

CHAPTER-3: THE GENERAL CLAUSES ACT, 1897

Sl. No	Topic	Page No in this notes	Page No in ICAI- SM
1.	Definitions	1	3.7-3.13
2.	Coming into operation of Enactments [Sec.5]	3	3.13
3.	Effect of Repeal [Sec.6]	3	3.14
4.	Construction of references to repealed enactments [Sec.8]	3	3.15
5.	Commencement & Termination of Time [Sec.9]	4	3.15
6.	Computation of Time [Sec.10]	4	3.16
7.	Power conferred to be exercisable [Sec.14]	4	3.16
8.	Power to appoint include appointment by ex-officio [Sec.15]	4	3.17
9.	Power to appoint includes power to removal [Sec.15]	4	3.17
10.	Official Chiefs and Subordinates [Sec.19]	4	3.17
11.	Construction of orders issued under Enactments [Sec.20]	5	3.17
12.	Power to issue includes power to amend or vary [Sec.21]	5	3.18
13.	Making of rules after passing but before commencement of enactment [Sec.22]	5	3.18
14.	Making of rules after publication [Sec.23]	6	3.18
15.	Continuation of orders issued under repealed enactments [Sec.24]	6	3.19
16.	Recovery of Fines [Sec.25]	6	3.19
17.	Offences punishable under two enactments [Sec.26]	6	3.20
18.	Service by Post [Sec.27]	6	3.20
19.	Citation of Enactments [Sec.28]	7	3.20
20.	Application of Act to Ordinances [Sec.30]	7	3.21

Q-1: DEFINITIONS [Sec.3]

A. Affidavit [Sec.3(3)]

- Affidavit shall include affirmation and declaration, made by a person, allowed by law to affirm or declare, instead of swearing.
- It is a written statement confirmed by oath or affirmation for use as evidence in court or before any authority.
- The essential ingredients of an affidavit are:
 - a) It contains statements or declarations made by the deponent relevant to the subject-matter.
 - b) In order to add sanctity to such declarations, the deponent swears or affirms the truth of the statements.
 - c) Such affirmation or swearing is made in the presence of a person who in law is authorized either to administer oath or to accept the affirmation.

B. Central Government [Sec.3(8)]

- (a) In relation to anything done before the commencement of the Constitution, "Central Government" means the Governor General in Council.
- (b) In relation to anything done after the commencement of the Constitution, "Central Government" means the President.

Where President has entrusted his functions under any statute:

- i) To State Government in accordance with Article-258(1) of the Constitution;
- ii) To a Union Territory in accordance with Article-239 of the Constitution,

then the word "Central Government" shall be read as "State Government".

C. Enactment [Sec.3(19)] – Enactment includes:

- a. Any regulation as defined in Sec.3(50) i.e., Regulations made by President under 240 & 243 of the Constitution.
- b. Regulation of the Bengal, Madras or Bombay Code.
- c. Any Act made by the Union Parliament or the State Legislature.
- d. Any provision contained in any Act or Regulation.

D. Good Faith [Sec.3(22)]

- A thing shall be deemed to be done in good faith, if such thing is done honestly, whether it is done negligently or diligently.
- It has to be determined with reference to the circumstances of each case.

- Where any Act contains a definition of “Good Faith”, then such definition shall be followed and the above definition of “Good Faith” as specified in General Clauses Act shall not apply.
- Where an Act does not contain a definition of “Good Faith”, the above definition given in General Clauses Act shall apply, if there is nothing contrary in the context. If there is anything in such Act contrary to the above definition, then the above definition shall not apply.
- The definition of “Good Faith” given in General Clauses Act shall not apply to Indian Contract Act. This is because, under civil law, a thing is said to be done in good faith only if it is done with due care and attention expected from a man of ordinary prudence. Therefore, a thing done negligently cannot be said to be done in good faith.

E.g., A honest purchase made carelessly without making proper enquiries cannot be said to have been made in good faith in order to convey good title.

E. Immovable Property [Sec.3 (26)]

Immoveable property shall include land, benefits arising out of land, thing attached to earth or permanently fastened to anything attached to earth.

<i>Inclusions</i>	<i>Exclusions</i>
• Trees are immoveable property because they are benefits arising out of land. • Buildings are immoveable property. • Any machinery fixed to the soil, standing crops can be held to be immoveable property.	Timber is not immoveable property as it is not permanently attached to earth.
Right of way to access from one place to another is immoveable property.	Right to drain of water is not immoveable property.

F. Person [Sec.3(42)]

- As per Sec.3 (42), the word “Person” shall include any Company, Association or Body of Individuals, whether incorporated or not.
- In judicial decisions it has been held that a firm, HUF, Municipal Authorities are all treated as persons.

Q-2: Coming into operation of Enactments [Sec.5]

- If a Central Act does not specify the date from which such Act comes into effect, then such Act shall be implemented from the day on which it receives the assent of the President.
- It can also be said that a Central Act comes into effect from the date of its publication in the Official Gazette.
- If any specific date of enforcement is prescribed in the Official Gazette, then a Central Act shall come into force from such date.

Q-3: Effect of Repeal [Sec.6]

Where any Central Legislation or Regulation repeals any Act, then such repeal shall not:

- a. Affect the prior management of any legislation;
- b. Affect any claim, privilege obtained under repealed legislation;
- c. Affect any responsibility assumed or debt obtained under repealed legislation;
- d. Affect any penalty or punishment imposed for any offence committed;
- e. Affect any inquiry or investigation initiated.

Distinction between Repeal and Deletion

<i>Repeal</i>	<i>Deletion</i>
"Repeal" ordinarily brings about complete cancellation of the provision as if it had never been enacted.	a. "Deletion" ordinarily takes effect from the date the Legislature has affected the said deletion.
The effect of repeal is to destroy all incoherent rights and all causes of action which may have arisen under the repealed provision.	b. A deletion has no effect of total erosion or wiping out of provision as if it never existed.

Q-4: Construction of references to repealed enactments [Sec.8]

Where any Central Act or Regulation repeals and re-enacts, with or without modification, any provision of a former enactment (i.e., old Act e.g., CA, 1956),

Then references, to the repealed provisions, contained in any other Enactment (say Income Tax Act, 1961) or in any instrument,

Shall be construed as reference to the re-enacted provision (i.e., New Act - CA, 2013)

E.g., Reference to Companies Act, 1956 contained in Sec.115JB of the Income Tax Act, 1961 shall be read as reference to Companies Act, 2013.

Q-5: Commencement & Termination of Time [Sec.9]

- ▶ Use of the word "**from**" in any legislation or regulation implies that, for the purpose of counting a time period, the **first** in a series of **days** to be **excluded**.
- ▶ Similarly, use of the word "**to**" imply that the **last** in a series of **days** to be **included**.

Q-6: Computation of Time [Sec.10]

Where any legislation or regulation requires anything to be done on a certain day or within a prescribed period,

And

If the court or office is closed on such day or on the last day of prescribed period, then such thing can be done on the next day on which the court or office is open.

Q-7: Power conferred to be exercisable [Sec.14]

- ▶ If any power is given to any authority under any Act, then such authority can exercise its powers from time to time as the occasion requires.
- ▶ There is no limit on the number of times such power can be exercised.
- ▶ This section applies to all Central Acts and Regulations made on or after 14.01.1887.
- ▶ Therefore, this section shall not apply to interpret the provisions of NI Act, 1881 and Indian Contract Act, 1872.

Q-8: Power to appoint include appointment by ex-officio [Sec.15]

- Where any legislation or regulation gives power to appoint any person to fill any office, then such appointment may be made by name or by virtue of office.
- Therefore where there is a power to appoint, the appointment may be made as ex-officio also.

Q-9: Power to appoint includes power to removal [Sec.15]

Where any Central Act or Regulation gives power to appoint any person, then the authority having the power to appoint shall also have the power to suspend or dismiss any person so appointed.

Q-10: Official Chiefs and Subordinates [Sec.19]

Where any Central Act or Regulation prescribes the a duty of the superior, then such duty of a superior of an office shall also apply to the deputies or subordinates lawfully performing the duties of such office in place of their superior.

Q-11: Construction of orders issued under Enactments [Sec.20]

- ▶ Where any notification, order, rule is issued as per the powers given in any legislation, then the words used in such N/O/R shall have the same meaning as given in the legislation conferring such power to issue N/O/R.
- ▶ Notification implies a formal announcement of a legally relevant fact.
- ▶ Notification is published in the official Gazette by the authority of law.
- ▶ Notification is a formal declaration and should be in accordance with the statute.
- ▶ Notification cannot be substituted by administrative instructions.

Q-12: Power to issue includes power to amend or vary [Sec.21]

- ▶ Where any legislation confers power to issue any N/O/R/BL, then such power includes power to amend, vary or rescind such N/O/R/BL.
- ▶ Such amendment, variation or rescission shall be made in the same manner as issue.
- ▶ The power to A/V/R is not limited to be exercised only once. Such power can be exercised from time to time having regard to necessity.

Q-13: Making of rules after passing but before commencement of enactment [Sec.22]

Where any **Central Act or regulation**, which is not to come into force immediately, **confers powers to make rules** or bye-laws or to issue orders:

- a) **With respect to** the application of the Act or Regulation;
- b) With respect to the establishment of any court;
- c) With respect to the person by whom anything is required to be done under the Act or regulation;
- d) With respect to time & place for anything required to be done;
- e) With respect to the manner in which anything is required to be done; or
- f) With respect to fees for anything required to be done,

Then, such rules or orders may be **issued** at any time **after passing** of the Act or regulation.

But such rules or orders so issued **shall not take effect till the commencement** of such Act or Regulation.

Q-14: Making of rules after publication [Sec.23]

Where any Central Act or regulation requires previous publication of rules, then the following provisions shall apply:

1. The authority having the power to make rules shall publish draft rules for the information of persons likely to be affected;
2. Such publication shall be made as that authority deems sufficient or in a manner prescribed by Government.
3. Along with draft rules, a notice shall be published and that notice shall specify the date after which the draft rules will be considered.
4. The authority having the power to make rules shall consider the objections or suggestions, received from any person, on the draft rules.
5. Publication of rules in the Official Gazette shall be conclusive proof that rules have been duly made.

Q-15: Continuation of orders issued under repealed enactments [Sec.24]

Where any Central Act or Regulation is repealed and re-enacted then, any N/O/S/R issued under the repealed Act shall continue in force and deemed to be made under the re-enacted provisions, unless such N/O/S/R is superseded by any new N/O/S/R issued under re-enacted provisions.

Q-16: Recovery of Fines [Sec.25]

(a) Secs. 63 to 70 of the Indian Penal Code and (b) The provisions of Code of criminal procedure relating to the issue and execution of warrants for levy of fines,

shall apply to all fines imposed under any Act, Regulation or Rule, unless there is an express provision to the contrary.

Q-17: Offences punishable under two enactments [Sec.26]

Where an act or omission constitutes an offence under 2 or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments. But shall not be punished twice for the same offence.

Q-18: Service by Post [Sec.27]

- Where any Central Act or regulation requires any document to be served/send by post, Then, such document shall be deemed to be effected, if it is properly addressed, pre-paid and posted by registered post.

Such document shall be deemed to be effected at the time at which it would have been delivered in the ordinary course of post.

- ▶ The above presumptions i.e., presumption relating to mode of service and time of service, shall apply unless a different intention appears or contrary is proved.

E.g., If law requires sending of document by 'registered post acknowledgment due' then, sending of document by only registered post shall not be deemed to be valid service.

- ▶ Endorsement "not claimed/not met" is sufficient to prove deemed service of notice.

Q-19: Citation of Enactments [Sec.28]

In any:

- a) Central Act or Regulation;
- b) Rule or Bye-Law;
- c) Instrument or Document made under any such Act or regulation,

Any enactment may be cited:

- i. By reference to the title or short title; or
- ii. With reference to the number and year of such enactment;

Any provision in such enactment may be cited by reference to the section or sub-section of the enactment.

Q-20: Application of Act to Ordinances [Sec.30]

- ▶ In the General Clauses Act 1897:

- a) The expression "Central Government" wherever it occurs except in Section.5; and
- b) The word "Act" in Sec.3 and Sec.25,

shall be deemed to include ordinance made and promulgated by the President under Article 123 of the Constitution

Filename: GCA_NOTES
Directory: C:\Users\samsung\Documents
Template: C:\Users\samsung\AppData\Roaming\Microsoft\Templates\Normal.dot
m
Title:
Subject:
Author: samsung
Keywords:
Comments:
Creation Date: 10/10/2018 4:44:00 PM
Change Number: 42
Last Saved On: 10/16/2018 7:50:00 AM
Last Saved By: samsung
Total Editing Time: 200 Minutes
Last Printed On: 10/16/2018 7:50:00 AM
As of Last Complete Printing
Number of Pages: 8
Number of Words: 2,074 (approx.)
Number of Characters: 11,826 (approx.)