

Part A - MCQ

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| Q1. | c |
| Q2. | c |
| Q3. | b |
| Q4. | b |
| Q5. | a |
| Q6. | b |
| Q7. | c |

Part B – Subjective

1.
 - (i) **“Measurement of Distances” [Section 11 of the General Clauses Act, 1897]** - 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**.
 - (ii) According to **section 3(23)** of the General Clauses Act, 1897, ‘Government’ or ‘the Government’ shall include both the Central Government and State Government.

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

Thus, when the Income Tax Act, 1961, provides that gratuity paid by the government to its employees is fully exempt from tax, the exemption from gratuity income will be available to the State Government employees also.
2. Toy Ltd. being a Japanese company would be a person resident outside India. [Section 2(w)].

Section 2(u) defines ‘**person**’. Under clause (viii) thereof person would include any agency, office or branch owned or controlled by such ‘person’. The term such ‘person’ appears to refer to a person who is included in clauses (i) to (vi). Accordingly, robotic unit in Mumbai, being a branch of a company, would be a ‘person’.

Section 2(v) defines ‘**person resident in India**’.

Under clause (iii) thereof ‘person resident in India’ would include an office, branch or agency in India owned or controlled by a person resident outside India. Robotic **unit in Mumbai** is owned or controlled by a person ‘resident outside India’. Hence, it would be ‘**person resident in India**’.

Further, an office, branch or agency outside India owned or controlled by a person resident in India is also considered as a person resident in India. Now, robotic unit in Mumbai, though not ‘owned’ controls Singapore branch, which is a person resident in India. Hence, the **Singapore branch is ‘person resident in India’**.
3. According to **section 27** of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:
 - i. Properly addressing
 - ii. Pre-paying, and
 - iii. Posting by registered post.

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

The facts of the question are similar to a decided case law, wherein it was held that where a notice is sent to the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served. Thus, in the given question it can be deemed that the notice was rightfully served on Mr. Vyas.

4. The word 'shall' is used to raise a presumption of something which is mandatory or imperative while the word '**may**' is **used to connote something which is not mandatory** but is only directory or enabling. However, **sometimes Word 'may' has a mandatory force if directory force will defeat the object of the Act.**

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

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

In the given case, it can be said that the word "may" should be taken as mandatory force, because the law will never allow the formation of company with unlawful object. Here the word used "may" shall be read as "shall". Usage of word 'may' here makes it mandatory for a company for the compliance of section 3 for its formation.

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

In the given question, the court fixed the date of hearing of dispute between PK and VK, on 29.04.2018, which was subsequently announced to be a holiday.

Applying the above provisions we can conclude that the **hearing date of 29.04.2018, shall be extended to the next working day.**

- (ii) The word 'bullocks' could be interpreted to include 'cows': This **statement is not valid.** Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of General Clauses Act, 1897 do not apply.

Thus, the word 'bullocks' could not be interpreted to include 'cows'.

6. Under provisions of **section 5** of the Foreign Exchange Management Act, 1999 certain Rules have been made for drawal of Foreign Exchange for **Current Account transactions.** As per these Rules, Foreign Exchange for some of the Current Account transactions is prohibited. As regards some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central Government while in case of some Current Account transactions, prior permission of Reserve Bank of India is required.

- a. In respect of item No.(i), i.e., **remittance out of lottery winnings, such remittance is prohibited** and the same is included in First Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, Mr. Sane cannot withdraw Foreign Exchange for this purpose.
- b. Foreign Exchange for meeting expenses of **cultural tour** can be withdrawn by any person **after obtaining permission from Government of India,** Ministry of Human Resources Development, (Department of Education and Culture) as prescribed in Second Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, in respect of item (ii), Mr. Sane can withdraw the Foreign Exchange after obtaining such permission.

In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorised Person as defined in Section 2(c) read with section 10 of the Foreign Exchange Management Act, 1999.

7. **Mischief Rule** - Where the language used in a statute is capable of more than one interpretation, principle laid down in the Heydon's case is followed. This is known as 'purposive construction' or 'mischief rule'. The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'.

It has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning. It enables consideration of four matters in construing an Act -

1. what was the law before the making of the Act;
2. what was the mischief or defect for which the law did not provide;
3. what is the remedy that the Act has provided; and
4. what is the reason for the remedy

8.

- (a) **Associated Words to be Understood in Common Sense Manner** - When two words or expressions are coupled together one of which generally excludes the other, obviously the more general term is used in a meaning excluding the specific one. On the other hand, there is the concept of '**Noscitur A Sociis**' ('it is known by its associates'), that is to say 'the meaning of a word is to be judged by the company it keeps'. When two or more words which are capable of analogous (similar or parallel) meaning are coupled together, they are to be understood in their cognate sense (i.e. akin in origin, nature or quality).

They take, as it were, their colour from each other, i.e., the more general is restricted to a sense analogous to the less general. It is a rule wider than the rule of ejusdem generis, rather ejusdem generis is only an application of the noscitur a sociis. It must be borne in mind that noscitur a sociis, is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider.

- (b) **Preamble** - The Preamble expresses the scope, object and purpose of the Act more comprehensively. The Preamble of a Statute is a part of the enactment and can legitimately be used as an internal aid for construing it. However, the Preamble does not over-ride the plain provision of the Act. But if the wording of the statute gives rise to doubts as to its proper construction, for example, where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction.

In short, the Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.