

## 5. INTERPRETATION OF STATUTES, DEEDS AND DOCUMENTS

### PREVIOUS EXAM QUESTIONS OF CA INTER

YEAR	QUESTION	MARKS
MAY18	Explain briefly the distinction between 'mandatory' and 'directory' provisions in a statute. How the court deals with them differently?	4
NOV 18	Write short note on i) Proviso ii) Explanation, with reference to interpretation of statutes, Deeds and Documents.	4
NOV 18	Explain how 'Dictionary Definitions' can be of great help in interpreting / constructing an Act when the statute is ambiguous.	2
MAY 19	It is defined as a) Company means a company incorporated under the companies Act, 2013 or under any previous company law b) Person includes under the consumer protection Act, 1986. How would you interpret or construct the nature and scope of above definitions. How will you understand whether a provision in a statute is 'mandatory' or 'directory'?	3

**Q.No.1. Define the term "Statute"? (B)**

**(MTP – NOV 19)(NEW SM)**

- To the common person, '**Statute**' generally means the laws and regulations of every kind without considering from which source they originate.
- However, the term 'Statute' 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, like Indian Contract Act).
- The Constitution does not use the term 'statute', but used term 'law' instead of 'statute'.
- The term 'law' defined as including any ordinance, order, byelaw, rule, regulation, notification and the like.

#### **SIMILAR QUESTIONS:**

- Explain the meaning of the word 'statute'.**  
A. Refer above answer.
- What is meant by 'Statute'? Whether constitution recognizes it?**  
A. Refer above answer.

**Q.No.2. Define the term "Document"? (B)**

**(NEW SM)**

- In general, a document is a paper or other material thing giving information, proof or evidence of anything. **Example:** Piece of paper contains some information, which may be in the form of print or photograph.
- Section 3 of the Indian Evidence Act, 1872 states that 'document' means **any matter** expressed or described upon any substance by means of letter, figures or marks or by more than one of those means, intended to be used, or which may be used, for the purpose of recording the matter. Section 3(18) of The General Clauses Act, 1897 also gives similar definition to the word 'document'.
- Generally, documents contain the following four elements:
  - Matter:** This is the first element. The word **any matter** in definition reveals that the definition of document is exhaustive.
  - Record:** This is the second element. The matter employed on the substance must be in the form of writing, expression or description.

- c) **Substance:** This is the third element. The recorded information (mental or intellectual elements) must be on a substance, which is permanent in nature.
- d) **Means:** This represents forth element by which such permanent form is acquired and those can be letters, any figures, marks, symbols that can be used to communicate between two persons.

**SIMILAR QUESTIONS:**

1. What do you understand by the term 'Document'?
  2. How various statutes define the term 'Document'?
  3. Decompose the term 'Document'.
- A. Refer above answer for these three questions.
4. What are the 4 elements of 'Document'?
- A. Write point no: 3 in the above answer.

**Q.No.3. Define the term "Instrument"? (B)****(NEW SM)**

1. In general parlance, 'instrument' means a formal legal document, which **creates** or confirms a **right** or records a **fact**.
2. It has a legal effect either as creating **liability** or as affording (giving) evidence of it.
3. It is a formal writing of any kind, such as an agreement, deed, charter (contract) or record, drawn up and executed in a technical form.
4. Section 2(14) of the Indian Stamp Act, 1899 states that 'instrument' includes every document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded.

**SIMILAR QUESTIONS:**

1. How the term "instrument" is defined by Indian Stamp Act, 1899.
- A. Refer above answer.

**Q.No.4 Define the term "Deed"? (B)****(NEW SM)**

1. According to the Legal Dictionary, 'deed' is an instrument in writing purporting to effect some legal disposition.
2. Simply stated deeds are instruments though all instruments may not be deeds.
3. However, in India no distinction seems to be made between instruments and deeds.

**SIMILAR QUESTIONS:**

1. How the term 'Deed' differs from the term 'Instrument'?
- A. Write point no 2& 3 above.

**Q.No.5. What is meant by Interpretation and the Significance of Interpretation? (A) (NEW SM)**

'Interpretation' is the process by which the real meaning of an Act (or a document) and the intention of the legislature in enacting it (or of the parties executing the document) is ascertained.

**SIGNIFICANCE/IMPORTANCE:**

1. 'Interpretation' signifies clarifying the meaning of complex words, writings, etc. making out of their meaning, explaining, understanding them in a specified manner.
2. It aided in arguing, contesting and interpreting the proper significance of a section, a proviso, explanation or schedule to an Act or any document, deed or instrument.

3. The process of statute making and process of interpretation of statutes take place separately from each other, and two different agencies concerned. (Making statutes is the power of legislature and interpretation of statutes by judiciary).
4. An interpretation of Act serves as the bridge of understanding between the two.
5. The process of interpretation is more legalistic and thorough use of legal technique as contrasted with the application of common law rules.

**SIMILAR QUESTIONS:**

1. **What do you mean by interpretation of Statutes? What is the need for interpretation of Statute?**

A. Refer above answer.

**Q.No.6. Classification of interpretation (C)****(NEW SM)**

- a) According to Jolowicz, interpretation is classified into 'Legal' or 'Doctrinal'.
- b) According to Fitzgerald, interpretation is classified into 'Literal and 'Functional'.

**Q.No.7. Jolowicz classification of Legal Interpretation. (B)****(NEW SM)**

**Legal Interpretation:** It is legal when there is actual rule of law, which binds the judge to place a certain interpretation of the statute. It sub-divides into two.

1. **Authentic:** It is authentic when rule of interpretation is derived from the legislator himself. Interpretation always within the words given in text and not beyond.
2. **Usual:** It is usual when it comes from some other source such as custom or case law.
3. **Custom:** *Zamindar died without male issue. To safeguard the assets of Zamindari, Widow Parvatha Vardini adopts a son with the consent of husband's Sapindas. Later she also died and collector issued notice by alleging that Zamindar died without children, and then the assets of Zamindar were escheated by government. Then adopted son files a petition by contending that adoption is with the consent of Sapindas, which is a valid custom in their area. Privy Council held that the adoption is valid based on customary law. "COLLECTOR OF MADURA vs. MOOTOO RAMALINGA SETHUPATHY".*

**Q.No.8. Jolowicz classification of Doctrinal Interpretation (B)****(NEW SM)**

**Doctrinal Interpretation:** According to it, purpose of interpretation is to discover real and true meaning of statute and to ascertain the intention of the legislature. It again divided into two categories.

1. **Grammatical:**
  - a) It 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) It concerns exclusively within the verbal expression of the law and does not go beyond the letter of the law.
  - c) The court cannot delete or add to modify the letter of the law while applying this interpretation by court.
  - d) In all ordinary cases, the grammatical interpretation is the sole form allowable.
2. **Logical:**
  - a) When the court goes beyond the words and tries to discover the intention of the statute in some other way, then it is said to be logical interpretation.
  - b) It helps to know true intention of legislature with satisfactory evidence.

## Q.No.9 Fitzgerald classification - Literal and Functional Interpretation (B)

(New SM)

- The 'literal interpretation' is that which regards conclusively the verbal expression of the law.
- It does not look beyond the 'literaligis' (letter of law). The duty of the court is to ascertain the intention of the legislature. The intention seeks out from the words used in the context.
- In all ordinary cases, the courts must accept the letter of the law as the exclusive and conclusive evidence of the spirit of the law.
- 'Functional interpretation', on the other hand, is that which departs from the letter of the law and seeks elsewhere for some other and more satisfactory evidence to ascertain the true intention of the legislature.

## Q.No.10. What is Construction and how it differs from interpretation (A)

(NEW SM)

- One, who intends to know about interpretation, must know about construction and the difference between these two terms.
- Where cardinal law of interpretation is that if the language is simple and unambiguous, it is to be read with the clear intention of the legislation (CWT vs. Smt.Muthu Zulaika). For the purpose of construction of a statute the same has to be read as a whole (State of Bihar Vs. CIT).
- Court adopts these two terms to ascertain the meaning of particular text.

**For example:** let us say that you and I agree that I will sell you my car. I say that I will sell you my car for \$100, and you accept. I deliver my 1984 Honda to you. You are angry, because you do not want this car. You thought I was selling my new, 2013 Cadillac. When you sue me for breach of contract, the court will follow certain guidelines, or rules of construction, in an attempt to determine what each of us intended.

In the given example court interpret I will sell you my car, by using certain guidelines, which are called as construction.

- Interpretation is finding out the true sense of any form and the construction is the drawing of conclusion, respecting subjects that lie beyond the direct expression of the text.
- Where the court adheres to the plain meaning of the language used by the legislature, it would be interpretation  
Where the meaning is not plain, the court has to decide whether the wording was meant to cover the situation before the court. Here the court would be resorting to what is called construction.
- The two terms – interpretation and construction – overlap each other and it is rather difficult to state where 'interpretation' leaves off and 'construction' begins.

**SIMILAR QUESTIONS:****1. Difference between Interpretation and Construction?**

A. Refer above answer .

## Q.No.11. Why do we need Interpretation/Construction? (A)

(NEW SM)

- Now a days, the enacted laws are drafted by legal experts and there is a possibility, that language used in it contains ambiguity and not perfect.
- Further, by its very nature, a statute is an edict of legislature and many-a-time the intent of the legislature gathered from not only the language but also the surrounding circumstances that prevailed at the time when that particular law enacted.
- If any provision of the statute is open to two interpretations, the court has to choose that interpretation which represents the true intention of the legislature.
- It is not within human powers to foresee the manifold set of facts, which may arise in the future, and even if it were so, it is not possible to provide for them in terms free from all ambiguity.

- e) Human mind not to presume what will happened in future, even presumes it is difficult task to frame law without ambiguity – Denning L.J.
- f) The English language is not an instrument of mathematical accuracy. Our literature would be much the poorer if it were which leads to criticize, the drafters of Acts of Parliament.
- g) A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else leads to ambiguity.
- h) When a defect appears, a judge cannot simply fold his hands and blame the draftsman and he must find out the intention of the legislature considering the social conditions at the time of preparing legislation.
- i) Judge must give 'force and life' to the intention of the legislature.

All these aspects add to give great prominence to the subject of interpretation and construction in the practical administration of the law.

**Q.No.12. What are the rules of Interpretation/Construction of Statutes? (B) (NEW SM)**

Over a period, certain rules of interpretation/construction have come to be well recognized. However, these rules are considered as guides only and are not rigid. These rules can be broadly classified as follows:

**a) PRIMARY RULES:**

- Rule of Literal Construction
- Rule of Reasonable Construction
- Rule of Harmonious Construction
- Rule of Beneficial Construction
- Rule of Exceptional Construction
- Rule of Ejusdem Generis etc.

**b) SECONDARY RULES**

- Effect of usage
- Associated words to be understood in Common Sense Manner

**Q.No.13. Explain the Rule of Literal Construction (A) (NEW SM)**

Rule of literal interpretation can be read and understood under the following headings:

**a) Natural and grammatical meaning:**

- i) Statute is to be first understood in their natural, ordinary, or popular sense and must be construed (understand) according to their plain, literal and grammatical meaning.

***Example:** In a question before the court whether the sale of betel leaves was subject to sales tax. In this matter, Supreme Court held that betel leaves could not be given the dictionary, technical or botanical meaning when the ordinary and natural meaning is clear and unambiguous. Being the word of everyday use it must be understood in its popular sense by which people are conversant with it as also the meaning which the statue dealing with the matter would attribute to it. Therefore, the sale of betel leaves was liable to sale tax. (Ramavtar vs. Assistant Sales Tax Officer).*

- ii) The meaning of a word depends upon its context. In the construction of statutes, the context means the statute as whole and other statutes in '*pari materia*' (where two enactments have common purpose in an analogous (similar) case.

***Example:** In construing of the Andhra Pradesh General Sales Tax Rules, 1957, the words 'Livestock means all domestic animals will not include 'chicks' construing in the popular sense although in literal sense animal refers to any and every animate object as distinct from inanimate object (Royal Hatcheries Pvt. Ltd. Vs. State of AP).*

- b) **Exact meaning preferred to loose meaning:** Exact meaning is preferred to loose meaning in an Act of Parliament. As every word has a secondary meaning too.

*Example: Crane (it is a bird as well as lifting object).*

**c) Technical words are construed in technical sense only.**

This point of literal construction is that technical words are understood in the technical sense only.

*Example: In construing of word 'practice' in Supreme Court Advocates Act, 1951, it was observed that practice of law generally involves the exercise of both the functions of acting and pleading on behalf of a litigant party. When legislature confers upon an advocate the right to practice in a court, it is legitimate to understand that expression as authorizing him to appear and plead as well as to act on behalf of suitors in that court. (Ashwini Kumar Ghose vs. Arabinda Bose).*

**CRITICISM: WHITELEY V CHAPPEL (1868) LR 4 QB 147:** A statute made it an offence 'to impersonate any person entitled to vote.' The defendant used the vote of a dead man. The statute relating to voting rights required a person to be living in order to be entitled to vote. Held: The literal rule was applied and the defendant was thus acquitted.

**SIMILAR QUESTIONS:**

**1. State the Grammatical Construction Rule.**

A. Refer above answer

**Q.No.14. Explain rule of reasonable Construction/Golden Rule of Interpretation (A) (NEW SM)**

- According to this rule, the words of a statute must understood by considering the Latin maxim, '*ut res magis valeat quam pereat*', which means the words of statute must be understood based on reasonable meaning.
- While interpreting a law, two meanings are possible, one making the statute vague and meaningless and other leading to certainty and a meaningful interpretation, in such case the later interpretation should be followed. (Pratap Singh vs. State of Jharkhand).
- A reasonable construction will be adopted in accordance with the policy and object of the statute.
- If the court finds that giving a plain meaning to the words will not be a fair or reasonable then, it becomes the duty of the court to depart from the dictionary meaning and adopt the construction, which will advance the remedy and suppress the mischief.

**Q.No.15. Explain Rule of Harmonious Construction (A)**

**(NEW SM)**

- When there is doubt about the meaning of the words in a statute, these should be understood in the sense in which they harmonize with the subject of the enactment and the object, which the legislature had in view.
- 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.
- 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.
- The rule is not applicable when the words have only one clear meaning. In such a case harmonious construction is replaced by literal construction.

*Example: As per the facts given in the Raj Krishna vs. Binod, there was a conflict between section 33 (2) and 123(8) of the Representation of People Act, 1951. Section 33 (2) stated that a government servant may nominate or second a candidate seeking election, whereas section 123(8) provided that a government servant is not entitled to assist a candidate in an election in any manner except by casting his vote.*

Supreme Court applies Harmonious Construction in this aspect. Accordingly, a government servant can vote as well as of proposing and seconding a candidature and forbidding him from assisting a candidate in any other manner.

**SIMILAR QUESTIONS:**

1. Explain the meaning and application of the rule of “Harmonious Construction”.

A. Refer above answer for these two questions.

**Q.No.16. Rule of Beneficial Construction or Haydon’s Rule or Purposive Construction (B)  
(NEW SM)**

- a) Where the language used in a statute is capable of more than one interpretation, the court must adopt that construction which ‘shall suppress the mischief and advance the remedy’.
- b) This rule requires the court to consider the following matters in construing an Act:
- What was the law before the making of the Act;
  - What was the mischief or defect for which the law did not provide;
  - What is the remedy that the Act has provided; and
  - What is the reason for the remedy?
- c) This rule does not normally apply to fiscal (financial) statute like Income tax Act. While construing a fiscal statute the words of the statute are given the plain meaning. If a taxpayer 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. The Supreme Court in the case of Hemraj Gordhandas vs. H.H. Dave held this.
- d) 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.

*In the landmark case of B SHAH Vs. PRESIDING OFFICER, LABOUR COURT, court applied beneficial rule of construction in construing section 5 of the Maternity Benefit Act, 1961, which makes the employer liable to pay maternity benefit to woman worker at the rate of average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for six weeks immediately following that day. The court held that Sundays must also be included and held that the Act was intended not only subsist but also make up for her dissipated energy and take care of child. The Act was read in the light of Article 42.*

**SIMILAR QUESTIONS:**

1. What is Mischief rule of interpretation?

2. Explain the rule of purposive construction?

A. Refer above answer for these two questions.

**Q.No.17. Rule of Exceptional Construction (B) (NEW SM)**

- a) The rule of exceptional construction stands for the elimination of words in a statute, which defeat the real objective of the statute or make no sense.
- b) It also stands for construction of words ‘and’, or, ‘may’, ‘shall’ and ‘must’. This rule has several aspects viz.,
- Common sense rule:** Despite the general rule that full effect must be given to every word, if no sensible meaning can be fixed to a word or phrase, or if it would defeat the real object of the enactment, it should be eliminated.
  - Conjunctive and disjunctive words ‘or’ ‘and’:** The word or is normally disjunctive and is normally conjunctive (**junction**). However, at times they are read as **vice versa** to give effect to the clear intention of the legislature as disclosed from the context. This would be so where the literal reading of the words produces an unintelligible or absurd result.

*Example: In the Official Secrets Act, 1920, any person who attempts to commit any offence under the Act, or solicits or incites or endeavors (activities) to persuade (influence) another person to commit an offence, or aids or abets **and** does any act preparatory to the commission of an offence. Here, the word and in bold is to be read as 'or'. Reading and as and will result in unintelligible and absurd sense and against the clear intention of the legislature.*

iii) **Mandatory vs. directory provisions:** When a provision is mandatory, it must be strictly observed. When a provision is directory, it would be sufficient that it is substantially complied with.

**Q.No. 18. Explain briefly the distinction between 'Mandatory' and 'Directory' provisions in a Statute. How the court deals with them differently? (A) (MAY – 19)(NEW SM)**

- 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 is 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 in a statute 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.
- 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**.

**Q.No. 19. Write a Short note on Interpretation of Words "May and Shall" (A) (NEW SM)**

**MAY:**

- The use of the word 'may' in a **statutory provision 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.**
- In order to **interpret the word 'may' various factors** have to be **considered** such as 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.
- Where the word 'may' involves a **discretion coupled with an obligation** or where it **confers a positive benefit** to the **general class of subjects**, or where a **remedy would be advanced** and a **mischief suppressed**, or where giving the word a directory significance would defeat the very object of the Act **then word 'may' should be interpreted to convey a mandatory force.**
- Therefore, while undoubtedly the word 'may' generally does not mean 'must' or 'shall' yet the same word 'may' is capable of meaning 'must' or 'shall' in the light of the context in which it occurs.

**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.
- As **against the Government the word 'shall' when used** in statutes is to be construed as 'may' **unless a contrary intention is manifest.** Eg: 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 the provision rather under some other applicable statute.**



- c) Therefore, **generally speaking** when a statute uses the word 'shall' prima facie it is mandatory but it is **sometimes not so** interpreted if the context or intention of the legislature otherwise demands.
- d) 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**.
- e) The **use of word 'shall'** with respect to one matter and use of word 'may' with respect to another matter **in the same section** of a statute, will normally lead to the conclusion that the word 'shall' **imposes an obligation**, whereas word 'may' **confers a discretionary power**.

**Q.No.20. Explain the Rule of "Ejusdem Generis" with reference to the Interpretation of Statutes. State the cases in which this rule is no applicable (A) (NEW SM)**

- a) 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 take their colour from the specific words used earlier.
- b) For instance, where an Act permits keeping of dogs, cats, cow, 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.,
- c) The general principles 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 following those specific words remains unaffected – those general words then would not take colour from the earlier specific words.
- d) 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 courts is held to be not restricted by the first five situation in which the court may wind up a company.
- When the company is unable to pay its debts
  - If the company has by special resolution resolved that the company be wound up by the tribunal.
  - If the company has acted against the interest of the integrity or morality of India, security of the state, or has spoiled any kind of friendly relations with foreign or neighboring countries.
  - If the company has not filled its financial statements or annual returns for preceding 5 consecutive financial years.
  - If the company in any way is indulged in fraudulent activities or any other unlawful business, or any person or management connected with the formation of company is found guilty of fraud, or any kind of misconduct.
  - If the tribunal by any means finds that it is just & equitable that the company should be wound up.

**SIMILAR QUESTIONS:**

1. **Do the courts have a discretionary power to apply the rule of 'Ejusdem Generis' in a given situation.**
- A. Refer above answer for these three questions.

**Q.No.21. What is the Effect of Usage? (B)**

**(NEW SM)**

- a) Usage or practice developed under the statute is indicative of the meaning recognized to its words.
- b) A uniform practice continued under an old statute and inaction of legislature to amend the same are important factors to show that the practice so followed was based on correct understanding of the law.
- c) When the usage or practice receives judicial or legislative approval it gains additional weight:

- d) In this connection, we have to bear in mind two Latin Maxims:
- i) 'Optima Legum interpres est consuetudo' (the custom is the best interpreter of the law); and
  - ii) 'Contempranea expositio est optima et fortissimo in lege' (the best way to interpret a document is to read it as it would have been read when made).

**SIMILAR QUESTIONS:**

1. In what way is 'usage' helpful in the interpretation of a Statute?

**Q.No.22. Associated words to be understood in common sense manner- Explain. (B)**

**(NEW SM)**

- a) When two words or expressions are coupled together, one of which generally excludes the other, obviously the more general term is used in a meaning excluding the specific one.
- b) On the other hand, there is the concept of Noscitur A Sociis (it is known by its associates), that is to say 'the meaning of a word is to be judged by the company it keeps.
- c) When two or more words which are capable of similar meaning are coupled together, they are to be understood in their nature or quality.

**SIMILAR QUESTIONS:**

1. Explain the term 'Noscitur A sociis'?

A. Refer above answer.

**INTERNAL AIDS TO INTERPRETATION/CONSTRUCTION**

**Q.No. 23. WHAT ARE THE INTERNAL AND EXTERNAL AIDS TO INTERPRETATION OF STATUTES? GIVE FIVE EXAMPLES EACH OF INTERNAL AND EXTERNAL AIDS (C) (NEW SM)**

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

**Examples of external aids to interpretation:**

- |   |  |
|---|--|
| 1. Historical setting (Background)      | a. Earlier acts explained by the later act |
| 2. Consolidating statute & Previous law | b. Reference to repealed acts              |
| 3. Usage                                | 5. Dictionary definition                   |
| 4. Earlier & later analogous acts       | 6. Use of foreign decisions                |

**Q.No.24. Titles of the Act (C)**

**(NEW SM)**

- a) An enactment would have what is known as 'Short Title and also a 'Long Title'
- b) The 'Short Title' merely identifies the enactment and is chosen merely for convenience.
- c) The 'Long Title' describes the enactment and does not merely identify it.  
*Example: Full title of the Supreme Court Advocates (Practice in High Courts) Act, 1951 specify that this is an act to authorize Advocates of the Supreme Court to practice as of right in any High court.*
- d) The Long Title of an Act is a part of the Act. We can, therefore, refer to it to ascertain the object, scope and purpose of the Act and so is admissible as an aid to its construction.

**Q.No.25. Explain the Usefulness of Preamble in Interpreting a Statute (B)****(NEW SM)**

- a) The Preamble expresses the scope, object and purpose of the Act more comprehensively than the Long Title.
- b) The Preamble may recite the ground and the cause of making a statute and the evil which is sought to be remedied by it.
- c) The Preamble of a Statute is a part of the enactment and can legitimately be used for construing it. However, the Preamble does not over-ride the plain provision of the Act but if the wording of the statute given rise to doubts as to its proper construction, for example, where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction.

**Example:** Use of the word 'may' in section 5 of Hindu Marriage Act, 1955 provides that 'a marriage may be solemnized between two Hindus.....' has been construed to be mandatory in the sense that both parties to the marriage must be Hindus as defined in section 2 of the Act. It was held that a marriage between a Christian male and a Hindu female solemnized under the Hindu Marriage Act was void. This result was reached also having regard to the preamble of the Act which reads: "An Act to amend and codify the law relating to marriage among Hindus" {Gullipoli Sowria Raj Vs. Bandaru Pavani, (2009)}

**SIMILAR QUESTIONS:**

1. The preamble to an Act discloses the primary intention of the Legislature, but it cannot over-ride the provisions of the Act. Explain

**Q.No.26. 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 (B) (NEW SM)****1. HEADINGS & TITLES**

- a) 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.
- b) Heading and Titles prefixed to sections or groups of sections can legitimately be referred to for the purpose of construing the enactment or its parts.
- c) The heading to one group of sections cannot be used to interpret another group of sections.

**2. MARGINAL NOTES**

- a) Marginal notes means titles to the section.
- b) In C.I.T vs. Ahmedbhai Umarbhai & Co. case it has been held that "Marginal notes in an Indian statute, as in an Act, of Parliament cannot be referred to for the purpose of construing the statute.
- c) Many cases show that reference to marginal notes may be permissible in exceptional cases for construing a section in a statute. (Deewan Singh vs. Rajendra Pd. Ardevi) (Sarabjit Rick Singh vs. Union of India).
- d) In Uttam Das Chela Sunder Das vs. 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'.
- e) Marginal note is legislative and not editorial exercise C Bhagirath vs. 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.
- f) It is relevant factor to be taken into consideration in construing the ambit of the section. Shree Sajjan Mills Ltd. Vs. CIT (1985) 156 ITR 585 (SC).

- g) Marginal notes appended to Articles of the Constitution have been held to be part of the Constitution as passed by the Constituent Assembly and therefore have been made use of in construing the articles.

**Q.No.27. In what way are Definitional Sections helpful in The Interpretation of Statutes (B) (NEW SM)**

- a) The legislation contains the definitions to a word at the earliest. The meaning of the word is alike wherever the word is used in that legislation.
- b) Court at the time of interpretation of the ambiguous word not to substitute its own meaning by ignoring the meaning given in the legislation.
- c) Purpose of definition clause is two-folds i.e., to interpret properly the Act and Shorten the language by using 'word' that defined.
- d) **RESTRICTIVE & EXTENSIVE DEFINITIONS:**
- In definition, word 'mean' used, either it may exhaustive or restrictive, restrictive meaning only consider.  
**Example:** Director means a director appointed to the board of a company. Even word director is exhaustive, meaning of it only consider in restrictive way- Section 2(34) of Companies Act, 2013.
  - Word 'include' used in the definition, then definition is exhaustive.  
**Example (1):** 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.  
**Example (2):** Definition of Whole time director {Section 2 (94) of the Companies Act, 2013}- Whole time director includes a director in the whole time employment of the company. The word includes suggests extensive definition. Other directors may be included in the category of the whole time director.
  - Where the word is defined as "means and includes", then definition is exhaustive.
  - Where the word is defined "to apply to and include", definition understand as extensive.
  - Definition section worded as "is deemed to include" may use as inclusive or exhaustive.
- e) **AMBIGUOUS DEFINITION:** When definition is ambiguous, interpret it with help of other provisions of Act and not to read in isolation.
- f) **DEFINITIONS SUBJECT TO CONTRARY CONTEXT:** Word contains several meaning the meaning nearer to objects of the Act only to consider.

**Q.No.28. Illustrations (B)**

(NEW SM)

Illustrations appended to the section, form part of the statute and are considered to be of relevance and value in construing the text of sections. However, illustrations cannot have the effect of modifying the language of the section and can neither curtail nor expand the ambit of the section.

**Q.No.29. Explain the importance of Proviso as an internal aid to interpretation. (B) (NEW SM)**

- a) 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.
- b) A proviso should not be, ordinarily, interpreted as a general rule.
- c) Proviso carves out an exception to the main provision to which it has been enacted and to no other.

- d) 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 main provision to which it has been enacted as a proviso and to no other. (*Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax, AIR 1955 SC 765*).

**SIMILAR QUESTIONS:**

1. Explain the function of proviso while carrying out the interpretation.
2. What is the effect of a proviso? Does it qualify the main provisions of an Enactment?
3. What are the rules to be followed in the interpretation of a proviso in a Statute?

**Q.No.30. Why an Explanation is added to a Section. (B)****(NEW SM)**

- a) An Explanation should normally be so read as to harmonize with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.
- b) Following are the objects of adding an explanation to the section:
  - i) Explain the meaning and intendment of the Act itself.
  - ii) Clarify any vagueness in the main enactment to make it consistent with the object.
  - iii) Provide an additional support to the object of the Act to make it meaningful and purposeful.
  - iv) Fill up the gap which is relevant for the purpose of the explanation to suppress the mischief and advance the object of the Act.
  - v) It cannot take away a statutory right.

**SIMILAR QUESTION:**

1. Does an explanation added to a section widen the ambit of a Section?
- A. Refer above answer.

**Q.No.31.Schedules (B)****(NEW SM)**

- a) The Schedules form part of an Act.
- b) They must be read together with the Act for all purposes of construction. However, the expressions in the Schedule cannot control or prevail over the expression in the enactment. If there appears to be any inconsistency between the schedule and the enactment, the enactment shall always prevail.

**EXTERNAL AIDS TO INTERPRETATION/ CONSTRUCTION****Q.No.32.Historical Setting (C)****(NEW SM)**

- a) In construing any enactment, we have to take help from all those external or historical facts which are necessary in the understanding and comprehension of the subject matter and the scope and object of the enactment.
- b) History in general and Parliamentary History in particular, ancient statutes, contemporary or other authentic works and writings all are relevant in interpreting and construing an Act.

**Q.No.33.Consolidating Statutes & Previous Law (C)****(NEW SM)**

The Preambles to many statutes contain expressions such as "An Act to consolidate" the previous law, etc. In such a case, the Courts may stick to the presumption that it is not intended to alter the law.

**Q.No.34. Usage (B)****(NEW SM)**

Where the meaning of the language in a statute is doubtful, usage – how that language has been interpreted and acted upon over a long period – may determine its true meaning.

**Q.No.35. Earlier & Later Acts and Analogous Acts. (C)****(NEW SM)**

- a) Where there are different statutes in 'parimateria' (i.e. in an analogous case), though made at different times, or even expired and not referring to each other, they shall be taken and construed together as one system and as explanatory of each other.
- b) In case of discrepancy between two Acts, then the Act enacted later in point of time, shall prevail.

**Q.No.36. Earlier Act Explained by the Later Act (C)****(NEW SM)**

Sometimes, later Act furnishes a legislative interpretation of the earlier one, if it is 'pari materia' and if, but only if, the provisions of the earlier Act are ambiguous.

**Q.No.37. Reference to Repeal Act. (C)****(NEW SM)**

Where a part of an Act has been repealed, it loses its operative force. Nevertheless, such a repealed part of the Act may still be taken into account for construing the unrepealed part. This is so because it is part of the history of the new Act.

**Q.No.38. Dictionary Definitions (B)****(NEW SM, N18(N)- 2M)**

- a) Where a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood.
- b) In selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act. It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear.
- c) Judicial decisions laying down the meaning of words in construing statutes in 'pari materia' will have greater weight than the meaning furnished by dictionaries.
- d) For technical terms reference may be made to technical dictionaries.

**Q.No.39. Use of Foreign Decisions (A)****(RTP – NOV 19)(NEW SM)**

- a) Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts. However, prime importance is always to be given to the language of the Indian statute.
- b) Where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.

**Q.No.40. Discuss the rules of interpretation/construction of deeds and documents. (A) (NEW SM)**

- a) 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, would understand by the words used in that deed or document.
- b) Terms of one deed cannot be construed by reference to the terms of another deed.
- c) The same word cannot have two different meanings in the same document.

- d) Ascertain the intention of the parties to the instrument after considering all the words in the document/deed concerned in their ordinary, natural sense.
- e) The circumstances in which the particular words had been used have also to be taken into account.
- f) 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 an ordinary person in one sense and by a trained person or a specialist in quite another special sense.
- g) 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 the latter sense.
- h) It may also happen that there is a 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.
- i) 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 document harmoniously, if possible. If that is not possible, then the earlier part will prevail over the latter one which should, therefore, be disregarded.

### SUMMARY

- In the olden days i.e. in **Primitive Age**, the rulers regulate the law and order in the State according to 'Dharma Sastras', which are based on what is good and what is bad. Later, in **Middle Age**, Monarchic form of governments comes into existence and in which, ruler enjoyed all the powers like, enacting legislations, implementation of the legislations and punishment awarded to the violators of legislation.
- Whereas in **Modern Age**, as the democratic form of governments comes into force the powers required to be separated for implementation of welfare legislations. At this juncture, Montesquieu a French Political Philosopher, profound a theory of **separation of powers**, which paved path to separate the powers and allocates to three organs. Legislative powers vest with legislature, power of implementation of legislation exercised by Executive and the power of punishment bestow on judiciary. He opines that the object of democracy only achieved when one organ not to interfere with the other.
- Function of judiciary is eminence in democratic form of governments. It exercises not only the power of awarding punishment, but also the power of interpretation of legislations for better implementation of the same. At the time of enacting and implementation of legislations, there is no problem either to legislature or to executive regarding lacunas in legislation. However, at the time of adjudication by the court, the wrongdoer may escape from the clutches of judiciary by using such lacunas. Therefore, the **judiciary** as far as possible to avoid such escapism by **interprets the legislation** in right way by not deviating the legislative intention.
- While interpreting the legislation judicial authority not to add or delete the words in legislation, which leads to interference in powers of one organ into other organ. It must concentrate on implementation of statute rather than struck down the same with an object to **clear ambiguity** in right way. Judiciary avoids injustice to either party and to follow principles of natural justice, when it interprets the legislation. It is mandatory to read the statute as a whole at the time of interpretation of statute or provisions of statute.
- In this book, it is clearly narrated different rules and aids regarding the interpretation of statute or instruments (drafted by parties conferring rights between them) which are helpful to know actual theme and object to study the subject of interpretation of statutes and for which emphasized important points precisely. It helps the student to know how to study a particular legislation, how to ascertain the true sense of legislature in enacting legislation, how to get rid from ambiguity arise in legislation etc.

**MULTIPLE CHOICE QUESTIONS (MCQ'S)**

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 expositio
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 merely 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

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**KEY:**

1.	D	2.	C	3.	B	4.	D
5.	D	6.	C	7.	B	8.	C

**THE END**