

RULES AND INTERPRETATION OF STATUTES DEEDS AND DOCUMENTS

Question 1

*Explain the rule of 'beneficial construction' while interpreting the statutes quoting an example
(May, 2000)*

Answer

Where the language used in a statute is capable of more than one interpretation, the most firmly established rule for construction is the principle laid down in the Heydon's case. This rule enable, consideration of four matters in constituting an act:

- (1) what was the law before making of the Act,
- (2) what was the mischief or defect for which the law did not provide,
- (3) what is the remedy that the Act has provided, and
- (4) what is the reason for the remedy.

The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. Therefore even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it. If the object of any enactment is public safety, then its working must be interpreted widely to give effect to that object. Thus in the case of Workmen's Compensation Act, 1923 the main object being provision of compensation to workmen, it was held that the Act ought to be so construed, as far as possible, so as to give effect to its primary provisions.

However, it has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning [*CIT v. Sodra Devi* (1957) 32 ITR 615 (SC)].

Question 2

*What is meant by 'disclaimer of onerous property' and how the same is exercised during winding up". Explain the circumstances under which such a disclaimer is not allowed.
(May, 2000)*

Answer

The provisions relating to disclaimer of onerous property will arise during the winding up of the company. The liquidator, may, with the leave of the court disclaim any onerous property within 12 months of the commencement of the winding up. If the existence of any disclaimable property does not come to the knowledge of the liquidator, within one month after the commencement of the winding up, he can disclaim at any time within 12 months after he has become aware of it. The Court has, however, the power to extend the time.

An onerous property may consist of (a) land of any tenure burdened with onerous covenants (b) shares or stocks in companies (c) any other property which is unsaleable or not readily saleable (d) unprofitable contracts.

The liquidator's right to disclaim is lost if within 28 days or such extended period as may be allowed by the court, of receiving a demand from any interest person to make his decision, he does not give notice that he intends to apply to the court for leave to disclaim [Section 535(4)].

Question 3

How far are (i) title, (ii) preamble and (iii) marginal notes in an enactment helpful in interpreting any of the parts of an enactment? **(May, 2001)**

Answer

- (i) **Title:** An enactment would have what is known as 'Short Title' and also a 'Long Title'. The short title merely identifies the enactment and is chosen merely for convenience. The 'Long title' describes the enactment and does not merely identify it.

The Long title is a part of the Act and, therefore, can be referred to for ascertaining the object and scope of the Act.

- (ii) **Preamble:** It expresses the scope and object of the Act more comprehensively than the long title. The preamble may recite the ground and the cause for making a statute and or the evil which is sought to be remedied by it. The preamble like the Long title can legitimately be used for construing it. However, the preamble cannot over ride the provisions of the Act. Only if the wording of the Act gives rise to doubts as to its proper construction (e.g., where the words or a phrase has more than the one meaning and doubts arises as to which of the two meanings is intended in the Act) the preamble can and ought to be referred to to arrive at the proper construction.

- (iii) **Marginal notes:** As held in *CIT Ahmed Bhai Umar Bhai Company HJR 1950, SC (134, 141)* marginal notes applied to the section cannot be used for construing the section.

However, marginal notes appended to the Articles of the Constitution have been held to be part of the constitution and therefore, have been made use of in construing the articles.

Question 4

Explain the principles of grammatical interpretation vis-à-vis logical interpretation especially in the context that the duty of the Court is to administer the law as it stands and not to find out whether the law is just or reasonable. (November, 2001)

Answer

Interpretation may be either grammatical or logical. Grammatical interpretation concerns itself exclusively with the verbal expression of law. It does not go beyond the letter of the law. Logical interpretation on the other hand, seeks more satisfactory evidence of the true intention of the legislature. In all ordinary cases, the grammatical interpretation is the sole form allowable. The court cannot take from or add to modify the letter of the law. However, where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness, the court is under a duty to travel beyond the letter of law so as to determine from the other sources, the true intentions of the legislature. Further a statute is enforceable at law, however, unreasonable it may be. The duty of the court is to administer the law as it stands. It is not within its jurisdictions to see whether the law is just or unreasonable. However, if there are two possible constructions of a clause, one a mere mechanical construction based on the rules of grammar and the other which emerges from the setting in which the clause appears and the circumstances in which it came to be enacted and also the words used therein, the courts may prefer the second construction which though may not be literal may be a better one. (*Arora vs. State of U.P.*)

Question 5

Explain the significance of the definition clause in a Statute. The definition of a word may be either restrictive or extensive. Elaborate this with particular reference to the following definition of 'Book and Paper' as contained in the Companies Act, 1956:

"Book and Paper" include accounts, deeds, vouchers, writings, and documents. (May, 2002)

Answer

When a word is defined as having a particular meaning in the enactment, it is that meaning alone which must be given to it in interpreting the said section of Act unless there be anything repugnant in the context. When a word is defined to "mean" such and such, the definition is *prima facie* restrictive and exhaustive and it restricts the meaning of the word to that given in the definition section. But where the word is defined to "include" such and such the definition is *prima facie* extensive. Again when the word is defined as "means" and includes such and such, the definition would be exhaustive.

'Book and paper'

It is an inclusive definition and as such the definition is *prima facie* extensive i.e. the word defined is not restricted to the meaning assigned to it but has extensive meaning which also

includes the meaning assigned to it in the definition section. It includes all registers, book and other papers maintained by the company and as such the directors who are entitled to inspect the books of accounts and other books and papers can have access to all the registers and other documents maintained by the company.

Question 6

Explain the meaning of the word "Statute" and discuss the need for interpretation of any statute citing an example in the case of holding the annual general meeting of a company where more than one prescribed time is given in the Companies Act, 1956. (May, 2002)

Answer

The word 'Statute' generally means the laws and regulations of every sort without considering from which source they emanate. It has been defined as the written will of the legislature solemnly expressed according to the forms necessary to constitute it the law of the State. Normally, the term denotes an Act enacted by the legislative authority (e.g. Parliament of India).

Even though the Laws are drafted by legal experts, yet they are expressed in language and no language is so perfect as to leave no ambiguities. Since a statute is an edict of the legislature, many a time the intent of the legislature has to be gathered not only from the language but the surrounding circumstances that prevailed when the law was enacted. Further if any provision is open to two interpretations, the Court has to choose that interpretation which represents the time intention of the legislature.

In the case of holding an annual general meeting of a company three different periods have been given as stated.

- (a) The meeting should be held in every calendar year (section 166(i))
- (b) The gap between the two meetings should not be more than 15 months (Section 166(ii))
- (c) The meeting should be held with 6 month from the close of the financial year of the company (section 210(3))

The above said three requirements are cumulative and separate. Failure to comply with any of them constitutes an offence. Therefore to give effect to all the provisions, they are to be interpreted harmoniously.

Question 7

Explain the rules relating to interpretation of the terms 'subject to' and 'notwithstanding' used in the provisions of an Act. State the effect of the term 'notwithstanding anything contained in this Act' used in Section 408 of the Companies Act empowering the Central Government to prevent oppression or mismanagement. (May, 2003)

Answer

Interpretation of the terms 'notwithstanding' and 'subject to'

The word 'notwithstanding anything contained' characterise the non obstante clause. It is generally included to give an overriding effect to the clause over the other. If there is any inconsistency or departure between the non obstante clause and another provision, it is the non obstante clause which will prevail (*K. Parasuramaiah v. Pakari Lakshman*, A/R 1965 AP 220).

But the word 'subject to' conveys the idea of a provision yielding place to another provision or provisions to which it is made 'subject to'. Hence the effect of non obstante clause (i.e. notwithstanding) is the opposite of a provision which states 'subject to'.

Section 408 of the Companies Act, 1956 opens with the words 'notwithstanding anything contained in this Act. This is a non obstante clause which vests overriding powers in the Government to nominate directors to prevent mismanagement or oppression (*Oriental Industrial Investment Corporation Ltd vs. Union of India* (1981) 52 Com cases 487, 493 (Del)). This expression indicates that the appointment of directors under this section is not to be controlled by the maximum number or other proportion, if any, fixed by any provisions of the Act. Further, they cannot be removed by the company at general meeting under section 284 of the Companies Act.

Question 8

Explain the usefulness of 'Heading and Title of a chapter in an Act and marginal notes of a Section' as internal aids in interpreting the provisions of a Statute. (November, 2003)

Answer

Heading and Marginal Notes: A number of sections in an Act applicable to any particular object are grouped together, sometimes in the form of chapters, pre-fixed by Heading and/or Titles. Marginal notes means titles to the section.

In *Uttam Das Chela Sunder Das v. SGPC* AIR 1996 SC 2133, it was observed that 'Marginal notes or captions undoubtedly, part and parcel of legislative exercise and the language employed therein provides the key to the legislative intent. The words employed are not mere surplusage'. Marginal note is legislative and not editorial exercise *C Bhagirath v. Delhi Admn. AIR, 1985 SC 1050*. It gives an indication as to what was exactly the mischief that was intended to be remembered and throws light on the intention of legislature. It is relevant factor to be taken into consideration in construing the ambit of the section. *Shree Sajjan Mills Ltd. (v) CIT* (1985) 156 ITR 585(SC). Heading, title and marginal notes can be referred to if the words are ambiguous. If there is any doubt in the interpretation of words in a section, the headings help to resolve the doubt. But they cannot control the plain words of a statute.

Corporate and Allied Laws

To sum up, heading, title and marginal notes can be used to understand the legislative intent, but cannot limit or restrict the clear word used in a section.

Question 9

Explain the effects of a proviso to a section in a statute.

(May, 2004)

Answer

Proviso: Some times a section in a statute contains a proviso. The normal function of a proviso is to except something out of the enactment to qualify something stated in the enactment which would be within its purview of the proviso were not there. The effect of the proviso is to qualify the preceeding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute embraces only the field which is covered by the main provision. It carries out an exception to the main provision to which it has been enacted as a proviso and to no other (*Ram Narain Sons Ltd v. Asst. Commissioner of Sales Tax AIR 1955 Sc. 765*).

Question 10

Explain briefly the distinction between "Mandatory" and "Directory" provisions in a statute. How the Court deals with them differently?

(November, 2004)

Answer

The distinction between a provision which is mandatory and one which is 'directory' is that when it 'mandatory', it must be strictly complied with, when it is 'directory', it would be sufficient that it substantially complied with. Non-observance of mandatory provisions involves the consequences invalidating. But non-observance of directory provision does not entail the consequence of invalidating, whatever other consequences may occur.

No general rule can be laid down for deciding whether any particular provision on a statue is mandatory or directory. In each case the court has to consider not only the actual word used, but has to decide the legislatures intent. For ascertaining the real intention of the legislature, the court may consider, amongst other things, the following

1. The nature and design of the statute.
2. The consequence, which would flow from construing one-way or the other.
3. The impact of other provisions by resorting to which the necessity of complying with the provision in question can be avoided.

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4. Whether or not the statute provides any penalty if the provision in question is not complied with
5. If the provision in question is not complied with, whether the consequences would be trivial or serious.
6. Most important of all, whether the object of the legislation will be defeated or furthered.

Where a specific penalty is provided in a statute itself for non-compliance with the particular provision of the Act no discretion is left to the court to determine whether such provision is directory or mandatory - it has to be taken as mandatory.

Question 11

- (i) Explain the rule of 'ejusdem generis' with regard to interpretation of statutes. (4 Marks)
- (ii) Sunrise Industries Ltd. has paid Rs.1,00,000 to a political party as its contribution to fight elections. Can it do so under the provisions of the Companies Act, 1956? (4 Marks)

Will it make any difference if the company has advertised its products in the monthly magazine published by the political party?
(May 2005)

Answer

- (i) the term 'ejusdem generis' means 'of the same kind or species'. This rule can be explained as follows:
 - (a) Where any Act enumerates different subjects, general words following specific words are to be construed with reference to the words that precede them. Those general words are to be taken as applying to things of the same kind as the specific words previously mentioned, unless there is something to show that a wider sense was intended. Thus, this rule means that where specific words are used and after them some general words are used the general words would take their colour from the specific words used earlier.

Where there was prohibition on importation of arms, ammunition or gun -powder or any other goods', the words' any other goods' will be construed as referring to goods similar to 'arms, ammunition or gun powder – A.G. Brown (1920)/KB. 773.
 - (b) If the particular words used exhaust the whole genus (category), then the general words are to be construed as covering a larger genus.
 - (c) This rule applies only where the specific words are of the same nature. When they are of different categories than the meaning of the general words following these specific words remains unaffected. The general words then would not take colour from the earlier specific words.

Courts have discretion whether to apply this rule in a particular case or not. For example, the 'just and equitable' clause under Section 433 of the Companies Act is held to be not restricted by the first five situations in which the court may wind up a company.

- (ii) Under section 293A of the Companies Act, 1956, a company may contribute any amount not exceeding 5% of its average net profits during 3 immediately preceding financial years, to any political party or for any political purpose. For the purpose, Board may pass a resolution in this behalf and the amount contributed and the name of the party be disclosed in the Profit and Loss Account of the company. However, a Government company is prohibited to make any such political contribution.

Sunrise Industries Ltd. may contribute the amount of Rs.1 lakh subject to the above restrictions provided it has been in existence for more than three years.

As per section 293A(3)(b) of the Act, the amount of expenditure incurred on advertisement in any publication (being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like) by a political party shall also be deemed to be a contribution to a political party. Publication of advertisement of the products of the company in the monthly magazine of the political party will be covered by the general words 'or the like and will also be deemed to be a contribution to the political party for the purposes of section 293A of the Act.

Question 12

- (i) Explain the rules relating to interpretation of Statutes, when the terms "notwithstanding" and "Subject to" are used in any provision of an Act.
- (ii) State the effect of the words "notwithstanding anything contained in this Act" used in Section 408 of the Companies Act, 1956, which vests certain powers in the Central Government to prevent oppression or mismanagement **(November 2005)**

Answer

- (i) The term "notwithstanding" used along with the words "anything contained" in an Act characterises the non obstante clause. It is used in a provision of an Act when the intention of the legislature is to give an over-riding effect to that provision over other provisions of that Act and/or over provisions of other Acts as may be specified later in such provision. If there is any inconsistency or departure between the non obstante clause and other provisions, then the provisions as contained in the non obstante clause shall prevail. [*K. Parasuramaiah Vs. Pakari Lakshman AIR (1965) AP 220*].

As against the above non obstante clause, the term "subject to" is used in a provision of an Act to convey the intention of the legislature that the particular provision is yielding place to another provision or provisions to which is made "subject to". Thus, it

can be concluded that the effect of non obstante clause (i.e., not withstanding”) is the opposite to a provision or provisions which includes the term “subject to”.

- (ii) Section 408 of the Companies Act, 1956 starts with the words “notwithstanding anything contained in this Act”. This is a non obstante clause which vests over-riding powers in the Central Government to nominate directors to prevent mismanagement or oppression. [*Oriental Industrial Investment Corporation Ltd. Vs. Union of India (1981) 52 Comp. Cas. 487, 493*]. This expression indicates that the appointment of the directors under this section is not to be controlled by other provisions of the Companies Act, 1956 such as maximum number or other proportion, if any fixed by the said Act. Further, the directors so appointed are also not liable to be removed by the company at general meeting under the provisions of section 284 of the Companies Act, 1956.

Question 13

What are the Internal and External aids to interpretation of statutes? Give five examples each of Internal and External aids. **(May 2006)**

Answer

Internal aids to interpretation / construction are those which are found within the text of the statutes. On the other hand external aids of interpretation are those factors which are external to the text of the statute but are of great help.

Examples of internal aids to interpretation:

1. Definitional sections and clauses
2. Illustrations
3. Provisos
4. Long title and short title
5. Preambles
6. Heading and title of chapter
7. Marginal notes
8. Explanations
9. Schedules
10. Reading the statute as a whole

Examples of external aids to interpretation:

1. Historical setting (Background)
2. Consolidating statute & Previous law

3. Usage
4. Earlier & later analogous acts
5. Earlier acts explained by the later act
6. Reference to repealed acts
7. Dictionary definition
8. Use of foreign decisions

Question 14

There is an apparent difference between section 292 of the Companies Act, 1956, which permits the board to delegate its power to make loans and section 372A of the Companies Act, which requires approval of loan by a resolution passed at a board meeting with the consent of all the directors present at the meeting. How would you interpret these two provisions applying the rule of harmonious construction? (November 2006)

Answer

Rule of Harmonious Construction

Where there are in an enactment two or more provisions which cannot be reconciled with each other, they should be so interpreted, wherever possible, as to give effect to all of them. This is what is known as the Rule of Harmonious Construction. Importance should not be attached to a single clause in one section overlooking the provisions of another section. If it is impossible to avoid inconsistency, the provision which was evaluated or amended later in point of time must prevail. The rule of Harmonious Construction is applicable only where there is real and not merely apparent conflict between the provisions of an Act, and one of them has not been made subject to the other.

Every loan falling within the purview of Section 372 A of the Companies Act, 1956 must be sanctioned by a resolution of the Board of Directors passed at its meeting (Section 372 A(2)). Every such resolution must be passed with the consent of all the directors present at the Board meeting, that is no one dissenting or unanimously.

Every loan covered by Section 372 A falls within the purview of Section 292 (i)(e). That section permits delegation by the Board of its power of making loans vide proviso to Section 292 (i), subject to the conditions stipulated in Section 292(3). The condition that the resolution delegating the power must specify the total amount upto which loans may be made by the delegate, the purposes for which the loans may be made and the maximum amount of loans which may be made for each purpose in individual cases.

However, by harmonious interpretation of both the provisions of Section 292 and 372A and in absence of specific prohibition in Section 372A against delegations, the Boards

power under Section 372A may be delegated in accordance with the provisions of Section 292 by passing unanimous resolution of the Board. Any other interpretation will make provisions of Section 292 redundant.

Question 15

- (i) What is the effect of proviso ? Does it qualify the main provisions of an Enactment?
- (ii) Does an explanation added to a section widen the ambit of a section ? Support your answer with an example from the Companies Act, 1956.
- (iii) *What do you understand by the term 'Preamble' and how does it help in interpretation of a statute ?* **(May 2007)**

Answer

- (i) Normally a Proviso is added to a section of an Act to except something or qualify something stated in that particular section to which it is added. A proviso should not be, ordinarily, interpreted as a general rule. A proviso to a particular section carves out an exception to the main provision to which it has been enacted as a Proviso and to no other provision. [*Ram Narain Sons Ltd. Vs. Commissioner of Sales Tax AIR (1955) S.C. 765*]
- (ii) Sometimes an explanation is added to a section of an Act for the purpose of explaining the main provisions contained in that section. If there is some ambiguity in the provisions of the main section, the explanation is inserted to harmonise and clear up and ambiguity in the main section. Something may added to or something may be excluded from the main provision by insertion of an explanation. But the explanation should not be construed to widen the ambit of the section.

For example, Section 294AA of the Companies Act, 1956 gives power to the Central Government to prohibit the appointment of Sole Selling Agents of a company in certain cases. An explanation has been added to that section which states that an "appointment" includes "re-appointment". By inclusion of this explanation, the legislature has only clarified the main provisions of that section and has not widened the ambit of the powers of the Central Government.
- (iii) The "Preamble" expresses the scope, object and purpose of the Act. It may recite the ground and the cause making a statute and the evil, which is sought to be remedied by it. It is a part of the statute and can legitimately be used for construing it. However, it does not over-ride the plain provisions of the Act, but if the wording of the statute gives rise to the doubts as to its proper construction, e.g., where the words or phrase have more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, then the Preamble can and ought to be referred to in order to arrive at the proper construction.

Question 16

“When two or more provisions of the same statute are repugnant to each other, the court will try to construe the provisions in such a manner, if possible, as to give effect to all”. Examine the statement with reference to the provisions of sections 166 and 210 of the Companies Act, 1956 which appear to be seemingly contradictory to each other for compliance.

(November 2007)

Answer

The statement in question relates to an important rule of interpretation that is ‘Rule of Harmonious Construction of a statute. According to this rule when there is doubt about the meaning of the words of a statute, these should be understood in the sense in which they harmonise with the subject of the enactment and the object which the legislature had in view their meaning is found not so much in strictly grammatical or etymological propriety of language, nor even its popular use, as in the subject or in the occasion on which they are used and the object to be attained.

Where there are in an enactment two or more provisions which cannot be reconciled with each other, they should be so interpreted whichever possible as to give effect to all of them. This is what is known as the Rule of Harmonious Construction. Let us take an example: according to Section 166(i) of the Companies Act, 1956 there must be not more than fifteen months between two consecutive annual general meetings of a Company. Section 210 requires the Board of Directors to lay at every annual general meeting of a company a profit and loss account, which must cover the period since the preceding account and must be made up to date not earlier than the date of the meeting by more than six months.

The account is required to be accompanied by a balance sheet as at the date to which the profit and loss account is made up. For some special reasons, however, the Registrar may give an extension for not more than 3 months to hold the meeting.

In such a case, the accounts must relate to a period not earlier than the date of the meeting by more than six months plus the extension period. From this, we can easily make out that except the first annual general meeting which is subject to different rules on annual general meeting is to be held subject to the following rules:

- (i) The meeting must be held in each year
- (ii) It must be held not later than 15 months (18 months if extension is granted) from the date of the previous general meeting.
- (iii) Further, it must be held later than six months (or six months + extension) of the date of balance sheet.

These three requirements are cumulative and separate; failure to comply with any of them constitutes an offence. We would note that even where a company may hold its annual general meeting within the time limit of 15 months (or 18 months, if extension is granted) it may still be guilty of contravention of Section 210. Therefore, to give effect to both the sections, they are to be interpreted harmoniously and in fixing the date of the annual general meeting Section 166 as well as 210 are to be taken into account. The following illustration will make things clear – the financial year of a company ends on 31st March each year, presumption that the annual general meeting to adopt the accounts etc. relating to the year ended on 31st March, 2006 was held on 30th September, 2006 under Section 166 (i) the next general meeting need not be held till 31st December, 2007. But the relevant accounts would be those of the year ended on 31st March, 2007 which would be more than six months before the date of meeting. Therefore, the last date for holding that meeting would be 31st September, 2007.

Question 17

- (i) *Explain the rules relating to interpretation of statutes when the terms “notwithstanding” and “Subject to” are used in any provision of an Act.*
- (ii) *State the effect of the words “notwithstanding anything contained in this Act” used in Section 408 of the Companies Act, 1956 which vests certain powers in the Central Government to prevent oppression or mismanagement. (May 2008)*

Answer

- (i) The term ‘notwithstanding’ used along with the words ‘anything contained’ in an Act characterises the non obstante clause. It is used in a provision of an Act when the intention of the legislature is to give an over-riding effect to that provision over other provisions of that Act and/or over provisions of other Acts as may be specified later in such provision. If there is any inconsistency or departure between the non-obstante clause and other provisions, then the provisions as contained in the non-obstante clause shall prevail. [*K Parsuramaiah Vs. pakari Lakshman AIR (1965) AP 220*].

As against the above non obstante clause, the term ‘subject to’ is used in a provision of an Act to convey the intention of the legislature that the particular provision is yielding place to another provision or provisions to which is made ‘subject to’. Thus, it can be concluded that the effect of non obstante clause (i.e., not withstanding) is the opposite to a provision or provisions which includes the term “subject to”.

- (ii) Section 408 of the Companies Act, 1956 starts with the words “notwithstanding anything contained in this Act”. This is a non obstante clause which vests over-riding powers in the Central Government to nominate directors to prevent mismanagement or oppression. [*Oriental industrial Investment Corporation Ltd. Vs. Union of India (1981) 52 Comp. Cas. 487, 493*]. This expression indicates that the appointment of the directors under this section is not to be controlled by other provisions of the Companies

Act, 1956 such as maximum number or other proportion, if any, fixed by the said Act. Further, the directors so appointed are also not liable to be removed by the company at general meeting under the provisions of Section 284 of the Companies Act, 1956.

Question 18

The analysis of the language of Section 292 and Section 372A of the Companies Act, 1956 apparently discloses a conflict because the former provision permits the Board of Directors to delegate its powers to make loans whereas the latter provision requires approval of loan by resolution passed at a board meeting with the consent of all the directors present at the said meeting. To what extent the rule of "Harmonious construction" can be applied for the purpose of interpreting these two provisions of the companies Act, 1956.

(November 2008)

Answer

HARMONIOUS CONSTRUCTION: Where there are in an enactment two or more provisions which can not be reconciled with each other, they should be so interpreted, wherever possible so as to give effect to all of them. This is what is known as the rule of Harmonious Construction. Importance should not be attached to a single clause in one section overlooking the provision of another section. If it is impossible to avoid inconsistency the provision which was enacted or amended later in point of time must prevail. The Rule of Harmonious Construction is applicable only when there is a real and not merely apparent conflict between the provisions of an Act and one of them has not been subject to the other.

Every loan falling within the preview of Section 372A of the Companies Act, 1956, must be sanctioned by a resolution of the Board of Directors passed at its meeting. Every such resolution must be passed with the consent of all the directors present at the Board meets unanimously so that there is no one dissenting.

Every loan covered by Section 372A falls within the preview of Section 292(1)(e). The Section permits delegation by the Board of Directors of its powers of making loans vide proviso to Section 292(I), subject to the conditions stipulated in Section 292(3). The condition is that the resolution delegating the power must specify the total amount up to which loans may made by the delegate, the purpose for which the loans may be made and the maximum amount of loans which may be made for each purpose in individual cases.

However by harmonious interpretation of both the provisions of Section 292 and Section 372A and in the absence of specific prohibition in Section 372A against delegation, the Board's power under Section 372A may be delegated in accordance with the provisions of Section 292 by passing unanimous resolution of the Board. Any other interpretation will make provisions of Section 292 redundant.

Question 19

The word “May” doesn’t mean “Shall”. Yet the word ‘May’ under certain circumstances means “Shall”. Discuss the statement in the context of interpretation of statutes and the importance of distinction between mandatory and directory provisions. **(May 09)**

Answer

The use of the word ‘may’ in a statutory provision will not by itself show that the provision is directory in nature. In some cases the legislature may use the word ‘may’ as a matter of pure conventional courtesy and yet intend a mandatory force. Therefore, in order to interpret the legal import of the word ‘may’ we have to consider various factors, e.g. the object and the scheme of the Act, the context or background against which the words have been used, the purpose and advantages of the Act sought to be achieved by use of this word and the like.

Coming to the word ‘shall’ the use of the word ‘shall’ would not of itself make a provision of the Act mandatory. It has to be construed with reference to the context in which it is used. Thus, as against the government the word ‘shall’ when used in a statute is to be construed as ‘may’ unless a contrary intention is manifest. Hence, a provision in a criminal statute that the offender shall be punished as prescribed in the statute is not necessary to be taken as against the government to direct prosecution under that provision rather under some other applicable statute.

The distinction between a provision which is mandatory and one which is directory is that when it is mandatory, it must be strictly complied with; when it is ‘directory’, it would be sufficient that it is substantially complied with. Non-observance of mandatory provision involves the consequences of invalidity. But non-observance of directory provisions does not entail the consequence of invalidity, whatever other consequences may occur.

No general rule can be laid down for deciding whether any particular provision in a statute is mandatory or directory. In each case the court has to consider not only the actual words used, but has to decide the legislative intent. For ascertaining the real intention of the legislature, the court may consider, amongst other things, the following:

- (i) The nature and design of the statute.
- (ii) The consequence which would flow from construing from one way or the other.
- (iii) The impact of other provisions by resorting to which the necessity of complying with the provisions in question can be avoided.
- (iv) Whether or not the statute provides any penalty if the provision in question is not complied with.
- (v) If the provision in question is not complied with, whether the consequences would be trivial or serious.

(vi) Most important of all, whether the object of the legislation will be defeated or furthered.

Where a specific penalty is provided in a statute itself for non-compliance with the particular provision of the act, no discretion is left to the court to determine whether such provision is directory or mandatory – it has to be taken as mandatory.

Question 20

Explain the principles of “Rule of Beneficial Interpretation”.

Answer

While framing the language of a statute, generally, the care is taken to make it in such a manner that there does not remain any confusion in its interpretation. But sometimes, the language of the statute may be capable of more than one interpretation. In such cases the most firmly established rule of construction is the principle laid down in the Heydon's case. This rule is also called the “mischief rule”. This rule enables construction of four matters in construing an Act as stated below:

- (i) What was the law before the making of the Act.
- (ii) What was the mischief or defect for which the law did not provide;
- (iii) What is the remedy that the Act has provided; and
- (iv) What is the reason for the remedy.

The rule then directs that the courts must adopt that construction which ‘shall suppress the mischief and advance the remedy’. Therefore, even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it. If however, the circumstances show that the phraseology in the Act is used in a larger sense than its ordinary meaning then that sense may be given to it. If the object of a statute is public safety then its working must be interpreted widely to give effect to that object. Thus the legislature having intended, while passing the Workmen's Compensation Act, the main object being provision of compensation to workman, it was decided that the act ought to be so construed, as far as possible, so as to give effect to its primary provisions.

It has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are reasonably capable of more than one meaning.

This rule does not normally apply to a fiscal statute like Income tax Act,. While construing a fiscal statute the words of the statute are given three plain meanings. If a tax payer is within the plain meaning of the terms of an exemption, he cannot be denied the benefit by resorting to any supposed intention of the exempting authority. This was held by the Supreme Court in the case of *Hemraj Gordhandas vs. H.H. Dave*.

Question 21

- (i) *Many a time a proviso is added to a Section of the enactment. Explain the function of such a proviso while carrying out the interpretation?*

Discuss the rules of interpretation of deeds and documents

(Nov 09)

Answer

- (i) The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as it stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the provision to which it has been enacted as a proviso and not to the other. (Ram Narain Sons Ltd. Vs. Assistant Commissioner of Sales Tax., A.I.R., 1995 Sc 765)

An explanation is at times appended to a Section to explain the meaning of the text of the section. An explanation may be added to include something within the Section or to exclude something from it. An explanation should normally be so read as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.

- (ii) The rules regarding interpretation of deeds and documents are as follows:

First and the foremost point that has to be borne in mind is that one has to find out what a reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document.

It is inexpedient to construe the terms of one deed by reference to the terms of another. Further, it is well established that the same word cannot have two different meanings in the same document, unless the context compels the adoption of such a rule.

The Golden Rule is to ascertain the intention of the parties to the instrument after considering all the words in the document/deed concerned in their ordinary natural sense. For this purpose, the relevant portions of the document have to be considered as a whole. The circumstances in which the particular words have been used have also to be taken into account. Very often, the status and training of the parties using the words have also to be taken into account as the same words may be used by a ordinary person in one sense and by a trained person or a specialist in quite another sense and a special sense. It has also to

be considered that very many words are used in more than one sense. It may happen that the same word understood in one sense will give effect to all the clauses in the deed while taken in another sense might render one or more of the clauses ineffective. In such a case the word should be understood in the former and not in the latter sense.

It may also happen that there is conflict between two or more clauses of the same document. An effort must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect to. If, however, it is not possible to give effect to all of them, then it is the earlier clause that will over ride the latter one.

Similarly, if one part of the document is in conflict with another part, an attempt should always be made to read the two parts of the documents harmoniously, if possible. If that is not possible, then the earlier part will prevail over the latter one which, therefore, be disregarded.

Question 22

Briefly discuss the Rule of 'ejusdem generis' as applied in the interpretation of statute. (6 Marks)

Answer

When particular words pertaining to a class or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified. This rule which is known as Rule of ejusdem generis reflects an attempt 'to reconcile incompatibility between the specie and general words in view of the other rules of interpretation that all words in the statute are given effect if possible, that a statute is to be construed as a whole and that no words are presumed to be superfluous. For instance, where an Act permits keeping of dogs, cats, cows, buffaloes and other animals the expression 'Other animals' would not include animals like lions and tigers, but would mean, only domesticated animals like horses etc.

The rule applied when (i) the statute contains an enumeration of specific words: (ii) the subjects of enumeration constitute a class or category: (iii) that class or category is not exhausted by the enumeration; (iv) the general terms follow the enumeration; and (v) there is no indication of a different legislative intent. If the subjects of enumeration belong to a broad based genus as also to narrower genus, there is no principle that the general words should be confined to the narrower genus.

The rule is applied extensively in interpreting the various statutes. The rule of ejusdem generis has to be applied with care and caution. It is not an inviolable rule of law, but only permissible reference in the absence of an indication, to the contrary, and where the context and the object and mischief of the enactment do not require restricted meaning to be attached to word of general import, it becomes the duty of the courts to give words their plain and ordinary meaning. The rule of ejusdem generis has no inverse application. General words preceding the enumeration of specific instances are not governed by this rule and their import cannot be limited by such words.

Question 23

- (i) Explain the rules relating to interpretation of the terms 'Subject to' and 'Notwithstanding' as used in the different provisions of the Acts. What is the effect of the term 'Notwithstanding anything contained in this Act' used in Section 408 of the Companies Act, 1956 empowering the Central Government to prevent oppression and mismanagement ?
- (ii) In what way are the following terms considered as 'internal aid' in the interpretation of statutes?
- (A) Illustrations
- (B) Explanation. (May, 2010)

Answer

The word 'notwithstanding anything contained' characterize the non obstante clause. It is generally included to give an overriding effect to the clause over the other. If there is any inconsistency or departure between the non obstante clause and another provision, it is the non obstante clause which will prevail (*K. Parasuramaiah Vs. Pakari Lakshman, A/R 1965 AP 220*). But the word 'subject to' conveys the idea of a provision yielding place to another provision or provisions to which it is made 'subject to'. Hence the effect of non obstante clause (i.e notwithstanding) is the opposite of a provision which states 'subject to'.

Section 408 of the Companies Act, 1956 opens with the words 'notwithstanding anything contained in this Act'. This is a non obstante clause which vests overriding powers in the Government to nominate directors to prevent mismanagement or oppression (*Oriental Industrial Investment Corporation Ltd. vs. Union of India (1981) 52 Com Cases 487, 493(Del)*). This expression indicates that the appointment of directors under this section is not to be controlled by the maximum number or other proportion, if any, fixed by any provisions of the Act. Further, they cannot be removed by the company at general meeting under section 284 of the Companies Act, 1956.

- (ii) (A) **Illustrations:** Illustrations form a part of the statute and considered to be of relevance and value in construing the text of the section. However, illustration can not have the effect of modifying the language of the section and can neither curtail nor expand the ambit of the section.
- (B) **Explanation:** An Explanation may be added to include something or to exclude something from it. Explanation should normally be read as to harmonise with and clear up any ambiguity in the main section. It should be construed as to widen the ambit of the section

Question 24

Gaurav Textile Company Limited has entered into a contract with a Company. You are invited to read and interpret the document of contract. What rules of interpretation of deeds and documents would you apply while doing so? (New, May, 2010)

Answer

The rules regarding interpretation of deeds and documents are as follows:

First and the foremost point that has to be borne in mind is that one has to find out what reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document.

It is inexpedient to construe the terms of one deed by reference to the terms of another. Further, it is well established that the same word cannot have two different meanings in the same documents, unless the context compels the adoption of such a rule.

The Golden Rule is to ascertain the intention of the parties of the instrument after considering all the words in the documents/deed concerned in their ordinary, natural sense. For this purpose, the relevant portions of the document have to be considered as a whole. The circumstances in which the particular words have been used have also to be taken into account. Very often, the status and training of the parties using the words have also to be taken into account as the same words maybe used by a ordinary person in one sense and by a trained person or a specialist in quite another sense and a special sense. It has also to be considered that very many words are used in more than one sense. It may happen that the same word understood in one sense will give effect to all the clauses in the deed while taken in another sense might render one or more of the clauses ineffective. In such a case the word should be understood in the former and not in the latter sense.

It may also happen that there is a conflict between two or more clauses of the same documents. An effect must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect. If, however, it is not possible to give effect of all of them, then it is the earlier clause that will over ride the latter one.