

# INDEX

S.No.	Chapter Name	Page No.
1.	THE INDIAN CONTRACT ACT, 1872	
	UNIT - 1: CONTRACT OF INDEMNITY AND GUARANTEE	1-5
	UNIT - 2: BAILMENT AND PLEDGE	6 - 10
	UNIT - 3: AGENCY	11 - 14
2.	THE NEGOTIABLE INSTRUMENTS ACT, 1881	15 - 19
3.	THE GENERAL CLAUSES ACT, 1897	20 - 23
4.	INTERPRETATION OF STATUTES	24 - 28

# CHAPTER 1:

## THE INDIAN CONTRACT ACT, 1872

### UNIT – 1: CONTRACT OF INDEMNITY AND GUARANTEE

#### QUESTION - 1

Satya has given his residential property on rent amounting to ₹ 25,000 per month to Tushar. Amit became the surety for payment of rent by Tushar. Subsequently, without Amit's consent, Tushar agreed to pay higher rent to Satya. After a few months of this, Tushar defaulted in paying the rent.

- (i) Explain the meaning of contract of guarantee according to the provisions of the Indian Contract Act, 1872.
- (ii) State the position of Amit in this regard. [Jan 21 (4 Marks)]

#### ANSWER:

- (i) **Contract of guarantee:** As per the provisions of section 126 of the Indian Contract Act, 1872, a contract of guarantee is a contract to perform the promise made or discharge the liability, of a third person in case of his default.

Three parties are involved in a contract of guarantee:

**Surety-** person who gives the guarantee,

**Principal debtor-** person in respect of whose default the guarantee is given,

**Creditor-** person to whom the guarantee is given

- (ii) According to the provisions of section 133 of the Indian Contract Act, 1872, where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.

In the instant case, Satya (Creditor) cannot sue Amit (Surety), because Amit is discharged from liability when, without his consent, Tushar (Principal debtor) has changed the terms of his contract with Satya (creditor). It is immaterial whether the variation is beneficial to the surety or does not materially affect the position of the surety.

#### QUESTION - 2

Y advances Z a loan of ₹ 10,000 on the guarantee of X, at an interest of 10%. Subsequently, as Z was having some financial problems, Y reduced the rate of interest to 7% and also extended time for repayment of loan without the consent of X. Z becomes insolvent. Can Y sue X for recovery of amount? [Study Mat. & MTP Nov 2021 (4 Marks)]

#### ANSWER:

According to section 133 of the Indian Contract Act, 1872, where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.

Accordingly, Y cannot sue X, because a surety (X) is discharged from liability when, without his consent, the creditor makes any change in the terms of his contract with the principal debtor (Z), no matter whether the variation is beneficial to the surety or does not materially affect the position of the surety.

### QUESTION - 3

Rahul is the owner of electronics shop. Priyanka reached the shop to purchase an air conditioner whose compressor should be of copper. As Priyanka wanted to purchase the air conditioner on credit, Rahul demand a guarantor for such transaction. Mr. Arvind (a friend of Priyanka) came forward and gave the guarantee for payment of air conditioner. Rahul sold the air conditioner of a particular brand, misrepresenting that it is made of copper while it is made of aluminium. Neither Priyanka nor Mr. Arvind had the knowledge of fact that it is made of aluminium. On being aware of the facts, Priyanka denied for payment of price. Rahul filed the suit against Mr. Arvind. Explain with reference to the Indian Contract Act 1872, whether Mr. Arvind is liable to pay the price of air conditioner? [RTP Nov, 2021]

### SOLUTION:

As per the provisions of section 142 of the Indian Contract Act 1872, where the guarantee has been obtained by means of misrepresentation made by the creditor concerning a material part of the transaction, the surety will be discharged. Further according to provisions of section 134, the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, of by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

In the given question, Priyanka wants to purchase air conditioner whose compressor should be of copper, on credit from Rahul. Mr. Arvind has given the guarantee for payment of price. Rahul sold the air conditioner of a particular brand on misrepresenting that it is made of copper while it is made of aluminium of which both Priyanka & Mr. Arvind were unaware. After being aware of the facts, Priyanka denied for payment of price. Rahul filed the suit against Mr. Arvind for payment of price.

On the basis of above provisions and facts of the case, as guarantee was obtained by Rahul by misrepresentation of the facts, Mr. Arvind will not be liable. He will be discharged from liability.

### QUESTION - 4

'Surendra' guarantees 'Virendra' for the transactions to be done between 'Virendra' & 'Jitendra' during the month of March, 2021. 'Virendra' supplied goods of ₹ 30,000 on 01.03.2021 and of ₹ 20,000 on 03.03.2021 to 'Jitendra'. On 05.03.2021, 'Surendra' died in a road accident. On 10.03.2021, being ignorant of the death of 'Surendra', 'Virendra' further supplied goods of ₹ 40,000. On default in payment by 'Jitendra' on due date, 'Virendra' sued on legal heirs of 'Surendra' for recovery of ₹ 90,000. Describe, whether legal heirs of 'Surendra' are liable to pay ₹ 90,000 under the provisions of Indian Contract Act 1872.

What would be your answer, if the estate of 'Surendra' is worth of ₹ 45,000 only?

[RTP May 22]

### ANSWER:

According to section 131 of Indian Contract Act 1872, in the absence of a contract to contrary, a continuing guarantee is revoked by the death of the surety as to the future transactions. The estate of deceased surety, however, liable for those transactions which had already taken place during the lifetime

of deceased. Surety's estate will not be liable for the transactions taken place after the death of surety even if the creditor had no knowledge of surety's death.

In this question, 'Surendra' was surety for the transactions to be done between 'Virendra' & 'Jitendra' during the month of March'2021. 'Virendra' supplied goods of ₹ 30,000, ₹ 20,000 and of ₹ 40,000 on 01.03.2021, 03.03.2021 and 10.03.02021 respectively. 'Surendra' died in a road accident but this was not in the knowledge of 'Virendra'. When 'Jitendra' defaulted in payment, 'Virendra' filed suit against legal heirs of 'Surendra' for recovery of full amount i.e. ₹ 90,000.

On the basis of above, it can be said in case of death of surety ('Surendra'), his legal heirs are liable only for those transactions which were entered before 05.03.2021 i.e. for ₹ 50,000. They are not liable for the transaction done on 10.03.2021 even though Virendra had no knowledge of death of Surendra.

Further, if the worth of the estate of deceased is only ₹ 45,000, the legal heirs are liable for this amount only.

#### QUESTION - 5

Enumerate the following as per the provisions of the Indian Contract Act, 1872:

- (i) Meaning of contract of guarantee
- (ii) Parties to a contract of guarantee.

[MTP March 22 (4 Marks)]

#### ANSWER:

- (i) **Contract of guarantee:** As per the provisions of section 126 of the Indian Contract Act, 1872, a contract of guarantee is a contract to perform the promise made or discharge the liability, of a third person in case of his default.
- (ii) Three parties are involved in a contract of guarantee:  
**Surety** – person who gives the guarantee,  
**Principal debtor** – person in respect of whose default the guarantee is given,  
**Creditor** – person to whom the guarantee is given

#### QUESTION - 6

Due to urgent need of money amounting to ₹ 3,00,000, Pawan approached Raman and asked him for the money. Raman lent the money on the guarantee of Suraj, Tarun and Usha. Pawan makes default in payment and Suraj pays full amount to Raman. Suraj, afterwards, claimed contribution from Tarun and Usha refused to contribute on the basis that there is no contract between Suraj and him. Examine referring to the provisions of the Indian Contract Act, 1872, whether Tarun can escape from his liability.

[Dec 21 (4 Marks)]

#### ANSWER:

Equality of burden is the basis of Co-suretyship. This is contained in section 146 of the Indian Contract Act, 1872, which states that “when two or more persons are co-sureties for the same debt, or duty, either jointly, or severally and whether under the same or different contracts and whether with or without the knowledge of each other, the co-sureties in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor”.

Accordingly, on the default of Pawan in payment, Tarun cannot escape from his liability. All the three sureties Suraj, Tarun and Usha are liable to pay equally, in absence of any contract between them.

#### QUESTION - 7

Alpha Motor Ltd. agreed to sell a bike to Ashok under hire –purchase agreement on guarantee of Abhishek. The Terms were: hire-purchase price ₹ 96,000 payable in 24 monthly Instalments of ₹ 8,000 each. Ownership to be transferred on the payment of last Installment. State whether Abhishek is discharged in each of the following alternative case under the provisions of the Indian Contract Act, 1872:

- (i) Ashok paid 12 installments but failed to pay next two installments. Alpha motor Ltd. sued Abhishek for the payment of arrears and Abhishek paid these two instalments i.e. 13<sup>th</sup> and 14<sup>th</sup>. Abhishek then gave a notice to Alpha Motor Ltd. to revoke his guarantee for the remaining month.
- (ii) If after 15<sup>th</sup> Months, Abhishek died due to COVID-19. [Dec 21 (4 Marks)]

#### ANSWER:

According to section 130 of the Indian Contract Act, 1872, the continuing guarantee may at any time be revoked by the surety as to future transactions by notice to the creditors.

Once the guarantee is revoked, the surety is not liable for any future transaction however he is liable for all the transactions that happened before the notice was given.

A specific guarantee can be revoked only if liability to principal debtor has not accrued.

- (i) In the given question Ashok paid 12 instalments (out of total 24 monthly instalments), but failed to pay next two instalments. Abhishek (guarantor) paid the 13<sup>th</sup> and 14<sup>th</sup> installments but then he revoked guarantee for the remaining months. Thus, Abhishek is not liable for installments that was made the notice, but he is liable for installments made before the notice (which he had paid i.e. 13<sup>th</sup> and 14<sup>th</sup> installments).
- (ii) According to section 131 of the Indian Contract Act, 1872, in the absence of any contract to the contrary, the death of surety operates as a revaluation of a continuing guarantee as to the future transactions taking place after the death of surety.

However, the surety's estate remains liable for the past transactions which have already taken place before the death of the surety.

In the given question, Abhishek (guarantor) died after 15<sup>th</sup> month. This will operate as a revaluation of a continuing guarantee as to the future transaction taking place after the death of surety (i.e. Abhishek). However, the Abhishek's estate remains liable for the past transactions (i.e. 15<sup>th</sup> month and before) which have already taken place before the death of the surety.

#### QUESTION - 8

Examine the validity of the following statements under the provisions of the Indian Contract Act, 1872.

- (i) Creditor should proceed legal action first against the Principal Debtor and later against the surety. [May 22 (1 Mark)]

#### ANSWER:

**Creditor should proceed legal action first against the Principal Debtor and later against the surety:** Invalid

**Reasoning:** As per Section 128 of the Indian Contract Act, 1872, the surety's liability is co-extensive with that of Principal debtor. It's not mandatory that creditor should proceed legal action in case of default, first against the Principal debtor and later against the surety. It is on creditor to start action first either against the Principal debtor or the surety.





## UNIT – 2: BAILMENT AND PLEDGE

### QUESTION - 1

Mr. Stefen owns a chicken farm near Gurgaon, where he breeds them and sells eggs and live chicken to retail shops in Gurgaon. Mr. Flemming also owns a similar farm near Gurgaon, doing the same business. Mr. Flemming had to go back to his native place in Australia for one year. He needed money for travel so he had pledged his farm to Mr. Stefen for one year and received a deposit of ₹ 25 Lakhs and went away. At that point of time, stock of live birds were 1,00,000 and eggs 10,000. The condition was that when Flemming returns, he will repay the deposit and take possession of his farm with live birds and eggs.

After one year Flemming came back and returned the deposit. At that time there were 1,09,000 live birds (increase is due to hatching of eggs out of 10,000 eggs he had left), and 15,000 eggs.

Mr. Stefen agreed to return 1,00,000 live birds and 10,000 eggs only.

State the duties Mr. Stefen as Pawnee and advise Mr. Flemming about his rights in the given case. [May 2021]

### SOLUTION:

According to section 163 of the Indian Contract Act, 1872, in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

In the given question, when Mr. Flemming returned from Australia there were 1,09,000 live birds and 15,000 eggs (1,00,000 birds and 10,000 eggs were originally deposited by Mr. Flemming). Mr. Stefen agreed to return 1,00,000 live birds and 10,000 eggs only and not the increased number of live birds and eggs.

In the light of the provision of law and facts of the question, following are the answers:

**Duties of Mr. Stefen:** Mr. Stefen (pawnee) is bound to deliver to Mr. Flemming (pawnor), any increase or profit (9,000 live birds and 5,000 eggs) which has occurred from the goods bailed (i.e the live birds and eggs).

**Right of Mr. Flemming:** Mr. Flemming is entitled to recover from Pawnee any increase in goods so pledged.

### QUESTION - 2

Radheshyam borrowed a sum of ₹ 50,000 from a Bank on the security of gold on 1.07.2019 under an agreement which contains a clause that the bank shall have a right of particular lien on the gold pledged with it. Radheshyam thereafter took an unsecured loan of ₹ 20,000 from the same bank on 1.08.2019 for three months. On 30.09.2019 he repaid entire secured loan of ₹ 50,000 and requested the bank to release the gold pledged with it. The Bank decided to continue the lien on the gold until the unsecured loan is fully repaid by Radheshyam. Decide whether the decision of the Bank is valid within the provisions of the Indian Contract Act, 1872? [Jan 21 (4 Marks)]

### SOLUTION:

**General lien of bankers:** According to section 171 of the Indian Contract Act, 1872, bankers, factors, wharfingers, attorneys of a High Court and policy brokers may, in the absence of a contract to the

contrary, retain, as a security for a general balance of account any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to the effect.

Section 171 empowers the banker with general right of lien in absence of a contract whereby it is entitled to retain the goods belonging to another party, until all the dues are discharged. Here, in the first instance, the banker under an agreement has a right of particular lien on the gold pledged with it against the first secured loan of ₹ 50,000/-, which has already been fully repaid by Radheshyam. Accordingly, Bank's decision to continue the lien on the gold until the unsecured loan of ₹ 20,000/- (which is the second loan) is not valid.

### QUESTION - 3

As per the Indian Contract Act, 1872, answer the following –

1. Definition of pledge, pawnor and pawnee
2. Essential characteristics of contract of pledge

[MTP May 2021]

#### ANSWER:

- (i) “Pledge”, “pawnor” and “pawnee” defined [Section 172]: The bailment of goods as security for payment of a debt or performance of a promise is called “pledge”. The bailor is in this case called the “pawnor”. The bailee is called the “pawnee”.
- (ii) Since Pledge is special kind of bailment, all the essential of bailment are also essentials of Pledge. Apart from that, the characteristics of the pledge are:
- (1) There shall be a bailment of security against payment or performance of the promise.
  - (2) The subject matter of pledge is goods.
  - (3) Goods pledged for shall be in existence
  - (4) There shall be delivery of goods from pledger to pledgee.

### QUESTION - 4

Anay bailed 100 kg of high quality sugar to Saksham, who owned a kirana shop, promising to give ₹ 800 at the time of taking back the bailed goods. Saksham's employee, unaware of this, mixed the 100 kg of sugar belonging to Anay with the sugar in the shop and packaged it for sale when Saksham was away. This came to light only when Anay came asking for the sugar he had bailed with Saksham, as the price of the specific quality of sugar had trebled. What is the remedy available to Anay, as per the provisions of the Indian Contract Act, 1872?

[MTP March 22 (4 Marks)]

#### ANSWER:

According to section 157 of the Contract Act, 1872, if the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

In the given question, Saksham's employee mixed high quality sugar bailed by Anay and then packaged it for sale. The sugars when mixed cannot be separated. As Saksham's employee has mixed the two kinds of sugar, he (Saksham) must compensate Anay for the loss of his sugar.



### QUESTION - 5

Shyam, at the request of Govind, sells goods which were, in the possession of Govind. However, Govind had no right to dispose of such goods. Shyam did not know this and handed over the proceed of the sale to Govind. Afterwards, Manohar, who was the true owner of the goods, sued Shyam and recovered the value of the goods. In the light of the provisions of the Indian Contract Act, 1872, answer the following questions:

(i) Is Govind liable to indemnify to Shyam for his payment to Manohar?

(ii) What will be the liability of Govind if the goods is a prohibited drug? [Dec 21 (4 Marks)]

### ANSWER:

According to section 178 of the Indian Contract Act, 1872, where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the pawnee acts in good faith and has not at the time of the pledge notice that the Pawnor has no authority to pledge.

It is also to be noted that:

1. The possession of goods must be with the consent of the owner. If possession has been obtained dishonestly or by a trick, a valid pledge cannot be effected.

2. The pledgee should have no notice of the pledger's defect of title. If the pledgee knows that the pledger has a defective title, the pledge will not be valid.

(i) In the given question, Shyam had no notice of the Govind's defect of title. He acted in ordinary course of business of a mercantile agent considering Govind as owner of the good and genuinely handed over the proceed of the sale to him. Therefore, said transaction is invalid.

Thus, Govind shall be liable to indemnify Shyam for his payment to Manohar.

(ii) Govind shall not be liable to indemnify Shyam as selling of prohibited drugs is a prohibited act and against the public policy.

### QUESTION - 6

Mr. Truth deposited 100 bags of ground-nut in the factory of Mr. False for safe keeping. Mr. False mixed the ground-nut bags with the other ground-nut bags in the factory with the consent of Mr. Truth and consumed it to produce edible Oil.

(i) Whether Mr. Truth is entitled to claim his share in the edible oil produced under the provisions of the Indian Contract Act, 1872?

(ii) What will be the consequences in case the ground-nut bag were mixed without the consent of Mr. Truth under the above said Act?

[May 2022 (4 Marks)]

### ANSWER:

The given question is based on section 155, 156 & 157 of the Indian Contract Act, 1872.

(i) W.r.t. this part of the question, Mr. Truth deposited his ground nut bags for safe keeping in the factory of the Mr. False. He mixed the ground nut bags of Mr. Truth with the other ground nut

bags lying in the factory with the consent of Mr. Truth and consumed the same for producing edible oils.

According to section 155 of the Indian Contract Act, 1872, if the Bailee, mixes the goods bailed with his own goods, with the consent of the bailor, both the parties shall have an interest in proportion to their respective shares in the mixture thus produced.

Accordingly, Mr. Truth is entitled to claim his share in the edible oil produced.

- (ii) According to section 156 & 157 of the Indian Contract Act, 1872, where the bailee, without the consent of the bailor, mixes the goods bailed with his own goods and the goods can be separated or dividend, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expenses of separation or division and any damage arising from the mixture.

In the given case, the goods were mixed without consent of Mr. Truth, and if such mixture can be separated, then Mr. False will bear the expenses of separation and the damage, if any, arising from mixture.

However, in the light of given facts, as mixture of goods were consumed to produce oil, and so it cannot be separated and therefore Mr. False shall be liable to compensate Mr. Truth.

#### QUESTION - 7

Examine the validity of the following statements under the provisions of the Indian Contract Act, 1872.

- (ii) If the bailee does not use the goods according to the terms and conditions of bailment, the contract of bailment becomes void. **[May 2022 (4 Marks)]**

#### ANSWER:

If the bailee does not use the goods according to the terms and conditions of bailment, the contract of bailment becomes void: Invalid

**Reasoning:** As per Section 153, a contract of bailment is voidable at the option of the bailor, if the bailee does not use the goods according to the terms and conditions of bailment.

#### QUESTION - 8

Kartik took his AC to Pratik, an electrician, for repair. Even after numerous follow ups by Kartik, Pratik didn't return the AC in reasonable time even after repair. In the meantime, Pratik's electric shop caught fire because of short circuit and AC was destroyed. Decide, whether Pratik will be held liable under the provisions of the Indian Contract Act, 1872.

**[Nov 2022 (4 Marks)]**

#### ANSWER:

The legal provisions which dealt with the return of goods under the Indian Contract Act, 1872 (the Act) is covered in Sections 160 and 161 of the Act, whereby, it is the duty of bailee to return, or deliver according to the bailor's directions, the goods bailed without demand, as soon as the time for which they were bailed, has expired, or the purpose for which they were bailed has been accomplished.

Further, Section 161 of the Act clearly says that where a bailee fails to return the goods as per term given under Section 160, within the agreed time, he shall be responsible to the bailor for any loss, destruction or deterioration of the goods from that time notwithstanding the exercise of reasonable care on his part.

In the instant case, Pratik did not return the AC in reasonable time even after repair, in spite of numerous follow ups by Kartik.

In the light of the said provision, Pratik shall be held liable for the destruction of goods (i.e. AC) on his failure to return to Kartik within the reasonable time.



## UNIT – 3: AGENCY

### QUESTION - 1

**What is the meaning of ‘Agency by estoppel’? What are the essential conditions for creation of an agency by estoppel? Give your answer with respect to the provisions the Indian contract Act, 1872.**

[MTP May 2021 (4 Marks)]

### ANSWER:

An agency by estoppel is based on the principle of estoppel. The principle of estoppel lays down that “when one person by declaration (representation), act or omission has intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, he shall not be allowed to deny his previous statement or he shall be stopped to deny his previous statement or conduct”.

The agency by Estoppel is provided under section 237 of the Indian Contract Act. Section 237 states: “When an agent has without authority done acts or incurred obligations to third persons on behalf of his principal the principal is bound by such acts or obligations if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority”.

According to section 237 of the Contract Act, an agency by estoppel may be created when following essentials are fulfilled:

1. The principal must have made a representation;
2. The representation may be express or implied;
3. The representation must state that the agent has an authority to do certain act although really he has no authority;
4. The principal must have induced the third person by such representation; and
5. The third person must have believed the representation and made the contract on the belief of such representation.

### QUESTION - 2

**A rented his house to B on lease for 3 years. The lease agreement is terminable on 3 month notice by either party. C, the son of A, being in need of a separate house to live, served a notice on B, without any authority, to vacate the house within a month and requested his father A to ratify his action. Examine whether it shall be valid for A to ratify the action of C taking into account the provisions of the Indian Contract Act, 1872?**

[May 2021]

### SOLUTION:

As per section 200 of the Indian contract Act, 1872, an act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

In the given instance, A rented his house to B on lease for 3 years. The lease agreement was terminable on three months' notice. C, son of A, gives notice of termination to B, without any authority, to vacate the house within a month. Also requested A to ratify his action.

Here by the act of C, the interest of B is affected, therefore the principle of ratification does not apply. Hence, it's not valid for A to ratify the action of C, thereby causing the notice to be binding on B.

### QUESTION - 3

**Explain whether the agency shall be terminated in the following cases under the provisions of the Indian Contract Act, 1872:**

- (i) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. Afterwards, A becomes insane.
- (ii) A appoints B as A's agent to sell A's land. B, under the authority of A, appoints C as agent of B. Afterwards, A revokes the authority of B but not of C. What is the status of agency of C?

[Jan 2021 (4 Marks)]

### SOLUTION:

- (i) According to section 202 of the Indian Contract Act, 1872, where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

In other words, when the agent is personally interested in the subject matter of agency, the agency becomes irrevocable.

In the given question, A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A.

As per the facts of the question and provision of law, A cannot revoke this authority, nor it can be terminated by his insanity.

- (ii) According to section 191 of the Indian Contract Act, 1872, a "Sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

Section 210 provides that, the termination of the authority of an agent causes the termination (subject to the rules regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

In the given question, B is the agent of A, and C is the agent of B. Hence, C becomes a sub-agent.

Thus, when A revokes the authority of B (agent), it results in termination of authority of sub-agent appointed by B i.e. C (sub-agent).

### QUESTION - 4

**Shiva appoints Ganesh as Shiva's agent to sell Shiva's land. Ganesh, under the authority of Shiva, appoints Gauri as agent of Ganesh. Afterwards, Shiva revokes the authority of Ganesh but not of Gauri. What is the status of agency of Gauri? Advise whether the said agency shall be terminated as per the provisions of the Indian Contract Act, 1872.**

[MTP March 22 (4 Marks)]

### ANSWER:

According to section 191 of the Indian Contract Act, 1872, a "Sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.



Section 210 provides that, the termination of the authority of an agent causes the termination (subject to the rules regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

In the given question, Ganesh is the agent of Shiva, and Gauri is the agent of Ganesh. Hence, Gauri becomes a sub-agent.

Thus, when Shiva revokes the authority of Ganesh (agent), it results in termination of authority of sub-agent appointed by Ganesh i.e. Gauri (sub-agent).

#### QUESTION - 5

**Hari, authorises Bharat, a merchant in Mumbai, to recover dues from Bankey & Co., Bharat instructs Deepak, a solicitor, to take legal proceedings against Bankey & Co. for recovery of the money. Explain the legal position of Deepak, referring provisions of the Indian Contract Act, 1872, related to agency. [May 2022 (3 Marks)]**

#### ANSWER:

As per section 194 of the Indian Contract Act, 1872, where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person shall be an agent of the principal for such part of the business of the agency as is entrusted to him.

In the instant case, Hari, authorizes Bharat, a merchant in Mumbai, to recover dues from Bankey & Co. Bharat instructs Deepak, a solicitor, to take legal proceedings against Bankey & Co. for recovery of the money.

Here, Deepak, a solicitor, is a substituted agent to act for the principal in the business of the agency, to take legal proceedings for recovering of money.

#### QUESTION - 6

**Ramu has given authority to Prem to buy certain goods at the market rate. Prem buys the goods at a higher rate than the market rate. However, Ramu accepted the purchase inspite of higher rate. Afterwards, Ramu comes to know that the goods purchased belonged to Prem, himself. Decide, whether, Ramu is bond by ratification done? [May 2022 (2 Marks)]**

#### ANSWER:

According to section 198 of the Indian Contract Act, 1872, no valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

In the instant case, Ramu has given authority to Prem to buy certain goods at the market rate. Prem buys the goods at a higher rate than the market rate. However, Ramu accepted the purchase inspite of higher rate. Afterwards, Ramu comes to know that the goods belonged to Prem himself. The ratification is not binding on Ramu.

#### QUESTION - 7

**Mr. X owes Mr. Y ₹50,000. He (Mr. X) afterwards appoints Mr. Y as his agent to sell his Flat at Bangalore and after paying himself (i.e., Mr. Y) what is due to him, hand over the balance to Mr. X. Examine, as per the provisions of the Indian Contract Act, 1872, can Mr. X revoke his authority delegated to Mr. Y? [Nov 2022 (4 Marks)]**

## **ANSWER:**

According to Section 202 of the Indian Contract Act, 1872 an agency becomes irrevocable where the agent has himself an interest in the property which forms the subject-matter of the agency, and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest.

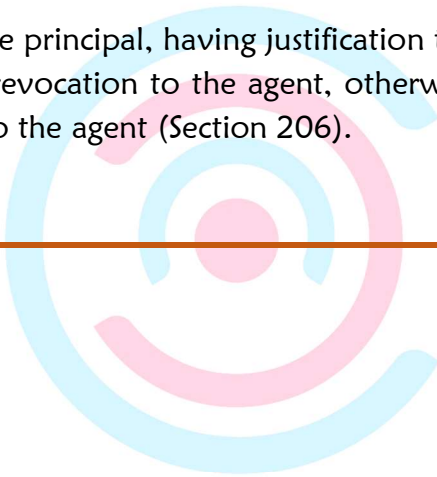
In the given question, Mr. X owed to Mr. Y ₹ 50,000.

When Mr. X appointed Mr. Y as his agent to sell his Flat and authorized him to appropriate the amount due to Mr. X out of the sale proceeds, interest was created in favor of Mr. Y and the said agency is not revocable. Thus, Mr. X cannot revoke his authority delegated to Mr. Y.

**Note:** The answer to the above question can also be given as per Section 203, section 204 and section 206 as follows:

**Revocation of authority under the Indian Contract Act, 1872:** An agency may be terminated by the principal revoking the authority of the agent. Principal may revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal [Section 203]. However, the principal cannot revoke the authority given to his agent after the authority has been partly exercised so far as regards such acts and obligations as arise for acts already done in the agency. [Section 204]

When the principal, having justification to do so, revokes the authority, he must give reasonable notice of such revocation to the agent, otherwise, he would be liable to pay compensation for any damage caused to the agent (Section 206).



CA DREAMERS  
THE AVENGER

## CHAPTER 2:

# THE NEGOTIABLE INSTRUMENTS ACT, 1881

### QUESTION - 1

**What are the essential characteristics of Negotiable Instruments?**

[MTP Nov 21]

### ANSWER:

Essential Characteristics of Negotiable Instruments

1. It is necessarily in writing.
2. It should be signed.
3. It is freely transferable from one person to another.
4. Holder's title is free from defects.
5. It can be transferred any number of times till its satisfaction.
6. Every negotiable instrument must contain an unconditional promise or order to pay money. The promise or order to pay must consist of money only.
7. The sum payable, the time of payment, the payee, must be certain.
8. The instrument should be delivered. Mere drawing of instrument does not create liability.

### QUESTION - 2

**Amit draws a cheque for ₹ 1000 and hands it over to Beena by way of gift. Is Beena a holder in due course?**

[MTP May 2021]

### ANSWER:

The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof, and to receive or recover the amount due thereon from the parties thereto.

"Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque (if payable to bearer), or the payee or indorsee thereof, (if payable to order), before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

In the given question, Beena is a holder but not a holder in due course as she does not get the cheque for value and consideration. Her title is good and bonafide. As a holder she is entitled to receive Rs. 1000 from the bank on whom the cheque is drawn.

### QUESTION - 3

'Akhil' made a promissory note for ₹4,500 payable to 'Bhuvan', and delivered the same to 'Bhuvan' on the condition that he ('Bhuvan') will demand payment only on the death of 'Chaman'. Before the death of 'Chaman', 'Bhuvan' indorsed and delivered the promissory note to 'Deepak', who receive the promissory note in good faith. On the date of maturity, 'Deepak' presented the promissory note for payment but 'Akhil' denied for payment by stating

that he issued this promissory note on the condition that it can be paid only on the death of 'Chaman'. Can 'Deepak' recover the amount due on the promissory note from 'Akhil' under the provisions of the Negotiable Instrument Act 1881? [RTP Nov 2021]

**SOLUTION:**

By virtue of provisions of section 9 of the Negotiable Instrument Act 1881, any person who for consideration became the possessor of a negotiable instrument in good faith and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. While Sec. 47 provides if a negotiable instrument is delivered to a person, upon condition, i.e. it will be effective on the happening of a certain event, such negotiable instrument cannot be further negotiated unless such event happens. However, if it is transferred to a holder in due course, his rights will not be affected by such condition.

'Akhil' issued a promissory note to 'Bhuvan' on the condition that he ('Bhuvan') will demand payment only on the death of 'Chaman'. Before the death of 'Chaman', 'Bhuvan' indorsed and delivered the promissory note to 'Deepak', who receive the promissory note in good faith, On due date, 'Deepak' presented the promissory note for payment but 'Akhil' denied for payment.

From the above provisions and facts of the case, it can be said that 'Deepak' has received the promissory note in good faith, he is a holder in due course and his rights will not be affected by any Condition attached to the instrument by any prior party. Therefore, 'Deepak' can recover the amount due on the promissory note from 'Akhil'.

**QUESTION - 4**

Chandra issued a cheque for ₹ 50,000/- in favour of Daye. Chandra has sufficient amount in his account with the Bank. The cheque was not presented within reasonable time to the Bank for payment and the Bank, in the meantime, became bankrupt. Decide under the provisions of the Negotiable Instruments Act, 1881, whether Daye can recover the money from Chandra? [RTP May 2021]

**ANSWER:**

Section 84(1) of the Negotiable Instruments Act, 1881 provides that cheque should be presented to Bank within reasonable time. If cheque is not presented within reasonable time, meanwhile the drawer suffers actual damage, the drawer is discharged to the extent of such actual damage. This would be so if the cheque would have been passed if it was presented within reasonable time. As per section 84(2), in determining what is a reasonable time, regard shall be had to (a) the nature of the instrument (b) the usage of trade and of bankers, and (c) facts of the particular case. The drawer will get discharge, but the holder of the cheque will be treated as creditor of the bank, in place of drawer. He will be entitled to recover the amount from Bank [section 84(3)].

In the above case drawer i.e. Chandra has suffered damage as cheque was not presented by Daye within reasonable time. Hence, Chandra will be discharged but Daye will be the creditor of bank for the amount of cheque and can recover the amount from the bank.

**QUESTION - 5**

Mr. Harsha donated ₹ 50,000 to an NGO by cheque for sponsoring the education of one child for one year. Later on he found that the NGO was a fraud and did not engage in Philanthropic activities.

He gave a “stop payment” instruction to his bankers and the cheque was not honoured by the bank as per his instruction.

The NGO has sent a demand notice and threatened to file a case against Harsha. Advise Mr. Harsha about the course of action available under the Negotiable Instruments Act, 1881.

[May 2021]

### **SOLUTION:**

In the given instance, Mr. Harsha donated ₹ 50,000 to NGO by cheque for sponsoring child education for 1 year. On founding that NGO was fraud, Mr. Harsha instructed bankers for stop payment. In lieu of that, NGO sent a demand notice and threatened to file a case against him.

Section 138 of the Negotiable Instruments Act, 1881 deals with dishonor of cheque which is issued for the discharge, in whole or in part, of any debt or other liability. However, any cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, would be considered outside the purview of section 138.

Here the cheque is given as a donation for the sponsoring child education for 1 year and is not legally enforceable debt or other liability on Mr. Harsha. Therefore, he is not liable for the donated amount which is not honoured by the bank to the NGO.

### **QUESTION - 6**

What is the meaning of not negotiable crossing as per the Negotiable Instruments Act, 1881?

[MTP May 2021]

### **SOLUTION:**

This requires writing of words “not negotiable” in addition to the two parallel lines. These words may be written inside or outside these lines. According to Section 130, a person taking a cheque crossed generally or specially, bearing in either case the word “not negotiable” shall not have, and shall not be capable of giving a better title to the cheque than that which the person from whom he took it. It is a statutory crossing. A cheque with such crossing is not negotiable, but continues to be transferable as before. Ordinarily, in a negotiable instrument, if the title of the transferor is defective, the transferee, if he is a Holder in Due Course, will have a good title. When the words “not negotiable” are written, even a Holder in Due Course will get the same title as that of transferor. Thus, if the title of the transferor is defective, the title of transferee will also be so.

Hence, the addition of the words not negotiable does not restrict the further transferability of the cheque, but it entirely takes away the main feature of negotiability, which is that a holder with a defective title can give a good title to the subsequent holder in due course.

### **QUESTION - 7**

Discuss with reasons, whether the following persons can be called as a ‘holder’ under the Negotiable Instruments Act, 1881:

- (i) Madan was going to office through metro rail. He found a cheque payable to bearer, on the floor of coach number 6 and retains it.
- (ii) Preeti, the agent of Mr. Rajesh, is entrusted with an instrument without indorsement by Mr. Rajesh, who is the payee.

[MTP March 22 (3 Marks)]



**ANSWER:**

**Person to be called as a holder:** As per section 8 of the Negotiable Instruments Act, 1881, 'holder' of a Negotiable Instrument means any person entitled in his own name to the possession of it and to receive or recover the amount due thereon from the parties thereto.

On applying the above provision in the given cases—

- (i) In the given question, though Madan is in possession of the cheque but is not entitled to the possession of it in his own name (he got the cheque on the floor of metro coach). Hence, Madan is not a holder of the Instrument.
- (ii) In the given question though the agent (i.e. Preeti) may receive payment of the amount mentioned in the cheque, yet she cannot be called the holder thereof because she has no right to sue on the instrument in her own name. Hence, Preeti is not a holder.

**QUESTION - 8**

**What are the essential characteristics of Negotiable Instruments? (Write any five)**

**[MTP March 22 (3 Marks)]**

**ANSWER:**

Essential Characteristics of Negotiable Instruments

1. It is necessarily in writing.
2. It should be signed.
3. It is freely transferable from one person to another.
4. Holder's title is free from defects.
5. It can be transferred any number of times till its satisfaction.
6. Every negotiable instrument must contain an unconditional promise or order to pay money. The promise or order to pay must consist of money only.
7. The sum payable, the time of payment, the payee, must be certain.
8. The instrument should be delivered. Mere drawing of instrument does not create liability.

**QUESTION - 9**

**Mr. A made endorsement of a bill of exchange amounting ₹50,000 to Mr. B. But, before the same could be delivered to Mr. B, Mr. A passed away. Mr. S, son of Mr. A, who was the only legal representative of Mr. A approached Mr. B and informed him about his father's death. Now, Mr. S is willing to complete the instrument which was executed by his deceased father. Referring to the relevant provisions of the Negotiable Instruments Act, 1881, decide, whether Mr. S can complete the instrument in the above scenario? **[Nov 2022 (3 Marks)]****

**ANSWER:**

According to Section 57 of the Negotiable Instruments Act, 1881, the legal representative of a deceased person cannot negotiate by delivery only, a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

An agent can complete the instrument if he is authorized by the principal to do so. But, a legal representative is not an agent of the deceased.

The rights in the instrument are not transferred to the indorsee unless after the indorsement, the same has been delivered. If a person makes the indorsement of instrument but before the same could be delivered to the indorsee, the indorser dies, the legal representatives of the deceased person cannot negotiate the same by mere delivery thereof.

Therefore, a legal representative cannot complete the instrument if the instrument was executed by the deceased but could not be delivered because of his death.

Hence, in the said case, Mr. S, son of Mr. A (the deceased) cannot complete the instrument which was executed by Mr. A but could not be delivered to Mr. B, because of his death.



# CHAPTER 3:

## THE GENERAL CLAUSES ACT, 1897

### QUESTION - 1

Income Tax Act, 1961 provides that the gratuity paid by the government to its employees is fully exempt from tax. You are required to explain the scope of the term 'government' and clarify whether the exemption from gratuity income will be available to the State Government Employees? Give your answer in accordance with the provisions of the General Clauses Act, 1897. [Jan 2021]

### ANSWER:

According to section 3(23) of the General Clauses Act, 1897, 'Government' or 'the Government' shall include both the Central Government and State Government.

Hence, wherever, the word 'Government' is used, it will include Central Government and State Government both.

Thus, when the Income Tax Act, 1961, provides that gratuity paid by the government to its employees is fully exempt from tax, the exemption from gratuity income will be available to the State Government employees also.

### QUESTION - 2

"The act done negligently shall be deemed to be done in good faith." Comment with the help of the provisions of the General Clauses Act, 1897. [Jan 21]

### SOLUTION:

In general, anything done with due care and attention, which is not malafide is presumed to have been done in good faith.

But, according to section 3(22) of the General Clauses Act, 1897, a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not.

The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case.

It is therefore understood that the General Clauses Act, 1897 considers the honesty in doing the Act as a primary test to constitute the thing done in good faith and therefore the act done honestly but with negligence may also be termed as done in good faith as per the General Clauses Act, 1897.

The term "Good faith" has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term "good faith" and there the definition given in that particular enactment has to be followed. This definition may be applied only if there is nothing repugnant in subject or context, and if that is so, the definition is not applicable.

### QUESTION - 3

Ajit was supposed to submit and appeal to High Court of Kolkata on 30<sup>th</sup> March, 2020, which was the last, day on which such appeal could be submitted. Unfortunately, on that day High

**Court was closed due to total Lockdown all over India due to Covid-19 pandemic. Examine the remedy available to Ajit under the provisions of the General Clauses Act, 1897. [May 2021]**

**ANSWER:**

The given answer is based on section 10 which deals with “Computation of time” under the General Clauses Act, 1897. Where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

In the question, Ajit was supposed to submit an appeal to High Court on 30th March 2020, which was the last day of filing the same. On that day High Court was closed due to total lockdown all over India.

In line with said provision, Ajit can submit an appeal on the day on which the High Court is open.

**QUESTION - 4**

**Mr. Sohan has issued a promissory note of ₹1000 to Mr. Mohan on 17th May 2021 payable 3 months after date. After that, a sudden holiday was declared on 20th August 2021 due to Moharram. As per the provisions of the General Clauses Act 1897, what should be the date of presentment of promissory note for payment? Whether it should be 19th August 2021 or 21st August 2021? [RTP Nov 2021]**

**ANSWER:**

Section 10 of the General Clauses Act 1897 provides where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

A promissory note of ₹1000 was issued by Mr. Sohan to Mr. Mohan on 17th May 2021 which was payable 3 months after date. After that, a sudden holiday was declared on 20th August 2021 due to Moharram.

In the given case, the period of 3 months ends on 17th August 2021. Three days of grace are to be added. It falls due on 20th August 2021 which declared to be a public holiday after the issue of Promissory Note. In the light of provisions of Sec. 10 of the General Clauses Act 1897, the due date will be on next day when office is open i.e. 21st August 2021.

**QUESTION - 5**

**Ayush and Vipul are good friends and pursuing CA course. While doing group studies for the paper of “Corporate and Other Law”, they are confused about the provisions of section 3 of the Companies Act 2013. Section 3 provides “A company may be formed for any lawful purpose by.....” Both Ayush and Vipul are in difficulty about the meaning of word “may”. Whether it should be taken as mandatory or directory? [RTP May 22]**

**ANSWER:**

The word ‘shall’ is used to raise a presumption of something which is mandatory or imperative while the word ‘may’ is used to connote something which is not mandatory but is only directory or enabling.

However, sometimes Word 'may' has a mandatory force if directory force will defeat the object of the Act.

However, sometimes the words "may and shall" can be interpreted interchangeably depending on the intention of the legislator.

Ayush and Vipul, two CA students, are confused with the language of the provisions of section 3 of the Companies Act 2013 that whether the word "may" used in section should be considered as mandatory or directory.

In the given case, it can be said that the word "may" should be taken as mandatory force, because the law will never allow the formation of company with unlawful object.

Here the word used "may" shall be read as "shall". Usage of word 'may' here makes it mandatory for a company for the compliance of section 3 for its formation.

#### QUESTION - 6

Examine the validity of the following statements with reference to the General Clauses Act, 1897:

- (i) 'Things attached to the earth' have been held to be immovable property.
- (ii) The word "bullocks" could be interpreted to include 'cows'.

[MTP March 22 (4 Marks)]

#### ANSWER:

- (i) 'Things attached to the earth' have been held to be immovable property: This statement is valid.

As per section 3(26) of the General Clauses Act, 1897, 'Immovable Property' shall include:

- (1) Land,
- (2) Benefits to arise out of land, and
- (3) Things attached to the earth, or
- (4) Permanently fastened to anything attached to the earth.

It is an inclusive definition. The four elements to the definition includes 'things permanently fastened to anything attached to the earth'. Hence, the given statement is correct.

- (ii) The word 'bullocks' could be interpreted to include 'cows': This statement is not valid.

Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of General Clauses Act, 1897 do not apply. Thus, the word 'bullocks' could not be interpreted to include 'cows'.

#### QUESTION - 7

Give the definition of the following as per the General Clauses Act, 1897:

- (i) "Rule"
- (ii) "Oath"
- (iii) "Person"

[Dec 21]

#### ANSWER:



- (i) **Rule:** As per section 3(51) of the General Clauses Act, 1897, 'Rule' shall mean a rule made in exercise of a power conferred by any enactment, and shall include a Regulation made as a rule under any enactment.
- (ii) **Oath:** As per section 3(37) of the General Clauses Act, 1897, 'Oath' shall include affirmation and declaration in the case of person by law allowed to affirm or declare instated of swearing.
- (iii) **Person:** As per section 3(42) of the General Clauses Act, 1897, "Person" shall include:
- (1) Any company, or
  - (2) Association, or
  - (3) Body of individuals, whether incorporated or not.

### QUESTION - 8

**Mr. A (landlord) staying in Delhi, rented his flat of Bengaluru to Mr. B (tenant) for ₹20,000 per month to be paid annually. An agreement was made between them that during the tenancy period, if A requires his flat to be vacated, one-month prior notice is to be given to Mr. B. After eight months a notice was sent by Mr. A to Mr. B to vacate his flat by registered post which was refused to be accepted by Mrs. C (wife of Mr. B) and Mr. B denied to vacate the flat on ground of non-receipt of notice. Examine, as per the General Clauses Act, 1897, whether the notice is tenable? [Nov 2022 (4 Marks)]**

### ANSWER:

According to Section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

- (i) Properly addressing
- (ii) Pre-paying, and
- (iii) Posting by registered post.

### Case Laws

- (i) In Smt. Vandana Gulati Vs. Gurmeet Singh alias Mangal Singh, AIR 2013 All 69, it was held that where notice sent by registered post to person concerned at proper address is deemed to be served upon him in due course unless contrary is proved.
- (ii) In Jagdish Singh Vs. Nathu Singh, AIR 1992 SC 1604, it was held that where a notice is sent by the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served.

In other words, Endorsement 'not claimed/not met' is sufficient to prove deemed service of notice.

In the given question, Mr. A has served the notice to Mr. B by registered post which was refused to be accepted by Mrs. C (wife of Mr. B). However, Mr. B cannot deny to vacate the flat on ground of non-receipt of notice, since Mrs. C had refused to accept the notice served by Mr. A through registered post.

Hence, the notice served by Mr. A is tenable provided one- month prior notice given to Mr. B.

# CHAPTER 4:

## INTERPRETATION OF STATUTES

### QUESTION - 1

Explain the impact of the two words “means” and “includes” in a definition, while interpreting such definition. [May 2021]

### ANSWER:

**Impact of the words “Means” and “Includes” in the definitions-** The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

When a word is defined to ‘mean’ such and such, the definition is ‘prima facie’ restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.

But where the word is defined to ‘include’ such and such, the definition is ‘prima facie’ extensive, here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

### Example:

Definition of Director [section 2(34) of the Companies Act, 2013]—Director means a director appointed to the board of a company. The word “means” suggests exhaustive definition.

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.

### QUESTION - 2

Differentiate between interpretation and construction. [MTP May 2021]

### ANSWER:

‘**Construction**’ as applied to a written statute or document means to determine from its known elements its true meaning or the intention of its framers. Construction involves drawing conclusions beyond the actual expressions used in the text. This is done by referring to other parts of the enactment and the context in which the law was made. Thus, when you construe a statute you are attempting to ascertain the intention of the legislature.

### Difference between Interpretation and Construction:

It would also be worthwhile to note, at this stage itself, the difference between the terms ‘**Interpretation**’ and **Construction**. While more often the two terms are used interchangeably to denote a process adopted by the courts to ascertain the meaning of the legislature from the words with which it is expressed, these two terms have different connotations.

Interpretation is the art of ascertaining the meaning of words and the true sense in which the author intended that they should be understood.

It is the drawing of conclusions from a statute that lie beyond the direct expression of the words used therein. [Bhagwati Prasad Kedia v. C.I.T, (2001)]

It is the duty of the courts to give effect to the meaning of an Act when the meaning can be equitably gathered from the words used. Words of legal import occurring in a statute which have acquired a definite and precise sense, must be understood in that sense. (State of Madras v. Gannon Dunkerly Co. AIR 1958)

Thus, where the Court adheres to the plain meaning of the language used by the legislature, it would be 'interpretation' of the words, but 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 'construction'. Conclusions drawn by means of construction are within the spirit though not necessarily within the letter of the law.

In practice construction includes interpretation and the terms are frequently used synonymously.

### QUESTION - 3

**Differentiate Mandatory Provision from a Directory Provision. What factors decide whether a provision is directory or mandatory?** [MTP May 2021]

#### **SOLUTION:**

Practically speaking, the distinction between a provision which is 'mandatory' and one which is 'directory' is that when it is mandatory, it must be strictly observed; when it is 'directory' it would be sufficient that it is substantially complied with. However, we have to look to the substance and not merely the form, an enactment in mandatory form might substantially be directory and, conversely, a statute in directory form may in substance be mandatory. Hence, it is the substance that counts and must take precedence over mere form. If a provision gives a power coupled with a duty, it is mandatory: whether it is or is not so would depend on such consideration as:

- The nature of the thing empowered to be done,
- The object for which it is done, and
- The person for whose benefit the power is to be exercised.

### QUESTION - 7

**(i) What is the effect of proviso? Does it qualify the main provisions of an Enactment?**

**(ii) Does an explanation added to a section widen the ambit of a section?** [MTP May 2021]

#### **ANSWER:**

(i) Normally a Proviso is added to a section of an Act to except something or qualify something stated in that particular section to which it is added. A proviso should not be, ordinarily, interpreted as a general rule. A proviso to a particular section carves out an exception to the main provision to which it has been enacted as a Proviso and to no other provision.

[Ram Narian Sons Ltd. Vs. Commissioner of Sales Tax AIR (1955) S.C. 765]

(ii) Sometimes an explanation is added to a section of an Act for the purpose of explaining the main provisions contained in that section. If there is some ambiguity in the provisions of the main section, the explanation is inserted to harmonise and clear up and ambiguity in the main section. Something may added be to or something may be excluded from the main provision by insertion of an explanation. But the explanation should not be construed to widen the ambit of the section.

#### QUESTION - 4

Write short note no:

- (i) Proviso
- (ii) Explanation,

With reference to interpretation of Statutes, Deeds and Documents.

[MTP March 22 (3 Marks)]

#### ANSWER:

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

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision.

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

The meaning to be given to an explanation will really depend upon its terms and not on any theory of its purpose.

#### QUESTION - 5

Explain the Mischief Rule/ the rule in Heydon's case for interpretation of statute. Also give four matters it considers in construing an Act,

[Dec 21 (3 Marks)]

#### ANSWER:

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

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

The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. Therefore, even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it. If the object of any enactment is public safety, then its working must be interpreted widely to give effect to that object. Thus, in the case of Workmen's Compensation

Act, 1923 the main object being provision of compensation to workmen, it was held that the Act ought to be so construed, as far as possible, so as to give effect to its primary provisions.

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

#### QUESTION - 6

In what way are the following terms considered as external aid in the interpretation of statutes:

(i) Historical Setting

(ii) Use of Foreign Decisions

[Dec 21 (5 Marks)]

#### ANSWER:

(i) **Historical Setting:** The history of the external circumstances which led to the enactment in question is of much significance in construing any enactment. We have, for this purpose, 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. 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.

(ii) **Use of Foreign Decisions:** 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. Further, where guidance can be obtained from India decisions, reference to foreign decision may become unnecessary.

#### QUESTION - 7

Explain in reference to Interpretation of Statutes, the cases where Rule of Eiusdem Generis will not apply.

[Nov 2022 (3 Marks)]

#### ANSWER:

The Rule of Eiusdem Generis will not apply in the following situations:

1.	If the preceding item is general, as well as that which follows this rule cannot be applied.
2.	Where the particulars words exhaust the whole genus.
3.	Where the specified objects enumerated are essentially diverse in character.
4.	Where there is an express intention of legislature that the general term shall not be read eiusdem generis the specific terms.

#### QUESTION - 8

What is the effect of proviso? Does it qualify the main provisions of the enactment? Explain it with reference to Interpretation of statutes.

[May 22 (4 Marks)]

#### ANSWER:



Normally a Proviso is added to a section of an Act to except something or qualify something stated in that particular section to which it is added. A proviso should not be, ordinarily, interpreted as a general rule. Usually, a proviso is embedded in the main body of the section and becomes an integral part of it. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general.

It is a cardinal rule of interpretation that a proviso or exception 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).

