

Swiftscan – CA Inter General Clauses Act, 1897



Dear Students.

This scanner contains all the questions of

- RTP (May' 18 – May' 24)
- Question papers (May' 18 – Nov' 23)
- Mock test papers

The scanner has been divided chapter wise to make it easier for you to follow. Do try to solve the questions before looking into the answers.

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Which of the following is not an Immovable Property (as per the provisions of the General Clauses Act, 1897):

- a) Land
- b) Building
- c) Timber
- d) Machinery permanently attached to the land **(MT Mar' 19)**

As per a Rule of an Educational Institution, every student may come on weekends for extra classes but every student shall appear on a weekly test conducted in the institute, which can be analysed in terms of General Clause Act, as: **(RTP Nov' 19)**

- a) Attending weekend classes is optional but appearing in weekly test is compulsory
- b) Attending weekend classes is compulsory but appearing in weekly test is optional
- c) Attending weekend classes and appearing in weekly test, both are compulsory for students
- d) Attending weekend classes and appearing in weekly test both are optional for students.

Where an act of parliament does not expressly specify any particular day as to the day of coming into operation of such Act, then it shall come into operation on the day on which: **(MT)**

- a) It receives the assent of the President
- b) It receives the assent of the Governor General
- c) It is notified in the official gazette
- d) It receives assent of both the houses of Parliament



Answer: C

Answer: A

Answer: C



The act by which the operation of a previous Act comes to an end, is called as

- a) The Repealing Act
- b) The Consolidating Act
- c) The Amending Act
- d) Analogous Act

Which of the following given Statement/s is/are correct:

- i. In all Central Acts and Regulations, any words which denote the masculine gender shall also be taken to include females, and vice versa.
 - ii. In all Central Acts and Regulations, words in the singular shall include the plural, but not vice versa.
- a) Only statement (1) is correct
 - b) Only statement (2) is correct
 - c) Both the statements are correct
 - d) None of the statement is correct

As per the provisions of the General Clauses Act, 1897, where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under: (MT)

- a) Under either or any of those enactments
- b) Twice for the same offence
- c) Either (a) or (b) as per the discretion of the court
- d) Under the cumulative effect of both the enactments



Answer: A

Answer: D

Answer: A



As per a Rule of an Educational Institution, every student may come on weekends for extra classes but every student shall appear on a weekly test conducted in the institute, which can be analysed in terms of General Clause Act, as: **(MT May' 20)**

- a) Attending weekend classes is optional but appearing in weekly test is compulsory
- b) Attending weekend classes is compulsory but appearing in weekly test is optional
- c) Attending weekend classes and appearing in weekly test, both are compulsory for students
- d) Attending weekend classes and appearing in weekly test both are optional for students.

Which of the following given Statement/s is/are correct: **(MT May' 20)**

- a) In all Central Acts and Regulations, any words which denote the masculine gender shall also be taken to include females, and vice versa.
- b) In all Central Acts and Regulations, words in the singular shall include the plural, but not vice versa.
- c) Both a and b
- d) Only statement (b) is correct

Calendar year starts from:

- a) January
- b) April
- c) June
- d) September **(MT)**



Answer: A
Answer: D
Answer: A



What among the following could be considered in the term 'Immovable Property' as defined under section 3(26) of the General Clauses Act, 1897?

- i. The soil for making bricks
- ii. Right to catch fish
- iii. Right to drain water
- iv. Doors and Windows of the house
 - a) Only (i) and (iv)
 - b) Only (i), (ii) and (iv)
 - c) Only (i) and (ii)
 - d) Only (ii), (iii) and (iv) (MT)/ (MT)

Where an act of parliament does not expressly specify any particular day as to the day of coming into operation of such Act, then it shall come into operation on the day on which:

- a) It receives the assent of the President
- b) It receives the assent of the Governor General
- c) It receives assent of both the houses of Parliament
- d) It receives assent of the Prime Minister (MT)

In all Central Acts and Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken:

- a) To exclude females
- b) To exclude girl child
- c) **To include females**
- d) To exclude boy child (MT)



Answer: B

Answer: A

Answer: C



In all Central Acts and Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken: **(MT)**

- a) To exclude females
- b) To exclude girl child
- c) To include females
- d) To exclude boy child

Where, by any Central Act, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power: **(MT)**

- a) To appoint the members of that family
- b) To grant increment to any family members
- c) To suspend or dismiss any person appointed
- d) No other power is conferred except for appointment



Answer: C

Answer: C



The act by which the operation of a previous Act comes to an end, is called as _____ (MT May' 20)

- a) The Repealing Act
- b) The Consolidating Act
- c) The Amending Act
- d) Analogous Act

As per the provisions of the General Clauses Act, 1897, where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under:

- a) Under either or any of those enactments
- b) Twice for the same offence
- c) Either (a) or (b) as per the discretion of the court
- d) Under the cumulative effect of both the enactments (MT)

A clause that begins with the words 'Notwithstanding anything contained' is called:

- a) An obstacle clause
- b) A non- obstante clause
- c) An objectionable clause
- d) A superior clause (RTP Nov' 22)/ (MT)



Answer: A

Answer: A

Answer: C



A notice when required under the Statutory rules to be sent by “registered post acknowledgment due” is instead sent by “registered post” only. Whether the protection of presumption regarding serving of notice by “registered post” under the General Clauses Act is tenable? Referring to the provisions of the General Clauses Act, 1897, examine the validity of such notice in this case. **(RTP May’ 18)/ (RTP May’ 19)**



As per the provisions of 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.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post. In *United Commercial Bank v. Bhim Sain Makhija*, a notice when required under the statutory rules to be sent by ‘registered post acknowledgment due’ is instead sent by ‘registered post’ only, the protection of presumption regarding serving of notice under ‘registered post’ under this section of the Act is not tenable.

In the above case as per the Statutory Rules a notice must be sent by registered post acknowledgment due. Instead the notice was sent by registered post. If nothing is stated otherwise notice sent by registered post would be valid but since it was specified that it should be sent by registered post acknowledgment due the notice shall not be considered as valid.

Therefore, in view of the above provision, the notice shall not be deemed to have been in compliance of said rules.



Yellow and Pink had a long dispute regarding the ownership of a land for which a legal suit was pending in the court. The court fixed the date of hearing on 29.04.2022, which was announced to be a holiday subsequently by the Government. What will be the computation of time of the hearing in this case under the General Clauses Act, 1897? (MT)



According to section 10 of 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 given question, the court fixed the date of hearing of dispute between Yellow and Pink, on 29.04.2022, which was subsequently announced to be a holiday.

Applying the above provisions we can conclude that the hearing date of 29.04.2022, shall be extended to the next working day.



The 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. (MT/ MT)



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.



What is the meaning of 'Official Gazette' as per the provisions of the General Clauses Act, 1897? (Nov' 22)



“Official Gazette” [Section 3(39) of the General Clauses Act, 1897]: ‘Official Gazette’ or ‘Gazette’ shall mean:

- i. The Gazette of India, or
- ii. The Official Gazette of a state.

The Gazette of India is a public journal and an authorised legal document of the Government of India, published weekly by the Department of Publication, Ministry of Housing and Urban Affairs. As a public journal, the Gazette prints official notices from the government. It is authentic in content, accurate and strictly in accordance with the Government policies and decisions. The gazette is printed by the Government of India Press.



Mr. Vyas is the owner of House No. 20 in Geeta Colony, Delhi. He has rented two rooms in this house to Mr. Iyer. The Income Tax Authority has served a show cause notice to Mr. Vyas. The said notice was received by Mr. Iyer and returned the notice with an endorsement of refusal. Decide with reference to provisions of "General Clauses Act, 1897", whether the notice was rightfully served on Mr. Vyas. (RTP May' 20)



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.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post. In Jagdish Singh V Natthu Singh the court held that where a notice is sent to 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 the above case The Income Tax Authority served a show cause notice to Mr. Vyas. The said notice was received by Mr. Iyer and returned by him with an endorsement of refusal.

Thus it shall be deemed that the notice was rightfully served on Mr. Vyas.



Mr. Ram, an advocate has fraudulently deceived his client Mr. Shyam, who was taking his expert advise on taxation matters. Now, Mr. Ram is liable to a fine for acting fraudulently both under the Advocates Act, 1961 as well as the Income Tax Act, 1961. State the provision as to whether his offence is punishable under the both the Acts, as per the General Clauses Act, 1897. **(RTP Nov' 18)**



As per section 26 of the General Clauses Act, 1897 if an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either one of those enactments, but shall not be punished twice for the same offence.

In the above case Mr. Ram, an advocate had deceived his client committing an offence under Advocates Act. 1961 and Income Tax Act, 1961. As per the provisions he can be punished under any one of the Acts.

Thus, Mr. Ram shall be liable to punished under the Advocates Act, 1961 or the Income Tax Act, 1961, but shall not be punished twice for the same offence.



Yogveer Singh has a mango orchard at Manchanga Village, Bilaspur. The orchard has more than one hundred Mango trees. Yogveer Singh has sold orchard along with all the mango trees. Explain, in the lights of provisions of the General Clauses Act 1897, whether the sale of trees will be considered as sale of Immovable Property? (RTP May' 24)



According to section 3(36) of the General Clauses Act 1897, 'Movable Property' shall mean property of every description, except immovable property. While section 3(26) provides, 'Immovable Property' shall include:

- i. Land,
- ii. Benefits to arise out of land, and
- iii. Things attached to the earth, or
- iv. Permanently fastened to anything attached to the earth.

In the given question, Yogveer Singh has sold mango orchard along with all the mango trees. In the lights of provisions of the Act, as trees are benefits arise out of the land and attached to the earth, hence, mango trees are immovable property.



Komal Ltd. declares a dividend for its shareholders in its AGM held on 27th September, 2018. Referring to provisions of the General Clauses Act, 1897 and Companies Act, 2013, advice:

- i. The dates during which Komal Ltd. is required to pay the dividend?
- ii. The dates during which Komal Ltd. is required to transfer the unpaid or unclaimed dividend to unpaid dividend account? **(Nov' 18)**



As per section 9 of the General Clauses Act, 1897, for computation of time, the first in a series of days or any other period of time to use the word “from” shall be excluded and the last in a series of days or any other period of time, shall be included.

In the given case, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2018.

- i. Under the provisions of Section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28/09/2018 to 27/10/2018. In this series of 30 days, 27/09/2018 will be excluded and last 30 day, i.e. 27/10/2018 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2018 and 27/10/2018 (both days inclusive).
- ii. As per the provisions of Section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account called the “Unpaid Dividend Account” (UDA). Therefore, Komal Ltd. shall transfer the unpaid/ unclaimed dividend to UDA from 28/09/20018 to 3/10/2018.



Kiran and Naman had a long dispute regarding the ownership of a land for which a legal suit was pending in the court. The court fixed the date of hearing on 29.04.2023, which was announced to be a holiday subsequently by the Government. What will be the computation of time of the hearing in this case under the General Clauses Act, 1897? (MT)



According to section 10 of 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 given question, the court fixed the date of hearing of dispute between Kiran and Naman, on 29.04.2023, which was subsequently announced to be a holiday. Applying the above provisions we can conclude that the hearing date of 29.04.2023, shall be extended to the next working day.



Explain various provisions applicable to rules or bye-laws being made after previous publications as enumerated in Section-23 of the General Clauses Act, 1897. (Nov' 18)



As per section 23 of the General Clauses Act, 1897, where, by any Central Act or Regulation, a power to make rules or bye-laws is given subject to the condition that it can be made only after previous publication, then the following provisions shall apply:-

1. **Publish of proposed draft rules/ bye - laws:** The authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;
2. **To publish in the prescribed manner:** The publication shall be made in such manner as that authority deems to be sufficient, or, respect to previous publication so requires, in such manner as the Government concerned prescribes;
3. **Notice annexed with the published draft:** a notice specifying the date on which the draft shall be taken into consideration shall be published with the draft.
4. **Consideration on suggestions/objections received from other authorities:** The authority or any authority whose sanction is required shall consider any objection or suggestion which may be received.
5. **Notified in the official gazette:** The publication in the Official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or byelaws after previous publication shall be conclusive proof that the rule or bye-laws have been duly made.



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

- i. Insurance Policies covering immovable property have been held to be immovable property.
- ii. The word "bullocks" could be interpreted to include "cows". **(July' 21)/ (MT)**



- i. Insurance Policies covering immovable property have been held to be immovable property: This statement is not valid. Insurance policy is a written document containing an agreement between the insurer and insured. It includes a matter intended to be used or may be used for the purpose or recording of the matter. Hence, the insurance policies covering immovable property is not covered under the definition of immovable property.
- 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'.



Ajit was supposed to submit an appeal to High Court of Kolkata on 30th 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. **(July' 21)**



As per section 10 of 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.



Repeal of provision is different from ‘deletion’ of provision. Explain. (Nov’ 18)/ (MT May’ 20)



In *Navrangpura Gam Dharmada Milkat Trust Vs. Rmtuji Ramaji*, the court specified that ‘Repeal’ of provision is in distinction from ‘deletion’ of provision. ‘Repeal’ ordinarily brings about complete obliteration (abolition) of the provision as if it never existed, thereby affecting all incoherent rights and all causes of action related to the ‘repealed’ provision while ‘deletion’ ordinarily takes effect from the date of legislature affecting the said deletion, never to effect total effecting or wiping out of the provision as if it never existed.



Explain the meaning of ‘calculation of duty to be taken on pro rata basis’ as per the provisions of the General Clauses Act, 1897. Give an example. (MT)



According to section 12 of the General Clauses Act, 1897, where, by any enactment now in force or hereafter to be in force, any duty of customs or excise or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity. Pro rata is a Latin term used to describe a proportionate allocation. Example: Where several debtors are liable for the whole debt and each is liable for his own share or proportion only, they are said to be bound pro rata.



SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment)

Regulations, 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1 January, 2016. Referring to the provisions of the General Clauses Act, 1897, examine the date of enforcement of these Regulations? (MT)



According to section 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the Governor General in case of a Central Acts made before the commencement of the Indian Constitution and/or, of the President in case of an Act of Parliament.

In the given question, SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1 January, 2016.

So it shall come into enforcement on 1st January, 2016 rather than the date of its notification in the gazette



The Companies Act, 2013 provides that the amount of dividend remained unpaid/unclaimed on expiry of 30 days from the date of declaration of dividend shall be transferred to unpaid dividend account within 7 days from the date of expiry of such period of 30 days. If the expiry date of such 30 days is 30.10.2021, decide the last date on or before which the unpaid/unclaimed dividend amount shall be required to be transferred to a separate bank account in the light of the relevant provisions of the General Clauses Act, 1897? (MT)



Section 9 of the General Clauses Act, 1897 provides that, for computation of time, in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

As per the facts of the question the company shall transfer the unpaid/unclaimed dividend to unpaid dividend account within the period of 7 days. 30th October 2021 will be excluded and 6th November 2021 shall be included, i.e. 31st October, 2021 to 6th November, 2021 (both days inclusive).



X owned a land with fifty tamarind trees. He sold his land and the (obtained after cutting the fifty trees) to Y. X wants to know whether the sale of timber tantamount to sale of immovable property. Advise him with reference to provisions of "General Clauses Act, 1897". **(May' 18)/ (RTP Nov' 19)/ (MT May' 20)/ (RTP May' 23)**



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

- i. Land,
- ii. Benefits to arise out of land, and
- iii. Things attached to the earth, or
- iv. Permanently fastened to anything attached to the earth.

It is an inclusive definition and contains four elements: land, benefits to arise out of land, things attached to the earth and things permanently fastened to anything attached to the earth. Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in the General Clauses Act will apply to the expression given in that enactment.

In the above case, X is the owner of a land with fifty tamarind trees. X sold the land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property however timber cannot be immovable property since the same are not attached to the earth.

Thus sale of timber shall not amount to sale of immovable property.



Define the term "Affidavit" under the General Clauses Act, 1897. (Nov' 19)



"Affidavit" as defined under section 3(3) of the General Clauses Act, 1897 shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

There are two important points derived from the above definition:

1. Affirmation and declaration,
2. In case of persons allowed affirming or declaring instead of swearing.

The above definition is inclusive in nature. It states that Affidavit shall include affirmation and declarations. This definition does not define affidavit. However, we can understand this term in general parlance. Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority.



Shree was supposed to submit an appeal to the High Court of Delhi on 8th September, 2023, which was the last day on which such appeal could be submitted. However, on that day the High Court was closed due to total Lockdown in Delhi for 30 days due to visit of foreign delegates from 40 countries for G40 Summit. Examine the remedy available to Shree under the provisions of the General Clauses Act, 1897. (MT)



Section 10 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, Shree was supposed to submit an appeal to High Court on 8th September 2023, which was the last day of filing the same. On that day High Court was closed due to total lockdown all over Delhi.

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



What do you understand by the term 'Good Faith'. Explain it as per the provisions of the General Clauses Act, 1897. Mr. X purchased a watch from Mr. Y carelessly without proper enquiry. Whether the purchase made could be said to be made in good faith. (Nov' 19)



As per Section 3(22) of the General Clauses Act, 1897, the term “good faith” means 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 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. 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. Thus, anything done with due care and attention, which is not malafide is presumed to have been done in good faith.

In the given problem in the question, Mr. X purchased a watch from Mr. Y carelessly without proper enquiry. Such a purchase made could not be said to be made in good faith as it was done without due care and attention as is expected with a man of ordinary prudence. An honest purchase made carelessly without making proper enquiries cannot be said to have been made in good faith so as to convey good title.

Thus the purchase cannot be said to be made in good faith.



Explain briefly any four effects by repeal of an existing Act by central legislation enumerated in Section-6 of The General Clauses Act, 1897. **(May' 18)/ (May' 22)**



According to Section 6 of the General Clauses Act, 1897, where any Central legislation or any regulation made after the commencement of this Act repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:

- Revive anything not enforced or prevailed during the period at which repeal is effected or;
- Affect the prior management of any legislation that is repealed or anything performed or undergone or;
- Affect any claim, privilege, responsibility or debt obtained, ensued or sustained under any legislation so repealed or;
- Affect any punishment, forfeiture or penalty sustained with regard to any offence committed as opposed to any legislation or
- Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.



Section 2(18)(aa) of the Income Tax Act, 1961, provides that a company is said to be a company in which the public are substantially interested, if it is a company which is registered under section 25 of the Companies Act, 1956. After the advent of Companies Act, 2013, the corresponding change has not been made in section 2(18) of the Income tax Act, 1961. Explain, with reference to the provisions of the General Clauses Act 1897, how will the provisions of section 2(18)(aa) of the Income Tax Act, 1961, will be considered after the enactment of the Companies Act 2013? (RTP Nov' 22)



According to section 8 of the General Clauses Act, 1897, where this Act or Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

Also, in *Gauri Shankar Gaur v. State of U.P.*, it was held that every Act has its own distinction. If a later Act merely makes a reference to a former Act or existing law, it is only by reference and all amendments, repeals new law subsequently made will have effect unless its operation is saved by the relevant provision of the section of the Act.

As per the facts of the question, even after the advent of the Companies Act 2013, no corresponding amendment was done in section 2(18)(aa) of the Income Tax Act, 1961, which provides that a company is said to be a company in which the public are substantially interested, if it is a company which is registered under section 25 of the Companies Act, 1956.

In the given situation, as per section 8 of the General Clauses Act, 1897 and the decision of case of *Gauri Shankar Gaur v. State of U.P.*, for section 2(18)(aa) of the Income Tax Act, 1961, provisions of the Companies Act, 2013 will be applicable in place of the Companies Act, 1956



What is the meaning of service by post as per provisions of The General Clauses Act, 1897? (May' 18)/ (MT)/ (MT)



As per 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.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.



Mr. Mike has lent his house property to Mr. Wise at a monthly rent of Rs. 15,0000 per month. The yearly rent agreement was due to expire in near future. However, Mr. Mike does not intend to continue this agreement and he has sent a notice to Mr. Wise for the termination of the agreement. Mr. Wise on the other hand does not want to vacate the property and hence has returned the notice with an endorsement of refusal. Now, Mr. Wise has contended that the no notice was served to him and hence there is no need for him to vacate the property. As per the provisions of the General Clauses Act, 1897, discuss whether a notice was served to Mr. Wise. **(MT Aug' 18)/ Nov' 22)**



As per section 27 of the General Clause 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.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post. In Jagdish Singh V. Natthu Singh, it was held that where a notice is sent to 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 the above case Mr. Mike had lent his property to Mr. Wise. The yearly agreement was due to expire. As Mr. Mike did not intend to renew the agreement he sent a notice to Mr. Wise for termination of agreement. Wise did not want to vacate the property so he returned the notice back with endorsement of refusal. Contending that since he had not received the notice he is not liable to vacate the property. As was held in the case of Jagdish Singh V. Natthu Singh that the notice marked with endorsement of refusal is deemed to be a valid notice, it will be presumed that the notice has been served.

Hence, in the given situation, a notice was rightfully served to Mr. Wise.



What do you understand by the term ‘Good Faith’. Explain as per the provisions of the General Clauses Act, 1897. (MT Aug’ 18)

OR

"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. (MT/ MT)



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.

In *Maung Aung Pu V. Maung Si Maung* it was pointed out that the expression good faith is not defined in the Indian Contract Act, 1872 and the definition given in the General Clauses Act does not expressly apply the term on the Indian Contract Act.



As per the provisions of the Companies Act, 2013, a whole time Key Managerial Personnel (KMP) shall not hold office in more than one company except its subsidiary company at the same time. Referring to the General Clauses Act, 1897, examine whether a whole time KMP can be appointed in more than one subsidiary companies? (MT Aug' 18)



As per section 203(3) of the Companies Act, 2013 a whole time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. With respect to the issue that whether a whole time KMP of holding company be appointed in more than one subsidiary companies or can be appointed in only one subsidiary company. Section 13 of General Clauses Act, 1897 provides that the word 'singular' shall include the 'plural', unless there is anything inconsistent to the subject or the context.

In the above case the statement says that he cannot be appointed in more than once company other than its subsidiary. As singular includes plural the words subsidiary shall include subsidiaries.

Thus, a whole time key managerial personnel may hold office in more than one subsidiary company as per the law.



Excel Ltd. declared dividend for its shareholder in its Annual General Meeting held on 30th September, 2017. Under the provisions of the Companies Act, 2013, company is required to pay declared dividend within 30 days from the date of declaration. As per the provisions of the General Clauses Act, 1897, discuss what will be the commencement and termination time for posting of declared dividend. **(MT Oct' 18)**



As per the provisions of section 9 of the General Clauses Act, 1897, for computation of time, the first in a series of days or any other period of time to use the word “from” shall be excluded and the last in a series of days or any other period of time, shall be included.

In the given case, Excel Ltd. declared dividend to its shareholders in its AGM held on 30th Sept, 2017. As per The Companies Act the dividend must be paid within 30 days from the date of declaration. Excluding the first day from the series i.e., 30/09/2017 and counting the last day 30 days shall be from 1/10/2017 to 31/10/2017.



The Companies Act, 2013 provides that the amount of dividend remained unpaid/unclaimed on expiry of 30 days from the date of declaration of dividend shall be transferred to unpaid dividend account within 7 days from the date of expiry of such period of 30 days. If the expiry date of such 30 days is 30.10.2018, decide the last date on or before which the unpaid/unclaimed dividend amount shall be required to be transferred to a separate bank account in the light of the relevant provisions of the General Clauses Act, 1897? (Nov' 19)



Section 9 of the General Clauses Act, 1897 provides that, for computation of time, in any legislation or regulation, the first in the series of day shall be excluded and the last of the day in the series shall be included.

In the above case the unpaid dividend shall be transferred to unpaid dividend account within 7 days from 30th Oct. Excluding 1st day and including the last day, 7 days shall be 6th Nov (from 31st Oct to 6th Nov).

So unpaid dividend shall be transferred by 6th Nov.



What is the effect on the implementation of the Rules that are issued between passing and commencement of enactment? Explain as per the provisions of the General Clauses Act, 1897. (MT Oct' 18)



As per section 22 of the General Clauses Act, where by any Central Act or Regulation which has not to come into force immediately, on passing, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation or with respect to

- the establishment of any Court or
- the appointment of any Judge or officer thereunder, or
- with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation,

then that power may be exercised at any time after passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.



SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1 January, 2016. Referring to the provisions of the General Clauses Act, 1897, examine the date of enforcement of these Regulations? (MT Oct' 18)



According to section 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of

- the Governor General in case of a Central Acts made before the commencement of the Indian Constitution; and/or,
- of the President in case of an Act of Parliament.

In this case SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI by a notification dates 14th Aug, 2015 with effect from 1st Jan, 2016.

Hence the Regulation shall come into enforcement on 1st January, 2016 rather than the date of its notification in the gazette.



A notice was served on Mr. P for appearing in the court. However, the notice could not be served on account of the fact that the house of the Mr. P was found locked. Thus, Mr. P. did not appear in the court at the said date. Examine the situation as per the provisions of the General Clauses Act, 1897 and determine whether Mr. P. will be liable in the given situation. (MT Mar' 19)



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.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post. In Smt. Vandana Gulati V. Gurmeet Singh alias Mangal Singh the court held that endorsements "not met/ not claimed" is sufficient to prove deemed service of notice.

In the above case a notice was served on Mr. P to appear in the court. However as his house was locked the notice was never received and Mr. P did not appear in the court. As was held in the case that the notice is deemed to have been served it was Mr. P obligation to be present in the court.

Thus the notice is deemed to have been served and Mr. P shall be held liable. It would be for Mr. P to prove that it was not really served and that he was not responsible for such non-service.



Mr. Rachit purchased a new house and after some time he shifted to his new house. He was regularly filing his Income Tax Return but he did not update his address with the Income Tax Department. The Income Tax department sent a show cause notice to Mr. Rachit whereby the time limit for reply was 15 days from service of notice. The notice was properly sent by registered post to his address which was in the records of the Income Tax Department. The notice reached at old house and present owner of that house refused to accept that notice. After a certain period, the Income Tax Department took a penal action against Mr. Rachit. He requested the department, that he should not be charged as he did not receive the said notice. Advise in terms of the provisions of the General Clauses Act, 1897, whether sending of the show cause notice by the Income Tax Department would be considered proper service of notice? Give your answer with reference to the provisions of the General Clauses Act, 1897. (MT)



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.

Further, on the basis of decision taken by the apex court in case of Jagdish Singh vs Natthu Singh, where a notice is sent to 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 the given case, the Income Tax Department sent the show cause notice properly by a registered post at the address which was in the records of the department. Hence, it was a proper service of notice. Further, refusal by current owner of house to accept the notice, will not amount to- that the notice was not properly served by the Income Tax Department. It was the duty of Mr. Rachit to update his address.

Therefore, Income Tax Department is correct in its decision.

Thus the notice is deemed to have been served and Mr. P shall be held liable. It would be for Mr. P to prove that it was not really served and that he was not responsible for such non-service.



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

- i. "Rule"
- ii. "Oath"
- iii. "Person" (Dec' 21)



- 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 persons by law allowed to affirm or declare instead of swearing.
- iii. Person: As per section 3(42) of the General Clauses Act, 1897, "Person" shall include:
 - a) any company, or
 - b) association, or
 - c) body of individuals, whether incorporated or not.



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)**



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.

In the above case, 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.



Referring to the provisions of the General Clauses Act, 1897, find out the day/ date on which the following Act/Regulation comes into force. Give reasons also,

1. An Act of Parliament which has not specifically mentioned a particular date.
2. The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1st January, 2016. (Nov' 19)



1. According to section 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the President in case of an Act of Parliament.
2. If any specific date of enforcement is prescribed in the Official Gazette, the Act shall come into enforcement from such date. Thus, in the given question, the SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 shall come into enforcement on 1st January, 2016 rather than the date of its notification in the gazette.



Mrs. Neelu Chandra was director in Laddoo Sweets Private Limited. Once while dealing with supplier of raw materials for company, she agreed to get some secret commission from supplier for making the deal. Afterwards, on finding the facts, the company has filed the suit against Mrs. Neelu Chandra. She contended that section 166 of the Companies Act, 2013, provides “A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.” She contended that section 166 is applicable to male director only, she being female will not be liable. In the light of the provisions of the General Clauses Act, 1897, decide whether she is bound by the provisions of section 166 of the Companies Act, 2013? **(RTP Nov’ 23)**



By virtue of provisions of section 13 of the General Clauses Act, 1897, in all Central Acts or Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken to include females.

Mrs. Neelu Chandra, director in Laddoo Sweets Private Limited, made an undue gain in the form of commission (from supplier for making the deal) in dealing for Laddoo Sweets Private Limited but she denied accepting the liability by saying that the language of section 166 provides penalty only for male directors not for females.

On the basis of provisions of the General Clauses Act, 1897 and facts of the case, the provisions of section 166 of the Companies Act, 2013, are not only applicable to males but also to females.

Therefore, Mrs. Neelu Chandra is bound to comply by section 166 of the Companies Act, 2013.



A confusion, regarding the meaning of 'financial year' arose among the financial executive and accountant of a company. Both were having different arguments regarding the meaning of financial year & calendar year. What is the correct meaning of financial year under the provision of the General Clauses Act, 1897? How it is different from calendar year? (MT/ MT/ MT)



Financial Year: According to Section 3(21) of the General Clauses Act, 1897, financial year shall mean the year commencing on the first day of April. The term Year has been defined under section 3(66) as a year reckoned according to the British calendar. Thus, as per the General Clauses Act, 1897, year means calendar year which starts from January to December.

Difference between Financial Year and Calendar Year: Financial year starts from first day of April but Calendar Year starts from first day of January.



Mr. Sridhar has issued a promissory note of ₹1000 to Mr. Mohan on 17th May 2022 payable 3 months after date. After that, a sudden holiday was declared on 20th August 2022 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 2022 or 21st August 2022? (MT)



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.

In the above case, a promissory note of ₹1000 was issued by Mr. Sridhar to Mr. Mohan on 17th May 2022 which was payable 3 months after date. After that, a sudden holiday was declared on 20th August 2022 due to Moharram. In the given case, the period of 3 months ends on 17th August 2022. Three days of grace are to be added. It falls due on 20th August 2022 which declared to be a public holiday after the issue of Promissory Note.

Thus in the light of provisions of section 10 of the General Clauses Act 1897, the due date will be on next day when office is open i.e. 21st August 2022.



The Ministry of Corporate Affairs (MCA) published in the Gazette of India, the proposed draft of Rules further to amend certain rules under the Companies Act, 2013. The MCA made some modifications in the draft Rules already published. In the light of the provisions of the General Clauses Act, 1897, answer the following:

- i. Is it required for MCA to publish a draft of the proposed Rules?
- ii. In case of any irregularities in the publication of the draft, can it be questioned?
- iii. Is MCA entitled to make suitable changes in the draft?
- iv. Is it necessary to re-publish the Rules in the amended form when the changes made are ancillary to the earlier draft? **(May' 22)**



As per section 23 of the General Clauses Act, 1897 following shall be the answers in the light of the given information and the relevant legal provisions:

- i. Yes, MCA is required to publish a draft of the proposed Rules for the information of persons likely to be affected thereby.
- ii. No, in case of any irregularities in the publication of the draft, it cannot be questioned. The publication in the Official Gazette of a rule or bye-law after previous publication, shall be conclusive proof that the rule or bye-laws has been duly made. It raises a conclusive presumption that after the publication of the rules in the Official Gazette, it is to be inferred that the procedure for making the rules had been followed. Any irregularities in the publication of the draft cannot therefore be questioned.
- iii. Yes, MCA is entitled to make suitable changes in the draft before finally publishing them.
- iv. No, it is not necessary to re-publish the Rules in the amended form when the changes made are ancillary to the earlier draft.