Department: Department of Law (LLB)

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Topic: Declaratory Decrees under Section 42 of the Specific Relief Act

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1. Introduction

In the realm of civil law, a party may sometimes find their legal status or right to property being denied or threatened by another. To resolve such uncertainty without necessarily seeking a coercive remedy (like damages or possession), the law provides the remedy of a Declaratory Decree. Under the Specific Relief Act 1877, this is a powerful tool to remove clouds cast upon a person’s legal title or status.

2. Definition of Declaratory Decree

A declaratory decree is a formal adjudication by a court that defines and declares the existing rights of the parties or their legal status. It does not direct the defendant to do anything; it simply proclaims what the law is regarding the plaintiff's rights.

3. Statutory Provision (Section 42)

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right.

4. Essential Ingredients for a Declaration

1. Title to Legal Character or Right: The plaintiff must possess a specific legal status or a right to property. 2. Denial by the Defendant: The defendant must have denied the right. 3. Suit against proper person. 4. No further relief omitted.

5. Legal Character and Right to Property

Legal Character refers to status like legitimacy or marriage. Right to Property includes ownership, share, or easement.

6. The Proviso: The Bar of Further Relief

If further relief like possession is available but not claimed, the suit will be dismissed.

7. Discretionary Power of the Court

The court may refuse declaration if it is useless, inequitable, or involves misconduct.

8. Legal Effect of Declaration (Section 43)

A declaratory decree binds only parties, their representatives, and trustees.

9. Conclusion

The Declaratory Decree is an equitable remedy to remove uncertainty, but must include all reliefs.