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**Unit I Concepts**

**Topic- Decree**

Subject : The Code of Civil Procedure

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Decree: Section 2(2) “Decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include-

- (a) Any adjudication from which an appeal lies as an appeal from an order, or
- (b) Any order of dismissal for default.

A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;

The judicial determination (decision) of a court is either in the shape of a decree or an order. Whether a judicial determination amounts to a decree or order is a matter of substance. A judicial determination in order to be a decree must fulfil the conditions laid down under Section 2(2) of the Civil Procedure Code. But it must be remembered that the court has no power to

extend the meaning of decree to include in it orders which may be similar to the orders expressly included in the definition. Therefore, an order rejecting the memorandum of appeal after dismissing an application under Section 5, Limitation Act, 1963 for condonation of delay is not a decree. A decision of a Court of law cannot be both at the same time, a decree or an order. Section 2 of Civil Procedure Code defines various terms to facilitate its study.

### Essential Elements of a Decree

The essential elements of a decree:

- (i) There must be an adjudication ;
- (ii) Adjudication must be in a suit;
- (iii) It must have determined (decided) the right of the parties with respect to all or any of the matters in controversy.
- (iv) Such determination must be conclusive determination and
- (v) There must be formal expression of the adjudication.

### Plaint- Order VII of the Code Civil Procedure

Rule 1. Particulars to be contained in plaint.- The plaint shall contain the following particulars:-

- (a) The name of the court in which the suit is brought
- (b) The name, description and place of residence of the plaintiff;
- (c) The name, description and place of residence of the defendant, so far as they can be ascertained;
- (d) Where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;
- (e) The facts constituting the cause of action and when it arose;
- (f) The facts showing that the court has jurisdiction;
- (g) The relief which the plaintiff claims;
- (h) Where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished;
- (i) A statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court –fees, so far as the case admits.

Order 7 lays down, in particular the requirements of a plaint. Rules 1 to 8 lay down the particulars to be incorporated in the plaint. Plaint means a statement

in writing of a course of action in which the relief claimed is set out in detail or a document by the presentation of which a suit is instituted.

The rule provides that all that the plaintiff is required to do is to plead facts which would entitle him to get a decree. He must plead all those facts within his knowledge.

Valuation of the subject matter of the suit is required for the following two purposes:

- (a) For the determination of the pecuniary jurisdiction of the court; and
- (b) For the determination of the court fees

In some cases the valuation of the subject matter for both purposes may be the same as for instance in a suit for the recovery of money.