

CA Final ~ Corporate & Allied Laws ~ Paper 4 ~ Interpretation

To **interpret** is to obtain, gather and uncover the meaning, usually, of texts - in order to understand their purpose, intent and effect, where ambiguous. It is not a mechanical task or a mere reading of a mathematical formula

Interpretation is an exercise in ascertainment of meaning & everything logically relevant is admissible.
[K P Varghese v. ITO 1981 7 Tm 13 SC]

- Exposition - uncovering and/or explaining - showing - the meaning.
- Ambiguous - unclear or having more than one meaning.
- Construction - follows interpretation
 - drawing conclusions beyond the direct expression of the text
 - on the basis of the interpreted elements of the text
 - conclusions which though not within the letter, are within the spirit of the text.

The need to interpret arises because of ambiguities in the texts, since

- language cannot be mathematically precise
- it is not possible to foresee, or specifically provide for,
 - each of the many possible sets of facts or situations
- the attendant circumstances prompting the framing - may be relevant & not apparent
- the mischief intended to be remedied may thus remain.

Hence, the rule of looking at the language as it is, and at nothing else

- is necessarily to be broken when the text is ambiguous
 - to supplement the "written word" and give the text "force and life." [cf Lord Denning]

I. Interpretation of Statutes

A. Internal or Primary Rules

The key to understanding the text lies primarily within the statute.

Rule 1 Reading as a Whole

The text must be read as a whole (i.e., completely, not in bits or parts)

- before any conclusion about it and its contents can be made

It must also be given effect to in its totality (all its parts)

- all parts are inter-dependant and integral, and equally important
- there is usually no scope, or call to, pick and choose between parts - See Rules 5 & 7a

If inconsistency cannot be resolved, provision enacted or amended later to prevail.

Rule 2 Plain Reading

The Act is the will of the legislature (the law-making body), hence

- the text itself shows its intention
 - and must be read as it appears - i.e. plainly.
- usually, the letter of the law is the exclusive and conclusive evidence of its spirit
 - hence, nothing is to be read into, or out of, or modified in the text.

Rule 3 Literal Construction

The text has to be read in its ordinary, natural, grammatical sense and meaning

- in order that it has the widest possible application
 - technical words prima facie carry their technical meaning, else, the natural.
- if both a narrow and a wider interpretation are possible
 - and the narrower fails in the manifest purpose, then adopt the wider.

No scope for interpretation where language is plain and admits one meaning only

- where the words are plain - no exposition is required.¹
- and that meaning is to be enforced,
 - even if it is absurd, mischievous, harsh or unjust.²
 - [A P Herbert: The best remedy for a bad law is to enforce it to its fullest]

Tax statutes have to be construed literally and strictly.³

Nor can anything be supplied to fill any omission or gap, however obvious.

1. S.S. Railway Co v. Workers' Union AIR 1969 SC 518
CIT v. Champarun Sugar Works Ltd 1997 225 ITR 863 All
2. CIT v. T V Sundaram Iyengar & Sons P Ltd 1975 101 ITR 764 SC
Murarilal Mahabir Prasad v. B R Vaid 1976 37 STC 77
CWT v. Hasmatunnisa Begum 1989 42 Tm 133 SC
3. Cape Brandy Syndicate v. CIT [1921 citation]
Ajmera Housing Corpn v. CIT 2010 193 Tm 193 SC

The **reason these restrictive rules** first apply is:

- The legislature is representative of the supreme will of the people, and is supposed to
 - have fully informed itself of the subject-matter
 - be aware of all aspects and effects touching upon the subject
 - have clearly and finally expressed itself on the subject - by means of the text
 - after due deliberation on all attendant matters.

However, **ambiguities do crop-up**; and the rules to apply then are:

Rule 4 Reasonable/Rational Construction

The text has to be given its ordinary, fair and sensible meaning

- reading must be neither rigid nor lax, neither narrow nor wide.⁴

If a plain reading does not lead to a fair or reasonable result (is absurd or is defeasive of the object)

- the ordinary meaning may be given up, and
 - that construction adopted, which, without conjecture or surmise (guessing)
 - advances the remedy and suppresses the mischief
 - as per the policy, intention and object of the Act – See Rule 6.
- court may modify the language, fine tune it or even do some violence to it.⁵
- and then, a result equity rather than injustice is preferred, though equity & tax may be strangers.⁶

4. Dr A L Mudaliar v. LIC of India 1963) 33 Comp Cas 420 (SC)
Waman Lal Chotanlal Parekh v. Scindia Steam Navigation Co Ltd 1944) 14 Comp Cas 69 (Bom)
5. CIT v. Sodra Devi 1957 32 ITR 615 SC
K P Varghese v. ITO 1981 7 Tm 13 SC
CWT v. Hasmatunnisa Begum 1989 42 Tm 133 SC
Narang Overseas (P) Ltd v. ITAT 2007 165 Tm 558 Bom
6. T N Vasavan v. CIT 1991 99 CTR Ker 103
Grey v. Pearson 1857 6 HL Cas 61

Rule 5 Harmonious Construction

In case of doubt, adopt the sense that harmonises the subject and object of the law.

All provisions of the text ought to be given effect to, and

- apparently conflicting (or related but un-workable) provisions
 - must be reconciled & brought into a state so as to be workable together
[example: ss 166 & 210, Companies Act; module pg 7]

Rule 6 Beneficial or Purposive Construction/Heydon's Rule

In case there is ambiguity, despite application of the above rules, then

- purposive construction may be applied
 - i.e. enquiry may be made as to the purpose of the enactment
 - the benefit or purpose it was intended to achieve.⁷

7. Heydon's Case (1584) 3 Co Rep 7a, 76 ER 637
CIT v. Sisodia Devi AIR 1957 SC 823
Dr Baliram Waman Hiray v. Mr Justice Lentin 1989 176 ITR 1 Sc

The enquiry, in a purposive construction, requires finding out

- how did the law stand before the enactment, what was the defect therein
 - what was (its) mischief due to such defect (non-provision)
 - what remedy the enactment now seeks to provide against that mischief, and
 - what reasons prompted the provision of those remedies.

Thereupon, such construction should be applied

- as would suppress the mischief and advance the remedy.

Thus, if the plain, ordinary or literal meaning of the language used in the text

- does not cover fully or in any part, the whole object of the Act, then
 - the words, that so fall short, can be given an extended meaning, if possible.

Rule 7 Exceptional Construction – Exceptions to Rule 3

Rule 7a Common Sense

Though all parts of a statute must be given effect to,

- for it is usually better for a thing to be given effect to, than made void

Yet, if common sense dictates that anything is surplus/waste, as

- being incapable of any meaning having put to it, or
- defeasive of the real object of, or the larger part of, the Act
 - it should be disregarded

Rule 7b Ungrammatical Usage

A corollary to literal construction is that it must be grammatical.

But sometimes, the ordinary rules of grammar

- as applied to disjunctive or conjunctive words – “or”, “and”
 - used between clauses or within a clause
 - may lead to absurdities and must be disregarded.

Rule 7c Mandatory & Directory words – may have been used interchangeably

In such cases, the guide is an enquiry of **substance over form**.

A power coupled (joined) with a duty is usually mandatory, depending on

- the nature of the thing empowered to be done
- the purpose for which it is to be done
- the person/s for whose benefit it is to be done, or the power exercised.⁸

8. P C Puri v. CIT 1985 151 ITR 584 Delhi
Ambica Quarry Works v. State of Gujarat AIR 1987 SC 1073

- “May” – usually directory
- construed as mandatory, if coupled with duty (courteous usage).
- “Shall” – usually mandatory, but not always so w.r.t. Government.
- Penalty – if provided for any act/prohibition – the provision is mandatory.

Rule 8 Eiusdem Generis – of the same kind or species

This is a rule for interpretation of a number of words, used together.

Where general words follow specific, they take colour (meaning) accordingly,

- unless there is something to show that a wider sense is intended. A.G. v. Brown (1920) 1 KB 773

If the particular words together cover a whole category

- then the general words must mean to be covering a larger genus.

The specific words themselves must all be of the same nature

- for the rule to be workable and applicable.

The discretion to apply this rule rests with the Court.

B. External or Secondary Rules

Society does not function in a void, or legislation in a cocoon.

Everything done has a background, a reason or cause - and an intended effect.

These aspects, which prompted a law into being, may not be apparent within it.

Hence, when the internal rules (and aids) remain inconclusive, these may be used.

Rule 9 Reference to Usage

How a text has been understood and given effect, over time

- in the ordinary course, by those to whom it applies
- may be considered a good guide to its interpretation.

Law is intended to provide for amicable regulation of human activities

- how people (by their usage & custom) have understood & used it – is the best guide.

Where long usage has been applied to an ambiguous provision

- it should be changed only for very cogent reasons and upon much reservation.

Rule 10 Contemporaneous Exposition

The best and strongest understanding of a statute is given

- by reading it in its contemporaneous (historical) setting
 - as it would have been read, when enacted
 - i.e. in the context of the time, & situations then prevailing. [example: Ringtones – copyright]

External circumstances then prevailing, or historical facts leading thereto

- necessary to comprehend the subject, scope and object of the enactment
 - general history; more so, parliamentary history and ancient statutes
 - also, contemporary and other authentic works and writings
 - commission reports, findings and recommendations; research
 - may be taken into consideration.

Rule 11 Associated Words

Where words or expressions are coupled together,

- if they are capable of analogous meaning
 - they are to be understood in their cognate sense
- the meaning of the more general words is restricted to that as the less general
- Noscitur a Sociis - known by its associates – by the company it keeps.
 - pvt dispensary not a commercial establishment [Dr D M Surti v. state of Gujrat AIR 1969 SC 63]
- but if they are such that one generally excludes the other
 - the more general term is used in a meaning excluding the specific.

Where sweeping general words are used

- other words of like import in the same enactment, or
- the same words used elsewhere in the same enactment
 - may be examined and interpreted to construe those at hand
 - what limitation, qualification or import is placed thereon
 - at times, this may also be used to contrast and distinguish the usage.

However, generally, a word has the same meaning wherever used in the text.

Rule 12 Internal Aids

Short Title - is only to identify the enactment – cannot be used to interpret.

Long Title - is part of the Act - may be used to find out the object, scope and purpose of the Act.

Preamble - is part of the Act – discloses its primary intention

- expresses more fully the object, scope and purpose of the Act
- may state the reasons for the enactment and the mischief to be suppressed
- may be used as an aid to resolve ambiguity
 - but cannot over-ride the plain provisions of the Act.

Chapter Headings - are part of the Act - may be used to aid construction of the sections thereunder.

- some opine that these are akin to “preambles”
- others that they can only be used in ambiguous cases
 - and cannot restrict the plain terms of the body of the text.

Marginal Notes/Section Headings - not part of the Act - usual view: not valid aids to construction.

- but relied on as indicating the drift of the section; a prima facie clue as to its meaning & purpose.⁹
- marginal notes to Articles of the Constitution - held to be part thereof and taken as legitimate aids.

Illustrations - are part of the Act – but not of the section - help explain the provisions by example

- hence relevant & valuable in understanding & construction - but cannot modify the language or ambit.

Schedule - is part of the Act - must be read together with it for all purposes of construction.

- language of Schedule cannot control that of the Act - Act prevails in case of inconsistency.

Proviso - carves out or makes an exception or qualification

- to the text to which it is appended – and to no other - thus limiting its general terms in some way.
- does not usually state a general rule – is to be read narrowly.¹⁰

Explanation - explains the meaning of the text, or part of it, to which it is appended

- may include within or exclude something from the main text.
- to be so read as to harmonise with & clear-up the main text - but not to widen its ambit.

9. CIT v. Ahmedbhai Umarbhai & Co AIR 1950 SC 134
K P Varghese v. ITO 1981 7 Tm 13 SC
10. Ram Narain Sons Ltd v. Asst. Commr. of Sales Tax AIR 1955 SC 765

Rule 13 Definitions

- statutes use and often define various words, phrases and expressions as key terms
 - necessary as the same word, in different contexts, may have different meaning, connotation or sound
 - to understand the provisions, thorough knowledge of these key terms & their meanings is a must
 - if the term is defined in the Act, then we are to be guided by that definition
 - if not we may refer to the General Clauses Act, 1897, cognate Acts, Case law or dictionaries.
 - may be placed together in one section and/or as clauses of different sections
 - if together in one section – apply throughout the Act – else only that section, usually.
 - aim to
 - provide a key to the proper (i.e. intended) interpretation, and
 - achieve brevity by avoiding repetition.
 - must be given the particular meaning as the Act provides
 - except in case of repugnancy with the context
 - no independent meaning can be extracted, ignoring the statute.
 - may extend or restrict the ordinary meaning.
 - in case of inclusive definitions usually the ordinary meaning will prevail, and
 - its scope cannot be limited to those categories only which occur therein,
 - but will extend to so many other things within the parent expression.¹¹
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- | | |
|--|---|
| <p>"means"</p> <p>"includes"</p> <p>"means and includes"</p> <p>"deemed"</p> | <ul style="list-style-type: none"> - prima facie restrictive and exhaustive. - extends the meaning to include those words. - exhaustive. - a fiction is being created, over-riding ordinary meaning <ul style="list-style-type: none"> - usually to be read narrowly. |
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Catch phrase used, with a populist intent, in the explanatory memorandum or speech introducing the Bill etc to describe a provision cannot determine or camouflage the true object of the legislation.¹²

11. Aditya Cement Staff Club v. UOI 2003 131 Txm 609 Raj
12. Shashikant Laxman Kale v. UOI 1990 52 Txm 352 SC

Rule 14 External Aids

Consolidating Statute

- merely puts in one place law which was scattered
 - not intended to alter or amend the existing law.
- ambiguity in the statute may be resolved by reference to old law
 - rejecting literal construction of the present law
 - but this is not usually allowed in case of an amending or a consolidating and amending statute.

Acts is Pari Materia

- where Acts cover similar or analogous subject-matters, then
 - irrespective of their time of enactment, being in force, or reference to the other Act/s
 - the provisions of one may be used to expound the other
 - or to construe them as constituting composite systems
 - and as explanatory of each other.
 - or, if one incorporates, by reference, text of the other – for that part of the text.
 - in case of discrepancy, usually the latter prevails - if they cannot be harmonised.

Repealed Acts

- if referred, may still be relevant to know the history and purpose
- so also, then, its text.

Bills & Documents therewith

- the Bill which became the Act, as also
 - Statement of Objects & Reasons, Notes on Clauses, Speech of its mover
 - reports of the parliamentary committee, if any
 - debates in parliament and any amendments proposed
 - may also be relevant
 - especially for purposive construction / contemporaneous exposition.

Undefined Words

- general words in normal dictionary sense, as admitting to the context
- technical terms in technical sense
- construction in judicial decisions, w.r.t. statutes in *pari materia*.

Judicial Decisions

Domestic Decisions

- on the Act under consideration
- on Acts in *pari materia*
- on similar/same facts and points
 - always of valuable guidance.

Foreign Decisions

- from similar jurisprudential systems
 - on Acts in *pari materia*
 - on similar facts and points
 - may be considered if no Domestic Decision available.

B. Interpretation of Documents

Document

- any matter
 - expressed, described, or recorded upon
 - any substance by any means (and usually transmittable)
 - giving proof, evidence or information as to its subject.

Instrument/Deed

- document making
 - disposition of property
 - creation, confirmation or cessation of rights/liabilities
 - recording any fact
 - in formal/legal manner
 - intending to achieve such effect

Rules for Reading of Documents

Reading

- as a whole.
- in the ordinary, natural sense
 - as a reasonable man of ordinary prudence would
 - to understand its scope, intendments and the circumstances in which it was made.
 - but the status and training of the person making it, or of the parties to it
 - may be relevant.
- on its own, without reference to any other
 - unless contemporaneous, or part of a set or series.
- such that the same word has the same sense throughout
 - unless the context compels otherwise
 - that sense to be adopted which retains effectiveness of all parts.
- all parts harmoniously
 - retaining effect of all
 - if not possible, earlier portion will prevail.

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