

INTERPRETATION OF STATUTES, DEEDS AND DOCUMENTS

ABOUT THE AUTHOR

Myself is Adithya Kiran. I cleared CA Final in November 2011 Attempt. I am a Certified Credit Officer from Indian Institute of Banking & Finance. I have cleared C.F.A (U.S.A) and I am one of the top 10% performers in the world rankings. I have cleared one group in CS Professional Programme with the elective of IPR Law & Practice.

Out of my academic achievements, notable ones are IPCC and Final Law papers. In both the papers though I have attempted 68 marks, I got 62 marks.

I am into teaching since 2010. My core subjects are:

- a. Law and FM in CA Inter (erstwhile CA-IPCC).
- b. Corporate and other Laws and Strategic Financial Management in CA Final.
- c. All Legal subjects in CS Executive & Professional Programme.

I am doing my practice since September 2012

My suggestions to the students are:

1. Never Read any law subject without having Bare Act in Hand.
2. In Financial Management think logically and not just read the subject by standard step-by-step procedure. Have your own way of solving the problem.

If you like this notes, you can contact me in the below mentioned mail-id and mobile number for:

- a. Complete notes,
- b. Revision notes and
- c. Classes

1. Define the terms “Statute” and “Law”.

A. Statute

- The term ‘Statute’ has been defined as the written will of the legislature.
- The will has to be expressed solemnly (i.e., formally and sincerely) and according to the forms necessary to constitute it as the law of the state/country.
- “Statute” is a written law. Customary law is oral or unwritten.

B. Law

- In India, the constitution does not use the term “Statute”, rather it uses the term “Law” at many places.
- The term “Law” is defined as including any ordinance, order, bye-law, rule, regulation, notification etc.,

2. Define the term “Document”

- The term “Document” means paper or other material thing (e.g., vessel, computer system, tree leaf) which is used to give some permanent form to mental or intellectual elements.
- Document records the facts, gives information and serves as the proof or evidence of something.
- Section 3 of the Indian Evidence Act, 1872 states that ‘document’ **MEANS** any matter expressed or described upon any substance by means of letters, figures or marks, intended to be used for the purpose of recording that matter.
- Section 3(18) of the General Clauses Act, 1897 states that the term ‘document’ shall **INCLUDE** any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording this matter.

Elements of Documents

1. Matter - Refers to mental or intellectual elements.
2. Means - Refers to expression of such intellectual elements by letters, figures, marks, symbols etc.
3. Recording - Refers to giving some permanent form to such intellectual elements by using some mechanical device.
4. Substance - Refers to a thing such as paper, computer system, and metal plate or stone, on which matters are recorded.

3. Define the term “Instrument”

- Instrument means a formal legal document.
- It is drawn up and executed in technical form.
- Instrument:
 - a. Creates a right;
 - b. Confirms a right; or
 - c. Records a fact.
- As a legal document, instrument has the effect of creating a liability or giving evidence of liability.
- Instrument also refers to writing that serves as an evidence of an individual's right to collect money. E.g., Cheque.
- Deeds, Wills, Bonds are all Instruments.
- Section 2(14) of the Indian Stamp Act, 1899 states that ‘instrument’ includes every document by which any right or liability is created, transferred, extended, extinguished.

4. Define the term “Deed”

1. A deed is a writing :
 - a. On paper, vellum (kind of wall) or parchment (skin of animal);
 - b. Sealed; and
 - c. Delivered,

Whereby an:

- i. Interest, right or property passes; or
 - ii. Obligation binding on some person is created.
2. All Deeds are Instruments but all Instruments may not be Deeds.
 3. In India there is no distinction seems between Instruments and Deeds.

5. Define the term “Interpretation “ and Explain in brief what is its importance

- In the words of SALMOND, interpretation is meant the process by which the Courts seek to ascertain the meaning of the legislature through the medium of the authoritative forms in which it is expressed.
- Interpretation is the process used to ascertain:
 - a. The real meaning of an Act and the intention of the legislature in framing such Act;
 - b. The real meaning of a Document and the intention of the parties executing the document.

Importance of Interpretation

1. In relation to statute law, interpretation is of importance because of the inherent nature of legislation as a source of law.
2. The process of statute making and the process of interpretation of statutes take place separately from each other, and two different agencies are concerned. An interpretation of Act serves as the bridge of understanding between the two.
3. In statutes, greater accuracy is required. The process of interpretation is more legalistic and makes more intensive use of the legal technique in statutory interpretation, as contrasted with the application of common law rules.

6. Classification of Interpretation - Jolowicz

- Interpretation is usually said to be either 'Legal' or 'Doctrinal'.

A. Legal Interpretation - Interpretation is said to be legal when there is an actual rule of law which binds the Judge to place a certain interpretation of the statute.

- a. When such actual rule of law is derived from the legislator itself, then the interpretation is said to be 'AUTHENTIC INTERPRETATION'.
- b. When such actual rule of law is derived from other sources such as custom or case law, then the interpretation is said to be 'USUAL INTERPRETATION'

B. Doctrinal Interpretation - Interpretation is said to be Doctrinal when its purpose is to discover the real and true meaning of the statute.

- a. Interpretation is GRAMMATICAL when the court applies only the ordinary rules of speech for finding out the meaning of the words used in the statute.
- b. Interpretation is LOGICAL when the court goes beyond the words used in the Act and tries to discover the intention of the statute in some other way.

7. Grammatical Interpretation and Exceptions to it.

- To ascertain the real meaning of the words used in the statute, if the court applies only the ordinary rules of speech, then it is called 'Grammatical Interpretation'.
- 'Grammatical interpretation' concerns itself exclusively with the verbal expression of the law: it does not go beyond the letter of the law.
- In all ordinary cases, 'grammatical interpretation' is the only rule of Interpretation that is allowable. The Court cannot take from or add to modify the letter of the law.

Exceptions: Grammatical rule is subject to following exceptions:

1. When the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness, the court may deviate from 'Grammatical Interpretation'.

2. When the language used in statute is very unreasonable and court feels that the legislature might not have an intention which is appearing from the language used in the statute, and then the court must resolve the deadlock by logically inferring the intention of the Legislature.

8. Classification of Interpretation - Fitzerland

- Literal Interpretation confines to the verbal expression of the law. It does not look beyond the words used in 'Law'.
- Functional Interpretation goes away from the words used in law and seeks elsewhere for more satisfactory evidence of the true intention of the legislature.
- Literal Interpretation endeavors to give effect to the Letter of Law, while Functional Interpretation endeavors to give effect to the Spirit of Law.
- In all ordinary cases, the Courts must be satisfied to accept the letter of the law (i.e., the words used in law) as the exclusive and conclusive evidence of the spirit of the law (i.e., the intention of the Law maker).

9. Difference between Interpretation and Construction

- Often the terms "Interpretation" and "Construction" are used interchangeably to denote a process adopted by the courts to ascertain the meaning of the legislative form in which it is expressed.
- Interpretation is the art of finding out the true sense of any form of words. Here, true sense, is the sense which the law maker intends to convey.
- Construction refers to drawing conclusions regarding the subjects that lie beyond the direct expression of the text. Such conclusions are drawn from elements known and given in the text. Such conclusions drawn by "Construction" are in spirit though not within the letter of the law.
- Where the court adheres to the plain meaning of the language used by the legislature, it is called "Interpretation". Where the court has to decide whether the wording was meant to cover the situation before the court, it is called "Construction".
- Interpretation of a legal provision is always independent of the facts of any given case; the application of a statutory provision would always depend on the exact facts of a given case.
- The two terms – 'interpretation' and 'construction' – overlap each other and it is rather difficult to state where 'interpretation' leaves off and 'construction' begins.

10.Necessity of interpretation.

- The duty of judiciary is to act upon the true intention of the Legislature. Following are the difficulties encountered in finding out the true intention of the legislature:
 1. **Ineffectiveness of Language**: - Laws are expressed in language and no language is so perfect as to leave no ambiguities. English language is not an instrument of mathematical precision. (Verbal Limitation)
 2. **Limitation of Human Powers**: - It is not within human powers to predict all the facts that may arise in the future. (Human Limitation)
 3. **Beyond the Words**: Intention of the Legislature has to be gathered not only from the language used in the Statute, but also by considering the:
 - a. Social conditions prevalent at the time when the particular law was framed;
 - b. Mischief (trouble) which the Law intends to resolve.

The judiciary must supplement the written words used in Law with the above considerations, so as to give 'force and life' to the intention of the Legislature.

11.Rule of Literal Construction

- According to this rule, the court should give a literal meaning to the language used by the legislature.
- Where the language is plain and admits of only one meaning there is no room for interpretation and only that meaning is to be enforced even though it is absurd (i.e., completely unreasonable).

The rule is based on the principle that "a simple proposition needs no expostor"

- If the narrower interpretation fails to achieve the manifest purpose of the legislation, wider interpretation should be adopted.
- This rule can be read and understood under the following heads:
 - a. Statutes must be construed according to their plain, literal and **Grammatical Meaning**. If there is inconsistency between purpose of the statute and the grammatical meaning of the words, then the grammatical sense must be modified to avoid inconvenience.
 - b. The words must be attributed with the natural, ordinary or popular **meaning** which they have **in relation to the subject-matter** with reference to which and the context in which they have been used in the statute.
 - c. In selecting the ordinary meaning of a word **exact meaning should be preferred to loose meaning** unless the context directs otherwise. In this regard, secondary meaning should not be confused with loose meaning.
 - d. **Technical words** must be construed in the technical sense only.

- e. In dealing with matters regarding the general public, statutes are presumed to use words in their popular sense.
- f. Omissions are not likely to be inferred. When a matter which should have been, but has not been, provided for in a statute cannot be supplied by courts as to do so would amount to legislation and would not be construction.
- g. A construction that will render ineffective any part of the language of a statute will normally be rejected.

Exceptions (Deviation from literal construction)

- 1) Literal meaning should not be adopted:
 - a. When the language is ambiguous;
 - b. When literal sense gives to any anomaly;
 - c. When literal sense results in something which may defeat the purpose of the Act
- 2) When there is conflict between literal meaning and the meaning which emerges from the setting in which a clause appears and the circumstances in which an Act come into effect, the courts should adopt the second meaning i.e., meaning emerging from the setting.

12. RULE OF REASONABLE CONSTRUCTION

- Generally the words or phrases of statute are to be given their ordinary/plain meaning (this is rule of literal construction). However, if the court finds that giving a plain meaning will not be fair or would defeat the object of the statute, then the court shall depart from the dictionary meaning and shall adopt the construction which will advance the remedy (i.e., improve the solution) or suppress the mischief (i.e., prevent the offence). This rule is called rule of reasonable construction.
- A reasonable construction will be adopted in accordance with the policy and object of the statute.
- According to this rule, the word used in the statute shall be construed in such a manner that they will result in sensible meaning.
- If two meanings are possible for a word:
 - a. One meaning which makes the statute vague;
 - b. Another meaning which leads to certainty and meaningful interpretation,

Then the second meaning shall be adopted.

- To determine whether a transaction entered/proposed by the company is intra-vires or ultra-vires the objects of the company, the objects clause of MoA should be construed reasonably i.e., neither rigid nor liberal.

13. RULE OF HARMONIOUS CONSTRUCTION

- According to this rule, when two or more provisions in an enactment cannot be reconciled with each other, they should be interpreted in such a manner that effect is given to all such provisions.
- When there is a doubt about the meaning of the words used in a statute, they should be understood in a manner consistent with the (i.e., harmonize) subject of the enactment and the object of the legislature.
- A statute is passed as a whole and not in sections. The sections and sub-sections must be read as parts of an integral whole and being inter-dependent. Therefore, 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 enacted or amended later in point of time must prevail.

Applicability:

- The Rule of Harmonious Construction is applicable only when:
 - a. There is a real and not merely apparent conflict between the provisions of an Act; and
 - b. One of such provision has not been made subject to the other i.e., one provision is not made dependent on the other.

When after having construed their context the words are capable of only a single meaning, the rule of harmonious construction disappears and is replaced by the rule of literal construction.

14. Rule of Beneficial Construction / The Heydon's Rule / Rule Of 'Purposive Construction / Mischief Rule

- A. **Applicability** – This rule is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning (CIT vs. Soda Devi).

After the words have been construed in their context and it is found that the language is capable of bearing only one construction, the rule in Heydon's case ceases to be applicable and the rule of Literal Interpretation comes into play.

- B. **Considerable Aspects** – This rule enables the court to consider the following matters:

1. What was the law before making the present Act
2. What was the defect to which the previous law did not provide any remedy
3. What is the remedy provided in the present Act
4. What is the reason for providing such remedy

- C. **Stages of Application** – Heydon's rule is applicable in 2 stages i.e., the above points have to be considered at 2 stages:

- a. Stage-1: To ascertain the plain meaning and primary meaning of the statute; and
- b. Stage-2: When the court reaches the conclusion that there is no plain meaning.

D. Requirement of Rule – This rule directs that, after considering the above aspects, the court must adopt a construction which ‘shall suppress the mischief and advance the remedy.

Example – The legislature having intended, while passing the Workmen’s Compensation Act, 1923 that every workman in the prescribed trade should be entitled to compensation, it was held that the Act ought to be so construed, as far as possible, as to give effect to its primary provisions.

15.Rule of Exceptional Construction

A. Common Sense Rule

- As per the general rule, effect must be given to every word.
- As per the rule of Exceptional construction, a word or phrase in a statute should be eliminated, if:
 - a. If no sensible meaning can be fixed to a word or phrase; or
 - b. Giving meaning to a word or phrase would defeat the real object of the enactment.
- The underlying principle is that “it is better to give effect to a thing rather than making it void”.

B. Construction of the words “OR” & “AND”

- As per the general rule, the word ‘or’ is normally disjunctive (Consisting of Choice) and ‘and’ is normally conjunctive (Combination of Things).
- As per the rule of Exceptional Construction, the words “OR” & “AND” are construed in contrast to general rule i.e.,
 - a. The word “OR” is read as “AND”
 - b. The word “AND” is read as “OR”.
- The above construction is done:
 - i. When the construction as per general grammar results in unreasonable or inappropriate meaning;
 - ii. To give effect to the intention of the Legislature.

C. Mandatory and Directory Provision

- When a provision is mandatory, it must be strictly observed.
- When a provision is directory, it would be sufficient if it is substantially complied.
- To determine whether a provision is mandatory or directory, one has to look at the substance and merely the form.
- A statute in directory form may in substance be mandatory. The use of the word ‘may’ would 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.
- An enactment in mandatory form might substantially be directory. 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. As against the Government the word 'shall' when used in statutes is to be construed as 'may' unless a contrary intention is manifest.

D. 'May' treated as Mandatory Force

- Generally speaking, use of the word 'May' in a provision implies that such provision is directory provision.
- But according to the rule of exceptional construction, use of the word 'May' should be interpreted as having mandatory force in the following cases:
 - a. Where the word 'may' involves a discretion coupled with an obligation;
 - b. Where a provision confers a positive benefit to the general class of subjects; or
 - c. Where a remedy would be advanced and a mischief suppressed; or
 - d. Where giving the word 'May' directory significance would defeat object of the Act.

E. 'Shall' treated as Directory Force

- Generally speaking, use of the word 'Shall' in a provision implies that such provision is Mandatory provision.
- But according to the rule of exceptional construction, use of the word 'Shall' should be interpreted as having Directory force:
 - a. If interpreting the word 'shall' as mandatory results in some absurdity or inconvenient consequences;
 - b. If mandatory interpretation is inconsistent with the intention of the legislature
 - c. If serious general inconvenience will be created to innocent persons without very much improving the object of the Act;
- As against the Government the word 'shall' when used in statutes is to be construed as 'may' unless a contrary intention is manifest.
- Where a specific penalty is provided in 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.

16. Effect of Usage

- Usage or practice developed under a statute is indicative of the meaning of words used in a Statute and is admissible as an external aid to construing the ancient statute.
- If a particular meaning has been given to a word continuously for a long period of time and the legislature has not taken any action to amend the law, then it implies

that practice of giving such meaning to that word is based on the correct understanding of the law.

- If such practice receives judicial approval, it gains additional weight.
- In this regard, the following 2 principles has to be observed:
 - a. Custom is the best interpreter of the law.
 - b. The best way to interpret a document is to read it as it would have been read when made.
- Generally, the principle of '*contemporanea expositio*' is not applicable to a modern statute. It is limited to the construction of ambiguous language used in very old statutes.
- However, in the case of *Indian Metals & Ferro Alloys Ltd vs Collector of Central Excise*, the supreme court held that: Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as contemporaneous exposition to interpret not only ancient but even recent statutes in India.

17. Construction of General Words

A. Noscitur a Sociis / Understanding Associated Words

- According to this rule, meaning of doubtful words may be ascertained by reference to the meaning of words associated with it.

E.g., the expression 'place of public resort will have:

 - a) One meaning when coupled with expression 'roads and streets'; and
 - b) Different meaning when coupled with the word 'houses'.
- When two or more words, which are capable of similar meaning are coupled together, then they take their colour from each other, that is to say, the scope of more general words is restricted in light of less general words.
- The above rule cannot be applied where general words are deliberately used to broaden their scope.
- The rule is applied only when the intention of the legislature in associated wider words with narrower words is doubtful or not clear.
- This rule is much wider than the rule of *ejusdem generis*.
- The rule of *ejusdem generis* is only an application of the rule of Noscitur a Sociis.

B. Rule of Ejusdem Generis

- The rule of *Ejusdem generis* means that where specific words are used and after those specific words, some general words are used, the general words would derive their scope in light of specific words used prior to such general words.

EXAMPLE: Where an Act permits keeping of dogs, cats, cows, buffaloes and other animals, the expression 'other animals' would not include wild animals like lions and

tigers, but would mean only domesticated animals like horses, etc. This is because specific words used prior to general word 'other animals' are all belong to domestic animals category.

- If the specific words used exhaust sub-category, then the general words shall be construed as belongs to much wider category.

Non-Applicability

1. The general principle of 'Ejusdem generis' applies only where the specific words are all the same nature. When they are of different categories, then the meaning of the general words shall not be influenced by specific words.
2. The rule of Ejusdem generis has no inverse application that is to say if general words are used prior to specific words, then such general words are not covered under this rule and their meaning cannot be limited to specific words.
3. The courts have a discretion whether to apply the 'Ejusdem generis' doctrine in particular case or not. For example, the 'just and equitable' clause in the winding-up powers of the Tribunal is held not to be restricted to other situations specified u/s 271 of Companies Act, 2013.

18.Preamble

- The Preamble expresses the scope, object and purpose of the Act **more comprehensively** than the Long Title.
- The Preamble may specify the :
 - a. Reasons for making the statute;
 - b. Evil (any wrong thing) which the Act expects to rectify.
 - c. The doubts which the Act intends to settle.
- The Preamble of a Statute is a part of the enactment and can legitimately be used for construing the Statute.
- If the wording of the statute gives rise to doubts, the Preamble can and ought to be referred to, in order to arrive at the proper construction.
- The Preamble does not over-ride the plain provision of the Act.

19.Long Title

- The Long Title describes the Act and does not merely identify the Act like Short Title.
- Long Title is part of the Act.
- Long Title can be used to ascertain the scope and purpose of the Act.
- Long Title is admissible as an aid to Construction.
- Long title cannot override the clear meaning of the Act.

20.Heading and Title of a Chapter

- Number of sections relating to a particular topic are normally grouped together in the form of chapters and prefixed by headings.
- The view is now settled that the Headings or Titles prefixed to sections or group of sections can be referred to for understanding various parts of the Act.
But conflicting views exist regarding the weight to be given to headings or titles.
- According to one view, Headings/Titles:
 - a. Can be referred for understanding the doubtful expressions
 - b. Cannot be used to restrict the plain words of the provision
- Headings/Titles of one group of sections cannot be used to interpret another group of sections.

21.Marginal Notes

- Although there are differences of opinion, the majority view is that “Marginal Notes attached to a section of the Act cannot be used for understanding the scope of the section.
- Notes are only explanatory in nature and do not dilute the rigor of the main provision.
- Notes cannot control the meaning of the section if the language used in it is clear.
- In exceptional cases, Marginal notes can be referred for understanding the section.
- Marginal notes attached to articles of constitution are held as part of the constitution and therefore can be used for interpreting the Articles.

22.Definitions

(or)

How will you interpret the definitions in a statute, if the following words are used in a statute? (i) Means, (ii) Includes

Give one illustration for each of the above from statutes you are familiar with.

- Definitions are normally given in the statute to explain the meaning of certain words or phrases used in it.
- When a definition to a particular word or phrase is given in the Act, then such meaning alone shall be considered in interpreting any section of the Act which uses that word or phrase.
- Courts cannot ignore the statutory definition and try to extract true meaning of the word in some other way.
- It is only when a statute does not contain the definition of a particular word or phrase, it becomes the duty of court to ascertain the meaning of such words.

Purpose of Definitions

1. To provide a key to the proper interpretation of the Act;
2. To shorten the language of the Act by avoiding frequent repetitions of the meaning of same words.

A. Restrictive Definition

- When the definition of a word starts with 'MEANS', it is said to be restrictive.
- Such definition is exhaustive that is to say, scope of such definition cannot be enlarged beyond what is expressly stated in such definition.
- A definition which begins with the words "means and includes" can also said to be exhaustive.
- The definition of company as given in Sec.2(20) is restrictive as it provides that "Company **means** a Co incorporated under CA,2013 or previous company law'

B. Extensive Definitions

- When the definition of a word starts with 'INCLUDES', it is said to be extensive.
- The scope of such definition is not restricted to what is expressly stated in it.
- The definition of body corporate as given in Sec.2(11) is extensive as it provides that "Body Corporate **includes** a company incorporated outside India"
- The word 'include' is generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute.
- Definitions which starts with the phrases 'to apply to and include' or 'is deemed to include' are also said to be extensive.
- The words 'deemed to include' are used to bring something within the word so defined, which according to its ordinary meaning is not included within it.

C. Ambiguous Definitions

- Normally definitions are used in the Act to clarify meaning of certain words used.
- But sometimes, the definition section may itself be ambiguous and may have to be interpreted in the light of other provisions of the Act and having regard to the ordinary meaning of the word so ambiguously defined.
- A Definition is not to be read in isolation. It must be read in the context of the phrase which it defines.
- Sometimes the ambiguity in the definition arises because of its bad drafting and the court may have to recast it to bring out its clear meaning.

D. Definitions contrasting with context

- When a word has been defined in the interpretation clause that definition governs whenever that word is used in the body of the statute.
- But where the context makes the definition given in the interpretation clause inapplicable, a defined word when used in the body of the statute may have to be given a meaning different from that contained in the interpretation clause.

- Therefore, all definitions given in an interpretation clause are normally enacted subject to the qualification i.e., 'unless the context otherwise requires'.
- Even in the absence of an express qualification to that effect, such a qualification is always implied.

Definitions with multiple meanings – When a word is defined to bear a number of inclusive meanings, the sense in which the word is used in a particular provision must be ascertained from the:

- a. Context of the scheme of the Act;
- b. The language of the provision;
- c. The object intended to be served.

23. Illustrations

- Illustrations are attached to the sections.
- Illustrations do not form part of a section.
- Illustration form part of a statute.
- Illustrations are relevant in understanding the text of the section and they should not be readily rejected as conflicting with the text of the section.
- Illustrations cannot have the effect of modifying the language of the section and cannot curtail or expand the scope of the section.

24. Proviso (or) What is the effect of proviso? Does it qualify the main provisions of an Enactment?

- The normal function of a 'proviso' is:
 - a. To remove something from the main provision; or
 - b. To qualify something contained in the main provision.
- A proviso is not interpreted as a general rule.
- Where the main provision is not clear, a 'proviso' can be looked into to ascertain the meaning and scope of the main provision.
- When the main provision is clear, a 'proviso' cannot expand or limit it.
- A 'proviso' to a particular section is applicable only to the field covered by such section but not to any other field.

25. Distinction between Proviso, Exception and Saving Clause

- A. Exception** - It is intended to restrain main provision to particular case(s).
- B. Proviso** – It is used to remove special cases from the general provision and deal with them separately.

Plaintiff has to plead for exclusion under exceptions, whereas defendant has to raise a defense under a proviso. In India no distinction is made between Exceptions and Proviso either in criminal or civil proceedings.

- C. **Saving Clause** – It is used to preserve certain rights or privileges already existing. It does not give any new rights.

26. Explanation (or) Does an explanation added to a section widens the ambit of a section?

- An Explanation is sometimes added to a section to explain the meaning of words contained in the section.
- Explanation should be read so as to clear any ambiguity in the section.
- Explanation cannot be read so as to widen the ambit of the section.

Objects of adding an Explanation to a Statutory Provision

1. To explain the meaning and true intention of the Act.
2. To clarify any vagueness in the main provision.
3. To provide additional support to the dominant object of the Act
4. To fill up the gap, if any, in the main provision in order to suppress the mischief and advance the remedy.
5. It cannot take away a statutory right given by main provision.
6. It cannot act as a hindrance to the interpretation of the Act.

27. Schedules

- Schedules attached to the Act forms part of the Statute.
- Schedules often contain details and forms for working out the policy underlying the sections of the statute.
- Schedules are used to avoid excessive details to being included in sections of the Act.
- Schedules can be used for construing the Act.
- Schedules cannot over-ride plain provisions of the Act. In case of conflict between schedule and the main provisions of the Act, the main provisions shall prevail.

28. Statute to be read as whole

- A fundamental rule of construction is that a statute has to be read as a whole considering all parts together.
- While comprehending the statutes, the intention of the legislature is to be gathered from the whole of the statute and every part of it taken and compared with other parts.
- The principle is that every part must be interpreted *ex visceribus actus* (within the four corners of the Act).
- There should not be any contradiction between one part and another part and one part will help in understanding another part.
- To construe the general words, other words of like import in the same enactment needs to be considered to see what limitations must be imposed on general words.

29. Consolidating Statutes & Previous Law

- d. Consolidating Statutes are indicated by expressions such as “An Act to consolidate” in the preamble to such Act.
- e. In case of purely consolidating statutes the presumption is that such a statute is not intended to alter the law. Therefore it is relevant to refer the previous law and judicial decisions interpreting the previous law, to understand the corresponding provisions in the consolidating Act.
- f. The primary rule of construction of a consolidation Act is to examine the language used in the Act itself without any reference to previous law. It is only when the consolidation Act gives no guidance to its proper interpretation that it is permissible to refer the repealed enactments for guidance.
- g. A Consolidating Act may further be an amending Act indicated by expressions such as “An Act to consolidate and amend”. In such cases, it may not be appropriate to refer the provisions of repealed enactment when the consolidating statute deals with the same subject in different terms.

30. Historical Setting

- a. History of the external circumstances which led to the passing of an Act is of much significance in understanding such Act.
- b. History in general and parliamentary history in particular all are relevant in understanding the Act.
- c. One should also consider whether the present Act was intended to alter the previous Act or leave where it stood before.
- d. Historical evolution of a provision in the statute is also sometimes a useful guide to its construction.
- e. Like any other external aid, the inferences from historical facts and surrounding circumstances must give way to the clear language employed in the Act itself.

31. Earlier & Later Acts & Analogous Acts

A. Analogous Acts

- h. Where there are different statutes dealing with same or similar subject, they shall be taken and construed together as one system and as explanatory of each other.
 - i. The above rule applies:
 - a. Even if such different statutes are made at different times;
 - b. Even if some of such different statutes are expired;
 - c. Even if one statute is not referring to other statute.
- If two Acts are to be read together then every part of each Act has to be construed as if contained in one composite Act.

- If there is some clear discrepancy then it is necessary to hold that later Act has modified the earlier Act.

B. Later Act Explained by Earlier Act

- When a Statute is repealed and re-enacted and words in the repealed statute are reproduced in the new statute, such words should be given same meaning in the new act as that of the meaning given by judiciary to such words in repealed Act.
- However, when the new legislation, although re-enacting many provisions from earlier statutes, contains a good deal of fresh material and deals with a subject on which social views have drastically changed, it may not be proper to rely on the earlier authorities for construing the new legislation.

Further, when there is no ambiguity in the re-enacted statute, it may not be permissible to refer the previous legislation or decisions rendered there under.

C. Earlier Act explained by Later Act

- Not only Later Act be construed in the light of Earlier Act, sometimes Later Act also furnishes some insights to interpret the earlier Act, if:
 - a. They both deal with same or similar subject; and
 - b. The Earlier Act is ambiguous.

32. Reference to Repealed Act

Where a part of the Act has been repealed, then such part may still be considered for understanding the un-repealed part. This is because; repealed part now becomes a history of the Act.

33. Dictionary Definitions

1. When a word is not defined in the Act, then it is permissible to refer dictionaries to find out the general sense in which a word is understood in common parlance.
2. In selection one meaning out of several meanings given in a Dictionary, consideration shall be given to the context in which the words appear in the Act.
3. Meaning of technical and legal words shall be construed in technical and legal sense.
4. Dictionary meaning cannot be adopted if it will make some existing words redundant or will require reading of some additional words.
5. Meaning of a word given in judicial decisions, on statutes of same or similar subject, have more weight than the meaning furnished by dictionaries.

34. Foreign Decisions

1. Decisions given by courts:
 - a. In foreign countries following the same jurisprudence (legal system) as India;
 - b. On laws similar to Indian Laws.

Can be used lawfully for understand the Indian Acts.

2. First importance shall be given to the:
 - i. Language of the Indian Statutes;
 - ii. Circumstances under which Indian Statute is enacted;
 - iii. Indian conditions where the Statute is to be applied.

In other words, the statutory construction must be home-spun even if hospitable to alien thinking.

3. Apart from the link of English Common Law and Jurisprudence and similarity of political thought, the use of English Language as authoritative text of Indian Statutes is another factor which obliges the Indian Courts in taking recourse to foreign precedents of English Speaking Countries.
4. In cases concerning an International Convention, foreign decisions are more readily used for guiding the Court.

35. RULES OF INTERPRETATION/CONSTRUCTION OF DEEDS AND DOCUMENTS

(or)

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?

1. A deed or document has to be read in the sense in which a reasonable man would read. Here, the reasonable man is a person who is aware of the:
 - a. Surrounding circumstances of a deed or document;
 - b. The scope of a deed or document; and
 - c. The true intention of the document.

Intention of the parties has to be ascertained by reading the whole document. Status and training of the parties shall also be considered.

2. The terms of one deed shall not be construed with reference to the terms of another deed.
3. The same word shall not be given two different meanings in the same document.
4. When a word is capable of 2 meanings:
 - i. One meaning which gives effect to all the clauses of the document;
 - ii. Another meaning which makes one or more clauses of the document ineffective,

Then the first meaning shall be considered.

5. When there is a conflict between 2 clauses of the same document / 2 parts of the same document and it is not possible to resolve such conflict, then the earlier clause/part will over-ride the latter clause/part.

MATCH THE FOLLOWING

I. DOCUMENTS

a) Written will of the legislature	i) Instrument
b) A paper or other material thing giving information, proof or evidence of anything.	ii) Statute
c) Formal legal document which creates or confirms a right or records a fact.	iii) Deed
d) Instrument in writing purporting to effect some legal disposition.	iv) Document
Answer: a) b) c) d)	

II. LEGAL MAXIMS

a) Absoluta sententia expositore non indigent	i) It is better for a thing to have effect than to be made void.
b) Ut res magis valeat quam pereat	ii) He who acts through another is deemed to act in person
c) Quo facit per alium facit per se	iii) A simple preposition needs no expositor.
d) Optima Legum interpretest consuetude	iv) The best way to interpret a document is to read it as it would have been read when made
e) Contempranea expositoest optima et fortissima in lege'	v) Custom is the best interpreter of Law
f) Noscitur A Sociis	vi) The meaning of a word is known by its associates.
Answer: a) b) c) d) e) f)	

III. INTERNAL AIDS TO CONSTRUCTION

a) Merely Identifies the Act	i) Explanation
b) Express the scope, object and purpose of the Act	ii) Preamble
c) Describes the Act and not merely identifies the Act	iii) Short Title
d) Grouping of Sections relating to a particular object	iv) Proviso
e) Explain the meaning of the text of the section.	v) Long Title
f) Except something out of the enactment or to qualify something stated in the enactment	vi) Heading and Title of a Chapter.
Answer: a) b) c) d) e) f)	

MULTIPLE CHOICE QUESTIONS

1. Formal legal document which creates or confirms a right or record a fact is a—
 - (a) Document
 - (b) Deed
 - (c) Statute
 - (d) Instrument
2. Which among the following is the cardinal rule of construction of statutes—
 - (a) Harmonious Rule of construction
 - (b) Beneficial Rule of construction
 - (c) Literal Rule of construction
 - (d) Reasonable Rule of construction
3. Rule of Reasonable Construction is based on the maxim—
 - (a) Absolut asentenia expositor non indigent
 - (b) Ut res magis valeat quam pareat
 - (c) Quo facit per alium facit per se
 - (d) Contemporanea exposition
4. Rule of Beneficial construction is also known as—
 - (a) Purposive construction
 - (b) Mischieve Rule
 - (c) Heydons's Rule
 - (d) All of the Above
5. Pick the odd one out of the following aids to interpretation—
 - (a) Preamble
 - (b) Marginal Notes
 - (c) Proviso
 - (d) Usage
6. Which rule of construction is applicable where there is a real and not apparent conflict between the provisions of an Act, and one of them has not been made subject to the other—
 - (a) Rule of Beneficial construction
 - (b) Rule of Literal construction
 - (c) Rule of Harmonious construction
 - (d) Rule of Exceptional construction
7. An internal aid that may be added to include something within the section or to exclude something from it, is—
 - (a) Proviso
 - (b) Explanation
 - (c) Schedule
 - (d) Illustrations

8. An aid that expresses the scope, object and purpose of the Act—
- (a) Title of the Act
 - (b) Heading of the Chapter
 - (c) Preamble
 - (d) Definitional sections.

Answer to MCQs

1. (d) 2. (c) 3. (b) 4. (d) 5. (d) 6. (c) 7. (b) 8. (c)

PRACTICE QUESTIONS

PQ-1: Explain the principles of “Grammatical Interpretation” and “Logical Interpretation” of a Statute. What are the duties of a court in this regard?

- The principles of Grammatical and Logical Interpretation are applied to conclude the real meaning of the law and the intention of the legislature behind enacting it.
- Grammatical interpretation concerns itself exclusively with the verbal expression of law. It does not go beyond the letter of the law.
- Interpretation is LOGICAL when the court goes beyond the words used in the Act and tries to discover the intention of the statute in some other way.

Duties of Court

1. In all ordinary cases, the grammatical interpretation is the sole form allowable. The court cannot delete or add to modify the letter of the law.
2. 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 the true intentions of the legislature.
3. The duty of the court is to administer the law as it stands. It is not within the jurisdiction of court to see whether the law is just or unreasonable.
4. If there are two possible constructions of a clause:
 - a. One a mere mechanical and literal construction based on the rules of grammar;
 - b. Other which emerges from the:
 - i. Setting in which the clause appears;
 - ii. The circumstances in which an Act came to be enacted; and
 - iii. Words used in the Act,

The courts may prefer the second construction which, though may not be literal, may be a better one.

PQ-2: When a defect appears a judge cannot simply fold his hands and blame the draftsmen. Comment

- The above statement is true. When a defect appears a judge cannot simply fold his hands and blame the draftsmen.
- Judge must set to work on the constructive task of finding the intention of parliament.
- The intention of parliament has to be gathered not only from the language of the statute but also but also by considering the:
 - a. Social conditions prevalent at the time when the particular law was framed;
 - b. Mischief (trouble) which the Law intends to resolve.

The judiciary must supplement the written words used in Law with the above considerations, so as to give 'force and life' to the intention of the Legislature.

PQ-3: A statute is enforceable at law, however unreasonable it may be. Comment.

- The above statement is true. A statute is enforceable at law, however unreasonable it may be.
- Where the language is plain and admits of only one meaning there is no room for interpretation and only that meaning is to be enforced even though it is absurd (i.e., completely unreasonable).
- The duty of the court is to administer the law as it stands.
- It is not within the jurisdiction of court to see whether the law is just or unreasonable.
- The ascertainment of the justification or reasonableness of law is the exclusive domain of the legislature.
- Legislature alone can consider alteration or modification of the law passed by it.
- Until the law is altered or modified or amended, the court has no choice. The court has to enforce the law as it is.

PQ-4: Nothing is to be added or taken away from a statute. Comment.

- It is the general rule that omissions are not likely to be inferred.
- If a case has not been provided for in a statute, it is not to be dealt with merely because there seems to be no good reason why it should have been omitted, and the omission appears to be consequentially unintentional.
- When a matter which should have been, but has not been, provided for in a statute cannot be supplied by courts. This is because supplementing words would amount to legislation and would not be construction.

- Nothing is to be added to or taken away from a statute unless there are some adequate grounds to justify the inference that the legislature intended something which it omitted to express.

PQ-5: Ascertaining the real intention of the legislature

For ascertaining the real intention of the legislature, the court may consider the following, among other things:

1. The nature and design of the statute;
2. The consequences which would flow from construing the statute in one way or the other.
3. Whether by complying with some provisions, the necessity of complying with other provisions can be avoided.
4. Whether a statute provides any penalty if the provision is not complied with.
5. If the provision is not complied with, whether the consequences are trivial or serious;

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