



dronacharya

FOR CA INTERMEDIATE

2024

Other Laws Revision Notes

Law

May 24



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CA Inter **Law May 2024**

General Clauses Act, 1897



Introduction

- Enacted on 11th March 1897
- Contains
 - Definitions
 - General Rule of Interpretation
- It is **'Law of all the laws'**
- Applicable to Central Acts
- Does not define any territorial extent clause
 - where central law applies, it also applies
- Also known as → Interpretation Law of India
- It does not apply to State Acts (they have their own GCA, but they are in line with GCA)

OBJECTS

The General Clauses Act, 1897 has following objects:

- ❖ To **S**horten the language of Central Acts and regulations
- ❖ To provide **u**niformity of expression in Central Acts by definitions
- ❖ State **R**ules of Interpretation

Definitions

Open for interpretation

Inclusive Definition



Word 'includes' is used



Eg. Body Corporate U/s 2(11)
definition

Body Corporate or corporation
Includes a company incorporated
outside India

Closed for interpretation

Exhaustive Definition



Word 'means' or 'means &
includes' is used



Eg. Company U/s 2(20) definition

Company means a company
incorporated under this act or
under previous act

Explain the impact of the two words "means" and "includes" in a definition, while interpreting such definition.(4 Marks) (MTP Oct. 23) (MTP Mar. 24)

Use of Words shall & may

Shall → Imperative or Mandatory

May → Not Mandatory but Directory

Important note:

Sometimes, the word 'may' has to be interpreted as 'shall'.

Eg. Section 3 of the Companies Act, 2013 states that 'a company 'may' be formed for any lawful purpose by....'

↓
may will be interpreted as shall

Meaning of certain words

'Statute'

- will of the legislature in writing

'Instrument'

- means a **formal legal document** which creates or confirms a **right or liability** or records a **fact**
- Section 2(14) of the Indian Stamp Act, 1899 states that 'instrument' includes every document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded.
- It is a formal writing of any kind, such as an agreement, deed, charter or record, drawn up and executed in a technical form

'Deed'

- instrument in writing (or other legible representation or words on parchment or paper) **purporting to effect some legal disposition.**
- Simply stated deeds are instruments though all instruments may not be deeds.

Formal legal document which creates or confirms a right or record a fact is a—

- (a) Document
- (b) Deed
- (c) Statute
- (d) **Instrument**

(MTP M 21)

1. Every Act has a _____ which expresses the scope, object and purpose of the Act. It is the main source for understanding the intention of lawmaker behind the Act. **(ICAI Study material)**

a. Definition

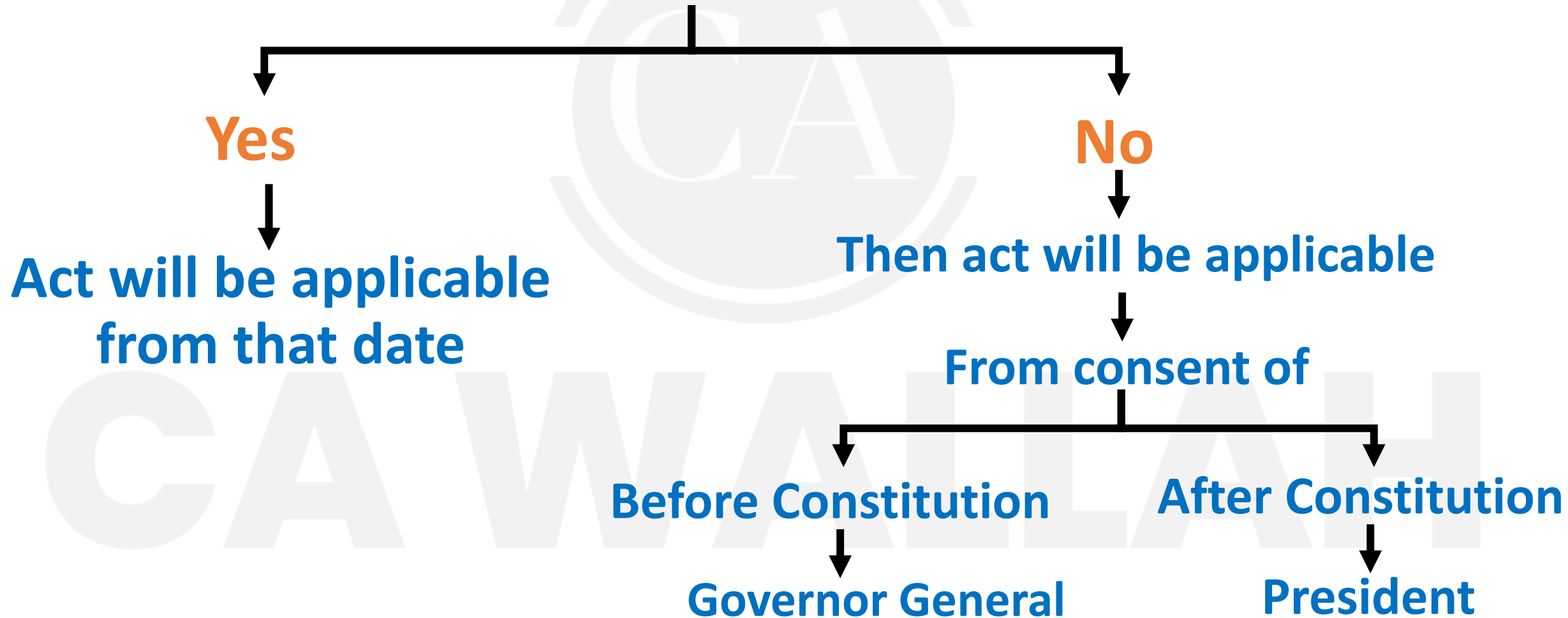
b. Preamble

c. Affidavit

d. Document

Sec. 5 → Comes into operation

Whether date of operation /commencement is specified



Note :- Act applies from midnight

Note of Sec. 5

1. Rules will be effective rules as published by gazette notification
2. Normally all laws are prospective unless they are expressly made retrospective

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: (1 Mark) (MTP Sep. 22)

- (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

Sec. 6 → Repeal

- It is not an amendment
- It is complete obliteration of provision as if it never existed

Sec. 6 Consequences of Repeal

Repeal any enactment, then such repeal **shall not** → (RRIP)

- a) **Revive** anything not in force at the time when repeal takes effect
- b) Affect any **right**, obligation, liability incurred under enactment so Repealed
- c) Affect any **investigation**, legal proceedings
- d) Affect any **penalty**, forfeiture or punishment for any offence committed under enactment so repealed

- **"Whenever an Act is repealed, it must be considered as if it had never existed."**

Comment and explain the effect of repeal under the General Clause Act, 1897.4

Marks (May 23)

'Repeal' of provision is different from 'deletion' of provision. Explain as per the General Clauses Act, 1897. (module)

- '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.

Sec. 6A - All Amendments in repealed Act to Continue

- Where any Central Act or Regulation made after this Act
- Repeal any enactment
- Then such repeal shall not affect the continuance of any amendment / omission / insertion made by enactment so repealed

CAWALLAH

Sec. 6A

Fact of case

Sec. 138 to 142 of NI Act was amended



By Banking , PFI, NI laws amendment Act, 1988



Later on banking, PFI, NI act was repealed

Question

- Will amendment made under NI act will also be repealed

Law

Repeal shall not affect continuance of any amendment made by Act so repealed

Conclusion

Amendment act will remain valid.

Sec. 7 – Revival of Repealed Act

- In any Central Act or Regulation made after commencement of this act
- Where any enactment repealed, either wholly or partially has been revived
- Then any such revival shall expressly state the purpose

Company Act, 1956

- Sec 1 to 658

Winding up

- Sec 425 to 560 (Supervision of Court)

Companies Act, 2013

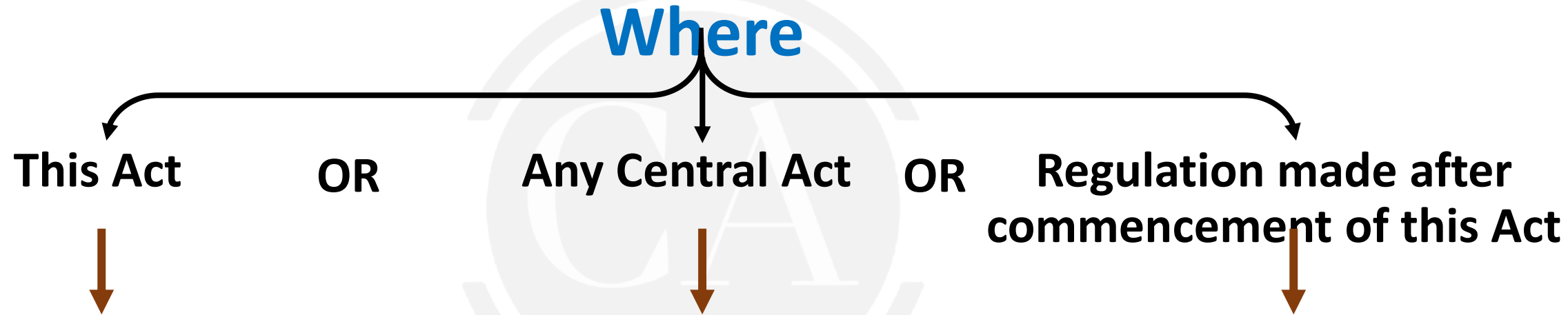
- repealed Company Act, 1956

Winding up U/Co. Act 13

- Sec 271 to 366 (Supervision of NCLT)

However at the formation of Companies Act, 2013, since NCLT was not there, thus Companies Act, 2013 provides for continuance of Sec 271 to 366 of Companies Act, 1956 to facilitate winding up

Sec. 8 Consequences of References to Repealed Act



Repealed & reenacted (Purana hataya naya laya), any provision of previous enactment then any reference in any other Act, above provision so repealed shall, unless a different intention appears be considered as reference to provisions so reenacted.

As per POBA, 1965 – as per sec 2(1) – financial year in relation to company shall have the same meaning as defined under companies act 1956 → since now Companies Act, 1956 repealed & Companies Act, 2013 reenacted after repealed → now any reference about companies Act 1956 means reference to Companies Act 2013

Sec. 9 – Commencement & Termination Of Time

Q. Count 10 Days from 1st January 2019

→ 1st Jan + 10 Days → 11th Jan

thus 1st Jan to be excluded

Q. IT return can be submitted upto 31st July. Whether 31st July to be included ??

→ Now last date to include is 31st July as well

- **Komal Ltd. declares a dividend for its shareholders in its AGM held on 27th September, 2022. Referring to provisions of the General Clauses Act, 1897 and the Companies Act, 2013, advice: (module) (MTP MAY 2020)**
- **The dates during which Komal Ltd. is required to pay the dividend?**
- **The dates during which Komal Ltd. is required to transfer the unpaid or unclaimed dividend to unpaid dividend account?**
- Hint -
- **Payment of dividend:** In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2022. 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 28/09/2022 to 27/10/2022. In this series of 30 days, 27/09/2022 will be excluded and last 30th day, i.e. 27/10/2022 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2022 and 27/10/2022 (both days inclusive).
- **Transfer of unpaid or unclaimed dividend:** 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, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the “Unpaid Dividend Account” (UDA). Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28th October, 2022 to 3rd November, 2022 (both days inclusive).

Sheesham Limited is a company engaged in the business of manufacturing premium quality furniture in the state of Tamil Nadu. In light of the provisions outlined in the General Clauses Act, 1897, and the Companies Act, 2013, please advise on the specific timelines regarding the payment of dividends subsequent to its declaration at the Annual General Meeting (AGM) held on 8th August 2023.

(4 Marks) (MTP April 24)

CAWALLAH

Sec. 10

Fact of case

Last day to sue was 31st Jan → It was Sunday & court was closed → He sued on immediately next day

Question

- Will suit be maintainable

Law

If certain Act/ proceeding was to be done within prescribed time and court/ office is closed on such day, then it is deemed to be done in prescribed time if done on next immediate day when court / office is open.

Conclusion

Yes suit will be maintainable

Sec. 11-Measurement of Distance

Any distance will be measured in a straight line on horizontal plane

- **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? (MTP Sep. 23)**
- **Ans – When court opens**
- **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.(3 Marks) (MTP Oct. 23)**
- **Hint – When court reopens**

Sec. 12 – Duty to be taken pro-rate

Fact of case

Sugar → Custom duty → Rs. 100 for 1000 kg

Calculate the duty for 100kg of Sugar

Law

Any duty / customs / exercise



Leviable on a quantity weigh / measure / value



Like duty is leviable on same rate on any greater / less quantity

Conclusion

$100/1000 * 100 = \text{Rs.}10$

Sec. 13

- Masculine gender always include 'She'
- 'Singular' always include 'Plural'

Exception 1) If male / female word is expressly mentioned in law

E.g (1) Male descendants will not include female descendants

(2) Bullock will not include cow.

Exception 2) It will not cover all cases

E.g (1) Previous year in companies act will not mean previous years

In all Central Acts and Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken: (1 Mark) (MTP Sep. 23)

- A. To exclude females
- B. To exclude girl child
- C. To include females**
- D. To exclude boy child

- **Mr. Avinash currently holds the position of a Whole-time director (Key Managerial Personnel) at Moon Pharma Limited, a company that maintains substantial ownership stake in X Limited (55% shares), Y Limited (60% shares), and Z Limited (65% shares). Mr. Avinash has expressed his desire to expand his role as a Whole-time director to encompass both X Limited and Y Limited. Determine the validity of his appointment as a Whole-time director in these additional companies, as per the provisions of the General Clauses Act, 1897.4 M (Nov 23)**
- Hint – subsidiary includes subsidiaries

- **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)**
- **Hint – Masculine includes feminine . She is bound for punishment**

Sec. 14 – Powers Conferred to be exercised from time to time

Fact

Sec. 12 confer power to R.D for permission to shift Regd. Office from one state to another can be do it only once or he can continue to exercise the power

Law

If any power is conferred



Then unless different intention appears



Power may be exercised from time to time as occasion requires

Conclusion

R.D can continue to give permission till he is expressly restricted

Where by any legislation or regulation, a power to appoint any person to fill any office or execute any function is conferred, any such appointment, may be made either by name or by virtue of office.

Power to appoint



Includes power to suspend / dismiss



Unless otherwise specified

CAWALLAH

- **Examine the validity of the following statements with reference to the General Clauses Act, 1897:**
- **Board of Directors of Sabarwal Construction Private Limited authorised by passing resolution in board meeting Mr. Munim to appoint five employees for accounts department of company. Mr. Munim appointed five employees including Mr. Rupal who was relative of one of the director of company. After one month, Mr. Munim observed that Mr. Rupal was not performing his duties honestly. Mr. Munim issued the order of dismissal of Mr. Rupal with proper reasons. Mr. Rupal filed a petition in the court that his dismissal order is not valid as Board of Directors had authorized Mr. Munim only for appointment of employees not for dismissal. Whether is Mr. Rupal correct with his words? (April 22)(4 Marks)**
- **Hint – one who can appoint can also dismiss**

Sec. 17 – Substitution of Functionaries

It shall be sufficient to mention the office title of the officer at present executing the functions of an office for the purpose of indicating the application of law

Sec. 18 – Successor

Any act done by functionary , can also be done by its successor

Sec. 19 – Official Chief & Subordinate

In any

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graph TD; A[In any] --> B[Any Central Act]; A --> C[Regulation made after commencement of act];
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Any Central Act

Regulation made after commencement
of act

Any law relating to Chief as senior of any office shall also apply to his deputies / subordinates who is lawfully performing duties of that office in place of their superior

Example : in case under the Preventive Detention Act, where there is a change in the Advisory Board after service of the detention order, the new Advisory Board can consider the case pending before the earlier board.

Sec. 20 – words used in definition to have same meaning for whole Act

Any **expression** used in



Notification, orders, schemes, rule forms



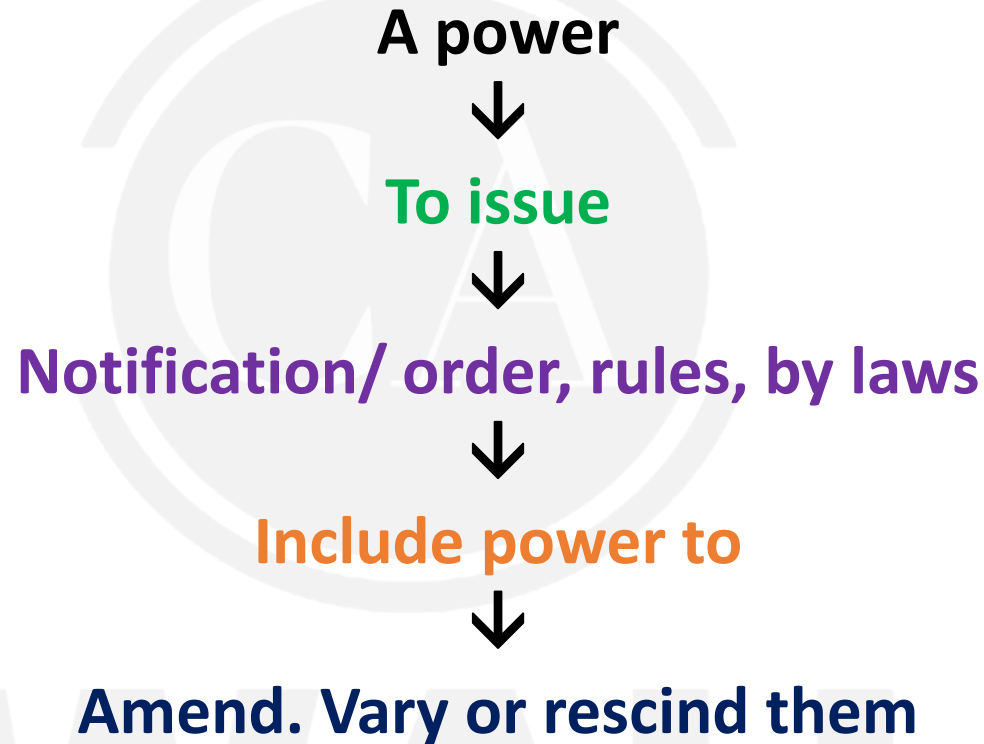
Shall have same meaning



As in act or regulation

E.g. Companies Act, 2013 – defined the word ‘Company’ later on certain rules were formed on concerned meeting. These rules also include the word ‘company’ now ‘company’ as used in rules shall have same meaning as assigned in companies Act

Sec. 21 – power to issue include power to amend as well



E.g.

- | | | |
|--------------|---|--|
| 1/4/2014 | → | Companies Act, 2013 –existence |
| 24/June/2015 | → | Exemption notification to govt co. by MCA |
| Dec. 2017 | → | MCA amends its exemption notification & provided that govt. co. shall be entitled to exemption only if there is non-compliance of Sec. 137 or 92 |

Sec. 22 – Validity of rules before commencement of Act

Fact of case

Co. Act
↓
Applicable
↓
29th Aug. 2013

Prescribed
provisions
for NCLT

But NCLT was notified in
Dec. 2016

Whether provisions of NCLT applicable from 29th Aug or Dec. 2016?

Law

Rules / Bye law / orders

Issued before will not enforce to

Till commencement of Act/ regulation

Conclusion

Provision of NCLT applicable from Dec. 2016

Sec. 23 – Making of rule or bye-laws after previous publications

Step 1 Make Draft by manner decided by govt. / authority

Step 2 Publish Draft mentioning time for suggestions / objections / comments

↓
Given to

↓
Affected person

↓
Permission authorities

Step 3 Interested person will make objections / suggestions

Step 4 Incorporate / consider suggestions / comments if req.

Step 5 Publish final copy in official gazette / conclusive proof

Sec. 24 – Continuation of orders issued under enactments repealed and reenacted

- Where any Central Act or Regulation, is, after the commencement of this Act,
- repealed and re-enacted with or without modification,
- then, unless it is otherwise expressly provided
- any notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted,
- continue in force,
- and be deemed to have been made or issued under the provisions so re-enacted,
- unless and until it is superseded by any appointment notification, order, scheme, rule, form or bye-law, made or issued under the provisions so re-enacted
- Example - The Mines Act of 1923 was repealed and replaced by the Mines Act of 1952. Rules made under the repealed Act must be deemed to continue in force by virtue of this section until superseded.

Sec. 25 – Recovery of Fines

Whether fine prescribed in specified law

Yes

Same fine will apply

No

Fines prescribed by

a) Sec. 63 to Sec. 70 of IPC

b) Provisions of code of criminal procedures will apply

Sec. 26 –Provision as to offence punishable under two or more enactments

- 1. Will not be punished twice / only punish under either of law**
- 2. Trial can be held under different laws, but punishment once**
- 3. If 2 alternative charges in same trial, acquittal from one does not ban conviction from other.**

"No person shall be prosecuted and punished for the same offence • more than once." Explain in the light of provisions of Section 26 of the General Clauses Act, 1897.3 Marks (May 23)

An act or omission constitutes an offence under two enactments. Referring to the provisions of the General Clauses Act, 1897, state which among the following is correct in such a situation: (module)

- a) The offender shall be liable to be prosecuted and punished under that enactment only, which was enacted last and not under the other enactment.
- b) The offender shall be liable to be prosecuted and punished under that enactment only, which was enacted first and not under the other enactment.
- c) The offender shall be liable to be prosecuted and punished under both the enactments.
- d) **The offender shall be liable to be prosecuted and punished under that either or any of those enactments, but shall not be punished twice for the same offence.**

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: (Mar.22)(1 Mark)

- 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

A company enter into process of reducing capital. Mr. Shah is concerned officer designated for preparing the list of creditor to records their reservation and reach to a settlement under section 66 of the Companies Act, 2013. Mr. Shah while preparing such list deliberately conceal the name of Ms. Ramya who is one of the company's creditor and object to the reduction, whereas make misstatement in context of some other creditors' claims. The offence committed by Mr. Shah is punishable under; (i) Under section 447 of the Companies Act, 2013 and (ii) Also under sections 417 read with 415 of Indian Penal Code 1860 (as dishonest concealment is involved). You are required to select the most appropriate option out of given below in context of offence committed by Mr. Shah:

- a) Mr. Shah shall be liable to be prosecuted under both of the Companies Act, 2013 and the Indian Penal Code 1860, but shall be punished under either of the Companies Act, 2013 or the Indian Penal Code, 1860.
- b) Mr. Shah shall be liable to be prosecuted under both of the Companies Act, 2013 and the Indian Penal Code, 1860, but shall be punished under the Companies Act, 2013 or the Indian Penal Code, 1860 where maximum punishment is lower.
- c) **Mr. Shah shall be liable to be prosecuted and punished under either of the Companies Act, 2013 or the Indian Penal Code, 1860.**
- d) Mr. Shah shall be liable to be prosecuted and punished under both of the Companies Act, 2013 and the Indian Penal Code, 1860. **(RTP Nov 23)**

Sec. 27 – Service by Post

1) Deemed to be served by post if :-

Properly
Addressed

+

Pre-paid

+

Posted by
Registered
post

2) Should be served by post – Acknowledgement due



Unless acknowledgement is not obtained it is not served

What is the meaning of service by post as per provisions of the General Clauses Act, 1897? (3 Marks) (MTP Sep. 22)

Hint: “Meaning of Service by post”: 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.

CAWALLAH

Question

(c) 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.

(4 Marks) (MTP Mar. 24)

Sec. 27

Cases	Due service when done
1) Addressee refuses to accept order	Assumed that done
2) Post return with not available in house / house locked / shop closed	Due service presumed
3) Sec. 138 notice unclaimed	Due service presumed
4) Regd. Post acknowledgment due is instead sent by only regd. Post	Due service cannot be presumed

AFFIDAVIT – SECTION 3(3)

- ‘Affidavit’ shall include **affirmation and declaration**
- In the case of persons by law
- Allowed to affirm or declare instead of swearing.

- In simple language, affidavit means a
- **Sworn statement in writing**
- Made under **oath or on affirmation**
- Before an **authorized Magistrate or officer.**

CENTRAL ACT- SECTION 3(7)

- Central Act mean an **Act of Parliament**.

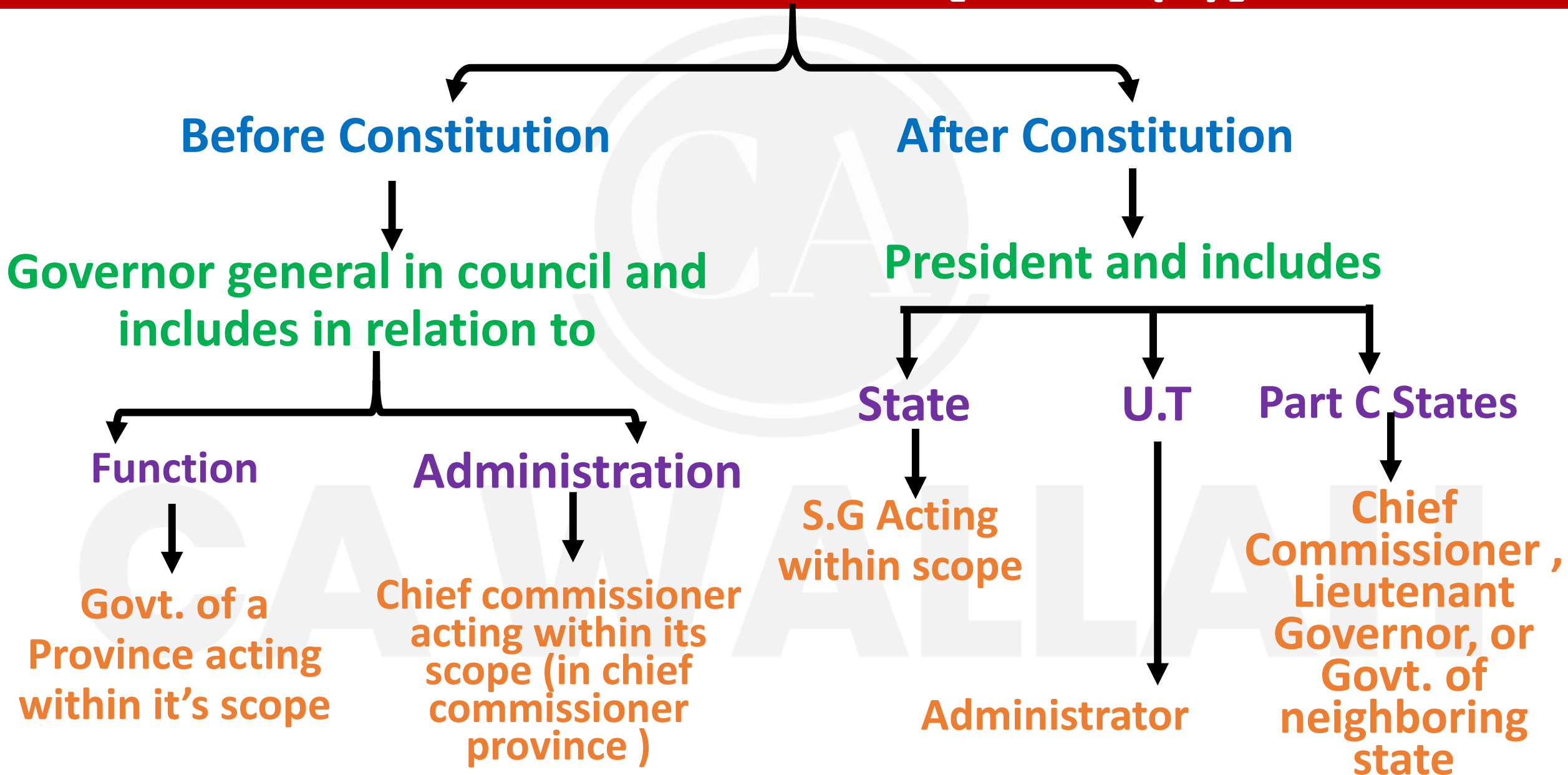
It shall include:

- An Act of the **Dominion Legislature** or
- Of the **Indian Legislature** Passed before the commencement of the constitution.

AND

- An Act made before such commencement
- By the **Governer-General in Council** or
- The **Governer-General**,
- Acting in a legislative capacity

Central Government [Sec. 3(8)]



- **‘Commencement’ [Section 3(13)]:**

‘Commencement’ used with reference to an Act or Regulations, shall mean the day on which the Act or Regulations **comes into force.**

- **‘Document’ [Section 3(18)]:**

‘Document’ shall include any

- **matter** (written, Expressed or described upon)

- **any substance**

- **By means** of letters, figures or marks or by more than one of those means.

- **Which is intended to be used or which may be used, for the purpose or recording that matter.**

include printing, lithography and photography.

- **A book, file, painting, inscription and even computer files are all documents.**

- **However, it does not include Indian currency notes.**

Financial year [SECTION 3(21)]

- Financial year' shall mean the year commencing on the first day of April.
- **Note:** Section 3(66) separately defines a year which means a calendar year starting 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

- **What is “Financial Year” under the General Clauses Act, 1897? (module)**
- **Mr. Apar and Mr. New, both aspiring Chartered Accountants have met in a conference for CA students. Both are having an argument about the meaning of Financial Year. They have approached you as a senior in the profession to guide them about the meaning of Financial Year as per the provisions of the General Clauses Act, 1872. Also, brief them about the difference between a calendar year and financial year.(RTP MAY 2021) (4 Marks) (MTP Oct. 23) (4 Marks) (MTP Mar. 24)**

GOOD FAITH [SECTION 3(22)]

- 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 be determined with reference to the circumstances of each case.
-
- **"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.(3 Marks) (MTP Sep. 23)**

Government [SECTION 3(23)]

- `Government' or 'the Government' shall **include both the Central Government and any State Government.**

Q. 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.

- **Hint – Govt includes both central and state((MTP Sep. 23)**

**Immovable Property
[Section 3
(26)]**

Shall include

Land

**Benefits to arise out of land
(e.g Trees , right to access)**

**Things attached to the earth
e.g – building /trees)**

**Things permanently fastened
to anything attached to the
earth (e.g bathroom fittings)**

IMMOVABLE PROPERTY – SECTION 3 (26)

- **Timber is not immovable property**
- Right of way to access from one place to another may come within the definition of Immovable property whereas the right to drain of water is not immovable property.

Which of the following is not an Immovable Property?

- (a) Land
- (b) Building
- (c) **Timber**
- (d) Machinery permanently attached to the land(1 Mark) **(MTP M 21)**

Question

19. 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 May24)

CAWALLAH

What among the following could be considered in the term 'Immovable Property' as defined under section 3(26) of the General Clauses Act, 1897? (2 Marks) (MTP Oct. 22)

- (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)

M owned a land with fifty tamarind trees. He sold his land and the timber (obtained after cutting the fifty trees) to N. M wants to know whether the sale of timber tantamount to sale of immovable property. Advise him with reference to provisions of the General Clauses Act, 1897. (RTP Mar 23)

Hint: . "Immovable Property" [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. It 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 instant case, M sold 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.

Mr. Z passed away at the age of 75 leaving behind some properties including both movable and immovable to be distributed between his two sons A & B, as per his registered will. According to the provisions of his duly registered will, Mr. Z specified that all immovable properties should go to A, while all the movable properties should go to B. Both the brothers divided the properties as per the will except for mentioned properties, because they could not establish which property should go to whom. Kindly help them by identifying the property which should go to B out of the followings, as per the provisions of the General Clauses Act, 1897 : (Nov 23)

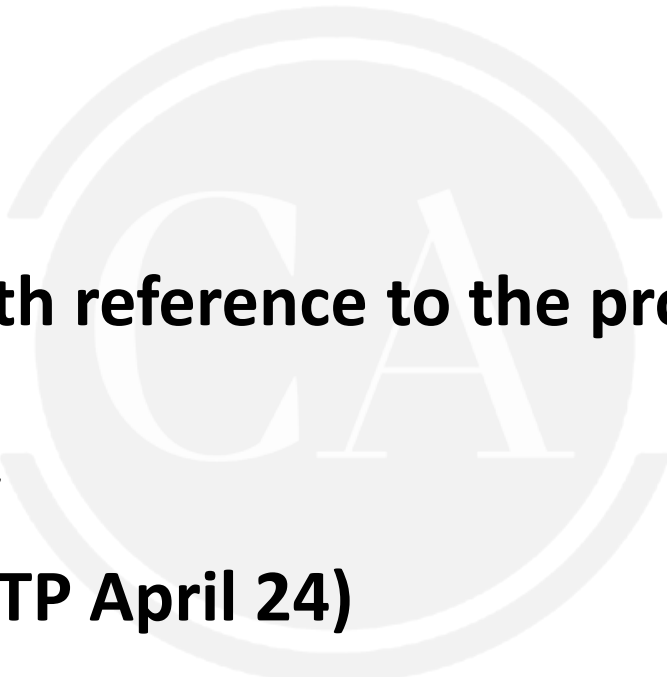
- a. Standing crop in the fields
- b. Tubewell in the agricultural land
- c. **Cut crops, ready to sell**
- d. Sandalwood tree

“Person” [Section 3(42)]:

“Person” shall include:

- (i) any company, or**
- (ii) association, or**
- (iii) body of individuals, whether incorporated or not**

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Explain the following with reference to the provisions of the General Clauses Act, 1897:

(i) Movable Property

(ii) Oath(4 Marks) (MTP April 24)

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CA Inter **Law Nov 2023**

Interpretation Of statues



Need for Interpretation (AUDI)

- **To remove ambiguities:** Although in modern times the statutes are drafted by legal experts, yet they are expressed in a language and no language is perfect. The English language is not an instrument of mathematical precision. The courts have to resort to interpretation to remove ambiguities in the language.
- **To understand intent of the legislature:** A statute is made by legislator and many times the intent of the legislature is derived not only from the language but also the surrounding circumstances that prevailed at the time when that particular law was enacted.
- **Different situations and facts:** In the words of Denning L.J., 'it is not within human powers to foresee the manifold set of facts which may arise in the future; and that, even if it were, it is not possible to provide for them in the statute in terms free from all ambiguity'.
- **Multiple interpretations:** If any provision of the statute is open to two interpretations, the court has to choose that interpretation which represents the true intention of the legislature.

Some Legal Terms

1. Statute:

- ✓ Law / Act
- ✓ Includes ordinance, orders, bye-laws, rules, regulations, notifications.
- ✓ 'a statute is a will of legislature conveyed in the form of text'.

2. Instrument:

- ✓ Formal legal Document which creates a Right or Record
- ✓ Includes Agreement, Deed, Charter, Record.

3. Deed: Instrument in writing → Purporting → To effect some legal disposition

NOTE: all deeds are instrument but all instruments are not deeds

How will you interpret the term "Instrument" used in a statutes? (NOV 2019)

Difference between Interpretation and Construction:

- 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 **to understand intent of legislature** . Here, the court would be resorting to '**construction**'.
- Conclusions drawn by **Interpretation are within the letter of law** but by **construction are within the spirit** though not necessarily within the letter of the law.

Rules of Interpretation

Primary Rule

Secondary Rule

Rule of

1. Literal Construction
2. Reasonable Construction
3. Harmonious Construction
4. Beneficial Construction
5. Exceptional Construction
6. Ejusdem Generis
7. Mischief Rule

1. Noscitur a sociis
2. Contemporanea Expositia

Shortcut to Remember

ROMAN → **HD**

R	→	Rule → Which rule
O	→	Other Imp Pts.
M	→	Meaning
A	→	Applicable
N	→	Not applicable
H	→	How to apply
D	→	Draftsman

Rule of Literal / Grammatical Interpretation

(i) R → Rule

- Primary and Cardinal rule
- Entry gate of every interpretation

(ii) Meaning →

Interpret literally & grammatically



Giving words their



Ordinary and natural meaning

(iii) Applicable

- Language → Plain, simple, unambiguous, only 1 meaning

(iv) Not -
Applicable

- If words or law creates Ambiguity, unreasonable or absurd results, defeats intention of law is defeated. in consistency, in completeness,

(v) H → How

1. Follow rules of grammar
2. No word to be added or deleted

Rule of Literal / Grammatical Interpretation

(vi) D → Draftsman ➤ Perfect (Assumption)

(vii) Other Imp Pts → i. Absoluta sententia expositore non indigent



If plain words capable of only one interpretation, no explanation required



ii. If two interpretation – Narrower & Broader → use narrower if broader fails to serve purpose

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is the cardinal rule of construction that words, sentences and phrases of a statute should be read in their ordinary, natural and grammatical meaning so that they may have effect in their widest amplitude. (1 Mark) (MTP Oct. 22) (MTP Oct. 23)

- (a) Rule of Literal Construction
- (b) Rule of Harmonious Construction
- (c) Rule of Beneficial Construction
- (d) Rule of Exceptional Construction

Nehul, a director of a Company, not being personally concerned or interested, financially or otherwise, in a matter of a proposed motion placed before the Board Meeting, did not disclose his interest although he has knowledge that his sister is interested in that proposal. He restrains from making any disclosure of his interest on the presumption that he is not

required by law to disclose any interest as he is not personally interested or concerned in the proposal. He made his presumption relying on the 'Rule of Literal Construction'. Explaining the scope of interpretation under this rule in the given situation, decide whether the decision of Nehul is correct? (3 Marks) (MTP Sep. 23)
Hint - we have to interpret in its broader sense of referring to any concern or interest containing any information and facts What is required is a full and frank disclosure without reservation or suppression, as, for instance where a son or daughter or father or mother or brother or sister is concerned in any contract or matter, the shareholders ought fairly to be informed of it and the material facts disclosed to them.

Rule of Reasonable / Logical Interpretation/Golden Rule

(i) Rule	➤ Primary
(ii) Meaning →	If legislature fails to give intended results ↓ Give sensible meaning to it
(iii) Applicable	Words / Provisions ↓ ➤ If words or law creates Ambiguity, unreasonable or absurd results, defeats intention of law is defeated. in consistency, in completeness,
(iv) Not - Applicable	➤ Language is plain simple, unambiguous and has only 1 meaning and give intended results.
(v) How to apply	If absurdity , adopt construction ↓ which was the intent of the legislator
(vi) Draftsman	Faulty
(vii) Other Imp Pts.	Maxim → <i>Utres magis valeat Quam paret</i> ↓ It is better to have effect than to be made void

Rule of Harmonious Construction

(i) Rule	➤ Primary
(ii) Meaning →	When there is conflict between two or more provisions ↓ Harmonize it to give effect to all provisions
(iii) Applicable	Where there is conflict between . ↓ i. Two statutes of same law ii. Two statutes of different laws iii. Conflict between previous and new law
(iv) Not - Applicable	➤ Where statute give a clear indication as to which provision is subservient and which overrides. This is done by the use of the terms “ subject to ”, “ notwithstanding ” and “ without prejudice ”.
(v) How to apply	i. Harmonize ii. If not possible give effect to both iii. Still not possible, amended, later act should prevail iv. Specific rule to over-ride general rule
(vi) Draftsman	Faulty (Assumption)
(vii) Other Imp Pts.	Statute should give clear reference of over riding provisions by using words. Subject to, notwithstanding, without prejudice.

Subject to

- a clause that uses the words **“subject to”** is subservient to **another.**

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Notwithstanding

- A clause that begins with the words “notwithstanding anything contained” is called a **non-obstante** clause. Unlike the “subject to” clause, the notwithstanding clause has the effect of making the provision **prevail over others**.
- A notwithstanding clause can operate at four levels.
 1. Notwithstanding anything contained in **another section or sub– section of that statute**.
 2. Notwithstanding anything **contained in a statute**.
 3. Notwithstanding anything contained in specific section(s) or sub-section(s) or all the provisions contained in **another statute**.
 4. Notwithstanding anything contained in **any other law** for the time being in force.

A clause that begins with the words "notwithstanding anything contained" is a clause that has the effect of making the provision prevail over others. It can operate at four levels. Explain any two of them.4 Marks (Nov 23)

Without prejudice

- When certain **particular provisions follow general provisions** and when it is stated that the particular provisions are without prejudice to those general provisions the particular provisions would not restrict or circumscribe the operation and generality of the preceding general provisions. In other words, the **particular provisions shall operate in addition to and not in derogation of the general provisions.**
- **Example 5:** Section 4(3) of the Companies Act, 2013, “Without prejudice to the provisions of sub-section (2), a company shall not be registered with a name which contains ”
- This implies that while registering (and deciding) the name of the company [as per section 4(3)], provisions of section 4(2) shall also be operative.
- **Explain the meaning of ‘Without Prejudice’ as a Harmonious aid to interpretation of statutes. Support your answer with the help of an example. (RTP Nov 23)**

- When there is a conflict between two or more statutes or two or more parts of a statute then which rule is applicable: (1 Mark) (MTP Oct. 23)
 - Welfare construction
 - Strict construction
 - **Harmonious construction**
 - Mischief Rule

-

Smith v. Hughes (1960)

Law : "Prostitutes shall be liable to prosecution if found guilty of attracting the attention of passers-by in street".

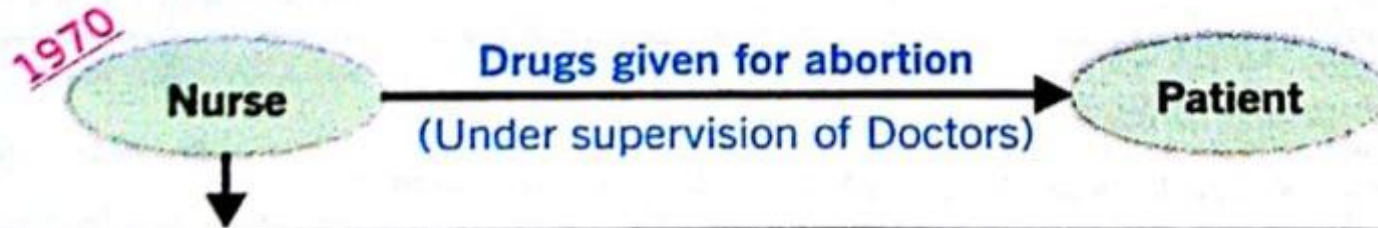


(1) **Literally :** No prosecution (as attention is attracted from balconies / windows)

(2) **Mischief :** ---- Purpose was to clean up the streets, to enable people to walk along the streets without being molested or solicited by common prostitutes.
---- Considering the purpose, lady is liable to prosecution.

Royal Challenge of Nursing (1981)

Law : Legal abortion can be performed only by Doctors (Abortion Act 1967)



(1) **Literally :** Illegal (as not performed by Doctor)

(2) **Mischief :** ---- Purpose was to curb / check 'back-street abortions performed by unqualified people.'
---- Drug based abortion done in hospital under supervision of doctor ∴ It is legal

Mischief Rule / Heydon's Rule / Beneficial

(i) Rule	➤ Primary
(ii) Meaning →	Where statute does not give intended result ↓ Words in statute may be extended to give intended meaning
(iii) Applicable	<ol style="list-style-type: none">i. Where actual law is different but intention of lawmaker is differentii. Where law was made to grant remedy to a problem
(iv) Not - Applicable	➤ Language is plain simple, unambiguous and has only 1 meaning and give intended results.
(v) How to apply	<ul style="list-style-type: none">• Court shall consider:<ol style="list-style-type: none">a) What was the earlier law ?b) What was the mischief ?c) What is the remedy ?d) Reason for the remedy. <p style="text-align: right;">Then suppress mischief & advance remedy</p>
(vi) Draftsman	Faulty (Assumption)
(vii) Other Imp Pts.	

- The Rule in Heydon's case is also known as— **(ICAI STUDY MATERIAL)**
 - Purposive construction
 - **Mischief Rule**
 - Golden Rule
 - Exceptional Construction

Rule of Exceptional Construction

- | | |
|-------------------------------|---|
| (i) Rule | ➤ Primary |
| (ii) Meaning → | Where statute does not give intended result
↓
Words in statute may be eliminated/replaced to give sensible meaning |
| (iii) Applicable | i. Directors (May) & Mandatory Provisions (Shall) or Conjunctive (and) or disjunctive (or) do not provide intention of lawmaker |
| (iv) Not - Applicable | ➤ Language is plain simple, unambiguous and has only 1 meaning and give intended results. |
| (v) How to apply | i. 'May' should be treated as directory and 'shall' should be treated as compulsory
ii. 'And' means addition whereas 'or' means optional |
| (vi) Draftsman | Faulty (Assumption) |
| • (vii) Other Imp Pts. | whether it is mandatory or directory depends upon 1.the nature of the thing empowered to be done, 2.the object for which it is done, and 3.the person for whose benefit the power is to be exercised. |

Rule of Beneficial Construction:

- Beneficial construction will be given to a statute, which brings into effect provisions for improving the conditions of certain classes of people who are under privileged or who have not been treated fairly in the past. In such cases it is permissible to give an extended meaning to words or clauses in enactments. But this can only be done when two constructions are reasonably possible and not when the words in a statute are quite unambiguous
- A method of interpretation which brings into effect provisions for improving the conditions of certain classes of people who are under privileged or who have not been treated fairly in the past. **(RTP Nov 23)**
 - Rule of Literal Construction
 - Rule of Harmonious Construction
 - **Rule of Beneficial Construction**
 - Rule of Exceptional Construction

Ejusdem Generis

- The general word will derive meaning from group of word it follows
 - E.g. Pineapple juice, orange, mosambi juice, etc (kya hoga??? ...Vodka, gin, whiskey)
 - E.g bread , butter, fruits , vegetable and other things
 - Other things means - edibles

Rule of Ejusdem Generis

Series of words forming particular class, or category are used & then general word follow them



In such case general words should be construed with reference to the previous words & accordingly meaning should be derived

Rule of Ejusdem Generis:

(i) R → Rule	Primary
(ii) Meaning	Where specific words pertaining to a class or category or genus are followed by general words, the general words shall be construed as limited to the things of the same kind as those specified.
(iii) Applicable	This rule applies when: <ol style="list-style-type: none">1. The statute contains an enumeration of specific words2. The subject of enumeration constitutes a class or category;3. That class or category is not exhausted by the enumeration4. General terms follow the enumeration; and5. There is no indication of a different legislative intent.
(iv) Not - Applicable	<ol style="list-style-type: none">1. If the preceding term is general, as well as that which follows this rule cannot be applied.2. Where the particular words exhaust the whole genus.3. Where the specific objects enumerated are essentially diverse in character.
(v) H → How to apply	—————
Examples	<ul style="list-style-type: none">• Pineapple juice, orange, <u>mosambi</u> juice, <u>etc</u> (<u>kya hoga???</u> ...Vodka, gin, whiskey ??) Solution - juices• <u>E.g</u> bread , butter, fruits , vegetable and other things Other things means – edibles

Enumerate when does the rule of Ejusdem Generis apply. (3 Marks) (MTP Sep. 22)

Noscitur A Sociis

- (i) Rule** ➤ Secondary
-
- (ii) Meaning** → 'Word is known by its associates'
↓
The meaning of a word is derived from the words found in immediate connection when words with analogous meaning are coupled together, understood in cognate sense
-
- (iii) Applicable** When some articles are grouped together, each word in the entry draws color from the other words therein.
-
- (iv) Not - Applicable** ➤ It cannot be applied where the meaning of the words was deliberately used in order to make the scope wider.
-
- (v) How to apply**
- 2 or more specific words
 - One ambiguous specific word
 - Such ambiguous specific word to derive its meaning from other specific word

“Associate words to be understood in common sense manner.” Explain this statement with reference to rules of interpretation of statutes. (3 Marks) (MTP Oct. 22)

Define the concept of "Doctrine of Noscitur a Sociis" with example in accordance with the provisions of the Interpretation of Statutes.3 Marks (Nov 23)

 means that when two or more words that are susceptible of analogous meaning, are coupled together they are understood to be used in their cognate sense. **(1 Mark) (MTP Oct. 23)**

- **Noscitur a Sociis**
- Contemporanea Expositio
- prima facie
- absoluta sententia expositore non indigent

Effect of usage and customs

- The Latin maxim of '*Optima legum interpretis est consuetudo*' which means that the best interpreter of laws is custom, has been recognised as one of the oldest principle in construing statutes.
- The Apex Court also confirmed another maxim *Contemporanea expositio est optima et fortissima in lege* meaning 'the best way to construe a document is to read it as it would have been read when made'. The rule is that a statute must be considered in the light of all circumstances existing at the time of its enactment. [Desh Bandhu Gupta v. Delhi Stock Exchange Assn. Ltd. — (SC) 1979]
- **At the time of interpreting a Statute what will be the effect of 'Usage' or 'customs and Practices'? (Module) (Nov 23)**
- **Explain the Doctrine of Contemporanea Expositio.3 Marks (May 23)**

Aid to Interpretations

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graph TD; A[Aid to Interpretations] --> B[Internal Aid]; A --> C[External Aid];
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Internal Aid

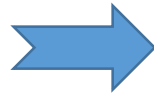
1. Long title
2. Preamble
3. Heading & chapter name
4. Definitions
5. Illustrations
6. Proviso
7. Explanations
8. Schedule
9. Marginal notes
10. Act as a whole

External Aid

1. History
2. Consolidating Statutes & Previous laws
3. Usage
4. Earlier Act / later act.
5. Dictionary definition
6. Court decisions

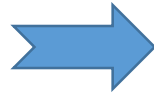
Internal Aids

1) Long/short title



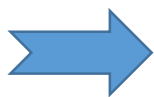
- Short title – identifies enactment & used for convenience – not aid
- Long title – describes enactment and used to ascertain object, general scope and purpose

2) Preamble



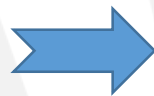
- Express more comprehensively scope, object and purpose than long title.
- Preamble discloses primary intention of legislature but can only be used as aid if statute is not clear

3) Headings/ title of chapter



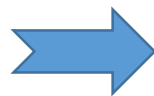
Used for interpretation of sections included in it.

4) Definitions



When definition is included, interpreter uses definition meaning and not ordinary meaning

5) Illustrations (Examples)



Good guide to find intention of draftman but is not part of section, so cannot modify /curtail section

When can the Preamble be used as an aid to interpretation of a statute? (RTP Mar 23)

Hint: When will courts refer to the preamble as an aid to construction?

Situation 1: Where there is any ambiguity in the words of an enactment the assistance of the preamble may be taken to resolve the conflict.

Situation 2: Where the words of an enactment appear to be too general in scope or application then courts may resort to the preamble to determine the scope or limited application for which the words are meant.

Use of the word 'may' in section 5 of the Hindu Marriage Act, 1955 provides that "a marriage may be solemnized between two Hindus" has been construed to be mandatory in the sense that both parties to the marriage must be Hindus as defined in section 2 of the Act. It was held that a marriage between a Christian male and a Hindu female solemnized under the Hindu Marriage Act was void. This result was reached also having regard to the preamble of the Act which reads: 'An Act to amend and codify the law relating to marriage among Hindus' [Gullipoli Sowria Raj v. Bandaru Pavani, (2009)1 SCC714]

Classification of Definitions

<p>(a) Restrictive and exhaustive definitions</p>	<ul style="list-style-type: none">● When the words used in definition restrict its meaning:<ul style="list-style-type: none">○ 'means' ; or○ 'means and includes'
<p>(b) Extensive or inclusive definitions</p>	<ul style="list-style-type: none">● When the word extends or enlarge the ordinary and natural meaning beyond the definition given in the Act or creating a legal fiction:<ul style="list-style-type: none">○ 'includes ...' ; or○ 'to apply to and include....'; or○ 'any... ' ; or○ 'is deemed to include...'
<p>(c) Ambiguous definitions</p>	<ul style="list-style-type: none">● Sometime the definition section may itself be ambiguous and it has to be interpreted having regard to the ordinary meaning of the word or in the light of the other provisions of the Act.

Explain the impact of the two words "means" and "includes" in a definition, while interpreting such definition. (3 Marks) (MTP Oct. 22)

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.

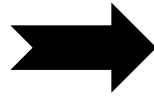
Definition of Whole time director [Section 2(94) of the Companies Act, 2013]—Whole time director includes a director in the whole time employment of the company. The word "includes" suggests extensive definition. Other directors may be included in the category of the whole time director.

Preamble - Example

The preamble of the Hindu Marriage Act, 1955 reads, 'An Act to amend and codify the law relating to marriage among Hindus'. Section 5 of the Act reads, 'A marriage may be solemnised between any two Hindus...'. A question arose that whether use of the word 'may' in Section 5 of the Act can be construed mandatory in the sense that both parties to the marriage must be Hindus. The court having regard to, inter alia, preamble of the Act held that a marriage between a Christian male and a Hindu female solemnised under the Hindu Marriage Act was void. [Gullipoli Sowria Raj v. Bandaru Pavani — (SC) 2009]

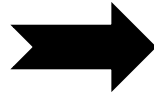
Internal Aids

6) Proviso



- It is not rule but exception to main provision to carve out qualification to main provision which is too general
- Starts with Provided that , to exclude something or limit applicability

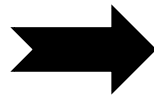
7) Explanation



An internal aid that may be added to include something within the section or to exclude something from it

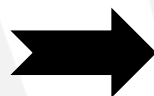
Normally used to clear ambiguity

8) Schedule



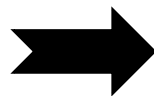
- A list , a format ,Form part of Act
- Read together with Act for construction
- If conflict between enactment or schedule, then Act prevail

9) Marginal notes



Normally cannot be used for construction except in exceptional cases .

10) Act as a whole



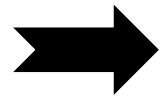
Act must be readed as whole in order to ascertain true meaning of several clauses for proper harmonisation

Proviso vs. Exception and Saving Clauses

- 'Exception' is intended to **restrain** the enacting clause to **particular cases i.e reverse effect to the section e.g sec 149 – total 15 directors – except by passing S.R**
- 'Proviso' is used to **remove special cases from the general enactment** and provide for them specially (provided that) **sec 188- RPt- B.R → N.A to Arm,s length transaction**
- 'Saving clause' is used to preserve provision of other sections in statute e.g **MOA – alteration – S.R save as sec 61**

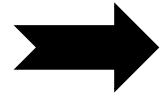
External aids

1) History



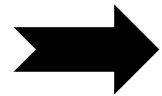
Helps in understanding subject matter object and scope of law.

2) Consolidating statutes & Previous law



May solve doubtful points in statute for intention

3) Usage



In case of doubt, usage helps to create understanding

4) Earlier law/ later law/ Analogous law



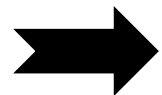
If there are 2 different act in each cases, various rules of interpretation can be used to know exact interpretation.

5) Dictionary definition



Useful where word is not defined in act.

6) Court decision



Used for construction of our own law
However prime importance given to Indian statutes

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

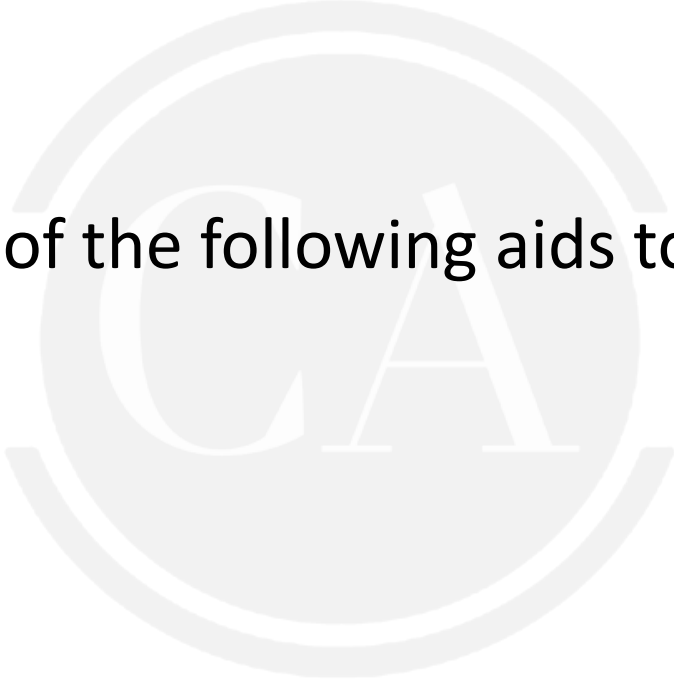
- (i) Historical Setting
- (ii) Use of Foreign Decisions (3 Marks) (MTP Oct. 22) (MTP may 24)

Hint:

- (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 Indian decisions, reference to foreign decisions may become unnecessary.

Pick the odd one out of the following aids to interpretation:(1 Mark) (MTP Oct. 22)

- (a) Preamble
- (b) Marginal Notes
- (c) Proviso
- (d) Usage**

- 
- 1. Pick the odd one out of the following aids to interpretation:(1 Mark)
(MTP Oct. 22)
 - a. Preamble
 - b. Marginal Notes
 - c. Proviso
 - d. **Usage**

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Statutory interpretation is a practice through which the courts break down the words of a legislation and give true intent to it. While the legislature makes the laws, the judiciary performs the art of interpretation to give meaning to the words of the law maker. It is correctly said that “The purpose of Interpretation of Statutes is to help the Judge to ascertain the intention of the Legislature – not to control that intention or to confine it within the limits, which the Judge may deem reasonable or expedient”. For interpretation of statutes various tools are used, you are required to pick the option depicting correct sequence of tools in order their application.

- a. Internal Aids to Construction, External Aids to Constructions, and Literal Construction
- **b. Literal Construction, Internal Aids to Construction, and External Aids to Constructions**
- c. Internal Aids to Construction, Literal Construction, and External Aids to Constructions
- d. External Aids to Constructions, Internal Aids to Construction, and Literal Construction (1 Mark) (MTP Sep. 23)

- 3. An internal aid that may be added to include something within the section or to exclude something from it, is—
 - a. Proviso
 - b. **Explanation**
 - c. Schedule
 - d. Illustrations(1 Mark) (MTP Sep. 23)

- 4. The Preamble is most important in any legislation, it:
 - a. Provides definitions in the Act.
 - b. Expresses scope, object and purpose of the Act.
 - c. Provides explanation of all the sections of the entire Act.
 - d. Provides side notes often found at the side of a section. (1 Mark) (MTP Oct. 23)

Differentiate Mandatory Provision from a Directory Provision. What factors decide whether a provision is directory or mandatory? (ICAI STUDY MATERIAL)

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

CAWALLAH

CA Inter **Law May 2024**

FEMA Act, 1999



FEMA 1999

Resident (Individual)

PRI

PROI

Preceding year → more than 182 day

Not PRI

India reside

Exception

Going outside India →

E → Employment

B → Business / vocation

U → Uncertain period

182 more stay
doesn't matter

PROI

Coming in India → otherwise than EBU

Nutshell

It person goes out of India for EBU

→ PROI → Irrespective of stay > 182 days

If person come to India otherwise than EBU

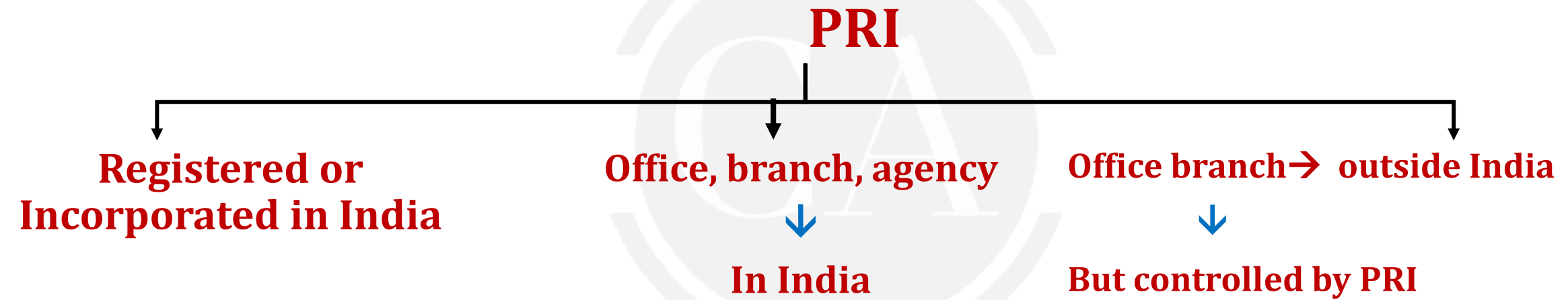
→ PROI → "-----"

If person comes to India for EBU

→ Last year stay doesn't matter
↓
PRI

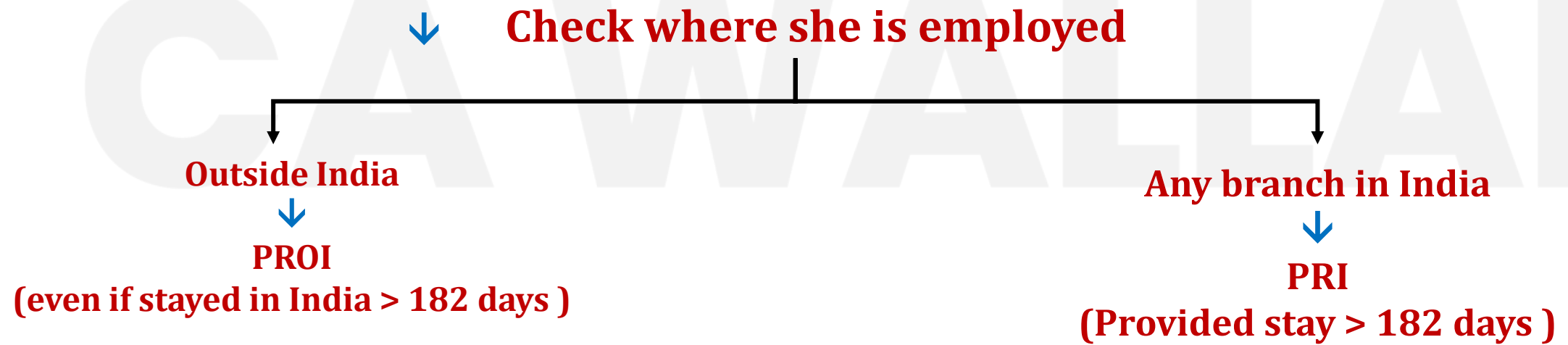
*Note:

1. Residential status for B.C (Body Corporate)



2. If left India for studies → PROI (RBI circular)

3. Airhostess coming and going outside India



- **Mr. X had resided in India during the financial year 2019-2020 for less than 182 days. He had come to India on April 1, 2020 for carrying on business. He intends to leave the business on April 30, 2021 and leave India on June 30, 2021. Determine his residential status for the financial years 2020-2021 and 2021-2022 up to the date of his departure?**

Hint - As explained in the above illustration, Mr. X will be considered as a 'person resident in India' from 1st April 2020. As regards, financial year 2021-2022, Mr. X would continue to be an Indian resident from 1st April 2021.

- If he leaves India for the purpose of taking up employment or for business/vocation outside India, or for any other purpose as would indicate his intention to stay outside India for an uncertain period, he would cease to be person resident in India from the date of his departure. It may be noted that even if Mr. X is a foreign citizen, has not left India for any of these purposes, he would be considered, 'person resident in India' during the financial year 2021-2022. Thus, it is the purpose of leaving India which will decide his status from 1st July 2021.

- **Mr. Z had resided in India during the financial year 2019-2020. He left India on 1st August, 2020 for United States for pursuing higher studies for three years. What would be his residential status during financial year 2020-2021 and during 2021-2022?**
- **Answer**
- Mr. Z had resided in India during financial year 2019-2020 for more than 182 days. After that he has gone to USA for higher studies. He has not gone out of or stayed outside India for or on taking up employment, or for carrying a business or for any other purpose, in circumstances as would indicate his intention to stay outside India for an uncertain period. Accordingly, he would be 'person resident in India' during the financial year 2020-2021. RBI has however clarified in its AP circular no. 45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to take care of their stay and cost of studies.
- For the financial year 2021-2022, he would not have been in India in the preceding financial year (2020-2021) for a period exceeding 182 days. Accordingly, he would not be 'person resident in India' during the financial year 2021-2022.

- **Miss Alia is an airhostess with the British Airways. She flies for 12 days in a month and thereafter takes a break for 18 days. During the break, she is accommodated in 'base', which is normally the city where the Airline is headquartered. However, for security considerations, she was based at Mumbai. During the financial year, she was accommodated at Mumbai for more than 182 days. What would be her residential status under FEMA?**
- Miss Alia stayed in India at Mumbai 'base' for more than 182 days in the preceding financial year. She is however employed in UK. She has not come to India for employment, business or circumstances which indicate her intention to stay for uncertain period. Under section 2(v)(B), such persons are not considered as Indian residents even if their stay exceeds 182 days in the preceding year. Thus, while Miss Alia may have stayed in India for more than 182 days, she cannot be considered to be a Person Resident in India.
- If however she has been employed in Mumbai branch of British Airways, then she will be considered a Person Resident in India.

Dealing in foreign exchange, etc. [Section 3]

- No person shall-
 - a) deal in or transfer any foreign exchange or foreign security to any person not being an authorised person (AP);
 - b) make any payment to or for the credit of any person resident outside India
 - c) receive otherwise than through an authorised person, any payment by order or on behalf of any person resident outside India in any manner.
 - d) enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person

Current A/c transaction vs Capital A/c Transaction

Capital a/c transaction (CAT)



Current transaction (sec. 5)

a/c → Other than capital a/c transaction

Includes (SIRF)

CUAT

S → Short term banking / credit facility (max 3 months)

I → Interest on loan / income from investment

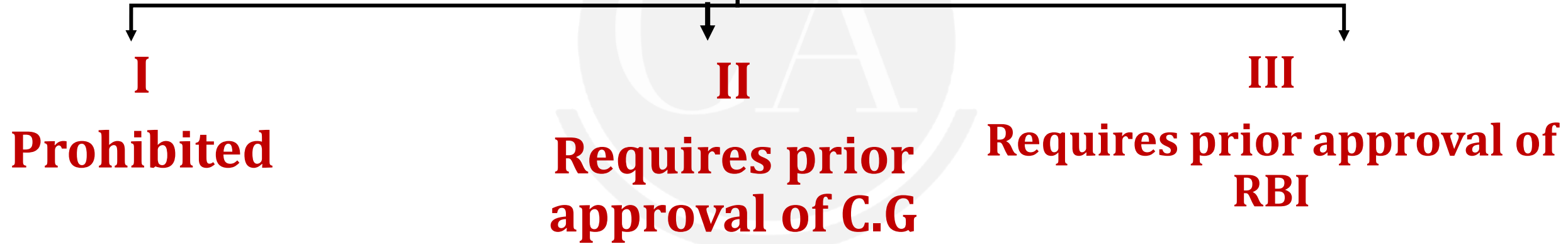
R → Parents / spouse / children → residing abroad → living expenses

F → Foreign travel, education, medical care of parents, spouse, children

*Current A/c Transaction[sec. 5]

→ It is permitted, unless specifically prohibited

→ **Schedule**



CAWALLAH

Schedule

I → Prohibited

REAL → Cash Dukarndaari RIP

R → Racing / riding horse → Income

E → Equally investment



Commission



In joint venture/ Wholly owned subsidiary

A → Any other prescribed

L → Lottery winning

C → Call back services

D → Dividend in dividend bal. Scheme

R → Rupee state credit route



Export commission



Except 10% of invoice value of tea/tobacco.

I → Interest income in non-resident special rupee a/c

P → Purchase of wrong thing

(lottery ticket, banned managing, Football pools, sweepstakes)

II → C.G Permission (CA me FM/SM/ DT / Costing)

Approval

C → Cultural tours

A → Advt. in foreign print media by S.G/ P.S.U

HRD ministry

→ Finance Ministry



Exceeding USD 10,000

Except promotion of tourism, foreign investment, international bidding

F → Freight of vessel chartered by P.S.U → Ministry of surface transport

M → Multimodal transport

→ Director general of shipping



To agent abroad

T → Transponder hiring charges for TV channel → Information Broadcasting ministry

✓ Internet service provider

D → Detention charges

→ Surface transport

S → sponsorship / prize abroad



Other than International / National/ state body exceeding USD 1 lakh

M → member of P&I club

→ Finance

Co. → CIF basis → Ocean transport

→ Surface

- 
- **Exemption for payment by International Credit Card while on a visit abroad** – If a person is on a visit abroad, he can incur expenditure stated in Schedule III if he incurs it through International credit card.

CAWALLAH

Question

Ms. Prabha, a classical dancer of Bharatnatyam, wants to go to the USA for a performance. In this connection she requires foreign exchange drawal of US\$ 50,000. Explain Ms. Prabha, the provision of the Foreign Exchange Management Act, 1999, in respect of permission required for such drawal of foreign exchange. **(4 Marks) (MTP Mar. 24)**

Mr. Shivesh, an Indian National desires to obtain Foreign Exchange for the following purposes:

- (i) Remittance of US Dollar 50,000 out of winnings on a lottery ticket.
- (ii) US Dollar 100,000 for sending a cultural troupe on a tour of U.S.A.

Advise him whether he can get Foreign Exchange and if so, under what conditions? **(RTP May24)**

University of Oxford is one of the leading institutes of UK. In the month of May 2024, they are planning a cultural event in UK. The University has invited Ms. Kanika Tripathi and her group, an Indian artist to perform in the event. Ms. Kanika Tripathi needs to withdrawal foreign exchange of USD 75,000 for the purpose of visit to UK for performing at cultural event of University of Oxford in UK. Advise whether she can withdraw Foreign Exchange and if so, under what conditions? (4 Marks) (MTP April 24)

Question

(c) Mr. Rohan Sharma, an international cricket player has started its cricket academy, namely, Rohan Sharma Cricket Academy, a private coaching club, which provides coaching for cricket. The Academy has a cricket team which participates in cricket matches all over India as well as outside India.

Rohan Sharma Cricket Academy in a collaboration with Melbourne Cricket Academy is organizing a cricket event in Melbourne, Australia in the month of May 2024 and June 2024. Rohan Sharma Academy is required to remit USD 200,000 to Melbourne Cricket academy as a part of its share for organizing the cricket event in Melbourne. Advise whether it can get Foreign Exchange and if so, under what conditions?

(4 Marks) (MTP April 24)

Schedule III- Requiring RBI approval

Individuals

MOGAMBO-SE



M → Medical expenses abroad, treatment, check-up

O → Other prescribed

G → Gift / donation

A → Abroad for employment

M → Maintenance of close relative abroad

B → Business Travel / conference / travel / meeting

θ

S → Study abroad

E → Emigration



Limit USD → 2,50,000



Exceeds → RBI permission

Others

Donation →

- Chair in edu. Inst
- Funds of edu. Institute
- Technical institutes

Commission →

- To agent abroad for sale of flats Plots in India

Consultancy →

- Infra. Project
- Other project

Re-imbursment of Pre - incorporation contract →

- 5% of Invt. Bought in India or USD → 1 lakh

Exceeding

1% of their foreign exch. Earning or 50 lakh USD

5% of inward remittance or USD 25,000

→ USD → 1 C.r

→ USD → 10 lakhs

Question

(d) Mr. Pravesh, an Indian National desires to obtain Foreign Exchange for the following purposes:

(i) US\$ 140,000 for studies abroad on the basis of estimates given by the foreign university.

(ii) U.S. \$ 10,000 for remittance towards hiring charges of transponders.

Advise him whether he can get Foreign Exchange, as per the provisions of the Foreign Exchange Management Act, 1999.

(4 Marks) (MTP Mar. 24)

❖ No Permission if done by RFC (Resident /foreign currency a/c) or EEFC (Exchange earners foreign currency A/c)

Except (i) P & club (ii) Flats (iii) pre-incorp. expenses

❖ No RBI permission for → EMS (Emigration medical study abroad) → If required by country of emigration, medical institute, university.

❖ Resident but not permanently resident in India (3 years)

Citizen of foreign state except Pakistan

Citizen of India deputed to foreign Co.

Can remit upto net salary after tax & P.F Deah.

❖ If individual rents any amt. from Liberalised

→ Amt. Reduced from 2,50,000 USD

Practical Questions Current vs Capital Account Transactions

Purpose	Permissibility / Condition to be satisfied
1. Remittance of USD 50,000 out of winnings on a lottery ticket (RTP, M 04, M 08)	Remittance out of Lottery Winnings is totally prohibited under Schedule I of FEM (Current Account Transactions) Regulations.
2. <u>Mr.P</u> has won a big lottery and wants to remit USD 20,000 out of his winnings to his son who is in USA. (N 14)	Remittance out of Lottery Winnings is totally prohibited under Schedule I of FEM (Current Account Transactions) Regulations.
3. USD <u>1,00,000</u> for sending a cultural troupe on a tour of USA. (RTP, M 04, M 08)	This is a Schedule II transaction. Prior approval of Central Government, Ministry of HRD (Department of Education and <u>Culture</u>) is required.
4. X, a Film Star, requires USD 20,000 to perform along with his associates in New York on the occasion of Diwali, for Indians residing at New York. (M 06, J 09)	

<p>5. Mr. Gopal, a Cine Artist in India proposes to organize a cultural <u>programme</u> at Dubai and requires to draw foreign exchange <u>USD 1,00,000</u> for this purpose. (N 13)</p>	<p>This is a Schedule II transaction. Prior approval of Central Government, Ministry of HRD (Department of Education and <u>Culture</u>) is required.</p>
<p>6. USD 3,50,000 for meeting the expenses of his business tour to Europe. (M04, M 08)</p>	<p>This is a Schedule III transaction. For business travel, upto USD <u>2,50,000</u> is permissible. However, since the amount is USD <u>3,50,000</u> in this case, prior approval from RBI is required.</p>
<p>7. Mr. Shah proposes to visit United States on a business tour and for this purpose he wants to draw foreign exchange USD 40,000 for meeting expenses. (N 13)</p>	<p>This is a Schedule III transaction — For Business Travel upto USD <u>2,50,000</u> is permissible. However, since the amount is USD 40,000, prior approval of RBI is not required.</p>
<p>8. Travel to Nepal (N 02)</p>	<p><u>Drawal of Foreign Exchange</u> for travel to Nepal and Bhutan is specifically prohibited under the Regulations.</p>
<p>9. Remittance of USD 10,000 for payment of goods purchased from a party in Nepal. (N 04, M 07, 3 09)</p>	<p>Transaction with a person resident in Nepal or Bhutan is not permissible (unless specifically exempted by RBI). Hence, RBI approval will be necessary for this transaction.</p>
<p>10. USD 10,000 for remitting as commission to his agent in USA, for sale of commercial <u>plot</u> situated near Bangalore, consideration in respect of which was received by Atul, by way of</p>	<p>Commission to agents abroad for sale of <u>residential flats / commercial plots</u> in India, exceeding USD 25,000 or 5% of the inward remittance whichever is higher, is permissible under Schedule III with RBI approval. In the given case, the commission does not exceed the specified limit of USD</p>

Nepal. (N 04, M 07, 3 09)	RBI approval will be necessary for this transaction.
<p>10. USD 10,000 for remitting as commission to his agent in USA, for sale of commercial <u>plot</u> situated near Bangalore, consideration in respect of which was received by <u>Atul</u>, by way of foreign currency inward remittance, amounting to USD 1,00,000. (N 04, M 07, 3 09)</p>	<p>Commission to agents abroad for sale of residential flats / <u>commercial plots</u> in India, exceeding USD 25,000 or 5% of the inward remittance whichever is higher, is permissible under Schedule III with RBI approval. In the given case, the commission does not exceed the specified limit of USD 25,000. Hence, prior approval of <u>RBI is not required</u> for <u>drawal of foreign exchange</u> in this case.</p>
<p>11. Payment of USD 10,000 as commission on exports under Rupee State Credit Route. (M 05, N 06)</p>	<p>Payment of Commission on Exports under Rupee State Credit Route, is totally prohibited under Schedule I, except for commission upto 10% of Invoice Value of exports of tea and tobacco.</p>
<p>12. USD 30,000 for a business trip to UK. (M 05)</p>	<p>This is a Schedule III transaction. For business travel, upto USD <u>2,50,000</u> is permissible. However, in this case, as the amount is USD 30,000, prior approval from RBI is not required.</p>
<p>13. Remittance of USD <u>2,00,000</u> for payment as prize money to the winning team in a Hockey Tournament to be held in Australia. (RTP, M 05)</p>	<p>Remittance of Prize Money / Sponsorship of sports activity abroad by a person other than International / National / State Level Sports Bodies, where the amount exceeds USD 1 Lakh, requires prior approval of Central Govt i.e. Ministry of HRD (Department of Youth Affairs and Sports).</p>

<p>14. Payment of remuneration to Foreign Technician (N 03, M 10, RTP)</p>	<p>This is not specifically prohibited or stated as requiring RBI / Central Government Approval. Hence, the transaction can be permitted since it is a Current Account Transaction.</p>
<p>15. Remittance of Dividend to <u>Non—Residents.</u> (N 03)</p>	<p>Payment of Dividend is a Current Account transaction and is hence freely permissible. However, Remittance of Dividend by any Company to which the requirement of dividend balancing <u>is applicable</u>, is prohibited.</p>
<p>16. Payment related to call back services of telephone.(RTP, 3 09)</p>	<p>Payments related to call back services of telephones are specifically prohibited under FEM Regulations.</p>
<p>17. Remittance under technical collaboration agreements.(RTP)</p>	<p>Remittance under Technical Collaboration Agreements are permitted without any restrictions.</p>
<p>18. Release of Foreign Exchange for attending conferences abroad.(RTP)</p>	<p>Release of Foreign Exchange, upto USD 2,50,000 to a person, irrespective of period of stay, for attending <u>a International Conference / Seminar / Study Tour or specialized training / <u>apprentice</u> training</u>, is permissible without RBI approval.</p>
<p>19. Release of Foreign Exchange for medical check—up abroad.(RTP)</p>	<p>Release of exchange for meeting expenses for medical check—up abroad, requires prior approval of RBI only if it exceeds <u>USD 2,50,000</u>.</p>

26. Exchange facilities for emigration.(RTP)	Exchange facilities for emigration, exceeding <u>USD 2,50,000</u> , or amount prescribed by country of emigration prior approval of RBI.
27. Payment of commission on exports made towards Equity Investment in wholly owned Subsidiary abroad of an Indian Company. (N 01)	Payment of commission on exports made towards equity investment in wholly owned subsidiary abroad of an Indian company is <u>prohibited</u> under FEM Regulations.
28. Remittance of hiring charges of transponder. (N 01, M 10, RTP)	<u>Drawal</u> of foreign exchange for remittance of hiring charges of transponder, can be made with the prior approval of the Central Government.
29. Remittance for use of trademark in India. (N 01, M 10) 30. F International Ltd has purchased trade marks from a Foreign Company to establish <u>retail business</u> chain in India as a joint venture at a consolidated price of USD 5 Lakhs which is to be paid in foreign currency of that country. (M 06)	<u>Drawal</u> of foreign exchange for remittance for use of trade marks, can be made without any restriction.
31. Gift remittance exceeding USD 10,000. (N 06, M 10)	Gift remittance exceeding <u>USD 2,50,000</u> per Remitter per financial year requires prior approval of RBI.
32. R wants to draw USD 20,000 to make Donation to a Charitable Trust situated in South Korea. (3 09, RTP)	Donation remittance exceeding <u>USD 2,50,000</u> per Donor per <u>financial</u> year requires prior approval of RBI. However resident individual under LRS Scheme can freely donate

*Capital A/c Transaction [Sec. 6]

→ Prohibited unless specifically permitted

→ **Division**

Cannot restrict

Permissible for

Prohibited

➤ **PRI**

➤ **PROI**

→ **Cannot restrict**

➤ **Amortisation of loan / depn in asset**

➤ **Asset acquired outside India → when PROI**

➤ **Asset acquired in India → when PRI**

Permissible → SIA → G.F → LCD → DI

Particulars	PRI	PROI
S → Securities	Purchase in foreign	➤ From B.C in India ➤ Capital of firm /ADP in India
I → Immovable property	Transfer outside India	Acquire transfer in India
A → A/c foreign currency	In/ outside India	In India
G → Guarantee	In favor of PROI	For PRI
F → Foreign Currency Loan	From India / abroad	-
L → Loan/ Deposits	From PROI	From PRI
C → Capital Assets	Outside India of asset in India	Same
D → Derivative contract	Outside India	In India
I → Insurance policy	In foreign currency	X

Prohibited

1) PROI cannot invest in India in any form



- Chit fund
- Nidhi Co.
- Agriculture or plantation activity
- Real estate or construction of farm house → Except
- Trading in Transferable development right



Township development
resident / commercial -
construction road,
bridge, real estate trust

2) PRI → from person Co. / → Citizen or resident of Korea

→ > 2,50,000 USD

- **No person resident in India shall undertake any capital account transaction with any person who is, a citizen of or a resident of Democratic People's Republic of Korea, or an entity incorporated or otherwise, in Democratic People's Republic of Korea, until further orders, unless there is specific approval from the Central Government to carry on any transaction.**

CAWALLAH

* L.R.S Scheme

(Individual + Minor)

- USD 2,50,000 (capital +current)
- No Clubbing by family members for CAT



Unless co-owner / co-partner

CAWALLAH

- M/s. Kedhar Sports Academy, a private coaching club, provides coaching for cricket, football and other similar sports. It coaches sports aspirants pan India. It also conducts various sports events and campaigns, across the country. In 2022, to mark the 25th year of its operation, a cricket tournament (akin to the format of T-20) is being organized by M/s. Kedhar Sports Academy in Lancashire, England, in the first half of April. The prize money for the 'winning team' is fixed at USD 40,000 whereas in case of 'runner-up', it is pegged at USD 11,000. You are required to choose the correct option from the four given below which signifies the steps to be taken by M/s. Kedhar Sports Academy for remittance of the prize money of USD 51,000 (i.e. USD 40,000+USD 11,000) to England keeping in view the relevant provisions of Foreign Exchange Management Act, 1999:
 - For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Ministry of Human Resource Development (Department of Youth Affairs and Sports).
 - For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Reserve Bank of India.
 - **For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is not required to obtain any prior permission from any authority, whatsoever, and it can proceed to make the remittance.**
 - For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Ministry of Finance (Department of Economic Affairs).

- Akash Ceramics Limited, an Indian company, holds a commercial plot in Chennai which it intends to sell. M/s. Super Seller, a real estate broker with its Head Office in the USA, has been appointed by Akash Ceramics Limited to find some suitable buyers for the said commercial plot in Chennai which is situated at a prime location. M/s. Super Seller identifies Glory Estate Inc., based out of USA, as the potential buyer. It is to be noted that Glory Estate Inc. is controlled from India and hence, is a 'Person Resident in India' under the applicable provisions of Foreign Exchange Management Act, 1999. A deal is finalised and Glory Estate Inc. agrees to purchase the commercial plot for USD 600,000 (assuming 1 USD = ` 70). According to the agreement, Akash Ceramics Limited is required to pay commission @ 7% of the sale proceeds to M/s. Super Seller for arranging the sale of commercial plot to Glory Estate Inc. and commission is to be remitted in USD to the Head Office of M/s. Super Seller located in USA. Considering the relevant provisions of Foreign Exchange Management Act, 1999, which statement out of the four given below is correct (ignoring TDS implications arising under the Income-tax Act, 1961):

- There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of commission upto USD 25,000 by Akash Ceramics Limited to M/s. Super Seller but for the balance commission of USD 17,000, prior permission of RBI is required to be obtained.
- There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of commission upto USD 30,000 by Akash Ceramics Limited to M/s. Super Seller but for the balance commission of USD 12,000, prior permission of RBI is required to be obtained.
- There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of entire commission of USD 42,000 by Akash Ceramics Limited to M/s. Super Seller.
- **It is mandatory to obtain prior permission of Reserve Bank of India (RBI) for remittance of entire commission of USD 42,000 by Akash Ceramics Limited to M/s. Super Seller.**

CA Inter **Law May 2024**


LLP Act, 2008



Enactment

- **The Ministry of Law and Justice on 9th January 2009 notified the Act**
- **81 sections and 4 schedules.**

Schedule	Deals with
I	mutual rights and duties of partners and limited liability partnership and its partners
II	conversion of a firm into LLP.
III	conversion of a private company into LLP.
IV	conversion of unlisted public company into LLP.



1. Which of the following cannot be converted into LLP? **(ICAI STUDY MAT)**

a. Partnership firm

b. Private company

c. Listed company

d. Unlisted company

CAWALLAH

Need

- 1. alternative to the traditional partnership with unlimited personal liability**
- 2. benefits of limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement.**

CAWALLAH

Question

5. (a) “LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership”. Explain.

(5 Marks) (MTP Mar. 24)

CAWALLAH

Characteristics and Comparison with Other Forms Of Business (PLASTIC + Basics)

Particulars	Company	Partnership Firm	LLP
1 Perpetual Succession	Yes	No	Yes
2 Liability	Limited	Unlimited	Limited to agreed Contribution
3 Artifical person but separate legal Entity	yes	no	yes
4 Seperation of Ownership From management	yes	No	Partners in the LLP are entitled to manage the business of LLP. But only the designated partners are responsible for legal Compliances
5 Separate Property in its own name	Yes	No	Yes
6 Transferability Of Shares	Freely transferable in Public co	With consent of partners	With consent of partners

Characteristics and Comparison with Other Forms Of Business (PLASTIC + Basics)

Particulars	Company	Partnership Firm	LLP
7 Incorporated Association (Registration Compulsory)	Yes	No	Yes
8 Common Seal	not mandatory	Not required	not mandatory
9 Capacity to sue in its own name	Yes	Through partners	Yes
10 Min Members /Partners	Pvt – 2 Public – 7 OPC- 1	2	at least two partners and shall also have at least 2 individuals as designated partners, of whom at least one shall be resident in India
11 Max Members / Partners	Pvt- 200 Public – No limit	50	No limit

Characteristics and Comparison with Other Forms Of Business (PLASTIC + Basics)

Particulars	Company	Partnership Firm	LLP
12 Agreement	MOA/AOA	Partnership deed	LLP Agreement
13 Business	For profit or non profit	Only for profit	Only for profit
14 Mutual Agency	Members not agent of company	All partners are agent of firm and of other partners	All partners will be the agents of the LLP alone. No one partner can bind the other partner by his acts.

1. Name of the Limited Liability Partnership shall be ended by: **(ICAI STUDY MAT)**

a.Limited

b.Limited Liability partnership or LLP

c.Private Limited

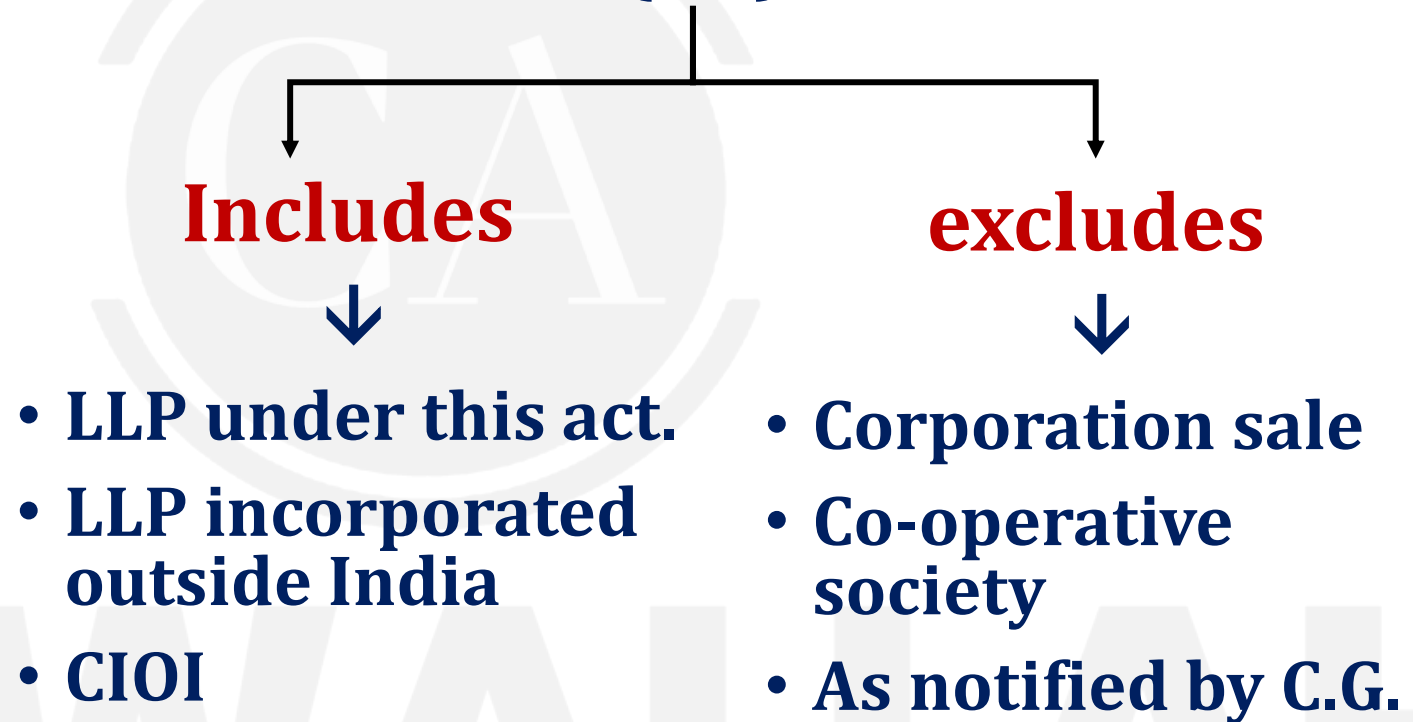
d.OPC

ADVANTAGES OF LLP FORM (LOL-FEE)

- | | |
|----------|--|
| L | 1. All partners enjoy limited liability. |
| O | 2. organised and operates on the basis of an agreement. |
| L | 3. Less legal and procedural requirements. |
| F | 4. Flexible Capital Structure |
| E | 5. Easy to form |
| E | 6. Easy to dissolve. |

Some Imp definitions

1. Body Corporate → As defined in 2(20) of Co. Act.



2. Business → Every trade, occupation, profession
→ Only profit motive

Some Imp definitions

3. F.Y → 1st April to 31st Mar.

→ If LLP incorporated after 30 Sep.



then FY till next 31st Mar.

4. Foreign LLP → Incorp. Outside India + POB → in India

5 Small LLP →

[Sec. 2(i) (ta)]

Contribution



**Does not exceed
25 lakhs**

&

**Turnover
(preceding F.Y.)**



**Does not exceed
40 lakhs**

Other Imp Details

1) File Statement of A/c & Solvency → **Within 6 months of F.Y.** → **With ROC** → **Signed by of LLP (Sec. 34)**

2. Annual Return → **within 60 days closure of F.Y. (Sec. 35)**

CA WALLAH

Steps to incorporate LLP

Reservation of
Name of LLP



File application
form for
incorporation



Execute LLP
Agreement



Registrar



Effect of
Registration

- File e-form no RUNLLP
- ROC reserves name for 3 months
- In e-form FiLLP
- Includes Name / business / Address/ details of partner
- Attach statement → By Adv. /CA/ CS/ CMA & subscriber → That all requirements of act
- During incorp.
- Within 30 days of incorporation file with ROC
- Within 14 days → Register & give or certificate (Certificate conducive evidence about incorporation)
- Becomes B.C

	Partner	Designated Partner
1. Who can be	<ul style="list-style-type: none"> • Individual (Resident / NR / OCI/ Foreign national) • LLP • Co. • Foreign LLP 	<ul style="list-style-type: none"> • Individuals
2. Requirement	<ul style="list-style-type: none"> • Atleast 2 partners (Sec. 6) • If no. fall below ↓ • After 6 months ↓ • Personally liable (same like co.) 	<ul style="list-style-type: none"> • Atleast 2 D.P. individual ↓ • 1 should be resident in India (atleast 120 days in F.Y.) • If all partner B.C ↓ • Nominee of such B.C. (Sec. 7)
3. Disqualification	<p style="text-align: center;">Sec. 5</p> <ul style="list-style-type: none"> i. Unsound mind ii. Insolvent iii. Applied for insolvency & application pending 	

- There is an LLP by the name Ram Infra Development LLP which has 4 partners namely Mr. Rahul, Mr. Raheem, Mr. Kartar and Mr. Albert. Mr. Rahul and Mr. Albert are non – resident while other two are resident. LLP wants to take Mr. Rahul and Mr. Raheem as Designated Partner. Explain in the light of Limited Liability Partnership Act, 2008 whether LLP can do so? **(module)**

CAWALLAH

Question

(b) Mr. Prateek (an individual) has started a Limited Liability Partnership firm along with Brown Limited and Picture Limited. As per the provisions of the Limited Liability Partnership Act, 2008, advise Limited Liability Partnership firm, about who can be the designated partners of the firm.

(5 Marks) (MTP April 24)

CAWALLAH

Question

(b) Mohan and Rakul are college friends and intend to do trading in musical instruments. They have met Mr. John and Ms. Kate who are non-resident Indian and they all have decided to form a Limited Liability Partnership (LLP) under the name and style of Mohan John LLP with an initial capital contribution of ` 1,00,000 each. The LLP was incorporated on October 15, 2020. The LLP intends to appoint Mr. John and Ms. Kate as designated partners and consults same with its Company Secretary. You as the Company Secretary advise the LLP on the appointment of Mr. John and Ms. Kate as the only designated partners of the LLP.

(5 Marks) (MTP Mar. 24)

Other IMP Pts.

- i. Prior consent required for DP**
- ii. D.P. should acquire DPIN no or has DIR no.**
- iii. Liability of D.P (sec. 8)**
 - Compliance of provision of Act.**
 - Liable to penalties**
- iv. Changes in DP → appoint New D.P within 30 days**
- v. If no. D.P or less than 2 → all partners will be deemed to be D.P.**

Name of LLP (Sec. 15)

- End with LLP
- If changes name → within 15 days → give notice of change to ROC
- If name → too identical → C.G may Ask to Change → Change within 3 months → Ask to change only till 3 years from incorp.

CA WALLAH

1. The approved name of LLP shall be valid for a period of ____ from the date of approval: **(ICAI STUDY MAT)**

a. 1 Month

b. 2 Months

c. 3 months

d. 6 months

CAWALLAH

Cessation of Partnership (Sec. 24)

Mode



- i. As per LLPA
- ii. By notice in writing to all the other partners (atleast 30 days notice)
- iii. By Law
 - Death/ dissolution of LLP
 - Declared unsound
 - Applied / declared insolvent

Effect



- Continues to be partner → if notice not give to ROC no public notice given



- Continues to be liable for obligation while be was partner

- Right

His contribution in firm

+

Acc. Profits → his share

Liabilities of LLP & Partner

- ❖ Normally LLP liable for all its act (separate legal entity)
- ❖ LLP bound by acts of partners unless
 - No authority → partner
 - Person doesn't believe him to be partner
- ❖ any remaining liability to be borne by property of LLP
- ❖ Partners not personally liable unless
 - ↓
 - As per Sec. 30 (fraud) → liability becomes unlimited
 - ↓
 - liable for punishment

Question

18. Mohit is a creditor of ABC LLP. He has a claim of ` 10,00,000 against the LLP. However, the assets of the LLP are valued at only ` 7,00,000. Now, Mohit seeks to hold the partners of the LLP personally accountable for the shortfall of ` 3,00,000. Under the provisions of the Limited Liability Act, 2008, can Mohit demand for the deficit from the partners of ABC LLP?

(RTP May24)

CAWALLAH

Other Imp Points

1) R.D or officer not below rank of R.D → Can compound offence → Which punishable by fine only

2) Trf of partners right → Same like partnership
→ Partner → right → Trf. → Transferee → will not be partner
→ Transferor → partner

3) Conversion → Firm
→ Pvt. Co.
→ Unlisted Co. → As per provision of Act.
→ Within 15 days inform ROC

Other Imp Points

4) Compromise / Arrangement



5) Winding up – Circumstances

By Tribunal

- Application by LLP
- Reduction of partners below 2 → more than 6 month
- Act against sovereignty or integrative of India.
- Default in filing
 - Statemetrn of A/c & solvey Or Annual return
 - ← 5 consecutive years
- Any just / equitable ground

Question

5. (a) Enumerate the circumstances in which a Limited Liability Partnership may be wound up by the Tribunal. Give your answer in respect of the provisions of the Limited Liability Partnership Act, 2008.

(5 Marks) (MTP April 24)

CAWALLAH

Mr. Ankit Sharma wants to form a LLP taking him, his wife Mrs. Archika Sharma and One HUF as partners for that. Whether this LLP can be incorporated under LLP Act, 2008? Explain. (module)

Hint - HUF is not covered in the definition of body corporate and cannot be partner in LLP.

There is an LLP by the name Ram Infra Development LLP which has 4 partners namely Mr. Rahul, Mr. Raheem, Mr. Kartar and Mr. Albert. Mr. Rahul and Mr. Albert are non – resident while other two are

resident. LLP wants to take Mr. Rahul and Mr. Raheem as Designated Partner. Explain in the light of Limited Liability Partnership Act, 2008 whether LLP can do so? (module)

Hint - Hence, in the given problem, besides Mr. Ram and Mr. Raheem, Mr. Albert should also be designated partners.

Question

1. Which of the following cannot be converted into LLP?

a. Partnership firm

b. Private company

c. Listed company

d. Unlisted company

Question

2. The approved name of LLP shall be valid for a period of ___ from the date of approval:

- a. 1 Month
- b. 2 Months
- c. 3 months**
- d. 6 months

Question

3. Name of the Limited Liability Partnership shall be ended by:

a. Limited

b. Limited Liability partnership or LLP

c. Private Limited

d. OPC

Question

4. Which one of the following statements about limited liability partnerships (LLPs) is incorrect?

- a. An LLP has a legal personality separate from that of its members.
- b. The liability of each partner in an LLP is limited.
- c. Members of an LLP are taxed as partners.
- d. A listed company can convert to an LLP.**

Question

5. For the purpose of LLP, Resident in India means:

- a. Person who has stayed in India for a period of not less than 182 days during the current year.
- b. Person who has stayed in India for a period of not less than 180 days during the immediately preceding one year.
- c. Person who has stayed in India for a period of not less than 181 days during the immediately preceding one year
- d. Person who has stayed in India for a period of not less than 120 days during the financial year.**

Question

6. LLP shall have atleast Partners.

a. 2

b. 4

c. 3

d. 5



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Question

7. The maximum no. of Persons in a LLP is —

a. 50

b. 100

c. 20

d. No limit

Question

8. Duration of LLP —

a. Is Limited

b. Depends on the Partnership Agreement

**c. Extends upto proper dissolution
(perpetual succession)**

d. None of the above

Question

9. The is responsible for doing all acts, matters and things as are required to be done by LLP as per the Act.

a. Designated Partner

b. Active Partner

c. Designated Director

d. All the Partners

Question

10. Which of the following enjoys separate legal entity status?

a. Partnership Firm

b. LLP

c. Company

d. Both B and C

Question

What does the principle of "reading the statute as a whole" imply in the interpretation of statutes? Explain with the help of an example.

(RTP May24) (4 Marks) (MTP April 24)

- It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only.
- The deed must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with other provisions

1. Which one of the following statements about limited liability partnerships (LLPs) is incorrect? **(ICAI STUDY MAT)**

a. An LLP has a legal personality separate from that of its members.

b. The liability of each partner in an LLP is limited.

c. Members of an LLP are taxed as partners.

d. A listed company can convert to an LLP.

1. For the purpose of LLP, Resident in India means: **(ICAI STUDY MAT)**

- a. Person who has stayed in India for a period of not less than 182 days during the current year.
- b. Person who has stayed in India for a period of not less than 180 days during the immediately preceding one year.
- c. Person who has stayed in India for a period of not less than 181 days during the immediately preceding one year
- d. Person who has stayed in India for a period of not less than 120 days during the financial year.**

- Mr. Mudit is the creditor of Devi Ram Food Circle LLP. He has a claim of `10,00,000 against the LLP but the worth of the assets of LLP are only `7,00,000. Now Mr. Mudit wants to make the partners of LLP personally liable for the deficiency of `3,00,000. Whether by virtue of provisions of Limited Liability Act, 2008, Mr. Mudit can claim the deficiency from the partners of Devi Ram Food Circle LLP? **(module)**

ANSWER

- A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners. The LLP itself will be liable for the full extent of its assets but the liability of the partners will be limited. Creditors of LLP shall be the creditors of LLP alone. In other words, creditors of LLP cannot claim from partners. The liability of the partners will be limited to their agreed contribution in the LLP. Hence the creditors of Devi Ram Food Circle LLP are the creditors of Devi Ram Food Circle LLP only. Partners of LLP are not personally liable towards creditors. Mr. Mudit can not claim his deficiency of ` 3,00,000 from the partners of Devi Ram Food Circle LLP.

- M/s Vardhman Steels LLP was incorporated on 01.09.2022. On 01.01.2023, one partner of a partnership firm named M/s Vardhimaan Steels is registered with Indian Partnership Act, 1932 since 01.01.2000 requested ROC that as the name of LLP is nearly resembles with the name of already registered partnership firm, the name of LLP should be changed. Explain whether M/s Vardhman Steels LLP is liable to change its name under the provisions of Limited Liability Act, 2008? **(module)**

aNSWER

- Following the above provisions, LLP need not change its name if its name resembles with the name of a partnership firm. These provisions are applicable only in case where name is resembles with LLP, company or a registered trade mark of a proprietor.
- Hence, M/s Vardhman Steels LLP need not change its name even it resembles with the name of partnership firm.

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- Kanik, Priyansh, Abhinav and Bhawna were partners in Singh Jain & Associates LLP. Abhinav resigned from the firm w.e.f. 01.11.2022 but this was not informed to ROC by LLP or Abhinav. Whether Abhinav will still be liable for the loss of firm of the transactions entered after 01.11.2022?
(module)

ANSWER

1. According to section 24(3), where a person has ceased to be a partner of a LLP (hereinafter referred to as “former partner”), the former partner is to be regarded (in relation to any person dealing with the LLP) as still being a partner of the LLP unless—
 - a) the person has notice that the former partner has ceased to be a partner of the LLP; or
 - b) notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar.
- Hence, by virtue of the above provisions, as no notice of resignation was given to ROC, Abhinav will still be liable for the loss of firm of the transactions entered after 01.11.2022.

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