

Chapter 13

General Clauses Act, 1897

Introduction

<p>Why do we study General Clauses Act</p>	<ul style="list-style-type: none"> ➤ The General Clauses Act, 1897 contains 'definitions' of some words and also some general principles of interpretation. This Act intends to provide general definitions which shall be applicable to all Central Acts and Regulations where there is no definition in those Acts or regulations that emerge with the provisions of the Central Acts or regulations ➤ The General Clauses Act has been enacted to shorten language used in parliamentary legislation and to avoid the repetition of the same words in the same course of the same piece of legislation. ➤ The General Clauses Act is very effective in the absence of clear definition in the specific enactments and it also gives a clear suggestion for the conflicting provisions
<p>Object, Purpose and Importance of General Clauses Act</p>	<ul style="list-style-type: none"> ➤ To shorten the language of Central Acts; ➤ To provide, as far as possible, for uniformity of expression in Central Acts, by giving definitions of a series of terms in common use; ➤ To state explicitly certain convenient rules for the construction and interpretation of central acts. <p>The purpose of the Act has been stated by the Supreme Court in the case of The Chief Inspector of Mines v. Karam Chand Thapar. It stated that the purpose of this Act is to place in one single Statute different provisions as regards interpretation of words and legal principles which would otherwise have to be specified separately in many different Acts and regulations. The purpose of the Act is to avoid superfluity of language in statutes wherever it is possible to do so.</p> <p>The General Clauses Act, thus, makes provisions as to the construction of General Acts and other laws of all-India application. Its importance, therefore, in point of the number of enactments to which it applies, is obvious.</p>
<p>Application of General Clauses Act</p>	<ul style="list-style-type: none"> ➤ The Supreme Court had observed in the case of Chief Inspector of Mines vs. K. C. Thapar "Whatever the General Clauses Act says, whether as regards the meanings of words or as regards legal principles, has to be read into every Act to which it applies." ➤ The Scope and effect of each section depends upon the text of the particular section. <p>Example: Section 3 of the General Clauses Act, which deals with the definitional clause, applies to the General Clauses Act itself and to all Central Acts and Regulations made after the commencement of the General Clauses Act in 1897.</p> <p>Similarly, section 4 of the General Clauses Act which deals with the application of foregoing definitions to previous enactment, applies to Central Acts and after January 3, 1868 and to regulations made after January 14, 1887.</p>

So, there is a difference in the applicability of each section as regards the statutes to which it applies.

Example: A claim of the right to catch fish came under the consideration of the court in Ananda Behera v. State of Orissa. The court had to decide whether the right to catch or carry fish is a movable or immovable property [ICAI SM Example]

A: Section 3(26) of the General Clauses Act, 1897 reads as under: - “Immovable property” shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;”

The S.3 Transfer of Property Act does not define the term except to say that immovable property does not include standing timber, growing crops or grass. As fish do not come under that category the definition in the Transfer of Property Act, General Clauses Act applies and as a result right to catch or carry a fish is regarded as a benefit arising out of land it follows that it is immovable property.”

Thus, the court construed “right to catch or carry fish” as an immovable property

Definitions [Section 3]

Act [Section 3(2)]	‘Act’, used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions;
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.
Central Act [Section 3(7)]	<p>‘Central Act’ shall mean an Act of Parliament, and shall include-</p> <ul style="list-style-type: none"> ➤ 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 Governor General in Council or the Governor General, acting in a legislative capacity; <p>*The date of the commencement of the Constitution is 26th January, 1950.</p>
Central Government [Section 3(8)]	<p>‘Central Government’ shall-</p> <ul style="list-style-type: none"> ➤ In relation to anything done before the commencement of the Constitution, mean the Governor General in Council, as the case may be; and shall include, - <ul style="list-style-type: none"> ▪ In relation to functions entrusted under sub-section (1) of the section 124 of the Government of India Act, 1935, to the Government of a Province, the Principal Government acting within the scope of the authority given to it under that sub- section; and ▪ In relation to the administration of a Chief Commissioner’s Province, the Chief Commissioner acting within the scope of the authority given to him under sub-section (3) of section 94 of the said Act; and

	<ul style="list-style-type: none"> ➤ In relation to anything done or to be done after the commencement of the constitution of the Constitution, mean the President; and shall include; - <ul style="list-style-type: none"> ▪ In relation to function entrusted under clause (1) of the article of the Constitution, to the Government of a state, the State Government acting within the scope of the authority given to it under that clause; ▪ In relation to the administration of a Part C State before the commencement of the Constitution (Seventh Amendment) Act, 1956, the Chief Commissioner or the Lieutenant Governor or the Government of a neighbouring State or other authority acting within the scope of the authority given to him or it under article 239 or article 243 of the Constitution, as the case may be; and ▪ In relation to the administration of a Union territory, the administrator thereof acting within the scope of the authority given to him under article 239 of the Constitution;
Commencement [Section 3(13)]	'Commencement' used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation 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.
Enactment [Section 3(19)]	'Enactment' shall include a Regulation (as hereinafter defined) and any Regulation of Bengal, Madras or Bombay Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid;
Financial Year [Section 3(21)]	Financial year shall mean the year commencing on the first day of April.
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;
Government [Section 3(23)]	'Government' or 'the Government' shall include both the Central Government and State Government.
Government Securities [Section 3(24)]	'Government securities shall mean securities of the Central Government or of any State Government, but in any Act or Regulation made before the commencement of the Constitution shall not include securities of the Government of any Part B state. By virtue of section 4A, this definition applies to all Indian laws.
Immovable Property [Section 3(26)]	'Immovable Property' shall include: <ul style="list-style-type: none"> ➤ Land, ➤ Benefits to arise out of land, and ➤ Things attached to the earth, or ➤ Permanently fastened to anything attached to the earth. <p>It is an inclusive definition.</p>

Indian law [Section 3(29)]	'Indian law' shall mean any Act, Ordinance, Regulation, rule, order, bye law or other instrument which before the commencement of the Constitution, had the force of law in any Province of India or part thereof or thereafter has the force of law in any Part A or Part C State or part thereof, but does not include any Act of Parliament of the United Kingdom or any Order in Council, rule or other instrument made under such Act;
Month [Section 3(35)]	'Month' shall mean a month reckoned according to the British calendar; The word "month occurring in s.271 (l)(a)(i) of the Income-tax Act, 1961, was construed to mean a period of thirty days and not a month as defined in the General Clauses Act
Movable Property [Section 3(36)]	'Movable Property' shall mean property of every description, except immovable property.
Oath [Section 3(37)]	'Oath' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.
Offence [Section 3(38)]	'Offence' shall mean any act or omission made punishable by any law for the time being in force. Any act or omission which is if done, is punishable under any law for the time being in force, is called as offence.
Official Gazette [Section 3(39)]	'Official Gazette' or 'Gazette' shall mean: <ul style="list-style-type: none"> ➤ The Gazette of India, or ➤ The Official Gazette of a state.
Person [Section 3(42)]	"Person" shall include: <ul style="list-style-type: none"> ➤ any company, or ➤ association, or ➤ body of individuals, whether incorporated or not
Registered [Section 3(49)]	'Registered' used with reference to a document, shall mean registered in India under the law for the time being force for the registration of documents.
Rule [Section 3(51)]	'Rule' shall mean a rule made in exercise of a power conferred by any enactment, and shall include a Regulation made as a rule under any enactment;
Schedule [Section 3(52)]	'Schedule' shall mean a schedule to the Act or Regulation in which the word occurs;
Section [Section 3(54)]	'Section' shall mean a section of the Act or Regulation in which the word occurs;
Sub-section [Section 3(61)]	'Sub-section' shall mean a sub-section of the section in which the word occurs;
Swear [Section 3(62)]	"Swear", with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing. Note: The terms "Affidavit", "Oath" and "Swear" have the same definitions in the Act.
Writing [Section 3(65)]	Expressions referring to 'writing' shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible forms; and
Year [Section 3(66)]	'year' shall mean a year reckoned according to the British calendar.

Example: Whether trees must be regarded as immovable property because they are attached to or rooted in the earth. [ICAI SM Example]

A: In *Shantabai v. State of Bombay*, the Supreme Court pointed out that trees must be regarded as immovable property because they are attached to or rooted in the earth.

An agreement to convey forest produce like tendu leaves, timber bamboos etc., the soil for making bricks, the right to build on and occupy the land for business purposes and the right to grow new trees and to get leaves from trees that grow in further are all included in the term immovable property

Example: Whether Right of way to access from one place to another, may come within the definition of Immovable property [ICAI SM Example]

A: Right of way to access from one place to another, may come within the definition of Immovable property. Any machinery fixed to the soil, standing crops can be held as immovable property according to the General Clauses Act, 1897.

Application to foregoing definitions to previous enactments [Section 4]

Application of terms/ expressions to Central Acts / Regulations	Here the given relevant definitions in section 3 of the following words and expressions, that is to say, 'affidavit', 'immovable property', 'imprisonment', 'month', 'movable property', 'oath', 'person', 'section', 'and 'year' apply also, unless there is anything repugnant in the subject or context, to all [Central Acts] made after the 3rd January, 1868, and to all Regulations made on or after the 14th January, 1887.
Application of terms/ expressions to all Central Acts and Regulations	The relevant given definitions in the section 3 of the following words and expressions, that is to say, 'commencement', 'financial year', 'offence', 'registered', 'schedule', 'sub-section' and 'writing' apply also, unless there is anything repugnant in the subject or context, to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.

Application of certain definitions to Indian Laws [Section 4A]

Certain expressions to apply to all Indian Laws	The definitions in section 3 of the expressions 'Central Act', 'Central Government', 'Gazette', 'Government', 'Government Securities', 'Indian Law', and 'Official Gazette', 'shall apply, unless there is anything repugnant in the subject or context, to all Indian laws.
Reference to revenues of SG/CG in Indian law	In any Indian law, references, by whatever form of words, to revenues of the Central Government or of any State Government shall, on and from the first day of April, 1950, be construed as references to the Consolidated Fund of India or the Consolidated Fund of the State, as the case may be.

“Coming into operation of enactment” [Section 5]

Where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of

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

Example: The Companies Act, 2013 received assent of President of India on 29th August, 2013 and was notified in Official Gazette on 30th August, 2013 with the enforcement of section 1 of the Act.

If any specific date of enforcement is prescribed in the Official Gazette, Act shall into enforcement from such date.

Example: SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1 January, 2016. Here, this regulation shall come into force on 1st January, 2016 rather than the date of its notification in the gazette.

Effect of Repeal [Section 6]

Where any Central legislation or any regulation made after the commencement of this Act repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:

- (a) Revive anything not enforced or prevailed during the period at which repeal is effected or;
- (b) Affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) Affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) Affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

Repeal of Act making textual amendment in Act or Regulation [Section 6A]

- Where any Central Act or Regulation made after the commencement of this Act
- repeals any enactment
- by which the text of any Central Act or Regulation was amended by omission, insertion or substitution of any matter,
- then unless a different intention appears,

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- the repeal shall not affect the continuance of any such amendment made by the enactment so repealed.
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Revival of repealed enactments [Section 7]

- In any Central Act or Regulation made after the commencement of this Act,
- it shall be necessary, for the purpose of reviving, (either wholly or partially),
- any enactment repealed (either wholly or partially),
- expressed to state that purpose.

This section applies also to all Central Acts made after the third day of January, 1968 and to all Regulations made on or after the fourteenth day of January, 1887.

Construction of references to repealed enactments [Section 8]

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

Where before the fifteenth day of August, 1947, any Act of Parliament of the United Kingdom repealed and re-enacted, with or without modification, any provision of a former enactment, then reference in any Central Act or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

Example: In section 115 JB of the Income Tax Act, 1961, for calculation of book profits, the Companies Act, 1956 are required to be referred. With the advent of Companies Act, 2013, the corresponding change has not been made in section 115 JB of the Income Tax Act, 1961. On referring of section 8 of the General Clauses Act, book profits to be calculated under section 115 JB of the Income Tax Act will be as per the Companies Act, 2013.

Commencement and termination of time [Section 9]

- In any legislation or regulation, it shall be sufficient,
 - for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and
 - for the purpose of including the last in a series of days or any other period of time, to use the word "to"
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Example: A company declares dividend for its shareholder in its Annual General Meeting held on 30/09/2016. Compute last date for payment of dividend. [ICAI SM Example]

A: Under the provisions of the Companies Act, 2013, company is required to pay declared dividend within 30 days from the date of declaration i.e. from 01/10/2016 to 30/10/2016.

In this series of 30 days, 30/09/2016 will be excluded and last 30th day i.e. 30/10/2016 will be included.

Computation of time [Section 10]

- Where by any legislation or regulation,
- any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day/a prescribed period then,
- if the Court or office is closed on that day or last day of the prescribed period,
- the act or proceeding shall be considered as done or taken in due time
- if it is done or taken on the next day afterwards on which the Court or office is open.

Measurement of Distances [Section 11]

In the measurement of any distance, for the purposes of any Central Act or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

Duty to be taken pro rata in enactments [Section 12]

Where, by any enactment now in force or to be in force, any duty of customs or excise or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity.

Gender and number [Section 13]

In all legislations and regulations, unless there is anything repugnant in the subject or context-

- Words importing the masculine gender shall be taken to include females, and
- Words in singular shall include the plural and vice versa.

In accordance with the rule that the words importing the masculine gender are to be taken to include females, the word men may be properly held to include women, and the pronoun 'he' and its derivatives may be construed to refer to any person whether male or female.

Power conferred to be exercisable from time to time [Section 14]

- Where, by any Central Act or Regulation made after the commencement of this Act,
- any power is conferred,
- then unless a different intention appears
- that power may be exercised from time to time as occasion requires.

This section applies to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.

Power to appoint to include power to appoint ex-officio [Section 15]

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

Power to appoint to include power to suspend or dismiss [Section 16]

The authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

Substitution of functionaries [Section 17]

- In any Central Act or Regulation made after the commencement of this Act,
- it shall be sufficient,
- for the purpose of indicating the application of a law
- to every person or number of persons for the time being executing the functions of an office,
- to mention the official title of the officer at present executing the functions.

This section applies also to all Central Acts made after the third day of January, 1868 and to all Regulations made on or after the fourteenth day of January, 1887.

Successors [Section 18]

- In any Central Act or Regulation made after the commencement of this Act,
- it shall be sufficient,
- for the purpose of indicating the relation of
- a law to the successors of any functionaries or of corporations having perpetual succession,
- to express its relation to the functionaries or corporations.

This section shall also apply to all Central Acts made after the third day of January, 1868 and to all Regulations made on or after the fourteenth day of January, 1887

Official Chiefs and subordinates [Section 19]

A law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior,

Therefore it is sufficient to prescribe the duty of the superior.

This section applies to all the 12 Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1881.

Construction of orders, etc., issued under enactments [Section 20]

- Where by any legislation or regulation,
 - a power to issue any notification, order, scheme, rule, form, or by-law is conferred,
 - then expression used in the notification, order, scheme, rule, form or bye-law, shall,
 - unless there is anything repugnant in the subject or context,
 - have the same respective meaning as in the Act or regulation conferring power.
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Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws [Section 21]

- Where by any legislations or regulations a power to issue notifications, orders, rules or bye-laws is conferred,
 - then that power, shall be exercisable in the like manner and subject to the like conditions (if any), to
 - add or amend or vary or rescind any notifications, orders, rules or bye laws so issued.
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Making of rules or bye-laws and issuing of orders between passing and commencement of enactment [Section 22]

- Where, by any Central Act or Regulation which is not to come into force immediately,
 - on the passing thereof, a power is conferred *[to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation or with respect to the establishment of any Court or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation],*
 - then that power may be exercised at any time after passing of the Act or Regulation;
 - but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation
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Provisions applicable to making of rules or bye-laws after previous publications [Section 23]

Where, by any Central Act or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely: -

- (1) The authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;
 - (2) The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes;
 - (3) There shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;
 - (4)
 - The authority having power to make the rules or bye-laws, and,
 - where the rules or bye-laws are to be made with the sanction of another authority, that authority also
 - shall consider any objection or suggestion which may be received
 - by the authority having power to make the rules or bye-laws
 - from any person with respect to the draft before the date so specified
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- (5) The publication in the Official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-laws has been duly made.
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Continuation of orders etc., issued under enactments repealed and re- enacted [Section 24]

- 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 appointment notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act, continue in force, and
 - be deemed to have been made or issued under the notification, order, scheme, rule, form or bye-law, made or issued under the provisions so re-enacted
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Recovery of fines [Section 25]

- Section 63 to 70 of the Indian Penal Code and
 - The provisions of the Code of Criminal Procedure for the time being in force
 - in relation to imposition of fines
 - shall apply to all fines imposed under any Act, Regulation, rule or bye-laws,
 - unless the Act, Regulation, rule or bye-law contains an express provision to the contrary.
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Provision as to offence punishable under two or more enactments [Section 26]

- 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 either or any of those enactments,
- but shall not be punished twice for the same offence.

Article 20(2) of the Constitution states that no person shall be prosecuted and punished for the same offence more than once.

Meaning of Service by post [Section 27]

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:

- Properly addressing
- Pre-paying, and
- 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.

Citation of enactments [Section 28]

- (1) In any Central Act or Regulation, and in any rule, bye law, instrument or document, made under, or with reference to any such Act or Regulation, any enactment may be cited by reference to the
- title or short title (if any) conferred thereon or
 - by reference to the number and years thereof,
 - any provision in an enactment may be cited by reference to the section or sub-section of the enactment.
- (2) In this Act and in any Central Act or Regulation made after the commencement of this Act, a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.
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Saving for previous enactments, rules and bye laws [Section 29]

The provisions of this Act respecting the construction of Acts, Regulations, rules or bye-laws made after commencement of this Act shall not affect the construction of any Act, Regulation, rule or bye-law is continued or amended by an Act, Regulation, rule or bye-law made after the commencement of this Act.

Application of Act to Ordinances [Section 30]

In this Act the expression Central Act, wherever it occurs, except in Section 5 and the word 'Act' in clauses (9), (13), (25), (40), (43), (53) and (54) of section 3 and in section 25 shall be deemed to include Ordinance made and promulgated by

- the Governor General
 - under section 23 of the Indian Councils Act, 1861 or
 - section 72 of the Government of India Act, 1915, or
 - section 42 of the Government of India Act, 1935 and
 - the President under Article 123 of the Constitution.
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Past Examination Questions

Q: Explain various provisions applicable to rules or bye-laws being made after previous publications as enumerated in Section-23 of the General Clauses Act, 1897 [Nov 2018]

Q: What is the meaning of service by post as per provisions of The General Clauses Act, 1897 [May 2018]

Q: X owned a land with fifty tamarind trees. He sold his land and the (obtained after cutting the fifty trees) to Y. X wants to know whether the sale of timber tantamounts to sale of immovable property. Advise him with reference to provisions of "General Clauses Act, 1897". [May 2018]

A: "Immovable Property" [Section 3(26) of the General Clauses Act, 1897]: 'Immovable Property' shall include:

- Land,
- Benefits to arise out of land, and
- Things attached to the earth, or
- 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, X 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.