

Question:

Define and explain the following terms:-

- (1) Decree- holder
- (2) Judge
- (3) Judgment
- (4) Judgment-debtor
- (5) Legal representative
- (6) Mense Profits
- (7) Orders

*Answer:***(1) DECREE-HOLDER.**

The term has been exhaustively defined and refers to any person including a defendant in whose favour either a decree has been passed or an order capable of execution has been made. **PLD 1961 Pesh. 5.** This definition does not cover the case of an assignee of a decree. The procedure for assigning a decree is laid down by Order 21 rule 16. A decree passed in favour of joint decree-holders should ordinarily be executed for the benefit of them all.

(2) JUDGE.

the word "court" is not defined in the Code, but it includes the term created by the Civil Ordinance, 1962. **PLD 1983 Quetta 12.** There is a distinction between the term "Judge" and "Court" though times they are used interchangeably. Also between a tribunal and a Court. A Court is a place where justice is judicially administered. **PLD 1984 Lah. 69.** The Code does not create any court. A court differs from a tribunal, where matters may be determined on considerations of policy. A tribunal acts judicially if it determines a dispute relating to a right or liability recognized by law, after determining the facts, in the presence of the parties, and on the basis of the law and renders judgment terminating the dispute.

In the case of an administrative tribunal, however, the emphasis is on policy, expediency, and discretion, to enable it to achieve the object for which it was set up, and the approach is subjective and not objective. **PLD 1958 SC 437.** An inquiry is judicial if the object of it is to determine a final relation between the parties regarding a right or liability which is actionable; the duty

to determine should rest ~~on~~ the ascertainment with notice and opportunity to the parties of the facts and the law and not on policy, expediency or some other extraneous consideration. The minimum requirements of justice are that the parties, should be allowed to present their pleas and give reasonable opportunity to support them. Some times the presiding officer of the court may be vested with extraordinary jurisdiction under special statute in addition to that ordinarily available to him under the Code will not be applicable to such special proceedings unless of course the special statute stipulates to the contrary. Where a judge is interested in the cause, he is disqualified from judging the cause.

(3) JUDGMENT.

“judgment” means the statement given by the judge of the grounds of a decree or order. A judgment means the judicial decision of a Court or Judge. 1986 SCMR 1736. A judgment need not necessarily deal with all the matters in issue in a suit, but may determine only those issues the decision whereof will have the effect of either adjudicating all the matters in controversy or will result in a final disposal of the suit. As is apparent from the provisions of Order 20, rule 3, it is only after the judge has reduced his decision into writing that a judgment comes into existence. PLD 1976 Lah. 1162. A judgment can be altered before its pronouncement in open court. An oral pronouncement is not a “judgment”. The notes dictated by a judge are not a judgment. Every statement of grounds will not be a judgment but will be so only if such decision can result in a decree or an order. An essential element of a judgment is that there should be a statement of the grounds for decision. The term judgment has a different meaning under the Letters Patent.

(4) JUDGMENT-DEBTOR.

“judgment-debtor” means any person against whom a decree has been passed or an order capable of execution has been made. Any person whose name is on the record as a party at the time of the adjudication and against whom a decree or order capable of execution is passed is a judgment-debtor. PLD 1970 Lah. 330. Parties against whom no decrees or orders capable of execution are passed are obviously not judgment-debtor. A decree passed against several judgment-debtors jointly may be executed against any one judgment-debtor who will thereafter have a right of contribution against the other joint judgment-debtor. The term “judgment-debtor” as defined does not include a judgment-debtor’s assignee.

(5) LEGAL REPRESENTATIVE.

“legal representative” means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or used. Sued.

“Audi alteram” is a principle of natural justice which demands that the other party should be heard before any decision is given which will affect its rights. **PLD 1964 SC 97.** Consequently upon the death of party to a suit its legal representatives must be impleaded as parties in the place of the deceased as the rights of the deceased have devolved upon them consequent to the death of the last owner. Obviously this only happens in case of heritable rights. **1990 CLC 404.** Order 22 lays down the procedure to be followed in impleading legal representative of deceased parties.

The definition of the term “legal representative” is meant only for the purposes of the Code. It creates no liability. It is three parts.

(A) The first part generally covers all persons

Who under law represent the estate of a Deceased. **PLD 1989 Lah. 305.** In case of Muslims, the heirs and legatees of the deceased will be legal representatives. In case of Christians and Parsis who leave wills, their executors, administrators and legatees will be the legal representatives, and where there is no will, the heir or next of kin of such person shall be the legal representative. He may even represent a part of the estate. Where the deceased leaves no estate, the next of kin cannot be termed as legal representative. Where it is a personal right, it can either be Heritable or non-heritable and the legal Representatives need not necessarily be natural heirs. **PLD 1975 Lah 1205.**

(B) The second part of the definition extends the Meaning to include those persons who assume Possession and authority over the estate of a deceased by intermeddling with the estate.

PLD 1975 Lah. 1205. The claim of such persons to the estate should be with the intention of representing the deceased. A tress-passer who claims for himself and does not have the intention of representing the deceased cannot be an intermeddler. The definition does not constitute an inter-meddler as the owner of the estate of the deceased. He is given the status of a legal representative only for the purpose of continuity of proceedings under the Code, and cannot be preferred to the true legal representative.

(C) The third part of the definition covers cases of parties who sue or are sued in a representative character. In such cases the person upon whom such office devolves on the death of the party is the legal representative. PLD 1975 Lah. 1205. For instance a Mutawalli filing or defending a suit does so in representative character on behalf of all the beneficiaries and in the event of the death of the Mutawalli the representative of such a Mutawalli, for purposes of continuing the suit, will be the person on whom the office devolves by operation of law. Only the death of the last representative, is covered by the definition of the term "legal representative". A person newly constituted as the holder of any office is not a legal representative but is there in his own right.

(6) MENSE PROFITS.

"mense profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession.

Persons wrongful deprived of the corpus or usufruct of property are entitled to claim compensation for such deprivation. Such compensation

which is awarded against persons in wrongful possession of property, is known as mense profits, and is claimable only by a person entitled to actual possession of such property. Where the plaintiff was jointly dispossessed by several persons, the mense profits may be decreed against them jointly or apportioned.

The measure for assessing such profits is the profit actually received or which might with ordinary diligence have been received. PLD 1986 Kar. 408. By the person in wrongful possession together with interest on such profits, for the period for which such person was in wrongful possession.

Mense profits can be awarded for a period of three years preceding the institution of the suit. 1998 MLD 225. From the profits a deduction is to be allowed on account of profit due to improvements made by the person in wrongful possession. The word "profit" obviously excludes expenses incurred on earning such profits. Mense profit can be claimed with respect to immovable property only. No decree for mense profits can be passed against a person in rightful possession, or against a person not in possession at all. Where a tenant holds over willfully and contumaciously, mense profits, can be awarded at double the rate of rent, and where not specifically claimed, mense profits can be awarded as general relief. Similar is the case of a licensee continuing in possession after revocation of license.

(7) ORDERS.

"order" means the formal expression of any decision of a Civil Court which is not a decree.

The term "order" ordinarily means a decision of a court or Judge made in writing. The term order is analogous to the term decree. The word order is used in contradistinction to decree and is distinguishable from a judgment. The term "decision" refers to judicial determination in accordance with evidence. It refers to a state of facts judicially determined. For appeal against orders and should be based on the record and contain reasons. An order can be a final order or any interlocutory order.

Decisions given by courts of law can either be decrees or orders. PLD 1990 SC AJ&K 23. Both must be formally expressed and be in precise and deliberate language so as to facilitate execution. The importance of a decree lies in the fact that ordinarily an appeal lies from every decree. 1991 SCMR 2457. Orders on the other hand are appealable only if so provided by the Code. Another difference between a decree and an order is that whilst a second appeal may lie against a decree, a second appeal shall not lie against

an order passed in appeal. A third difference is that a decree ordinarily conclusively determines the rights of the parties, whilst an order does not necessarily do so. The mere fact that an adjudication purports only to be an order is not conclusive of its character, which has to be determined with reference to its true nature. However, where an adjudication is described as an order by the Code, it cannot be taken to be a decree.
