries on business, or personally works for gain.
- b. Where there are more than one defendant but at different places then with the leave permission of court of with acquiesce of other defendants case can be at any place where any of the defendant resides, carries on business or personally works for gain.
- c. Cause of action, wholly or partly arises.

Whenever there is any corporation then place of business is following:

- a. Principal officer
- b. Subordinate officer

Sec 21: Wherever any person wants to object then he can raise it in appellate or revision court on following grounds: -

- a. Place of Suing.
- b. Pecuniary Jurisdiction
- c. Competence of executing court.

Such objection shall be as soon as possible, before settlement of issues.

Sec 21 A: Wherever decree has been passed then on the ground of objection of place of suing, no fresh suit shall lie. (Res judicata shall apply)

Sec 22: Wherever a suit can be instituted in 2 or more courts but instituted in one court, then any defendant after giving notice to other party as soon as possible before settlement of issues can apply to the court that it be transferred.

E.g.: A, B, C Vs. D
 Alwar Bombay Delhi

- If case is in Delhi, then objection can be by Alwar, Bombay and Delhi person before settlement of issues.

Sec23: Application shall be in following courts.

a. If both the courts are subordinate to the same appellate court.	Appellate Court
b. If both the courts are subordinate to the different appellate court but same HC.	High Court
c. If both the courts are subordinate to the different High Court's.	Such High Court where case is first instituted.

Sec24: HC or DC can at any stage on

- Application or
- Suo moto

After giving notice to parties. (In suomoto notice not required) can do following things: -

- a. Transfer any suit to other court subordinate to him.
- b. Withdraw any suit and do following.
 - i. Try himself
 - ii. Transfer to other court.
 - iii. Re-transfer to the same court.