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## **STAGES OF CIVIL SUIT**



# CHAPTER 1

## INTRODUCTION

As per Black's Law Dictionary - "Civil Procedure" means, body of law concerned with the methods, procedures and practices used in civil litigation. Laws can be divided into two groups:

- (i) Substantive law
- (ii) Procedural law

Substantive law determines rights and liabilities of parties and procedural or adjective law prescribes practice, procedure and machinery for the enforcement of those rights and liabilities. Procedural law is thus an accessory to substantive law. The Civil Procedure Code consolidates and amends the law related to the procedure of the Courts of Civil jurisdiction. On the other hand the Code of Civil Procedure is an adjective law. It neither creates nor takes away any right. It is intended to regulate the procedure to be followed by Civil Courts. The students need to be familiar with the essentials of the basic procedural laws of the Country. It is necessary for them to keep in view the requirement of the procedural law in handling of civil matters.

In *GhanshyamDass v. Dominion of India (1984)* it was held that "The Civil Procedure Code, 1908 neither creates nor takes away any right. It is intended to regulate the procedure to be followed by the Civil Courts".

## DIFFERENCE BETWEEN SUBSTANTIVE AND PROCEDURAL LAW

| Substantive Law  | Adjective Law   |
|--|---|
| 1. It determines the rights and liabilities of the parties.  | 1. It Provides machinery for enforcement of rights and liabilities i.e. it prescribes – practice, procedure & machinery       |
| 2. It Define, create or confer substantive legal rights or legal status.                               | 2. It provides legal machinery for the enforcement of legal rights and liabilities.   |
| 3. Procedural & substantive laws are complementary to each other.                                      | 3. It is also an accessory to substantive law.  |
| 4. Examples – Indian Contract Act, 1872, Transfer of Property Act, 1882, Indian Penal Code, 1860, etc. | 4. Examples – Indian Evidence Act, 1872, Limitation Act, 1963, Civil Procedure Code, 1908, Criminal Procedure Code, 1973 etc. |
| 5. Generally, prospective in operation.  | 5. Generally, retrospective but Civil Procedure Code is prospective and not retrospective.                                    |

## **AIM AND SCOPE OF CIVIL PROCEDURE CODE, 1908**

The Civil Procedure Code consolidates and amends the law relating to the procedure of the Courts of Civil jurisdiction. The Code neither affect any special or local laws nor does it supersede any special jurisdiction or power conferred or any special form of procedure prescribed by or under any other law for the time being in force. The Code is the general law so that in case of conflict between the Code and the special law the latter prevails over the former. Where the special law is silent on a particular matter the Code applies, but consistent with the special enactment.

The object of the Code generally is to create jurisdiction while the rules indicate the mode in which the jurisdiction should be exercised. Thus the main object of this civil procedure code is to consolidate and amend the laws relating to the procedures of the Court of Civil Judicature. The main aim of the CPC is to facilitate justice and seek an end to the litigation rather than provide any form of punishments and penalties.

## **SCHEME OF THE CODE**

The Civil Procedure Code consists of two parts.

- (i) In sections- 158 Sections are given in the first part
- (ii) In orders- The rules and orders in Schedule I form the second part. It contains 51 orders.

Thus the above two parts should be read together and in case of any conflict between the sections and the rules, the former must prevail.

## **HISTORY OF CIVIL PROCEDURE CODE 1908**

- To give uniformity to Civil Procedure, Legislative Council of India enacted Code of Civil Procedure, 1858, which received the assent of Governor-General on 23 March 1859.
- The Code however, was not applicable to the Supreme Court in the Presidency Towns and to the Presidency Small Cause Courts. It did not meet the challenges and was replaced by Code of Civil Procedure Code, 1877.
- Still it did not fulfill the requirements of time and large amendments were introduced in 1882 i.e. The Code of Civil Procedure, 1882 was introduced.
- With passing of time it is felt that it needed flexibility for timeliness and effectiveness. To meet these problems Code of Civil Procedure, 1908 was enacted.
- After that it has been amended number of times. The Code of Civil Procedure was substantially amended in the year 2002. The main purpose of the Amendment of the code was to ensure speedy disposal of civil cases governed under the Act.
- Keeping in view the establishment of Commercial Court and the provisions thereof, Civil Procedure Code (Amendment) Act, 2016 was enacted. These provisions are applicable to