

**1. SUITS OF CIVIL NATURE OR
ESSENTIALS OF CIVIL SUITS (Sec.9)**

PROBLEM No. 1

A residing in Delhi beats B in Calcutta. B wants to file a suit against A. Advise.

ANSWER:

As per Sec. 19 of CPC, B can file a suit against A either in Calcutta or in Delhi. **Sec. 19 read as follows-**

Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the **local limits of the jurisdiction of one Court** (Calcutta) and the defendant **resides** (Delhi), or carries on business, or personally works for gain, within the local limits of the jurisdiction of another court, the suit may be instituted at the option of the plaintiff in **either of the said Courts.**

The Illustration under Sec. 19 of CPC is as follows
- A, residing in Delhi, beats B in Calcutta, B may sue A for battery either in Calcutta or in Delhi.



**2. RES SUB JUDICE OR STAY OF SUITS
[Sec. 10]**

PROBLEM No. 2

A agreed to sell his garden to B. While the contract is still in force, A sells his garden to C. C has notice of the fact that there is a contract for sale between A and B. What are the remedies available to B?

ANSWER:

B can file a suit for specific performance against A **u/s 10 (a) & (b) and Sec. 10 Explanation (i) of the Specific Relief Act, 1963** which reads - the specific performance of any contract may, in the discretion of the Court, be enforced-

- a. when there exists no standard for ascertaining actual damage caused by the non-performance of the act agreed to be done; or
- b. when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief.

Sec. 10 Explanation: The Court shall presume:

- i. that **the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money;** and

B can also file a suit for permanent injunction u/s 34 of the Specific Relief Act, 1963, against C on the ground that B had a valid and subsisting agreement for sale of immovable property (garden) belonging to A.



PROBLEM No. 3

Mannavan entered into an agreement with Thandavan to sell his properties within three months. But after a month Mannavan was trying to sell the same properties to Anandan. What are the remedies available to Thandavan against Mannavan.

ANSWER:

Thandavan can sue Mannavan for Specific Performance to enforce the agreement to sell to him u/s 10 (b), Explanation. (i) of the Specific Relief Act, 1963.

It reads - the specific performance of any contract may, in the discretion of the Court, be enforced-

- b) when the act agreed to be done is such that compensation in money for its non - performance would not afford adequate relief.

Explanation.- Unless and until the contrary is proved, the Court shall presume-

- i) that **the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money;**

Thandavan can also get an injunction u/s 42 of the Specific Relief Act 1963 to restrain Mannavan from selling the property to Anandan.



PROBLEM No. 4

A suit was instituted by the plaintiff firm alleging infringement by the defendant company for using the trade name on their product with the same combination as that of plaintiff's firm. A subsequent suit was instituted in a different Court by the defendant company stating the same allegation. Advise the plaintiff firm with the step to be taken in accordance with law.

ANSWER:

Sec. 10 of the Code of Civil Procedure, 1908 states that a Court should not proceed with trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same or any other Court in India, having jurisdiction to grant the relief claimed.

The object of the principle of Res Sub Judice u/s 10 is to prevent a Court from exercising jurisdiction to two parallel litigations in respect of the same cause of action. This is to avoid two contradictory judgments by two or more Courts for the same cause of action.