Section 75 and Order 26 CPC of Pakistan — Detailed Explanation

SECTION 75 CPC — POWER OF COURT TO ISSUE COMMISSIONS

Section 75 CPC gives statutory authority to civil courts to issue commissions. A commission is authorization given to a neutral person (commissioner) to perform acts the court cannot conveniently perform.

Section 75 CPC allows the court to issue a commission for:

1. Examining witnesses

2. Making a local investigation

3. Adjusting accounts

4. Making partitions

5. Holding investigation (local amendment)

6. Performing any ministerial act

7. Any other purpose prescribed by rules

Purpose of Section 75:

- To assist the court by delegating specialized or location■specific tasks

- To save time and expedite proceedings

- To ensure justice where witnesses or evidence are inaccessible

ORDER 26 CPC — RULES GOVERNING COMMISSIONS

Order 26 explains how commissions under Section 75 are issued and executed.

1. Commission to Examine Witnesses (Rules 1–8)

When issued:

- Witness is old, sick, or infirm

- Resides beyond jurisdiction

- About to leave the country

- Government/military official unable to attend

- Woman who cannot appear in public due to custom

Purpose: To record evidence outside court.

Who may be appointed:

- Advocate commissioner

- Court official

- Magistrate

- Any trusted person

Commissioner’s powers:

- Administer oath

- Record evidence

- Allow cross■examination

- Submit signed report

2. Commission for Local Investigation (Rules 9–10)

Issued when court needs spot inspection: boundaries, encroachment, condition of property, measurements, pathways, easements, water channels.

Duties:

- Visit site, inspect and measure

- Take photos or maps if allowed

- Record statements if required

- Submit report with map/sketch

Evidentiary Value: Highly persuasive but not binding.

3. Commission to Examine Accounts (Rules 11–12)

Used in complicated financial disputes (partnerships, mortgages, business accounts).

Commissioner:

- Chartered accountant

- Auditor

- Financial expert

4. Commission for Partition (Rules 13–14)

Purpose: Divide property among co■owners.

Duties:

- Local investigation
- Prepare partition plan
- Suggest allotments
- Submit report

Court may modify or confirm the plan.

5. Scientific or Technical Investigation (Rule 10■A)

Issued for expert tasks:

- Medical examination
- Fingerprint/forensic work
- Handwriting analysis
- Technical inspection

Commissioner: A qualified expert.

6. Commission for Foreign Courts (Rules 19–20)

Pakistani courts assist foreign courts by:

- Recording evidence
- Examining witnesses
- Collecting documents

7. Commission to Perform Ministerial Acts

Ministerial acts include:

- Making inventories
- Verification tasks
- Obtaining signatures

- Delivering summons

KEY DIFFERENCE BETWEEN SECTION 75 AND ORDER 26

Section 75: Grants power to issue commissions.

Order 26: Provides procedure for exercising that power.

WHY COMMISSIONS ARE IMPORTANT

- Provide expert assistance

- Save judicial time

- Ensure accuracy in technical or on■site issues

- Help record evidence when witnesses cannot attend

- Improve quality of justice

SHORT EXAM■FRIENDLY ANSWER

Section 75 CPC empowers courts to issue commissions for witnesses, investigations, accounts, partition, and ministerial acts. Order 26 CPC lays down detailed rules for appointment, procedure, duties, and submission of the commissioner’s report, facilitating efficient and accurate judicial work.