

FACULTY OF JURIDICAL SCIENCES

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Lecture-19



Summons

Summons are the instruments that are issued by the Court to a party to appear and answer the alleged claim and are served in a manner prescribed on the given date of the proceeding. Chapter V of the Civil Procedure Code, 1908 (“CPC”) deals with the processes to compel the appearance of the defendants and witnesses in court. Summons under CPC notes three processes to compel the appearance of the party:

- Summons
- Warrant-Case
- Proclamation and attachment

Objectives of Summons

The main objective of the service of summons under CPC is to provide equal justice to all the parties involved in a case. It is based on the principle of Audi alteram partem i.e. hearing the contentions of both sides. The secondary objective to serve the summons under CPC is to inform the defendant that a case has been issued against him or her.

Essentials of Summons

As per Order V Rule 1, the following are the essential conditions for a service of summons under CPC –

- It should be in writing.
- It should be in duplicate form.
- It should be signed by the presiding officer of the court or such other officer authorized by the High Court.
- It should mention the time and place of the rule directed.
- It should bear the seal of the court.

As per the order of the Gujarat High Court, the issuance of a summons is a condition precedent to the making of an order. The mere making of an order for the issuance of summons is quite different from the issuance of summons.

Types of Summons

Majorly, three types of summons are issued under the law:

Civil Summons

These summons are issued in a civil case under CPC to the defendant to appear in court. It is a way of informing the defendant that a case has been issued against him or her in court. It is mainly served in the cases of breach of contract, damage suit, injunction orders or loss of goods, etc.

Criminal Summons

A summon issued to a person to appear in the criminal court under the Criminal Procedure Code is called a criminal summons. In the criminal summons, the court will mention the charges and facts based on which the summon has been issued.

Administrative Summons

These are sent by the administrative bodies whenever we fail to abide by the law. Tax authority or labor court summons is the main administrative summons issued by the law.

Substituted service of summons

It is an exception to the normal way of giving summons under CPC. To issue a substituted service of summons the court should be satisfied that there is enough evidence to believe that the defendant is intentionally keeping himself away from serving the summons, so there needs to be another way in which summon shall be served.

Procedure to serve Summons: -

The procedure to serve a summons is as follows:

- A summon has to be prepared considering all the essentials;
- The summons should be served by the persons authorized and if possible, personally;

- A duplicate copy should be provided to the person summoned;
- The person summoned shall sign the receipt on the back of the duplicate copy.
- Summons by Post
- *A summons can also be served by a registered post, even when the postman is serving the summons and the witness refuses to accept, the acknowledgment by the postman would be evidence that the summons is served.*

Summons on Corporate bodies and societies

Corporate persons who are authorized to receive such summons:

- Secretary
- Local manager / Principal officer of the corporation
- The chief officer of the corporation.
- Summon on a government servant

Where the person summoned is in the active service of the Government, the Court shall send it in duplicate to the head of the office in which such person is employed and that head will serve the summon and shall return it to the Court under his signature with the endorsement required by that section.

The procedure of trial of Summons Cases by Magistrates

If the case appears, then the magistrate has the authority to issue a summons.

- No summons can be filed until the list of a prosecution witnesses has been filed.
- If the complaint has been made in a written format, then a copy of that complaint should be attached with the summons.
- The Magistrate also has the power to dispose of the attendance or enforce it if required.
- If the proceeding is based on a police report, the magistrate shall provide a copy of that police report, first information report (FIR), witness statements, confessions and statements (if any), and any other document or relevant extract that was provided to the Magistrate with the police report.