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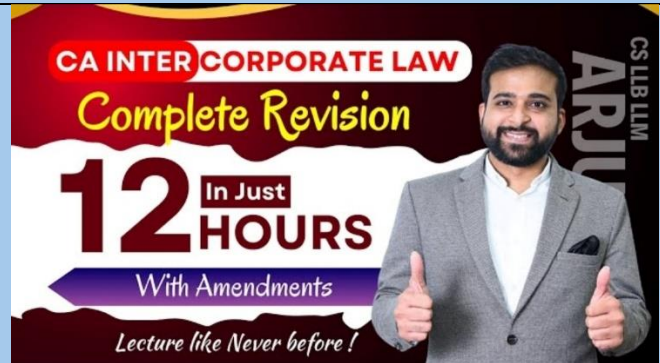
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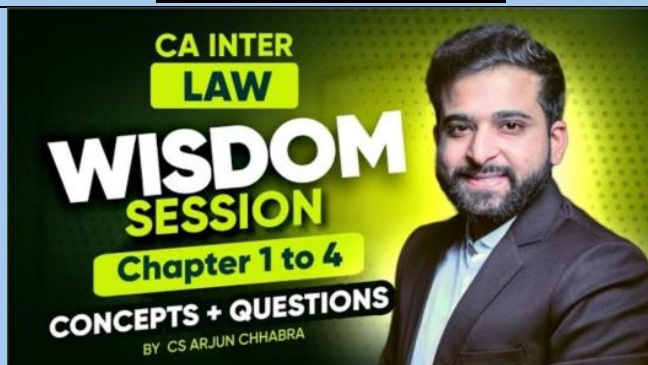
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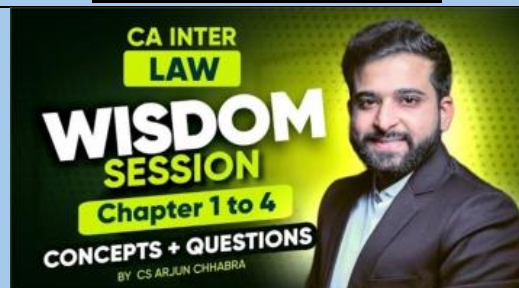


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CHAPTER 12 - The Limited Liability Partnership Act, 2008

Wisdom Blueprint

S. no	Section/Provision	Relevancy
1.	Financial Year [Sec. 2(1)(l)]	DPQ + MCQ
2.	Small LLP [Sec. 2(1) (ta)]	DPQ + MCQ
3.	Partners In LLP [Sec. 5]	DPQ + MCQ
4.	Minimum Number of Partners [Sec. 6]	DPQ
5.	Designated Partners [Sec. 7]	DPQ + MCQ
6.	Conditions For Incorporation [Sec 11]	DPQ + MCQ
7.	Change of Registered Office – [Sec 13]	DPQ
8.	Rectification Of Name [Sec. 17]	DPQ + MCQ
9.	Cessation of Partnership Interest [Sec. 24]	DPQ + MCQ
10.	Registration of Changes in Partners [Sec. 25]	DPQ + MCQ
11.	Extent Of Liability of LLP [Sec. 27]	DPQ
12.	Extent Of Liability of Partner [Sec. 28]	DPQ
13.	Whistle Blowing [Section 31]	DPQ
14.	Obligation To Contribute [Section 33]	DPQ
15.	Winding Up & Dissolution of LLP [Sec 63, 64 & 65]	DPQ

The Limited Liability Partnership Act, 2008

1. Notification & Enactment ★★ ★

- Passed by Parliament: **12th December 2008**.
- Presidential Assent (**Enactment Date**): **7th January 2009**.
- Publication in Gazette: **9th January 2009**
- Commencement (brought into force by notification of Central Government): **31st March 2009**
- Short title: **LLP Act, 2008**.
- Extent: **Whole of India**.

2. Objective

- To provide for **formation & regulation** of LLPs and matters **connected/incidental thereto**.

3. Structure of the Act ★★ ★

- **81 Sections** (Sec. 81 omitted w.e.f. 1st April 2022).
- **4 Schedules**:
 - **First Schedule** – Mutual rights & duties of partners/LLP (in absence of agreement).
 - **Second Schedule** – Conversion of **firm** into LLP.
 - **Third Schedule** – Conversion of **private company** into LLP.
 - **Fourth Schedule** – Conversion of **unlisted public company** into LLP.

4. Administration ★★ ★

- **MCA & Registrar of Companies (ROC)** administer the Act.
- **Central Government** empowered to frame/amend **Rules** via Official Gazette notifications.

5. Exclusion

- **Indian Partnership Act, 1932** – not applicable to LLPs.

6. Recent Amendment

- **Limited Liability Partnership (Amendment) Act, 2021** (dated 13th August 2021).

Need for Limited Liability Partnership (LLP) [Module Back Question]

1. Purpose of New Law

- To support **contemporary growth of Indian economy**.
- To provide an **alternative corporate form** between:
 - Traditional **partnership (unlimited liability)**, and
 - **Limited liability company (rigid governance)**.

2. Objectives of LLP Act, 2008

- Encourage **professional expertise + entrepreneurial initiative**.
- Provide **flexibility, innovation & efficiency** in operations.

3. Nature of LLP

- **Alternative corporate business vehicle**.
- Combines:
 - **Limited liability** (company feature).
 - **Internal flexibility** (partnership feature).
- Governed by **mutually agreed LLP agreement**.

4. Suitability of LLP

- For **entrepreneurs, professionals, service providers, scientific & technical enterprises**.
- For **small enterprises**.
- Attractive for **venture capital investment**.

5. Nutshell

- **New form** of legal business entity with limited liability
- **Alternative corporate business vehicle**
- Allows the partners the flexibility of organising their internal structure
- LLP itself will be liable for the full extent of its assets
- Liability of partners will be limited to the extent of their capital contribution

6. Advantages of LLP Form ★★ ★

1. Based on **mutual agreement**.
2. **Flexibility** – minimal legal/procedural requirements.
3. **Easy formation**.
4. **Limited liability** protection to all partners.
5. **Easy dissolution**.

DEFINITIONS

1. Address [Sec. 2(1)(a)] ★★ ★

- Individual → **Usual residential address**.
- Body Corporate → **Registered office address**.

2. Body Corporate [Sec. 2(1)(d)] ★★ ★

- **Includes:**
 - Company [Sec. 2(20), Companies Act, 2013].
 - LLP registered in India.
 - LLP incorporated outside India.
 - Company incorporated outside India.
- **Excludes:**
 - Corporation sole.
 - Co-operative society.
 - Anybody corporate as notified by **Central Government**. (**Other than Company under Sec 2 (20) & LLP In this Act**)

3. Financial Year [Sec. 2(1)(l)] ★★ ★

- Normally: **1st April – 31st March**.
- If LLP incorporated **after 30th Sept.**, financial year may end on **31st March of next following year**.
- **Example:**
LLP incorporated on **15th October 2022**
Option 1: 15 Oct 2022 → 31 Mar 2023 (**shorter first year**)
Option 2: 15 Oct 2022 → 31 Mar 2024 (**extended year, up to 18 months**)
This flexibility is only for the **first financial year**.
- **First accounts:** Period shall not exceed **18 months**.
- As per **Income Tax Law** → Must follow **1st April – 31st March**.

4. LLP [Sec. 2(1)(n)]

- Partnership **formed & registered under LLP Act**.

5. Partner Name [Sec. 2(1)(p)]

- Individual → Forename + Middle name + Surname.
- Body Corporate → Registered name.

6. Small LLP [Sec. 2(1)(ta)] ★★ ★

- Contribution not exceeding **₹25 lakh** (extendable up to **₹5 crore**).
- Turnover not exceeding **₹40 lakh** (extendable up to **₹50 crore**).
- Or as per other **prescribed requirements**.

7. Foreign LLP [Sec. 2(1)(m)]

- **Meaning** – LLP formed/incorporated/registered outside India.
- **Condition** – Must have established a place of business in India.
- **Participation** – A foreign LLP can be a partner in an Indian LLP.

8. Other Provisions ★★ ★

- **Sec. 2(2)** – Undefined terms to carry meaning from **Companies Act, 2013**.
- **Sec. 4** – **Indian Partnership Act, 1932 not applicable** to LLP (unless specifically provided).

Question 1:

Applicability of **Section 2(1) (ta) of LLP Act, 2008** to determine whether **JEET LLP** (with **contribution ₹20 lakh** and **turnover ₹35 lakh** in FY 2024-25) qualifies as a **Small LLP**, and its status if turnover **exceeds ₹50 crore** in the next year. [RTP May 25]

Answer:

Since **contribution does not exceed ₹25 lakh** and **turnover does not exceed ₹40 lakh**, JEET LLP is a **Small LLP** for FY 2024-25; however, if its **turnover exceeds ₹50 crore** in the following year, it will **lose Small LLP status** and be governed as a **regular LLP**.

LLP AS BODY CORPORATE [SEC. 3]

1. **Body Corporate** – Formed & incorporated under LLP Act.
2. **Separate Legal Entity** – Distinct from its partners.
3. **Perpetual Succession** – Continuous existence irrespective of changes.
4. **No Effect of Partner Change** – Rights & liabilities of LLP remain unaffected.

PARTNERS IN LLP [SEC. 5] ★★ ★

1. **Eligible Partners**
 - **Individuals** (Resident Indians, NRIs, OCIs, Foreign Nationals).
 - **LLPs** (domestic & foreign).
 - **Companies** (domestic & foreign).
 - **Foreign LLPs**.
 - **Foreign Companies**.
2. **Ineligible Individuals**
 - **Unsound mind** (declared by court, finding in force).
 - **Undischarged insolvent**.
 - **Applied for insolvency** & application pending.
3. **Exclusions**
 - **Co-operative society**.
 - **Corporation sole**.
4. **FDI Compliance ★★ ★**
 - Required when **persons resident outside India** (other than NRI/OCI on non-repatriation basis) invest capital or acquire stake in LLP.
 - **Non-repatriation basis** means the NRI/OCI's investment and profits must remain in India and cannot be freely sent abroad.

Note:

1. **NRI**: An Indian passport holder working in USA.
2. **OCI**: A US citizen born to Indian parents holding an OCI card.
3. **Foreign National**: A German citizen with no Indian origin.

Question 2:

Whether an LLP can be incorporated with **Mr. Ankit Sharma (individual)**, his wife **Mrs. Archika Sharma (individual)**, and one **HUF** as partners under the **LLP Act, 2008**. [Module]

Answer:

As per **Section 5 of LLP Act, 2008**, only an **individual** (subject to conditions) or a **body corporate** (as defined in **Section 2(1)(d)**) can be a partner; since **HUF is not a body corporate**, it **cannot be a partner in LLP**, hence such LLP **cannot be incorporated**.

MINIMUM NUMBER OF PARTNERS [SEC. 6] ★★★

1. **Requirement** – Every LLP must have **at least 2 partners**.
2. **Reduction below 2** – If business continues for more than **6 months** with only 1 partner:
 - That sole partner, **with knowledge of the fact**,
 - Becomes **personally liable** for obligations incurred after 6 months.

Question 3:

In an **LLP with two partners**, due to a dispute one partner left, and the **other partner alone continued the business**, whether such operation by a **single partner** is valid and what are the provisions for **winding up by Tribunal** under the **LLP Act, 2008**. [May 24 - 4 Marks]

Answer:

As per **Section 6 of LLP Act, 2008**, every LLP must have **minimum two partners**; if the number falls below two and business is continued for **more than six months**, the **sole partner becomes personally liable** for obligations incurred during that period. Further, under **Section 64**, Tribunal may order **winding up** if the number of partners remains **below two for more than six months**, or in other specified circumstances (acting against national interest, default in filing for **5 consecutive years**, or if just and equitable).

DESIGNATED PARTNERS [SEC. 7] ★★★

1. **Minimum Requirement**
 - Every LLP must have **at least 2 Designated Partners (DPs)**.
 - Both must be **individuals**.
 - At least **1 must be resident in India**.
2. **Where Partners are Bodies Corporate**
 - If all partners are bodies corporate / mix of individuals + bodies corporate →
 - **At least 2 individuals** (partners themselves or **nominees of bodies corporate**) must act as DPs.
3. **Resident in India (Definition)**
 - An individual who has stayed in India for **not less than 120 days in a financial year**.
4. **Examples**
 - **1 individual + 2 companies** → Individual + nominee of one company = DPs.
 - **Only companies as partners** → Nominees of any 2 companies = DPs.
 - **Mixed resident & non-resident individuals** → At least **1 resident must be among the DPs**.

COMPLIANCE

1. **On Incorporation [Sec. 7(2)]**
 - If incorporation document:
 - **Specifies DPs** → such persons are DPs.
 - **States all partners to be DPs** → every partner is a DP.
2. **Change of DP**
 - A partner may become/cease to be DP **as per LLP Agreement**.
3. **Consent Requirement**
 - Individual cannot be DP without **prior written consent** in prescribed form.
4. **Filing with ROC**
 - LLP must file **particulars of DPs** with ROC within **30 days of appointment**.
5. **Eligibility Conditions**
 - DP must satisfy **prescribed conditions/requirements**.
6. **DPIN Requirement**
 - Every DP must obtain **Designated Partner Identification Number (DPIN)**.
 - **Provisions of Secs. 153–159 of Companies Act, 2013** apply *mutatis mutandis*.

Question 4:

Whether **Ram Infra Development LLP** having 4 partners (**Mr. Rahul – non-resident, Mr. Raheem – resident, Mr. Kartar – resident, Mr. Albert – non-resident**) can appoint **Mr. Rahul (non-resident) and Mr. Raheem (resident)** as **Designated Partners** under the **LLP Act, 2008**. [Module]

Answer:

As per **Section 7(1) of LLP Act, 2008**, every LLP must have at least **two designated partners who are individuals** and **at least one resident in India**; since Mr. Rahul (non-resident) and Mr. Raheem (resident) fulfill these conditions, the LLP can validly appoint them as **Designated Partners**.

Question 5:

Whether **Mohan John LLP** (incorporated on **15.10.2020** with partners Mohan, Rakul, Mr. John and Ms. Kate—both **non-resident Indians**) can appoint **Mr. John and Ms. Kate** as the **only designated partners** under the **LLP Act, 2008**. (MTP May 24 (1) – 5 Marks)

Answer:

As per **Section 7 of LLP Act, 2008**, every LLP must have at least **two designated partners who are individuals** and **at least one resident in India**; since both proposed designated partners are **non-residents**, the LLP **cannot appoint them as the only designated partners**.

Question 6:

In an LLP formed by **Mr. Prateek (individual)** along with **Brown Limited** and **Picture Limited (both body corporates)**, who can be appointed as **Designated Partners** under the **LLP Act, 2008**. (MTP May 24 (2) – 4 Marks)

Answer:

As per **Section 7 of LLP Act, 2008**, if partners include **bodies corporate**, then at least **two individuals (either partners themselves or nominees of such bodies corporate)** must be designated partners; hence **Mr. Prateek and one nominee of either Brown Ltd. or Picture Ltd. must act as designated partners**.

Question 7:

Role and liabilities of **Designated Partners (DPs)** under **LLP Act, 2008** in cases where (i) **all partners are corporate entities**, (ii) **LLP agreement does not specify DPs**, (iii) **a DP relocates abroad**, and (iv) **a DP claims ignorance of compliance leading to penalty on LLP**. [MTP May 2025 – Series II]

Answer:

As per **Sections 7 & 8 of LLP Act, 2008**, (i) If all partners are bodies corporate nominees of bodies corporate must act as DPs. **Only individuals** can be DPs, not corporate bodies; (ii) LLP must specify DPs in **incorporation document or LLP agreement**, otherwise it is not validly formed; (iii) at least **one DP must be resident in India (120 days rule)**, so relocation may breach this requirement; (iv) DPs are **personally liable for LLP's compliance**, and **ignorance of law is no defence**—liability cannot be avoided.

LIABILITIES OF DESIGNATED PARTNERS [SEC. 8]

1. **Compliance Responsibility** – DPs are responsible for ensuring LLP complies with provisions of the Act, including:
 - Filing of documents, returns, statements, reports, etc.
 - Other duties specified in LLP Agreement.
2. **Penalty Liability** – DPs are **personally liable to all penalties** imposed on the LLP for contravention of provisions.

CHANGES IN DESIGNATED PARTNERS [SEC. 9]

1. **Filling Vacancy** – LLP must appoint a new Designated Partner **within 30 days** of vacancy.
2. **Applicability** – Provisions of **Sec. 7(4) & 7(5)** (consent, filing with ROC, eligibility) apply to new DP.
3. **Failure to Appoint** – If:
 - No DP is appointed, or
 - Only one DP exists → **All partners deemed to be Designated Partners**.

PUNISHMENT FOR CONTRAVENTION OF SECS. 7 & 9 [SEC. 10]

1. **Sec. 7(1) – Less than 2 DPs / No resident DP**
 - Penalty: ₹10,000.
 - Continuing contravention: ₹100 per day.
 - **Max penalty:** LLP – ₹1,00,000; Partner – ₹50,000.
2. **Sec. 7(4) – Failure to file consent of DP within 30 days**
 - Penalty: ₹5,000.
 - Continuing contravention: ₹100 per day.
 - **Max penalty:** LLP – ₹50,000; Designated Partner – ₹25,000.
3. **Sec. 7(5) or Sec. 9 – Other contraventions (e.g., non-appointment of DP within 30 days of vacancy)**
 - Penalty: ₹10,000.
 - Continuing contravention: ₹100 per day.
 - **Max penalty:** LLP – ₹1,00,000; Partner – ₹50,000.

INCORPORATION OF LLP [SEC. 11]

(1) Conditions for Incorporation

- a) **Minimum 2 persons** → associated for lawful business with profit motive. ★★★
- b) File **incorporation document** with Registrar (state where RO situated).
Filing is electronic (CRC since 2 Oct 2018).
- c) **Statement** to be filed by:
 - Advocate/CS/CA/CMA engaged in formation, **and**
 - One subscriber to incorporation document,
 - Certifying compliance with Act & Rules.

(2) Contents of Incorporation Document

- Prescribed form.
- Name of LLP.
- Proposed business.
- Address of Registered Office.
- Name & address of each partner.
- Name & address of designated partners.
- Any other prescribed info.

(3) Penalty for False Statement

- Imprisonment: up to **2 years**.
- Fine: **₹10,000 – ₹5,00,000**.

INCORPORATION BY REGISTRATION [SEC. 12]

1. **Registrar's Duty** – On compliance with Sec. 11(1)(b) & (c):
 - Retain incorporation document.
 - Within **14 days** →
 - (a) Register incorporation document.
 - (b) Issue certificate of incorporation.
2. **Sufficient Evidence of Compliance** – Registrar may accept **statement filed u/s 11(1)(c)** as sufficient evidence of compliance with Sec. 11(1)(a).
3. **Certificate** –
 - Signed by Registrar.
 - Authenticated with official seal.
4. **Legal Effect** – Certificate = **conclusive evidence** of incorporation of LLP with specified name.

REGISTERED OFFICE OF LLP [SEC. 13]

1. **Mandatory Office** – Every LLP must have a **registered office** for receipt of all communications & notices.
2. **Service of Documents** – Allowed modes:
 - By post under certificate of posting.
 - By registered post.
 - Any prescribed manner.
 - Sent to **registered office** or any other declared address.
3. **Change of Registered Office** – ★★
 - LLP may change its registered office.
 - Must **file notice of change** with Registrar (prescribed form, manner, conditions).
 - Change effective **only after filing** with Registrar.
4. **Penalty for Contravention** –
 - ₹500 per day.
 - Max: ₹50,000 for LLP & each partner.

Question 8:

Whether service of notice on **XYZ LLP (incorporated 15th March 2023, registered office at Mumbai)** is valid when the LLP **shifted to Pune on 10th Jan 2024** but **failed to inform the Registrar** about the change, and a **supplier sent notice to the Mumbai address**. [MTP May 2025 – Series I]

Answer:

As per **Section 13 of LLP Act, 2008**, since the **registered office remains Mumbai until change is filed with Registrar**, the **notice served at Mumbai address is legally valid**, and Pune office cannot be treated as registered office.

EFFECT OF REGISTRATION [SEC. 14] ★★★

On registration, LLP (by its name) can –

1. **Sue & be sued.**
2. **Acquire, own, hold, develop & dispose property** – movable/immovable, tangible/intangible.
3. **Have a common seal** (optional).
4. **Do/ suffer lawful acts** as a body corporate.

NAME [SEC. 15]

1. LLP name must end with **“Limited Liability Partnership”** or **“LLP”**.
2. Prohibited names – if **CG opines**:
 - (a) **Undesirable**, or
 - (b) **Identical / too nearly resembles**: ★★★
 - Another LLP, or
 - A company, or
 - A registered trademark (under Trade Marks Act, 1999).

Reservation of Name [Sec. 16]

1. **Application** – Any person may apply to Registrar:
 - (a) Name of proposed LLP, or
 - (b) New name for existing LLP.
2. **Form, manner & fee** – As prescribed.
3. **Registrar's power** – May reserve name if not objectionable under Sec. 15(2).
4. **Reservation period** – Valid for **3 months** from date of intimation. ★★★

Question 9:

Legal requirements for **reservation of name** when **Ravi and Neha** apply to the Registrar for reserving the name "**NextGen AI Innovations LLP**" through the prescribed platform with required fee, before incorporation. [RTP Sep 25]

Answer:

Under **Section 16 of LLP Act, 2008**, the Registrar may reserve the proposed name (if not hit by **Section 15(2): undesirable/identical/resembling existing LLP, company, or trademark**) for **3 months** from intimation, upon proper application and fee payment.

Rectification of Name [Sec. 17] ★★

1. **Grounds** – If LLP is registered with name:
 - (a) Identical/too nearly resembling another LLP or company, or
 - (b) Identical/too nearly resembling a registered trademark (under Trade Marks Act, 1999).
2. **Application** – By aggrieved LLP, company, or trademark proprietor.
 - Trademark proprietor must apply **within 3 years** from incorporation/change of name.
3. **Direction by Central Govt.** – LLP to change its name **within 3 months** of direction.
4. **Post-change Compliance** –
 - Notice of change to Registrar within **15 days** (with Govt. order).
 - Registrar makes changes in certificate.
 - LLP to update name in **LLP Agreement within 30 days** of new certificate.
5. **Default** – If LLP fails:
 - Central Govt. may allot a **new name**.
 - Registrar enters new name & issues fresh certificate.
 - LLP may later change name again (not barred).

Question 10:

Whether **M/s Vardhman Steels LLP** (incorporated on **01.09.2022**) is liable to change its name when a partner of an existing **partnership firm M/s Vardhimaan Steels** (registered under **Indian Partnership Act, 1932** since **01.01.2000**) objects before **ROC** that the LLP's name nearly resembles its firm's name. [MTP Sep 2024 – Series II - 5 Marks]

Answer:

As per **Section 15 and Section 17 of LLP Act, 2008**, the restriction and direction to change name apply only if it is **identical with or too nearly resembles** the name of an **LLP, company, or a registered trademark**, not a **partnership firm**; hence **M/s Vardhman Steels LLP is not liable to change its name** even if it resembles the firm's name.

Question 11:

Whether **XYZ LLP**, registered under the **LLP Act, 2008**, whose name was later found to be **identical to an existing company XYZ OPC Pvt. Ltd.**, is required to change its name, and what are the **formalities with ROC** after such name change. [RTP Sep 24]

Answer:

As per **Section 17 of LLP Act, 2008**, if an LLP is inadvertently registered with a name **identical with/too nearly resembling an LLP, company, or registered trademark**, the **Central Government may direct it to change its name within 3 months**; further, the LLP must **notify ROC within 15 days of such change with CG's order**, and ROC will alter the **certificate of incorporation**, after which the LLP must **update its LLP Agreement within 30 days**.

Steps to Incorporate LLP ★★

1. **Name Reservation** – File **e-Form RUN-LLP** for availability & reservation of name.
2. **Incorporation** – File **e-Form FiLLiP ((Form for Incorporation of Limited Liability Partnership)** (details of LLP, partners/designated partners, their consent). ★★
3. **LLP Agreement** – Execution mandatory u/s 23; file in **e-Form 3 within 30 days** of incorporation.

ELIGIBILITY TO BE PARTNERS [SEC. 22]

1. **Subscribers to incorporation document** → automatically become partners on incorporation.
2. **Other persons** → may become partners **as per LLP Agreement**.

RELATIONSHIP OF PARTNERS [SEC. 23]

1. **Governing rule** → Mutual rights & duties governed by **LLP Agreement** (partners ↔ LLP).
2. **Filing** → LLP Agreement + changes must be filed with Registrar (prescribed form + fee).
3. **Pre-incorporation agreement** → Binding on LLP if **ratified by all partners** after incorporation.
4. **No agreement** → Rights & duties determined by **First Schedule**.

CESSATION OF PARTNERSHIP INTEREST [SEC. 24] ★★★

1. **Mode of cessation** –
 - As per LLP Agreement, OR
 - By written notice not less than 30 days, if no agreement.
2. **Automatic cessation** –
 - Death of partner / Dissolution of LLP.
 - Unsoundness (declared by Court).
 - Insolvency (applied or declared).
3. **Holding out as partner** – Former partner is **deemed partner** until:
 - Person dealing with LLP has notice of cessation, OR
 - Registrar is notified.
4. **Liability** – Cessation does **not discharge past obligations** incurred while partner.
5. **Who is entitled** –
Former partner, OR
Person entitled to his share (on death/insolvency)
Entitlement on cessation (unless LLP agreement provides otherwise):
 - Refund of **capital contribution actually made**.
 - Share in **accumulated profits (less accumulated losses)** up to cessation date.
6. **Restriction** – Former partner / his heirs have **no right to interfere in LLP management**.

Question 12:

Whether **Abhinav**, who resigned from **Singh Jain & Associates LLP** w.e.f. **01.11.2022**, but whose resignation was **not informed to ROC** either by LLP or himself, will still be liable for the **loss of firm from transactions entered after 01.11.2022**. [Module]

Answer:

As per **Section 24(3) of LLP Act, 2008**, a **former partner** is deemed to continue as partner unless the **third party has notice of cessation** or **notice is filed with ROC**; since no such notice was given, **Abhinav will still be liable for transactions entered after 01.11.2022**.

REGISTRATION OF CHANGES IN PARTNERS [SEC. 25]

1. **Partner's duty** – Inform LLP of **change in name/address within 15 days**.
2. **LLP's duty** – File notice with Registrar **within 30 days** for:
 - (a) Admission/cessation of partner.
 - (b) Change in partner's name/address.
3. **Notice requirements** –
 - Prescribed **form + fees**.
 - Signed by **designated partner** + authenticated.
 - If **incoming partner** → must give **written consent** (signed & authenticated).

4. **Penalties –**

- LLP & designated partner → ₹10,000 (for contravention of (2)).
- Partner → ₹10,000 (for contravention of (1)).

5. **Protection for outgoing partner –**

- If LLP doesn't file, **former partner may himself file notice.**
- Registrar seeks confirmation from LLP.
- If **no reply within 15 days** → Registrar registers partner's notice.

Question 13:

Whether **XYZ LLP** defaulted under the **LLP Act, 2008** when (i) **Priya** changed her address but failed to notify the LLP within **15 days**, and consequently the LLP did not inform **ROC within 30 days**, and (ii) when **Ramesh** was admitted as a partner but the LLP filed notice with **ROC** only after a delay of **2 months**. [RTP Jan 25]

Answer:

As per **Section 25 of LLP Act, 2008**, (i) Priya was required to intimate her **address change within 15 days**, and LLP had to file notice with **ROC within 30 days**, which was not done, hence **non-compliance occurred**; (ii) LLP had to file notice of **Ramesh's admission within 30 days along with his consent**, but filed it after 2 months, hence **non-compliance with statutory timeline**.

PARTNER AS AGENT [SEC. 26]

1. **Every partner = agent of LLP** (for business of LLP).
2. **Partner is NOT agent of other partners.**
3. Liability arises on LLP level, not on individual partners.
4. **Example:** X and Y are partners in an LLP. X enters into a contract with a supplier to purchase raw material for the LLP.
The LLP will be bound by X's act (agency principle). But Y (other partner) is **not personally bound** by X's act.

EXTENT OF LIABILITY OF LLP [SEC. 27] ★★★

1. **LLP not bound** by partner's act if:
 - Partner has **no authority**, and
 - Third party **knows** this / doesn't know he is a partner.
2. **LLP liable** for wrongful act/omission of partner if:
 - Done in **course of LLP business**, or
 - Done **with LLP's authority**.
3. **Obligations** (contractual or otherwise) = only of LLP, **not partners personally**.
4. **Liabilities** met from **LLP's property** only.
5. **Example:** A, a partner of Z LLP, fraudulently misrepresents facts to a client while securing a contract **in the business of LLP**.
LLP will be liable for such fraud (since it was in course of business).
But if A, without authority, sells LLP property to his friend for personal benefit, and the buyer **knows** A had no authority → LLP is **not liable**.

Question 14:

Whether **Mr. Mudit**, a **creditor of Devi Ram Food Circle LLP** having a claim of **₹10,00,000** against the LLP whose assets are only **₹7,00,000**, can recover the **deficiency of ₹3,00,000** from the **partners personally** under the **LLP Act, 2008**. (RTP May 24)

Answer:

As per the principle of **separate legal entity** under the **LLP Act, 2008**, an LLP is liable to the extent of its **own assets**, and **creditors of LLP are creditors of LLP alone**; since the **liability of partners is limited to their agreed contribution**, **Mr. Mudit cannot claim the deficiency of ₹3,00,000 from the partners personally**.

EXTENT OF LIABILITY OF PARTNER [SEC. 28] ★★★

1. **No personal liability** – Partner not personally liable for LLP's obligations (Sec. 27(3)) merely by being a partner.
2. **Own wrongful acts** – Partner personally liable for **his own wrongful act/omission**.
3. **Others' acts** – Partner **not personally liable** for wrongful act/omission of **other partners**.
4. **Example:** B and C are partners in an LLP.
The LLP takes a bank loan. If LLP defaults, **LLP is liable, not B or C personally**.
If B commits professional negligence in advising a client, B is **personally liable** for his negligence, but C is **not liable**.
If a doctor in a hospital (LLP) gives a **wrong treatment** due to carelessness →
 - Doctor is personally liable for negligence.
 - Hospital (LLP) is also liable (since act done in course of business).
 - Other doctors in hospital (other partners) are **not liable**.

HOLDING OUT [SEC 29]

1. **Representation as Partner**
 - If a person represents himself (by words/writing/conduct) or knowingly allows others to represent him as partner → he is liable.
2. **Liability Basis**
 - Liability arises if someone gives **credit to LLP** relying on such representation.
3. **LLP's Liability**
 - If LLP receives credit/financial benefit due to such representation → LLP also liable, **to the extent of benefit received**.
4. **Deceased Partner's Name**
 - Continued use of deceased partner's name in LLP's business **does not make his legal heirs/estate liable** for future acts of LLP. [Sec 29 (2)]

UNLIMITED LIABILITY IN CASE OF FRAUD [SECTION 30]

1. **Fraud by LLP / Partner**
 - If act done with intent to **defraud creditors / any person** or for **fraudulent purpose** → Liability of LLP & guilty partner(s) = **Unlimited**.
 - LLP not liable if it proves act was **without its knowledge/authority**.
2. **Punishment (Criminal liability)**
 - Any person knowingly party to fraudulent business → **Imprisonment up to 5 years + Fine ₹50,000 – ₹5,00,000**.
3. **Compensation (Civil liability)**
 - LLP / guilty partner / designated partner / employee liable to **compensate for losses** caused by fraud.
 - LLP not liable if fraud was committed **without its knowledge**.

WHISTLE BLOWING [SECTION 31] ★★★

1. Penalty Reduction / Waiver

- Court/Tribunal **may reduce or waive penalty** on a partner or employee if:
 - They provide **useful information during investigation** of LLP; or
 - Information they provide (even outside investigation) leads to **conviction** of LLP, partner, or employee under this or any other Act.

2. Protection Against Retaliation

- No partner or employee can be **discharged, demoted, suspended, threatened, harassed, or discriminated** against in employment/LLP terms for providing such information.

Question 15:

Whether in case of **NS & Associates LLP (formed in 2020)**, where its employee **Mr. J (Accounts Manager)** was penalized **₹1,25,000** for involvement in a **fraud of ₹50,25,000**, but later provided **vital information exposing others involved**, (i) the **Tribunal can waive/reduce the penalty**, and (ii) whether the **LLP can suspend him** for revealing such information. **[Jan 25 - 5 Marks]**

Answer:

As per **Section 31 of LLP Act, 2008**, (i) the **Tribunal may reduce or waive penalty** on Mr. J since he provided **useful information aiding investigation**, and (ii) under **Section 31(2)**, no **employee/partner can be suspended, demoted, or harassed merely for providing such information**, hence the **LLP cannot suspend Mr. J**.

FORM OF CONTRIBUTION [SECTION 32]

1. Types of Contribution

- Partner's contribution may include:
 - **Tangible property** (e.g., machinery, equipment)
 - **Movable or immovable property** (e.g., vehicles, land, buildings)
 - **Intangible property** (e.g., patents, trademarks, goodwill)
 - **Other benefits**, including:
 - Money or promissory notes
 - Agreements to contribute cash/property
 - Contracts for services performed or to be performed

2. Accounting & Disclosure

- Monetary value of each partner's contribution must be **accounted for and disclosed** in LLP's accounts as prescribed.

OBLIGATION TO CONTRIBUTE [SECTION 33] ★★★

1. As per LLP Agreement

- Partner's obligation to contribute **money, property, or services** is determined by the **LLP agreement**.

2. Enforcement by Creditors

- If a creditor **extends credit or relies on the partner's obligation** under the LLP agreement, and has **no notice of any compromise among partners**, the creditor **can enforce the original obligation** against the partner.
- A & B agree in LLP to contribute ₹5,00,000 each. Later, they compromise that A will pay only ₹3,00,000. Creditor C, unaware of this, relies on original terms and can demand full ₹5,00,000 from A.

Maintenance Of Books of Account, Other Records and Audit, Etc. [Section 34] ★★★

1. Books of Account

- LLP must maintain **proper books of account** as prescribed:
 - Cash or accrual basis
 - Double-entry system
 - Maintained at **registered office**
 - For **prescribed period**

2. Statement of Account & Solvency

- Within **6 months** of financial year-end, LLP must prepare **Statement of Account & Solvency** (as at last day of FY).
- **Signed by designated partners.**
- Must be **filed with Registrar** in prescribed form, manner, and fee.

3. Audit

- LLP accounts shall be **audited as per prescribed rules.**
- Central Government may **exempt certain classes of LLP** from audit.

4. Penalty for Non-compliance

- LLP: ₹100/day, **max ₹1,00,000**
- Each designated partner: ₹100/day, **max ₹50,000**

5. Penalty for Non-Compliance (Books, Statement of Accounts & Audit)

LLP: Penalty: ₹25,000 minimum, may extend to ₹5,00,000

Designated Partner: Penalty: ₹10,000 minimum, may extend to ₹1,00,000

ACCOUNTING AND AUDITING STANDARDS [SECTION 34A] ★★★

1. **Authority:** Central Government, in consultation with **National Financial Reporting Authority (NFRA).**
2. **Accounting Standards:** May **prescribe standards of accounting** for LLPs.
3. **Auditing Standards:** May **prescribe standards of auditing**, as recommended by ICAI.

ANNUAL RETURN [SECTION 35] ★★★

1. Filing Requirement:

- LLP must file **annual return** with Registrar within **60 days** of financial year closure.
- **Form, manner, and fees** as prescribed.
- Example: FY ends 31st March → file by 30th May.

2. Significance:

- Unlike traditional partnerships (Partnership Act, 1932), **LLPs are required to file annual returns**, similar to companies.

3. Penalty for Non-Filing:

- **LLP:** ₹100/day, max ₹1,00,000
- **Each Designated Partner:** ₹100/day, max ₹50,000

INSPECTION OF DOCUMENTS KEPT BY REGISTRAR [SECTION 36]

1. Documents Inspectable: ★★★

- Incorporation document
- Names of partners and changes therein
- Statement of Account and Solvency
- Annual Return

2. Availability:

- Open for **inspection by any person**
- Subject to **prescribed manner and fees**

PENALTY FOR FALSE STATEMENT [SECTION 37]

1. **Applicability:**
 - Any return, statement, or document filed under the LLP Act.
2. **Offence:**
 - **False statement** in any material particular, **knowing it to be false**, or
 - **Omission of material fact, knowing it to be material.**
3. **Punishment:**
 - **Imprisonment:** up to **2 years**
 - **Fine:** ₹1,00,000 minimum, up to **₹5,00,000**

POWER OF REGISTRAR TO OBTAIN INFORMATION [SECTION 38]

1. **Authority of Registrar:**
 - May require **any person** (present/former partner, designated partner, employee, etc.) to:
 - Answer questions,
 - Make declaration, or
 - Supply details/particulars **in writing** within a reasonable time.
2. **If unsatisfactory / no reply:**
 - Registrar may **summon** such person before:
 - Himself,
 - Inspector, or
 - Any designated public officer.
3. **Penalty for non-compliance:**
 - Fine **₹2,000 – ₹25,000.**

COMPOUNDING OF OFFENCES [SECTION 39]

1. **Authority: ★★★**
 - Regional Director (RD) or other officer not below the rank of regional director (authorised by CG) may compound offences **punishable with fine only**.
 - Amount: **Not less than minimum fine** & up to **maximum fine**.
2. **Restriction: ★★★**
 - Cannot be compounded if **same offence committed within 3 years** of earlier compounding.
 - Offence after 3 years → treated as **first offence**.
3. **Application process:**
 - Application → Registrar → forwards with comments → RD/authorised officer.
4. **Intimation:**
 - Compounding (before/after prosecution) → Registrar to be informed within **7 days**.
5. **Effect of compounding:**
 - **Before prosecution:** No prosecution shall be initiated.
 - **After prosecution:** Registrar informs Court → offender discharged.
6. **Additional Directions by RD:**
 - May order partner/designated partner/employee to **file/register returns, accounts, docs** with prescribed fee/additional fee within specified time.
7. **Non-compliance with RD Order:**
 - Fine = **Twice the maximum fine** provided for such offence under the Act.

PARTNER'S TRANSFERABLE INTEREST [SECTION 42] ★★★

1. **Transferable Rights:**
 - Partner's rights in **profits & losses** and **distributions** under LLP Agreement are **transferable (wholly/partly)**.

2. Effect of Transfer:

- **Does not cause:**
 - Disassociation of partner, OR
 - Dissolution/winding up of LLP.

3. Limitations on Transferee/Assignee:

- **No right to:**
 - Participate in management/conduct of LLP.
 - Access LLP information/transactions.

Question 16:

Whether **X**, daughter of **A**, who received **70% of A's share of profits in Alpha LLP** (with partners A, B, C, D sharing equally), can **access LLP's trading information** on the ground that she receives part of the profits. **[Sep 24 – 5 Marks]**

Answer:

As per **Section 42 of LLP Act, 2008**, a partner's **right to share profits/losses is transferable**, but such transfer **does not entitle the transferee to management rights or access to LLP information**; hence the **partners are correct in denying access**, and **X has no remedy against such denial**.

Question 17:

Whether in **Sun Roofings LLP (6 partners)**, after **Mr. K (marketing head) dies**, his **share can be used to repay LLP debts**, and whether **Mr. W's son M (to whom Mr. W transferred his share)** can be denied participation in the business by other partners. **[May 25 - 5 Marks]**

Answer:

Under **Section 29(2)**, **Mr. K's share cannot be used** for repayment of LLP debts incurred **after his death**; and under **Section 42**, although **Mr. W can transfer his share to M**, such transfer **does not entitle M to participate in management**, hence partners can **forbid M** from business conduct.

CONVERSION INTO LLP ★★

1. Section 55 – Firm → LLP

- A partnership firm may convert into an LLP.
- Governed by **Second Schedule**.

2. Section 56 – Private Company → LLP

- A private company may convert into an LLP.
- Governed by **Third Schedule**.

3. Section 57 – Unlisted Public Company → LLP

- An unlisted public company may convert into an LLP.
- Governed by **Fourth Schedule**.

REGISTRATION AND EFFECT OF CONVERSION [SECTION 58]

1. Registrar verifies compliance with:

- Relevant Schedule,
 - LLP Act,
 - Rules.
- Issues **Certificate of Registration** → LLP deemed registered from date in certificate.

2. Intimation to Registrar:

- Within **15 days** of registration, LLP must inform:
 - Registrar of Firms (for partnership firm), OR
 - Registrar of Companies (for private/unlisted public co.).

3. Binding Effect:

- Partners/shareholders & LLP bound by **respective Schedule**.

4. Effective Date:

- Conversion effects apply from date of **Certificate of Registration**.

5. Effect of Registration

- (a) LLP by name in certificate comes into existence.
- (b) **Automatic Vesting**: All assets, rights, privileges, liabilities, obligations, undertaking of firm/company → vest in LLP (no further deed required).
- (c) Firm/Company deemed **dissolved** & removed from RoF/RoC records.

FOREIGN LIMITED LIABILITY PARTNERSHIPS [SECTION 59]

1. **Power of Central Government** → may frame rules for:
 - Establishment of place of business in India by foreign LLP.
 - Carrying on business in India by such LLPs.
2. **Application of Law** → Provisions of:
 - **Companies Act, 2013** (with modifications), OR
 - Any other **regulatory mechanism** prescribed.
3. **Flexibility** → Central Govt. can adapt provisions as appropriate.

COMPROMISE, ARRANGEMENT OR RECONSTRUCTION OF LIMITED LIABILITY PARTNERSHIPS

Term	Understanding	Example
Compromise	Settlement of dispute/claim by adjusting rights & liabilities.	Creditor accepts ₹7 lakh instead of ₹10 lakh → full & final settlement.
Arrangement	Broader reorganization of rights, liabilities, or contributions.	Loan converted into capital; profit ratio changed (60:40 → 70:30); repayment in installments.
Reconstruction	Business structure reorganized but continues in another/new entity.	LLP splits into 2 businesses (Textile → new LLP; IT stays with old LLP). Old company transfers business to new company.

COMPROMISE OR ARRANGEMENT OF LIMITED LIABILITY PARTNERSHIPS [SECTION 60]

Point	Extracted Provision
Applicability	Compromise or arrangement between LLP & creditors OR LLP & partners
Who can apply	LLP itself / any creditor / any partner / liquidator (if LLP under winding up)
Authority	Tribunal (NCLT)
Tribunal's Power	Order meeting of creditors/partners to be called, held & conducted
Manner of Meeting	As prescribed or as Tribunal directs

1. Approval Requirement →

- Must be agreed by **¾th in value** of creditors/partners present at the meeting.
- Tribunal sanction needed.

2. Binding Effect → Once sanctioned by Tribunal → binding on:

- All creditors/partners,
- The LLP itself,
- Liquidator & contributories (if in winding up).

3. Disclosure Requirement → Tribunal will not sanction unless:

- All material facts disclosed (financial position, investigations, etc.).

4. Filing with Registrar →

- Tribunal's order must be filed with ROC **within 30 days**.
- Effective only after filing.

5. Penalty for Default →

- LLP → ₹10,000 + ₹100 per day (max ₹1,00,000).
- Every Designated Partner → ₹10,000 + ₹100 per day (max ₹50,000).

6. Stay of Proceedings → Tribunal may stay any suit/proceeding against LLP until disposal of application.

POWER OF TRIBUNAL TO ENFORCE COMPROMISE OR ARRANGEMENT [SECTION 61]

1. When applicable → After Tribunal sanctions compromise/arrangement u/s 60.

2. Powers of Tribunal –

(a) **Supervision** → Tribunal can supervise the carrying out of compromise/arrangement.

(b) **Directions/Modifications** → May issue directions or modify terms for proper working.

3. If compromise fails →

- If Tribunal finds arrangement **cannot be worked satisfactorily** (with/without modifications),
- It may order **winding up of LLP**.

4. Winding up order → Deemed to be an order u/s 64 of LLP Act.

PROVISIONS FOR FACILITATING RECONSTRUCTION OR AMALGAMATION OF LIMITED LIABILITY PARTNERSHIPS [SECTION 62]

1. Application → Made u/s 60 for sanction of compromise/arrangement.

2. When applicable →

(a) Scheme for **reconstruction** of LLP(s) OR **amalgamation** of 2 or more LLPs.

(b) Under scheme → undertaking, property, liabilities of **transferor LLP** → transferred to **transferee LLP**.

3. Powers of Tribunal – May provide for:

(i) Transfer of undertaking, property, liabilities to transferee LLP.

(ii) Continuation of legal proceedings by/against transferee LLP.

(iii) Dissolution of transferor LLP **without winding up**.

(iv) Protection of dissenting persons (as directed).

(v) Incidental/consequential matters for effective reconstruction/amalgamation.

4. Restrictions/Reports –

- No amalgamation of LLP under winding up unless Registrar's report → affairs **not prejudicial** to partners/public interest.
- No dissolution order of transferor LLP unless OL's report confirms affairs **not prejudicial**.

5. Effect of Order –

- Property → automatically vests in transferee LLP.
- Liabilities → automatically become those of transferee LLP.
- Charges may cease, if directed.

6. Filing Requirement – Certified copy of order → to Registrar **within 30 days**.

7. Penalty for Default (filing) –

- LLP → ₹10,000 + ₹100 per day (max ₹1,00,000).

- Each Designated Partner → ₹10,000 + ₹100 per day (max ₹50,000).

8. Explanation –

- "Property" = includes all rights & powers.
- "Liabilities" = includes all duties.
- **LLP cannot be amalgamated with a company.**

Winding up & Dissolution of LLP ★★★

Section 63 – Modes of Winding up

- **Voluntary winding up** OR
- **By Tribunal** → LLP so wound up may be dissolved.

Section 64 – Circumstances of Winding up by Tribunal

LLP may be wound up by Tribunal if:

- (a) LLP resolves for winding up by Tribunal.
- (b) Partners reduced below **2 for > 6 months**.
- (c) LLP acts **against sovereignty, integrity, security of State, or public order**.
- (d) Default in filing **Statement of Account & Solvency / Annual Return for 5 consecutive years**.
- (e) Tribunal considers it **just & equitable** to wind up.

Section 65 – Rules

- **Central Government** → empowered to make rules for provisions relating to winding up & dissolution of LLP.

Question 18:

Whether **M/s Strong Steels LLP** (incorporated on **01.04.2010** with **10 partners**) which has incurred **losses** and failed to file **annual returns since 2020-21**, can be **wound up by Tribunal** under **Section 64 of LLP Act, 2008**, and what are the **provisions & penalties for non-filing of annual return**. [Sep 24 – 5 Marks]

Answer:

As per **Section 64 of LLP Act, 2008**, winding up by Tribunal is possible if default in filing **annual return/statement of account continues for 5 consecutive financial years**; since default is **not yet 5 years**, Tribunal **cannot order winding up**, and partners' objection is valid. Further, under **Section 35**, annual return must be filed within **60 days of FY end**, failing which penalty is **LLP – ₹100 per day (max ₹1,00,000)** and **every Designated Partner – up to ₹50,000**.

BUSINESS TRANSACTIONS OF PARTNER WITH LLP [SECTION 66]

- A **partner may lend money** to the LLP.
- A **partner may transact other business** with the LLP.
- In such cases, partner has **same rights & obligations** as a **third party (non-partner)** with respect to:
 - Loan, or
 - Other transactions.

PAYMENT OF ADDITIONAL FEE [SECTION 69]

- If a **document/return** is not filed with Registrar **within time**, it may still be filed **later**.
- Such late filing allowed on **payment of prescribed additional fee** (in addition to normal filing fee).
- Filing **after due date** is **without prejudice** to any other action or liability under the Act.
- **Different additional fees** may be prescribed for:
 - Different classes of LLPs, or
 - Different documents/returns.

ENHANCED PUNISHMENT [SECTION 70] ★★

- Applies when **LLP / partner / designated partner** commits a **second or subsequent offence**.
- **If offence punishable with imprisonment** → imprisonment as originally provided.
- **If offence punishable with fine (alone or with imprisonment)** → fine shall be **twice the prescribed amount**.
- In short: **Repeat offence = Double fine, same jail**.

Basis	LLP	Partnership Firm
Regulating Act	LLP Act, 2008	Indian Partnership Act, 1932
Body Corporate	Yes	No
Separate Legal Entity	Yes	No
Creation	Legal process under LLP Act	Agreement between partners
Registration	Mandatory	Voluntary (only registered firms can sue)
Perpetual Succession	Exists even after death/insolvency	Ends on death/insolvency; no perpetual succession
Name	Must include "LLP"	No specific guidelines
Liability	Limited to contribution (except fraud)	Unlimited; extends to personal assets
Mutual Agency	Partner can bind LLP, not others	Partner can bind firm & others
Designated Partners	At least 2, one resident in India	No provision
Common Seal	Possible (official signature)	Not applicable
Legal Compliances	Designated partners responsible	All partners responsible
Annual Filing	Statement of accounts + Annual return	Not required
Foreign Partnership	Foreign nationals can be partners	Cannot be partners
Minor as Partner	Not admitted	Can be admitted to benefits with consent

Basis	LLP	Limited Liability Company
Regulating Act	LLP Act, 2008	Companies Act, 2013
Members/Partners	Contributors = Partners	Investors in shares = Members
Internal Governance	By contract agreement between partners	By statute (Companies Act, 2013)
Name	Must include "LLP" / "Limited Liability Partnership"	Public co. → "Limited" ; Private co. → "Private Limited"
No. of Members/Partners	Min. 2; No max. limit	Pvt. Co.: 2–200 Public Co.: Min. 7; No max. limit
Liability	Limited to agreed contribution (except fraud)	Limited to unpaid amount on shares
Management	Managed by partners (incl. designated partners)	Managed by Board of Directors elected by shareholders
Minimum Directors/Partners	2 designated partners	Pvt. Co.: 2 directors Public Co.: 3 directors

Chapter 3: The Foreign Exchange Management Act, 1999

Wisdom Blueprint

S. no	Section/Provision	Relevancy
1	Residential Status	MCQ + DPQ
2	Current Account Transaction	MCQ + DPQ
3	Capital Account Transaction	MCQ + DPQ

Introduction & Need for FEMA

- **Need:** Manage foreign exchange due to **globalization & free trade**.
- **Historical background:**
 - **Defence of India Rules, 1939** → first exchange control.
 - **FERA 1947**, replaced by **FERA 1973**. ★ ★ ★
- **Liberalization 1991** → free movement of forex for trade & investment.
- **FEMA, 1999** → enacted to manage **foreign exchange reserves**.

Salient Features

1. Regulation of **transactions between residents & non-residents**.
2. Regulation of **foreign investments in India & Indian investments abroad**.
3. **Current account transactions** freely permissible (subject to reasonable restrictions).
4. **Capital account transactions** regulated by **RBI & Central Govt**.
5. **Export proceeds** to be realised & repatriated to India.
6. Dealings in forex only through **Authorised Persons** (AD, Money Changer, Offshore banking units).
7. **Adjudication & Compounding of offences**.
8. **Investigation by Directorate of Enforcement**.
9. **Appeals:** Special Director (Appeals) → Appellate Tribunal.

Enforcement ★ ★ ★

- Overall control: **RBI**.
- Enforcement: **Directorate of Enforcement** [Sec. 36].

PREAMBLE, EXTENT, APPLICATION AND COMMENCEMENT OF FEMA, 1999 ★ ★ ★

(A) Preamble

- Objective:
 - Facilitate **external trade & payments**.
 - Promote **orderly development & maintenance** of forex market in India.

(B) Extent & Application [Sec. 1]

- **Extent:** Whole of India.
- **Application:**
 - **Person's resident in India**
 - **Branches, offices, or agencies outside India** – owned or controlled by persons resident in India.
Key emphasis: "Owned or Controlled."
 - **Persons resident outside India**
 - Covers **contraventions outside India** by persons to whom FEMA applies.

(C) Commencement

- FEMA, 1999 enforced **w.e.f. 1st June, 2000**. ★ ★ ★

DEFINITIONS [SECTION 2]

Person [Sec. 2(u)] includes

1. Individual
2. Hindu Undivided Family (HUF)
3. Company
4. Firm
5. Association of Persons (AOP) / Body of Individuals (BOI), incorporated or not
6. Every **artificial juridical person** not covered above
7. Any **agency, office or branch** owned/controlled by such person

Person Resident in India Means - [Sec. 2(v)] - As per ICAI Module ★★★

(i) Individual Test - Residing in India for more than 182 days during preceding financial year.

Person gone out of India/stays outside India for	Person gone out of India/stays outside India for	Person gone out of India/stays outside India?
Yes	Yes	NO
<ul style="list-style-type: none"> ▪ (a) Employment abroad, or ▪ (b) Business/vocation abroad, or ▪ (c) Any purpose indicating intention to stay abroad for uncertain period. 	Any Other purpose	-
PROI	PRII	PRII

(i) Individual Test - Even if a person has not resided in India for more than 182 days in the previous financial year, he will be considered a Person Resident in India (PRII) if he comes to/stays in India.

Person who has come to/stays in India for	Person who has come to/stays in India for	Person who has come to/stays in India?
Yes	Yes	NO
<ul style="list-style-type: none"> ▪ (a) For employment in India, or ▪ (b) For business/vocation in India, or ▪ (c) Any purpose indicating intention to stay in India for uncertain period. 	Any Other purpose	-
PRII	PROI	PROI

Other Residents

- (ii) Any **person/body corporate** registered or incorporated in India.
- (iii) **Office/branch/agency in India** owned or controlled by a **person resident outside India**.
- (iv) **Office/branch/agency outside India** owned or controlled by a **person resident in India**.

Citizenship → **Not a criterion** for determining residential status.

Question 1:

Test: Residential status under **FEMA** – Mr. X stayed in India for less than **182 days in FY 2019-20**, entered India on **1-4-2020** for **business**, continued till **30-4-2021**, and left India on **30-6-2021**. [Module illustration]

Answer:

Under **Sec. 2(v)** FEMA, Mr. X is a **Person Resident in India** from **1-4-2020**; in **FY 2021-22**, he remains **resident** from **1-4-2021** to **30-6-2021**, but from **1-7-2021** he ceases to be **resident** only if departure is for **employment/business/vocation outside India** or any purpose indicating **indefinite stay abroad**; otherwise, he continues as **resident**.

Question 2:

Test: Residential status under **FEMA** – Mr. Z stayed in India for more than **182 days in FY 2019-20**, left India on **1-8-2020** to **USA** for **higher studies** for **3 years**. [Module illustration]

Answer:

Under **Sec. 2(v) FEMA**,

- in **FY 2020-21**, he is deemed **resident**, but as per **RBI AP Circular No. 45 (8-12-2003)**, students are treated as **non-residents** because usually students start working there to take care of their stay and cost of studies
- in **FY 2021-22**, since he was **not in India** for more than **182 days** in preceding **FY 2020-21**, he is a **non-resident**.

Question 3:

Test: Residential status under **FEMA – Toy Ltd.**, a **Japanese company (resident outside India)**, has a **robotic unit HQ in Mumbai** and a **branch in Singapore**, with **Mumbai HQ controlling Singapore branch**. [Module illustration]

Answer:

Under **Sec. 2(w) & 2(u)(viii) FEMA**, Mumbai unit is a '**person**'; under **Sec. 2(v)(iii) FEMA**, an **office/branch in India controlled by a non-resident** is a **Person Resident in India**; since **Mumbai unit (resident in India)** controls the **Singapore branch**, the **Singapore branch** is also treated as a **Person Resident in India**.

Question 4:

Residential status under **FEMA – Miss Alia** is an *airhostess with British Airways, flies 12 days in a month, takes 18 days break, based at Mumbai for security, accommodated at Mumbai for more than 182 days in the financial year.* [Module illustration]

Answer:

As per **Section 2(v)(B) FEMA**, though she stayed in India for more than **182 days**, she is **not a Person Resident in India**, since she has not come to India for employment/business/uncertain stay. If employed in **Mumbai branch of British Airways**, she would be considered **PRI**.

Question 5:

Tested: Residential status under **FEMA – Mr. L, fashion designer in Elegant Textile Ltd. Gurugram** for 183 days in **FY 2023-24**, left India on **02.04.2024** to join employment in **Jeff Fashion Ltd., Paris**, returned on **30.04.2024** for 10-day family function in Manali; alternate case – if instead of vacation he joins employment in India on 30.04.2024. (May 24 – 4 Marks)

Answer:

As per **Section 2(v) FEMA**, Mr. L becomes **PROI from 02.04.2024** as he left India for taking up employment abroad; **10-day visit does not change status**. In alternate case, he becomes **PRI from 30.04.2024** on joining employment in India.

Person Resident Outside India [Sec. 2(w)]

Means: **Any person who is NOT a "Person Resident in India."**

Authorised Person [Sec. 2(c)]

- Includes:
 - Authorised Dealer (AD)
 - Money Changer
 - Off-shore Banking Unit
 - Any other person authorised u/s 10(1)
- Function: Deal in **foreign exchange** or **foreign securities**.

Capital Account Transaction [Sec. 2(e)]

- Transaction altering **assets or liabilities** (incl. contingent) →
 - **Outside India** of persons resident in India, OR
 - **In India** of persons resident outside India.

Current Account Transaction [Sec. 2(j)] [Jan 25 - 5 Marks] ★★

- **Meaning:** Any transaction **other than Capital Account Transaction**.
- **Includes:**
 1. Payments for **foreign trade, business, services, short-term banking & credit facilities**.
 2. Payments of **interest on loans & net income from investments**.
 3. **Remittances** for living expenses of **parents, spouse, children abroad**.
 4. Expenses on **foreign travel, education, medical care** of parents, spouse, children.

REGULATION AND MANAGEMENT OF FOREIGN EXCHANGE

Dealing in foreign exchange, etc. [Section 3]

- **General Prohibition:** No person can undertake certain foreign exchange transactions unless **permitted under FEMA or with RBI approval**.
- **Prohibited transactions:**
 - (a) **Dealing/transfer of foreign exchange/foreign security** except through an **Authorised Person (AP)**.
Example: PROI selling USD to Indian resident friend – Not allowed.
 - (b) **Payment to/for credit of PROI** in any manner.
Example: Indian paying insurance premium for PROI – Not allowed.
 - (c) **Receipt on behalf of PROI** otherwise than through **AP**.
 - Even if routed through someone in India without corresponding inward remittance, it is deemed unauthorised.
 - **Example:** Restaurant accepting USD cash from foreign tourist – Not allowed unless licensed money changer.
 - (d) **Financial transaction in India** as consideration/association for acquiring, creating, or transferring an **asset outside India**.
Examples: Hawala transaction (cash in India, payout abroad) – Not permitted.
- **Explanation – "Financial transaction" includes:**
 - Making/receiving payment,
 - Drawing/issuing/negotiating bill of exchange/promissory note,
 - Transferring security,
 - Acknowledging debt.
- **Objective:** Regulate inflow/outflow of foreign exchange strictly via **Authorised Dealers**.
- **Applicability:** Applies to **Persons Resident in India (PRIIs)** and **Persons Resident Outside India (PROIs)**.

Holding of foreign exchange [Section 4]

- **General Prohibition:** A Person Resident in India (PRI) cannot **acquire, hold, own, possess, or transfer** –
 - **Foreign exchange,**
 - **Foreign security, or**
 - **Immovable property abroad,****except** as permitted under FEMA or notifications by RBI/Govt.
- **Example:** If a PRI receives **USD 10,000 in bank balance** from his **uncle in London**, he **cannot retain** it abroad; under **Sec. 8**, funds must be **repatriated to India**.

Current Account Transactions [Section 5] ★★

- Any person may **sell/draw forex** from an **Authorised Person** for a current account transaction.
- **Central Govt.** (in consultation with **RBI**) may impose **reasonable restrictions** in public interest.
- Restrictions notified under **FEM (Current Account Transactions) Rules, 2000**.

Examples:

- Import of **machinery (full payment)** → **Current Account Transaction**, since no cross-border asset/liability remains.
- Import of machinery **on 3-month credit** → still **Current Account Transaction** (short-term credit covered).
- **Gift by PRII to NRI abroad (USD 1,000)** → **Current Account Transaction** (no asset/liability remains abroad).
- Gift by PRII to **PROI in India** → **Capital Account Transaction** (creates asset in India for PROI).
- **PROI gifting to PRII by remittance into India** → allowed (no restriction).
- **PROI gifting to PRII abroad** → PRII cannot retain funds abroad, must bring into India.

General Rule:

- **Current Account Transactions** → **Freely permitted**, unless restricted.
- **Capital Account Transactions** → **Prohibited**, unless specifically or generally permitted.

FEM (Current Account Transactions) Rules, 2000 ★★

Prohibited Current Account Transactions

Drawal of foreign exchange by any person for the following purpose is prohibited, namely-

- (i) a **transaction** specified in the **Schedule I**, or
- (ii) a **travel to Nepal and/or Bhutan**, or
- (iii) a **transaction with a person resident in Nepal or Bhutan**.

Rule 3 - (Schedule I – Prohibited Current Account Transactions)

- **Foreign exchange cannot be drawn for the following:**
 1. **Remittance out of lottery winnings.**
 2. **Remittance of income from racing/riding or other hobbies.**
 3. **Purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes, etc.**
 4. **Commission on exports** made towards **equity investment** in JV/WOS abroad of Indian companies.
 5. **Dividend remittance** by companies subject to **dividend balancing requirement**.
 6. **Commission on exports under Rupee State Credit Route** (except up to **10% of invoice value** for tea & tobacco exports).
 7. **Payments related to “Call Back Services” of telephones.**
 8. **Remittance of interest income** on funds held in **Non-resident Special Rupee Scheme A/c**.

Rule 4 - Schedule II – Current Account Transactions Requiring Prior Approval of Central Government (for drawal of forex)

Purpose of Remittance	Approval Required From
Cultural Tours	Ministry of HRD (Dept. of Education & Culture)
Advertisement in foreign print media (other than tourism/FDI/international bidding) by State Govt./PSU exceeding USD 10,000	Ministry of Finance (Dept. of Economic Affairs)
Remittance of freight of vessel chartered by PSU	Ministry of Surface Transport (Chartering Wing)
Payment of import through ocean transport by Govt. Dept./PSU on c.i.f. basis	Ministry of Surface Transport (Chartering Wing)
Multi-modal transport operators remitting to agents abroad	Registration Certificate from Director General of Shipping
Remittance of hiring charges of transponders by: (a) TV Channels	Ministry of Information & Broadcasting

Remittance of hiring charges of transponders by: (b) Internet Service Providers	Ministry of Communication & Information Technology
Remittance of container detention charges exceeding prescribed rate	Ministry of Surface Transport (Director General of Shipping)
Remittance of prize money/sponsorship of sports activity abroad (other than by International/National/State level sports bodies) exceeding USD 100,000	Ministry of HRD (Dept. of Youth Affairs & Sports)
Remittance for membership of P & I Club	Ministry of Finance (Insurance Division)

Rule 5 - SCHEDULE III Facilities for INDIVIDUALS for Current Account Transaction – Foreign Exchange (within USD 250,000 limit)

1. **Private visits** abroad (except Nepal & Bhutan).
2. **Gift/Donation.**
3. **Employment abroad.**
4. **Emigration.**
5. **Maintenance of close relatives abroad.**
6. **Business travel / conference / specialized training OR medical expenses/check-up abroad** (including attendant).
7. **Medical treatment abroad.**
8. **Studies abroad.**
9. **Other current account transactions.**
 - Above limit → **RBI prior approval required.**
 - For **Emigration, Medical treatment, Studies abroad** → amount can exceed USD 250,000 under the **Liberalised Remittance Scheme** if required by country/institute/university.

LRS – Key Points (for individuals only)

- Limit = **USD 250,000 per financial year** (all permissible current + capital account transactions).
- Available to **resident individuals including minors** (guardian countersigns).
- **Family consolidation:** Allowed, but **not for capital a/c transactions** (bank a/c, investment, property) unless joint ownership.

Additional Provisions

If remittance is made under **Liberalised Remittance Scheme (LRS)** in a year → limit reduces by that amount.

Special Provision for Resident in India but not Permanently Resident

1. **Who is covered?**
 - A person who is **Resident in India but not Permanently Resident (RNPR)**.
 - RNPR means → in India **for employment/deputation/specific assignment ≤ 3 years**.
2. **Conditions:**
 - (a) Must be a **foreign citizen (other than Pakistan)**, OR
 - (b) An **Indian citizen deputed** to office/branch/JV/subsidiary of a **foreign company in India**.
3. **Remittance allowed:**
 - Such person can remit abroad up to his **net salary** (after taxes, PF, and other deductions).
 - **Example 1 – Foreign Citizen**
 - **Mr. John (UK citizen)** comes to India for a 2-year job with an IT company.
 - He earns ₹3,00,000/month. After TDS, PF & other deductions, his **net salary = ₹2,40,000/month**.
 - Being a **foreign citizen in India for ≤ 3 years**, he is RNPR.
 - He can legally **remit abroad ₹2,40,000/month** (i.e., his net salary).
 - **Example 2 – Indian Citizen on Deputation**
 - **Mr. Raj (Indian citizen)** works in **Microsoft Singapore**.
 - Microsoft deputed him to its **Indian subsidiary** for a project of 2 years.
 - His monthly net salary in India = ₹4,00,000.
 - Since he is an **Indian citizen on deputation to Indian branch of a foreign company**, he is RNPR.

- He can remit ₹4,00,000/month abroad.

Who is NOT covered?

- If Mr. Raj works for TCS (pure Indian company) in India, then he is a **normal resident**, not RNPR.
- He cannot claim this “net salary remittance” facility.

Further, a **person other than an individual** may also avail of foreign exchange facility, **mutatis mutandis**, within the limit prescribed under the said Liberalised Remittance Scheme for the purposes mentioned herein above. It simply means that companies, firms, trusts, etc. can also use foreign exchange facilities (like investments abroad, branch setup, donations), **within limits similar to LRS**, though emigration itself is irrelevant for them.

Question 6:

Mr. Amrish, admitted to a **postgraduate program abroad** with annual course fee of **₹3,50,000**, how can his parents remit fees under **FEMA, 1999**? (ii) After studies, Amrish works for a **JV of a foreign company in India** and is sent on **deputation abroad**, while his **family resides in India**—can he **remit salary to support them**?

Answer:

(i) As per **Schedule III of FEM (Current Account Transactions) Rules, 2000** read with **LRS**, an individual can remit up to **USD 250,000 per financial year**; excess requires **RBI approval**. Education fees abroad can be remitted within this limit, with the **LRS ceiling reduced by the amount remitted**. (ii) Under **FEMA, 1999**, a **resident but not permanently resident** deputed abroad may **remit net salary (after taxes, PF, other deductions)** to India for family maintenance.

Rule 5 - SCHEDULE III Facilities for persons OTHER THAN INDIVIDUALS for Current Account Transaction (with RBI approval)

- 1. Donations** (limit: **lesser** of 1% of forex earnings of last 3 years OR USD 5 million) for:
 - Creation of Chairs in reputed educational institutes.
 - Contribution to funds (not being investment funds) promoted by educational institutes.
 - Contribution to technical institution/body/association in donor's field.
- 2. Commission to agents abroad** for sale of Indian residential flats/commercial plots:
 - **Exceeding:** USD 25,000 per transaction OR 5% of inward remittance (whichever higher).
- 3. Consultancy services (imported):**
 - Infrastructure projects exceeding USD 10 million per project.
 - Other consultancy exceeding USD 1 million per project.
- 4. Reimbursement of pre-incorporation expenses** by Indian entity:
 - **Exceeding:** 5% of investment brought into India OR USD 100,000 (whichever higher).

Additional Provisions for Current Account Transactions

- If the transaction is not listed in any of the above three schedules, it can be freely undertaken.
- Exemptions:**
- **From RFC account:** No RBI approval needed for Schedule II/III transactions.
 - **From EEFC account:** No approval except for –
 - Membership of P&I Club.
 - **Commission to agents abroad - Exceeding:** USD 25,000 per transaction OR 5% of inward remittance (whichever higher).
 - **Pre-incorporation expenses - Exceeding:** 5% of investment brought into India OR USD 100,000 (whichever higher).
 - **International Credit Card:** Expenses abroad allowed (Schedule III items).

Question 7:

Questions Based on Current Account Transactions

- a) **Test:** Indian National requires **USD 2,000** for **call back services of telephones**.
Conclusion: Prohibited u/r 3, Sch. I → Cannot obtain forex.

- b) **Test: Mr. Ramesh (Nagpur) wants forex for travel to Nepal.**
Conclusion: Prohibited u/r 3 → No forex allowed for travel to **Nepal/Bhutan**.
- c) **Test: Commission on exports made towards equity investment in WOS abroad.**
Conclusion: Prohibited u/r 3, Sch. I → Cannot obtain forex.
- d) **Test: Payment of commission on exports under Rupee State Credit Route.**
Conclusion: Prohibited u/r 3, Sch. I → Cannot obtain forex.
- e) **Test: Film Star X + associates need USD 20,000 for cultural performance in New York.**
Conclusion: Allowed only with CG (Ministry of HRD) approval u/r 4, Sch. II.
- f) **Test: R's heart surgery in UK – forex needed (medical treatment).**
Conclusion: Up to actual estimate by medical institute; within USD 2,50,000 LRS freely available, beyond that → RBI approval required u/r 5, Sch. III.
- g) **Test: F's business trip to UK requiring USD 30,000.**
Conclusion: Allowed within USD 2,50,000 limit u/r 5, Sch. III → No RBI approval needed.
- h) **Test: Hiring charges of transponder – remittance USD 5,000.**
Conclusion: Allowed only with CG (Ministry of I&B) approval u/r 4, Sch. II (unless paid from RFC/EEFC).
- i) **Test: Mr. C wants to remit USD 10,000 commission to US agent for sale of commercial plot near Bangalore, inward remittance USD 1,00,000.**
Conclusion: Limit = Higher of USD 25,000 or 5% (USD 5,000). As USD 10,000 is less than 25,000, No RBI approval needed u/r 5, Sch. III.
- j) **Tested: L pursuing Fashion Design course in Paris → forex drawal of US\$ 20,000 (tuition) + US\$ 30,000 (incidental/stay) = US\$ 50,000.**
Conclusion: Under Rule 5, Sch. III (LRS limit US\$ 2,50,000), no RBI approval needed since studies abroad remittance is permitted up to amount estimated by the institute.
- k) **Tested: Mr. A remits US\$ 200,000 as prize money to winning Hockey team in Australia.**
Conclusion: Requires Central Govt. approval (Ministry of Youth Affairs & Sports) since prize/sports sponsorship abroad by private persons more than US\$ 100,000 → u/r 4, Sch. II.
- l) **Tested: Rohan gift remittance US\$ 10,000 abroad.**
Conclusion: Permitted under LRS up to US\$ 250,000 u/r 5, Sch. III → No RBI approval.
- m) **Tested: Mr. P won lottery; wants to remit US\$ 20,000 to son in USA out of lottery winnings.**
Conclusion: Prohibited (remittance out of lottery winnings) u/r 3, Sch. I → No forex allowed.
- n) **Tested: Mr. B remits US\$ 10,000 for goods purchased from a party in Nepal.**
Conclusion: Prohibited to draw foreign exchange for such payment; settlement to be in INR (transactions with Nepal/Bhutan: no forex drawal) u/r 3 (Prohibited).

Question 8:

ABC Ltd. engaged Mr. Taylor, a German technician, for machinery installation, and paid USD 40,000 as remuneration. Whether payment of remuneration to foreign technician Mr. Taylor is a permissible transaction under the provisions of the said Act.

Answer:

If the transaction is not listed in any of the above 3 schedules, it can be undertaken without any approval. Under **Sec. 5, FEMA, 1999** read with **FEM (Current Account Transaction) Rules, 2000**, payment of remuneration to a foreign technician is a **permissible current account transaction**; no ceiling applies, and salary can be **remitted abroad after tax, PF, and other statutory deductions**.

Question 9:

Lifsys Ltd., an Indian company, proposes to create a Chair in Computer Science in a reputed U.S. university, and seeks advice on **permissibility, donation limits, and formalities** under **FEMA, 1999**. [CA Final Nov 2016]

Answer:

Under **Rule 5, Sch. III, FEM (Current A/c Transaction) Rules, 2000**, such **chair creation is permissible**; donation limit is the **lower of 1% of foreign exchange earnings (last 3 FYs) or USD 5,000,000**, and if this limit is **exceeded, prior RBI approval** is mandatory.

Question 10:

Rules under **Schedule III, FEM (Current A/c Transactions) Rules, 2000** on remittances by **persons other than individuals** relating to (i) **commission to agents abroad** for sale of flats/plots in India, (ii) **consultancy services** procured from outside India, and (iii) **reimbursement of pre-incorporation expenses**. **(May 24 – 4 Marks)**

Answer:

Conclusion: Under **FEMA, 1999**, prior **RBI approval** is required if (i) commission > **USD 25,000 or 5% of inward remittance per transaction (whichever higher)**, (ii) consultancy remittance > **USD 10m per infrastructure project / USD 1m for others**, and (iii) reimbursement > **5% of investment or USD 100,000 (whichever higher)**.

Question 11:

Rohan Sharma Cricket Academy, a **private coaching club**, in collaboration with **Melbourne Cricket Academy**, organising a cricket event in **Melbourne (May–June 2024)** and required to remit **US\$ 200,000** to Melbourne Cricket Academy as its share. Advise Whether it can get Foreign Exchange and if so, under what conditions? **[MTP May 24 (2) – 4 Marks]**

Answer:

As per Section 5 read with **Schedule II (FEM (Current Account Transactions) Rules, 2000)**, remittance for **sports activity abroad** by a person **other than International/National/State sports bodies** exceeding **US\$ 100,000** requires prior **Central Government approval (Ministry of HRD — Dept. of Youth Affairs & Sports)**; **Academy can remit US\$ 200,000 only after obtaining that approval**.

Question 12:

Whether **Mitali Diamonds Ltd.** (diamond exporter, forex earnings in last 3 FYs: USD 1,25,000 + 1,10,000 + 95,000) can remit **donation of USD 10,000** to a **technical institution in USA** providing training in diamond cutting/polishing. **[Sep 24 - 4 Marks]**

Answer:

As per **Schedule III of FEMA, 1999**, donation by persons other than individuals exceeding **1% of forex earnings of last 3 FYs (USD 3,300) or USD 5,000,000, whichever is less** requires **RBI approval**; hence, donation up to **USD 3,300** can be made freely, but for the proposed **USD 10,000**, prior **RBI approval is mandatory**.

Question 13:

(1) **LMN Ltd.**, with **foreign exchange earnings of USD 600 million in last 3 years**, wants to know **max donation without RBI approval**. (2) **STU Ltd.**, with **USD 250 million forex earnings**, plans to **donate USD 3 million to a university fund**. Validity under **FEMA, 1999**? **[MTP May 2025 – Series II - 4 Marks]**

Answer:

As per **Schedule II of FEM (Current Account Transactions) Rules, 2000**, donations beyond **1% of forex earnings in last 3 years or USD 5 million, whichever is less**, need **RBI approval**. (1) For **LMN Ltd.**, 1% = **USD 6m**, limit = **USD 5m**, hence donation up to **USD 5m allowed without approval**. (2) For **STU Ltd.**, 1% = **USD 2.5m**, limit = **USD 2.5m**, but planned donation = **USD 3m**, hence **RBI approval required**.

Question 14:

Murari Lal, a **person resident outside India**, invested in **4 under-construction residential properties in Kolkata** (₹2 crore each), paying **60% upfront on booking** and balance on possession; transactions handled through **2 USA brokers on commission basis**, with **60% remittance made directly** to builder companies—whether (i) such **investment &**

commission payment are permissible, and (ii) what **maximum commission** can be paid to each broker without **RBI approval**? (Ignore the USD - Rupee Exchange Rate) [Jan 25 - 5 Marks]

Answer:

(i) As per **Schedule II of FEMA (Permissible Capital Account Transactions) Regulations, 2000**, **acquisition of immovable property in India by a person resident outside India** is permissible; hence investment & commission payment are allowed. (ii) Under **Schedule III of FEM (Current Account Transactions) Rules, 2000**, commission abroad cannot exceed the **higher of USD 25,000 or 5% of inward remittance**; here 5% of ₹1.2 crore (=₹6,00,000) per property, so **₹6,00,000 per broker per transaction** can be paid **without RBI approval**.

Capital Account Transactions [Section 6] ★★

- 1. General Rule (Sub-sec 1)** – Any person may sell/draw foreign exchange from an authorised person for capital account transactions (subject to RBI/CG provisions).
 - 2. RBI Powers (re: Debt Instruments) (Sub-sec 2)** – RBI (with CG consultation) may specify:
 - Permissible classes of capital account transactions **involving debt instruments**.
 - **Limits** up to which forex is admissible.
 - **Conditions** for such transactions.
 - **No restriction** on forex drawal for:
 - Loan amortisation payments. (**Repayment of foreign Loan**)
 - Depreciation of direct investments (ordinary business).
 - 3. Central Government Powers (re: Non-debt Instruments) (Sub-sec 2A)** – CG (with RBI consultation) may prescribe:
 - Permissible classes of transactions **not involving debt instruments**.
 - **Limits** on forex admissibility.
 - **Conditions** for such transactions.
 - 4. Residents Holding Foreign Assets (Sub-sec 4)** – A person resident in India may hold/own/transfer/invest in:
 - Foreign currency, security, or immovable property abroad, if:
 - Acquired, held or owned when he was a **non-resident**, or
 - **Inherited** from a non-resident.
- RBI Circular No. 90 (09.01.2014) clarifying Section 6(4) FEMA:**
1. **Foreign currency accounts** abroad, opened/maintained when person was NRI, are covered.
 2. **Income earned abroad** (employment, business, vocation, investments, gift, inheritance) while person was NRI, remains eligible.
 3. **Foreign exchange / income / accruals** held abroad and inherited from a person resident outside India, covered.
 4. **Resident in India can freely use eligible assets abroad** (and income/sale proceeds thereof) for payments or reinvestments abroad.
 5. Condition: Such investments/payments must be made **only from eligible assets abroad**.
 6. No RBI approval needed if transactions are not in contravention of FEMA provisions.
- 5. Non-residents Holding Indian Assets (Sub-sec 5)** – A person resident outside India may hold/own/transfer/invest in:
 - Indian currency, security, or immovable property in India, if:
 - Acquired, held or owned when he was a **resident**, or
 - **Inherited** from a resident.
 - 6. RBI Power on Branch/Office (Sub-sec 6)** – RBI may prohibit/restrict/regulate:
 - Establishment of branch/office/place of business in India by a non-resident.
 - 7. Definition (Sub-sec 7)** – “Debt instruments” to be determined by **Central Government in consultation with RBI**.

“Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000” ★★

- **Capital account transactions classification** under FEMA (Permissible Capital Account Transactions Regulations, 2000):
 1. **Permissible transactions** (with limits & conditions).
 2. **Transactions on which restrictions cannot be imposed.**
 3. **Prohibited transactions.**
- **Permissible Transactions:**
 - **Schedule I** → transactions permitted for **persons resident in India.**
 - **Schedule II** → transactions permitted for **persons resident outside India.**
- **General rule:** Any person may sell/draw foreign exchange from an authorised person for transactions specified in Schedules, **subject to:**
 - Provisions of FEMA Act, Rules, Regulations, Directions, or Orders.
 - Limits & conditions specified in respective regulations.

Regulation 3 - Permissible Capital Account Transactions

Schedule I – Permissible Capital Account Transactions for persons resident in India:	Schedule II – Permissible Capital Account Transactions for persons resident outside India:
1. Investment in foreign securities.	1. Investment in India by non-residents: <ul style="list-style-type: none"> • (i) Subscription to securities issued by Indian body corporate/entity. • (ii) Contribution to capital of firm/proprietorship/AOP in India.
2. Foreign currency loans raised in India/abroad.	
3. Transfer of immovable property outside India.	2. Acquisition & transfer of immovable property in India.
4. Guarantees in favour of non-residents.	3. Guarantees in favour/on behalf of residents.
5. Export/import/holding of currency & currency notes.	4. Import & export of currency/currency notes into/from India.
6. Borrowings (loans/overdrafts) from non-residents.	5. Deposits between residents & non-residents.
7. Foreign currency accounts in India & abroad.	6. Foreign currency accounts in India of non-residents.
8. Insurance policy from foreign insurance company.	
9. Lending (loans/overdrafts) to non-residents.	
10. Remittance outside India of capital assets of a person resident in India.	7. Remittance outside India of capital assets in India of a person resident outside India.
11. Derivative contracts.	8. Derivative contracts.

Transactions with No Restriction

1. Amortisation of loans.
2. Depreciation of direct investments in the ordinary course of business.
3. Drawal for repayment of loan installments – cannot be restricted.

Regulation 4 - Prohibited Transactions

1. **General Prohibition:**
 - No person shall undertake/sell/draw foreign exchange for capital account transactions except as permitted.
2. **Resident Individuals:**
 - Can draw up to **USD 250,000 per FY** (or as prescribed by RBI) for capital account transactions (Schedule I).
 - Drawals exceeding USD 250,000: limits under specific regulations apply.
 - USD 250,000 limit **cannot be remitted to FATF non-cooperative countries.**
3. **Non-Resident Investments in India:**
 - Prohibited in:
 - i. Chit funds (except NRI subscriptions via banking channel on non-repatriation basis with RBI approval).

- ii. Nidhi companies.
- iii. Agricultural or plantation activities.
- iv. Real estate business/farmhouse construction (**townships, REITs, residential/commercial development roads or bridges exempt**).
- v. Trading in Transferable Development Rights (TDRs).
- **Transferable Development Rights (TDRs):**
 - Certificates issued for land acquired for **public purpose** by Govt. (Central/State).
 - Given in consideration of **surrender of land without monetary compensation**.
 - **Transferable** (partly or wholly).
- 4. **Transactions with Democratic People's Republic of Korea (DPRK) (North Korea):**
 - No capital account transactions with DPRK citizens/entities without **Central Government approval**.
 - Existing investments with DPRK must be **closed/liquidated within 180 days** unless approved from CG for extension.
- 5. **General Rule:**
 - Capital account transactions are **permitted only if specifically allowed**; otherwise, prior approval is mandatory.

Question 15:

John, a foreign national (not of Indian origin) wants to buy agricultural land in India. (2) An NRI wants to open a fixed deposit account in Indian bank using foreign currency. Asked: Are these transactions valid under **FEMA, 1999**? [MTP May 2025 – Series II - 4 Marks]

Answer:

(1) As per **FEM (Permissible Capital A/c Transactions) Regulations, 2000**, **PROI is prohibited** from investing in entities engaged in **agriculture/plantation**, hence **John cannot buy agricultural land**.
(2) Under **Schedule II(e)** of same Regulations, **deposits between resident & non-resident are permitted**; thus, **NRI can open NRE or FCNR deposit accounts** in India using foreign currency.

Question 16:

Explain meaning of **Capital Account Transactions**, state its **categories**, and examine permissibility of: (i) Investment in **foreign securities**, (ii) **Foreign currency loans** raised in India and abroad, (iii) **Export/import/holding of currency notes**, (iv) Investment in a **Nidhi Company**, (v) **Trading in transferable development rights**.

Answer:

As per **s.2(e) FEMA, 1999** and **FEM (Permissible Capital Account Transactions) Regulations, 2015**, **Capital A/c Transactions** are those altering **assets/liabilities** of PRIs/PROIs, classified into: (1) **Permissible for PRI (Sch I)**, (2) **Permissible for PROI (Sch II)**, (3) **Prohibited (Reg. 4)**. Transactions given: (i) **Foreign securities – Permitted**, (ii) **Foreign currency loans – Permitted**, (iii) **Currency notes – Permitted**, (iv) **Nidhi Co. – Prohibited**, (v) **TDRs – Prohibited**.

Question 17:

Mr. Ram (**Indian citizen**, left India for **employment in USA** on **1-6-2020**) purchased a **flat in New Delhi for ₹795 lakhs** in **Sept 2021**; his brother Mr. Gopal (**employed in New Delhi**) also purchased a **flat for ₹795 lakhs** financed by a **housing loan**, with **guarantee given by Mr. Ram**. Examine under **FEMA, 1999** whether (i) purchase of flat by Mr. Ram, and (ii) guarantee by Mr. Ram, are **Capital Account Transactions** and whether permissible.

Answer:

As per **s.2(e) FEMA, 1999** and **Schedule II of FEM (Permissible Capital Account Transactions) Regulations, 2015**, both are **Capital Account Transactions**. (A) **Purchase of immovable property in India by Mr. Ram [PROI] – Permissible**, (B) **Guarantee by Mr. Ram [PROI] on behalf of Mr. Gopal (PRI) to housing finance company – Permissible**.

Question 18:

A **UK incorporated company (PROI)** establishes a **branch at Chennai**. What is the **residential status of Chennai branch**? The branch proposes to **purchase immovable property at Chennai for its business**. Examine if this is a **Capital Account Transaction u/s 2(e), FEMA 1999** and whether there are **any restrictions**.

Answer:

As per **s.2(v) FEMA, 1999**, the **Chennai branch = PRI** (since it is a branch in India owned/controlled by a PROI). As per **s.2(e) FEMA, 1999**, **acquisition of immovable property in India by PRI** does **not amount to Capital Account Transaction**. Hence, **no restriction** under FEMA on such acquisition.

Question 19:

Ms. Rose, an **Indian citizen**, lived in **USA for 12 years**, purchased a **house in USA** during her stay, then returned to India for employment. After return, she **let out the USA house**, deposited **rent in USA account**, and with that rent **purchased another house in USA**. Examine under **FEMA, 1999**:

(i) Can she **retain the first house** after return?

(ii) Can she **purchase another house in USA** after return? [Sep 24 – 4 Marks]

Answer:

As per **s.6(4) FEMA, 1999**, **Ms. Rose** can **retain the USA house** purchased while being a **non-resident**. Further, she can **purchase another house in USA** after return, since **income from assets held abroad (rent)** qualifies as **eligible assets**, which may be freely utilised for **fresh investments abroad**, provided compliance with FEMA.

Question 20:

Mr. Arjun, an **Indian resident**, had worked **abroad for 10 years**, during which he **acquired foreign currency**, made **investments in foreign securities**, and also **inherited a property in New York** from his **non-resident grandfather**. After permanently returning to India, he wants to know the **FEMA provisions** regarding ownership and utilization of these **foreign assets**. [RTP Sep 24]

Answer:

As per **s.6(4) FEMA, 1999** read with **RBI A.P. (DIR Series) Circular No. 90 (09-01-2014)**, **Mr. Arjun** may **hold, own, transfer or invest** in (i) **foreign currency accounts** opened as a non-resident, (ii) **investments and income earned abroad**, (iii) **gifts/inheritance from a non-resident**, and (iv) **immovable property abroad**. He may also **freely utilize such eligible assets** (including income/sale proceeds) for **payments or fresh investments abroad** after return, without RBI approval, subject to compliance with FEMA.

Question 21:

Whether **Mr. V**, a **person of Indian origin**, who lived in **USA from 1998 till 2024**, held **joint bank accounts with his wife**, permanently returned to India on **24-11-2024** after her demise on **17-11-2024**, **inherited her money (credited in his USA bank account)**, and **paid premium of his US insurance policy from that account**, is permitted to carry out such transactions under **FEMA, 1999**. [May 25 - 5 Marks]

Answer:

Yes, under **Section 6(4) of FEMA, 1999** read with **RBI Circular No. 90 dated 09-01-2014**, such amounts in his **USA account** are **eligible assets** (being inherited from a **person resident outside India**). A **person resident in India** can continue to hold and freely utilize such foreign assets, including for paying **insurance premiums** (a **permissible capital account transaction** under Schedule I of FEMA Regulations, 2000).

Question 22:

Mr. Janak, a **PROI (USA)**, invested in **5 residential immovable properties under construction in Mumbai**, each at **₹1.5 crores**, payable **50% on booking & 50% on possession**. Transaction was routed through **2 USA brokers** on commission basis, and **50% of the amount** was remitted directly to the builders. Asked: (A) **Whether investment & commission payment are permissible?** (B) **Maximum commission payable to each broker?**

Answer:

As per **s.6 FEMA, 1999** read with **Schedule II, FEM (Permissible Capital A/c Transactions) Regulations, 2015**, **acquisition of immovable property in India by PROI** is a **permissible capital a/c transaction**. Under **Rule 5, Schedule III**, commission to agents abroad is allowed up to the **higher of USD 25,000 or 5% of inward remittance**. Hence, **Mr. Janak's investment & commission** are **permissible**, and the **maximum commission** = $(₹1.5 \text{ cr} \times 5 \text{ properties} \times 50\% \text{ remittance} \times 5\%) \div 2 \text{ brokers} = ₹9,37,500 \text{ per broker}$.

Question 23:

Mr. Bandha, an **Indian origin person resident in USA**, desires to (i) **acquire a farmhouse in Munnar (Kerala)**, (ii) **invest in KLJ (Nidhi) Ltd.**, and (iii) **invest in Rose Real Estate Ltd.** (Indian company for **development of township**). Asked: Whether each investment is permissible under FEMA. [May 18 – 6 Marks]

Answer:

As per **Reg. 4, FEM (Permissible Capital A/c Transactions) Regulations, 2015**, **PROI cannot invest in Nidhi Companies, farmhouses, or entities engaged in real estate business/agricultural/plantation activities/TDR trading.** However, **real estate business does not include development of townships.** Hence, Mr. Bandha **cannot acquire farmhouse, cannot invest in Nidhi Company, but can invest in Rose Real Estate Ltd. (development of township).**

Miscellaneous Definitions

Currency [Sec. 2(h)] includes

- Currency notes
- Postal notes / Postal orders
- Money orders
- Cheques / Drafts
- Travellers' cheques
- Letters of credit
- Bills of exchange / Promissory notes
- Credit cards
- Any other similar instrument **notified by RBI**

Currency Notes [Sec. 2(i)]

- **Cash** in the form of:
 - Coins
 - Bank notes

Export [Sec. 2(l)]

- Means:
 1. **Taking goods out of India** to a place outside India.
 2. **Provision of services** from India to any person outside India.

Foreign Currency [Sec. 2(m)]

- Any currency **other than Indian currency.**

Foreign Exchange [Sec. 2(n)] [May 25 - 2 Marks]

- **Means:** Foreign Currency.
- **Includes:**
 1. Deposits, credits & balances **payable in foreign currency.**
 2. Drafts, travellers' cheques, LCs, BoEs **expressed/drawn in INR but payable in foreign currency.**
 3. Drafts, travellers' cheques, LCs, BoEs **drawn outside India but payable in INR.**

Foreign Security [Sec. 2(o)] [May 25 - 2 Marks]

- **Means:** Any security in the form of –
 - Shares
 - Stocks
 - Bonds
 - Debentures
 - Any other instrument **denominated/expressed in foreign currency**
- **Includes:** Securities expressed in foreign currency but with **redemption / return (interest, dividend, etc.) payable in INR.**

Transfer [Sec. 2(ze)]

- Includes:
 - Sale
 - Purchase
 - Exchange
 - Mortgage
 - Pledge
 - Gift
 - Loan
 - **Any other form** of transfer of right, title, possession or lien.

Current Account Transactions	Capital Account Transaction
Section 2 (j)	Section 2 (e)
Foreign Exchange Management (Current Account Transactions) Rules, 2000	Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000
<p>Rule 3 - Prohibition on drawal of Foreign Exchange read with schedule I</p> <p>Rule 4 - Transactions which require prior approval of the Central Government read with schedule II</p> <p>Rule 5 - Prior approval of Reserve Bank if drawal exceeds</p> <ul style="list-style-type: none"> USD 2,50,000 for individual or prescribed limit for other than individual 	<p>Regulation 3 - Permissible Capital Account Transactions</p> <p>(A) transactions, specified in Schedule I, for a PROI; (B) transactions, specified in Schedule II, for a PROI.</p> <p>Regulation 4 – Prohibited Capital Account Transactions for PROI</p>
<ul style="list-style-type: none"> Limit = USD 250,000 per financial year (all permissible current + capital account transactions). Available to resident individuals including minors (guardian countersigns). Family consolidation: Allowed, but not for capital a/c transactions (bank a/c, investment, property) unless joint ownership. 	
<p>Further, a person other than an individual may also avail of foreign exchange facility, mutatis mutandis, within the limit prescribed under the said Liberalised Remittance Scheme for the purposes mentioned herein above. It simply means that companies, firms, trusts, etc. can also use foreign exchange facilities (like investments abroad, branch setup, donations), within limits similar to LRS, though emigration itself is irrelevant for them.</p>	
<p>USD 250,000 limit cannot be remitted to FATF non-cooperative countries.</p>	
The general rule to be understood is that Current Account transactions are freely permitted unless specifically prohibited	<p>Capital Account transactions are prohibited unless specifically or generally permitted.</p> <p>Here prohibited means PROI has to take approval from RBI to undertake such transaction.</p>
Example : Payment of remuneration to foreign technician are current account transactions and not prohibited or do not require approval of Central Government or RBI under the Foreign Exchange Management (Current Account Transactions) Rules, 2000 and thus permitted without any restriction.	<p>Example: Taking out of insurance policy by a person resident outside India from an insurance company in India.</p> <p>Above transaction is not specifically permitted. For such transaction PROI has to take specific approval from RBI.</p>
<p>Rule 3 - Prohibition on drawal of Foreign Exchange read with schedule I.</p> <p>For above transaction drawal is prohibited. However, transactions listed in such schedule is not prohibited.</p>	<p>Regulation 4 – Prohibited Capital Account Transactions for PROI.</p> <p>5 Transactions prohibited for PROI: Which means for such 5 transaction no application for approval of RBI can be made.</p>
	<p>Transactions with Democratic People's Republic of Korea (DPRK) (North Korea):</p> <ul style="list-style-type: none"> No capital account transactions with DPRK citizens/entities without Central Government approval. Existing investments with DPRK must be closed/liquidated within 180 days unless approved from CG for extension.

Chapter 1: The General Clauses Act, 1897

Wisdom Blueprint

S. no	Section/Provision	Relevancy
1	Introduction & Application	MCQ
2	Commencement [Sec. 3(13)]	DPQ
3	Document [Sec. 3(18)]	DPQ
4	Good Faith [Sec. 3(22)]	DPQ
5	Government [Sec. 3(23)]	DPQ
6	Immovable Property [Sec. 3(26)]	DPQ
7	Imprisonment [Sec. 3(27)]	DPQ
8	Official Gazette [Sec. 3(39)]	DPQ
9	Person [Sec. 3(42)]	DPQ
10	Affidavit [Sec. 3(3)] Oath [Sec. 3(37)] Swear [Sec. 3(62)]	DPQ
11	Coming into Operation of Enactment - Section 5	MCQ + DPQ
12	PRESUMPTION AGAINST RETROSPECTIVITY	MCQ + DPQ
13	Construction of references to repealed enactments [Section 8]	MCQ + DPQ
14	"Commencement and termination of time" [Section 9]	MCQ + DPQ
15	"Computation of time" [Section 10]	MCQ + DPQ
16	"Measurement of Distances" [Section 11]	MCQ + DPQ
17	"Duty to be taken pro rata in enactments" [Section 12]	MCQ + DPQ
18	"Gender and number" [Section 13]	MCQ + DPQ
19	"Successors" [Section 18]	MCQ + DPQ
20	"Provision as to offence punishable under two or more enactments" [Section 26]	MCQ + DPQ
21	"Meaning of Service by post" [Section 27]	MCQ + DPQ

INTRODUCTION

- **Enactment:** General Clauses Act, 1897 → enacted on **11th March 1897**; consolidated & extended General Clauses Acts of **1868 & 1887**. ★★ ★
- **Purpose:** Provides *definitions & general principles of interpretation*.
- **Applicability:** Applies **to all Central Acts & Regulations** → unless a particular word is defined differently or context is repugnant.
- **Utility:**
 - Fills gap where specific enactments lack definition.
 - Resolves conflict between *pre-constitutional & post-constitutional* laws.
 - Clarifies commencement & enforcement provisions to avoid uncertainty.

OBJECT, PURPOSE AND IMPORTANCE OF THE GENERAL CLAUSES ACT

- **Objects of the Act:**
 1. Shorten language of Central Acts.
 2. Provide uniformity of expression through common definitions.
 3. Lay down rules for construction & interpretation of statutes.
 4. Prevent slips/oversights by importing common form clauses into every Act.
- **Case Example: *Ananda Behera v. State of Orissa***
 - Issue: Whether right to catch fish = movable or immovable property.
 - **Sec. 3(26), GCA:** "Immovable property" includes land, benefits arising out of land, things attached to earth.
 - **Fish catching right** = *profit à prendre* = benefit from land → hence **immovable property** under Transfer of Property Act.

APPLICATION OF THE GENERAL CLAUSES ACT★ ★ ★

- **No Territorial Extent Clause:** Act does not define territorial extent.
- **Application:**
 - Applies to:
 - (a) Acts of **Indian Parliament (Central Acts)**.
Example: Income Tax Act, 1961, or Companies Act, 2013
 - (b) Acts of **Dominion Legislature (15 Aug 1947 – 26 Jan 1950)**.
Example: Factories Act, 1948
 - (c) Acts passed **pre-Constitution** by Governor-General in Council/legislative capacity.
Example: Indian Penal Code, 1860
- **Article 367, Constitution:** Extends GCA to interpretation of Constitution itself (subject to adaptations under Art. 372).
- **Section-wise applicability:**
 - **Sec. 3** (Definitions) → applies to GCA itself & all Central Acts/Regs made after 1897.
 - **Sec. 4** (Application of definitions to prior enactments) → applies to Central Acts after 3 Jan 1868 & Regs after 14 Jan 1887.
- **State Acts:** GCA, 1897 serves as a **model for State General Clauses Acts** → to avoid divergent interpretation rules & confusion.

PRELIMINARY [SECTION 1]

- **Section 1(1):** Short title → *The General Clauses Act, 1897*.
- **Preliminary Part of Law:** Usually contains → short title, extent, commencement, application.
- **In GCA, 1897:** Only *short title* is given in Preliminary part.
- **Section 2:** Repealed.

DEFINITIONS [SECTION 3]

- **Section 3 (Principal Section):**
 - Applies to **GCA itself + post-1897 Central Acts/Regulations**.
 - Not applicable if: (i) Act provides its own definition, or (ii) context/subject is repugnant.
 - Defines **67 terms/phrases** → acts as a **dictionary for statutes**.

Central Act [Sec. 3(7)]

- Means: **Act of Parliament**.
- Includes:
 - (a) Acts of **Dominion Legislature** or **Indian Legislature** (pre-Constitution).
 - (b) Acts by **Governor-General in Council** or **Governor-General** (legislative capacity, pre-Constitution).
- **Commencement of Constitution = 26th January, 1950.**

Commencement [Sec. 3(13)] ★ ★ ★

- **Meaning** → Day on which Act/Regulation comes into force.
- **Coming into force = Commencement** (legislation, regulations, treaties, etc. get legal effect).
- **Law not in force** unless:
 1. Brought into operation by legislative enactment, OR
 2. By delegate authority empowered to bring it into force.
- A law on paper is not law in action until it is formally brought into force (**State of Orissa v. Chandrasekhar Singh Bhai**).

Question 1:

Elucidate the term "Commencement" as per the General Clauses Act, 1897.

Answer:

As per **Sec. 3(13)**, "**Commencement**" means the **day an Act/Regulation comes into force**; a law has no effect unless duly brought into operation by **legislature** or **delegate authority**, and the view that a statute can be in force "constitutionally" without actual operation has **no validity** (**State of Orissa v. Chandrasekhar Singh Bhai**).

Document [Sec. 3(18)] [MTP Jan 2025 – Series II - 4 Marks] ★★ ★

- **Definition** → Any matter written/expressed/described on substance by letters, figures, marks, or combo, intended/able to record matter.
- **Examples** → Book, file, painting, inscription, computer files.
- **Exclusion** → Indian currency notes not documents.

Question 2:

Meaning of the term '**document**' under the **General Clauses Act, 1897**, and whether a **Power of Attorney** and a **Cheque** are covered within it. [Jan 25 - 4 Marks]

Answer:

As per **Section 3(18), GCA 1897**, a **document** includes any matter written/expressed/ described on any substance by letters, figures or marks, intended to record information; examples include **books, files, paintings, inscriptions, computer files** (but not Indian currency notes). Both **Power of Attorney** (written instrument creating legal authority) and **Cheque** (negotiable instrument recording financial transaction) satisfy this definition and are treated as **documents**.

Question 3:

Whether a **CCTV recording of an incident** can be considered a **document**, and the meaning of the term '**document**' under the **General Clauses Act, 1897**. [MTP May 2025 – Series II]

Answer:

As per **Section 3(18), GCA 1897** and **Section 3, Indian Evidence Act 1872**, a **document** includes any **matter written, expressed, or described on a substance (paper or electronic document)** using **letters, figures, or marks** to record information. A CCTV recording qualifies as a **document** because it records **matter** (the incident), is stored on a **substance** (hard drive/tape), and uses **means** to preserve information, making it **usable as evidence**.

Financial Year [Sec. 3(21)]

- **Meaning** → Year commencing from **1st April**.
- **Year [Sec. 3(66)]** → Calendar year (Jan–Dec, British calendar).
- **Difference** →
 - Financial Year → April–March.
 - Calendar Year → Jan–Dec.

Question 4:

A **confusion** arose between a company's **financial executive** and **accountant** regarding the meaning of **financial year** vs **calendar year** under the **General Clauses Act, 1897**. (MTP May 24 (1) - 4 Marks)

Answer:

As per **Sec. 3(21)**, **financial year** means the year commencing on **1st April**; while under **Sec. 3(66)**, **year** means the **calendar year** reckoned according to the **British calendar** (i.e., **1st Jan–31st Dec**).

Good Faith [Sec. 3(22)] [MTP Jan 2025 – Series I - 2 Marks] ★★ ★

- **Meaning** → Act is in good faith if done **honestly**, even if negligently.
- **Question of fact** → Depends on facts & circumstances of each case.
- **Presumption** → Act with due care & without malafide = good faith.
- **Example** → Authority ignoring suspicion & not making enquiry = not good faith.
- **Different enactments** → May have their own definition (overrides Sec. 3(22)).
- **Indian Contract Act** → No definition of good faith; General Clauses Act definition not expressly applicable.
- **Civil law view** → Good faith requires **due care + honesty** (ordinary prudence).
- **Case law:**
 - **Maung Aung Pu v. Maung Si Maung** – careless purchase without enquiry not good faith → no good title.

Question 5:

Mr. P bought a **car** from his friend **Mr. G** without checking or test-driving it, raising the issue whether the **purchase** can be said to be made in **good faith** under the **General Clauses Act, 1897**. [Sep 24 – 2 Marks]

Answer:

As per **Sec. 3(22)**, an act is in **good faith** if done **honestly**, even if done **negligently**; but in **Maung Aung Pu v. Maung Si Maung**, it was highlighted that unlike in **civil law** (where **due care and attention** is required), the **General Clauses Act** focuses on **honesty**. Still, an **honest but careless purchase without proper enquiry** cannot be treated as in **good faith** so as to convey **good title**; hence, **Mr. P's purchase is not in good faith**.

Government [Sec. 3(23)] ★★★

- **Definition** → Includes **Central Government + State Government**.
- **Purpose** → To clarify that "Government" may mean either, depending on context.
- **General sense** → Covers all 3 wings – Legislature, Executive, Judiciary.
- **Narrow sense** → Refers only to the **Executive**.

Question 6:

Income Tax Act, 1961 provides that **gratuity paid by the Government** is fully exempt from tax; issue is whether such exemption covers **State Government employees**, requiring scope of '**Government**' under the **General Clauses Act, 1897**.

Answer:

As per **Sec. 3(23)**, '**Government**' includes both **Central Government** and **State Government**; hence, **gratuity exemption** is also available to **State Government employees**.

Immovable Property [Sec. 3(26)] ★★★

- **Includes:**
 1. Land
 2. Benefits to arise out of land
 3. Things attached to the earth
 4. Things permanently fastened to anything attached to the earth
- **Nature** → Inclusive definition (broad coverage).
- **Application** → Where enactment gives **negative / non-exhaustive definition**, this applies.
- **Judicial Examples:**
 - **Trees** = immovable property (attached to the earth) (**Shantabai v. State of Bombay**).
 - **Included** → forest produce (tendu leaves, timber, bamboos), soil for bricks, right to build/occupy, right to grow new trees, right of way, right to catch fish.
 - **Excluded** → right to drain off water.
 - **Machinery** fixed to soil & standing crops = immovable property.

Question 7:

X, who owned **land with fifty tamarind trees**, sold the **land** and also the **timber obtained after cutting those trees**, and wants to know whether such sale of **timber** amounts to sale of **immovable property** under the **General Clauses Act, 1897**. [ICAI Module]

Answer:

As per **Sec. 3(26)**, **immovable property** includes **land**, **benefits to arise out of land**, and **things attached to the earth**; thus, **land** is immovable property, but **timber (once cut)** is **not immovable property**, since it is no longer attached to the earth.

Question 8:

Yogveer Singh, having a **mango orchard at Manchanga Village, Bilaspur** with **100+ mango trees**, sold the **orchard along with the trees**, and the issue is whether the **sale of trees** amounts to sale of **immovable property** under the **General Clauses Act, 1897**. [RTP May 24]

Answer:

As per **Sec. 3(26)**, **immovable property** includes **land**, **benefits to arise out of land**, and **things attached to the earth**; since **mango trees** are **attached to the earth** and constitute **benefits arising out of land**, their sale is treated as sale of **immovable property**.

Question 9:

The issue is whether **insurance policies covering immovable property** can be treated as **immovable property**. [July 21-2 Marks]

Answer:

Insurance policy is merely a **document/contract** and not **immovable property**

Imprisonment [Sec. 3(27)] ★★★

- Meaning → imprisonment of **either description** as per IPC.
- IPC Sec. 53 → Two types of imprisonment:
 1. **Rigorous** → with hard labour.
 2. **Simple** → without hard labour.
- Court's discretion → may award rigorous or simple as per offence.

Question 10:

Whether **Mr. N**, caught **stealing a bicycle** punishable under **Section 379 IPC**, can be subjected to **"imprisonment"** under the **General Clauses Act, 1897** in line with the IPC. [RTP May 25]

Answer:

According to **Section 3(27) GCA, 1897** and **Section 53 IPC**, **imprisonment** means **either rigorous (with hard labour) or simple**, and the **court has discretion** to award **simple imprisonment for minor theft** or **rigorous imprisonment for violent/serious/habitual theft**.

Month [Sec. 3(35)]

- Month = reckoned by **British calendar**.

Movable Property [Sec. 3(36)] [MTP Jan 2025 – Series I - 2 Marks]

- Means: all property **except immovable property**.
- Examples: **debts, shares, electricity**.

Offence [Sec. 3(38)]

- Any **act or omission** punishable under any **law in force**.

Official Gazette [Sec. 3(39)] [MTP Sep 2024 – Series I - 2 Marks] ★★★

- Means:
 1. **Gazette of India**, or
 2. **Official Gazette of a State**.
- Gazette of India = **public journal & legal document**, published weekly by Govt. of India.
- Prints **official notices**, is **authentic & accurate**, aligned with Govt. policies.

Person [Sec. 3(42)] [MTP Jan 2025 – Series II - 4 Marks] ★★★

- Includes:
 1. **Company**
 2. **Association**
 3. **Body of individuals** (incorporated or not)

Question 11:

Meaning of **'person'** under the **General Clauses Act, 1897**, and whether an **idol**, a **public body**, and a **company** qualify as persons. [Jan 25 - 4 Marks]

Answer:

As per **Section 3(42), GCA 1897**, **'person'** includes **any company, association, or body of individuals, incorporated or not**. Therefore, an **idol** (juristic person recognized by law), a **public body** (legal entity, even if not statutory), and a **company** (expressly included) are all treated as **persons**.

Registered [Sec. 3(49)]

- Means: document **registered in India** under law in force for registration of documents.

Rule [Sec. 3(51)]

- Rule = made under **power conferred by enactment**.
- Includes: **Regulation made as rule** under any enactment.

Writing [Sec. 3(65)]

- Includes:
 - Printing
 - Lithography
 - Photography

<ul style="list-style-type: none"> Other modes of representing/reproducing words in visible form 		
Miscellaneous Definitions		
Act [Sec. 3(2)] <ul style="list-style-type: none"> Includes: <ul style="list-style-type: none"> A series of acts. Illegal omissions (not lawful omissions). Based on IPC Secs. 32 & 33. Applies to civil wrongs & crimes. Example (IPC S.36): Act causing death = blows (acts) + neglect/refusal to give food (illegal omissions). 		
Affidavit [Sec. 3(3)] [MTP Jan 2025 – Series I - 2 Marks] ★★★ <ul style="list-style-type: none"> Includes: affirmation & declaration (where swearing not required). Inclusive definition (not exhaustive). General meaning: Written statement confirmed by oath/affirmation for use as evidence before Court/authority. 	Oath [Sec. 3(37)] [MTP Jan 2025 – Series I - 2 Marks] ★★★ <ul style="list-style-type: none"> Includes: affirmation & declaration (for persons allowed to affirm/declare instead of swearing). 	Swear [Sec. 3(62)] ★★★ <ul style="list-style-type: none"> Includes: affirming & declaring (where permitted by law).
<ul style="list-style-type: none"> Affidavit is always in writing – a written declaration of facts, confirmed by oath/affirmation before a magistrate or notary. Oath can be spoken (like in court, “I swear to tell the truth”). Swear is simply the act of taking that oath. 		
Central Government [Sec. 3(8)] refers to: <ol style="list-style-type: none"> Before the Constitution: <ul style="list-style-type: none"> Governor-General or Governor-General in Council. Provincial Government (under section 124(1) of the Government of India Act, 1935). Chief Commissioner (under section 94(3) of the Government of India Act, 1935). After the Constitution: <ul style="list-style-type: none"> President. "Central Government" also includes: <ol style="list-style-type: none"> State Government (under Article 258(1) of the Constitution). Chief Commissioner or Lieutenant-Governor (for Part C States before the Constitution (7th Amendment) Act, 1956). Administrator of a Union Territory (under Article 239 of the Constitution). 		
Government Securities [Sec. 3(24)] <ul style="list-style-type: none"> Meaning → Securities of Central Government or any State Government. Exclusion → In Acts/Regulations before the Constitution, does not include securities of Part B States. Applicability → By Sec. 4A, this definition applies to all Indian laws. 		
Indian Law [Sec. 3(29)] <ul style="list-style-type: none"> Means → Any Act, Ordinance, Regulation, Rule, Order, Bye-law, or other instrument: <ul style="list-style-type: none"> Having force of law before Constitution (in any Province of India). Having force of law after Constitution (in Part A or Part C States). Excludes → <ul style="list-style-type: none"> Acts of UK Parliament. Orders in Council, Rules or instruments made under such UK Acts. 		
Schedule [Sec. 3(52)] <ul style="list-style-type: none"> Means: schedule to the Act/Regulation in which word occurs. 	Section [Sec. 3(54)] <ul style="list-style-type: none"> Means: section of Act/Regulation in which word occurs. 	Sub-section [Sec. 3(61)] <ul style="list-style-type: none"> Means: sub-section of section in which word occurs.

GENERAL RULES OF CONSTRUCTION: [SECTION 5 TO SECTION 13]

Coming into Operation of Enactment - Section 5 ★★★

1. General rule:

- If no date specified → Act comes into force on **assent date**.
 - Before Constitution → assent of Governor-General.
 - After Constitution → assent of President.

2. If specific date prescribed in Gazette → Act/Regulation effective from that date.

3. Case Laws:

- **A.K. Roy v. UOI (1982):** Courts cannot compel Govt. to notify Act on a particular date.
- **Altemeis Rein v. UOI (1988):** If Govt. delays unreasonably, Court can direct Govt. to *consider* bringing Act into force.
- **State of U.P. v. Mahesh Narain (2013):** Effective date of Rules = date of **Gazette notification**, not date of preparation.

4. Law ignores fractions of a day:

- If Act to commence on 1st Jan → comes into force from **12:00 a.m.** (start of 1st Jan).

5. Examples:

- **Companies Act, 2013:** Enforced on **date of Gazette publication** (30 Aug 2013).
- **SEBI ICDR Amendment, 2015:** Enforced on **1 Jan 2016** (as prescribed in notification).

Question 12:

Referring to the **General Clauses Act, 1897**, the issue is to determine the **date of commencement** of (i) an **Act of Parliament** where no date is specified, and (ii) the **SEBI (ICDR) (Fifth Amendment) Regulations, 2015**, notified on **14 Aug 2015** but stated to be effective from **1 Jan 2016**. [ICAI Module] [Sep 24 - 2 Marks]

Answer:

As per **Sec. 5**, (i) a **Parliamentary Act** without a specified date comes into force on the date it receives **President's assent**; (ii) where a **specific date** is prescribed in the **Official Gazette**, the Act/Regulation comes into force on that date, hence the **SEBI Regulations, 2015** took effect from **1 Jan 2016**, not from **14 Aug 2015**.

Question 13:

The issue is whether **Green Earth Ltd.** must comply with the **Environment Protection Amendment Act, 2024** immediately after **President's assent on 15 July 2024**, or only from the **specified commencement date of 1 Sept 2024**, under the **General Clauses Act, 1897**.

Answer:

As per **Sec. 5**, if no date is specified, an Act comes into force on the date of **President's assent**; however, since a **specific commencement date (1 Sept 2024)** is mentioned, the Act shall be enforced **from that date**, not from **15 July 2024**.

PRESUMPTION AGAINST RETROSPECTIVITY ★★★

1. General Rule: Laws are presumed to be **prospective** (apply to future acts/events).

2. Exception: Retrospective effect only if:

- Express words in the statute, OR
- Language necessarily implies retrospective intent.

3. Rights Affected: Substantive **vested rights** cannot be taken away retrospectively unless clearly intended.

4. Test: Interpretation depends on the **language of the statute**.

5. Example: If in **2025 punishment for insider trading** is increased from **5 to 10 years**, a person who committed it in **2023** can only get **5 years** (the **law** then in force). He can't be given **10 years** unless the **amendment** is made **retrospective**.

Effect of Repeal [Sec. 6] [Sep 24 - 2 Marks]

Unless a **contrary intention** appears, **repeal** of a **Central Act/Regulation** does **not**:

- **Revive** anything **not in force** when repeal took effect.
- **Affect previous operation** of repealed enactment or anything **done/suffered** under it.
- **Affect rights, privileges, obligations, or liabilities** acquired, accrued, or incurred under repealed law.
- **Affect penalties, forfeiture, or punishment** for offences under repealed law.
- **Affect inquiry, investigation, litigation, or remedy** regarding such rights/obligations — they may **continue/commence** as if law was not repealed.

Judicial Pronouncements

- **U.P. v. Hirendra Pal Singh (2011)**: Repeal = Act treated as if it never existed, except as saved under Sec. 6.
- **Kolhapur Canesugar Works v. UOI (2000)**: Sec. 6 applies only to **repeal**, not **omission**, and only to Central Acts/Regulations, not Rules.
- **Navrangpura Gam Trust v. Ramtaji Ramaji (1994)**:
 - **Repeal** = complete obliteration (as if never existed).
 - **Deletion** = effective only from date of deletion, not wiping out past existence.

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

- Applies when a **Central Act/Regulation (Revival Act, 2025)** repeals an enactment (**IBC, 2016**) that had **amended** another Act/Regulation (**Companies Act, 2013**) by **omission, insertion, or substitution**.
- Unless **contrary intention** appears, repeal **does not affect continuance** of such amendment.
- The **amendment remains in force** even after the enactment (**IBC, 2016**) is repealed, if it was already in operation at the time of repeal.

👉 In simple terms: Once a textual amendment (like addition/deletion/change) is made in a law, that change continues even if the amending Act itself is repealed.

Revival of repealed enactments [Section 7]

- **Revival** (whole/part) of a **repealed enactment** requires **express statement of intention** in the new Act/Regulation.
- In short → A repealed law **does not automatically revive**; revival must be **clearly expressed**.

"Construction of references to repealed enactments" [Section 8] ★★★

- **Rule**: When a provision is **repealed & re-enacted** (with/without modification), references to the old provision → **construed as references to the new provision**, unless contrary intention appears.
- **Scope**:
 - Applies to **Central Acts/Regulations after commencement** of this Act.
 - Also applies to **UK Parliament laws (before 15 Aug 1947)** that repealed & re-enacted provisions.
- **Example**: Sec. 115JB, Income Tax Act, 1961 → references Companies Act, 1956. After Companies Act, 2013, by Sec. 8, reference now applies to Companies Act, 2013.

👉 **Crux**: **Reference to repealed law = deemed reference to re-enacted law** (unless contrary intention).

Question 14:

The issue is that **Sec. 2(18) (aa) of the Income Tax Act, 1961** refers to companies registered under **Sec. 25 of the Companies Act, 1956**, but after the enactment of the **Companies Act, 2013**, no corresponding change was made, raising the question of interpretation under the **General Clauses Act, 1897**. [RTP Nov 22]

Answer:

As per **Sec. 8** of the General Clauses Act, 1897 and **Gauri Shankar Gaur v. State of U.P.**, when a law is **repealed and re-enacted**, references to the old provision are construed as references to the **newly re-enacted provision**; hence,

for **Sec. 2(18)(aa) of the Income Tax Act, 1961**, the relevant provisions of the **Companies Act, 2013 (Sec. 8 company)** will apply in place of **Sec. 25 company** of the **1956 Act**.

"Commencement and termination of time" [Section 9] ★★

- **Word "from"** → excludes the **first day** in a period.
 - **Word "to"** → includes the **last day** in a period.
 - **Application:** Used for calculating statutory time limits in Acts/Regulations.
 - **Example:** Dividend declared on **30/09/2022** → 30 days "from" declaration counted **01/10/2022 to 30/10/2022** (first day excluded, last day included).
- 👉 **Crux:** "From" = exclude first day; "To" = include last day.

Question 15:

Komal Ltd. declared dividend on **27 Sept 2018**, and the issue is (i) the **period for payment of dividend**, and (ii) the **period for transfer of unpaid/unclaimed dividend to the Unpaid Dividend Account**, with reference to the **General Clauses Act, 1897** and the **Companies Act, 2013**. [ICAI Module]

Answer:

As per **Sec. 9 of the General Clauses Act, 1897** and **Sec. 127 of the Companies Act, 2013**, dividend must be paid **within 30 days from declaration**, i.e., **28 Sept 2018 to 27 Oct 2018 (both inclusive)**; as per **Sec. 124**, any unpaid/unclaimed dividend must be transferred to the **Unpaid Dividend Account** within **7 days after expiry of 30 days**, i.e., **28 Oct 2018 to 3 Nov 2018 (both inclusive)**.

Question 16:

Mr. M issued a cheque of ₹3,00,000 on **31.12.2023** at 10 a.m. to **Mr. N**, which was **presented on 31.03.2024**, but was **dishonoured on the plea that it was not within 3 months as per Sec. 138 NI Act**; issue is whether such dishonour is valid, applying the **General Clauses Act, 1897**. (May 24-2 Marks)

Answer:

As per **Sec. 9 of the General Clauses Act, 1897**, **31.12.2023 is excluded** and **31.03.2024 included**, hence presentation was **within 3 months**, so the cheque was validly presented and **plea of dishonour is not valid**.

"Computation of time" [Section 10] ★★

- If any **act/proceeding** is to be done on a **certain day** / within a **prescribed period**,
 - And the **Court/office is closed** on that day / last day,
 - Then the act/proceeding is valid if done on the **next working day**.
 - **Case law:** *K. Soosalrathnam v. Div. Engineer* → Last date was a holiday → extended to next working day.
- 👉 **Crux:** Closure of court/office on last day → next working day is valid.

Question 17:

Ajit had to file an appeal in **Kolkata High Court** on **30.03.2020**, the **last day of limitation**, but the **Court was closed due to nationwide Covid-19 lockdown**; issue is whether filing afterwards is valid under the **General Clauses Act, 1897**. [July 21 – 3 Marks]

Answer:

As per **Sec. 10 of the General Clauses Act, 1897**, if the **last day is a court holiday/closure**, the act may be done on the **next reopening day**, hence **Ajit's appeal filed on reopening of the Court will be within time**.

"Measurement of Distances" [Section 11] ★★

- Applies to **Central Acts/Regulations** made after commencement of this Act.
- Distance to be measured:
 1. **In a straight line**
 2. **On a horizontal plane**
- Unless a **different intention** appears in that law.

Question 18:

Dispute where an **environmental agency** claims ABC Ltd.'s factory is 4.5 km from a river, while ABC Ltd. contends it is 5.3 km based on road distance, under a Central Act requiring factories to be at least 5 km away from rivers, referring to the **General Clauses Act, 1897**. [MTP Jan 2025 – Series II - 5 Marks]

Answer:

As per **Sec. 11 of the General Clauses Act, 1897**, distance is measured straight in a horizontal plane; thus the agency's 4.5 km is correct, the factory is less than 5 km, and ABC Ltd.'s contention is not correct.

"Duty to be taken pro rata in enactments" [Section 12] [MTP Sep 2024 – I - 4 Marks]

★ ★ ★

- If **duty of customs/excise** is leviable on any **given quantity** (by weight/measure/value),
- Then the **same rate applies proportionately (pro rata)** to any **greater or lesser quantity**.
- **Pro rata = proportionate allocation.**

Question 19:

Mr. Chagga Lal, an importer of luxury perfumes, faces a new enactment imposing 15% duty on luxury goods including perfumes, and seeks advice under the **General Clauses Act, 1897** on the rule of duty to be taken pro rata, along with calculation of duty on 100 bottles valued at ₹50 each. [RTP Sep 24]

Answer:

As per **Sec. 12 of the General Clauses Act, 1897**, duty applies pro rata on greater or lesser quantity, hence duty on perfumes = ₹5,000 × 15% = ₹750.

"Gender and number" [Section 13] ★ ★ ★ ★ ★

- **General Rule (unless context indicates otherwise):**
 1. Words in **masculine gender** → include females.
 2. Words in **singular** → include plural & VICE VERSA.
- **Applications:**
 - "Men" includes women; pronoun **"he"** can mean male or female.
 - In **CrPC Sec. 125(1)(d)**: "his father and mother" = also "her father and mother"; daughter can be liable to maintain father.
- **Limitations:**
 - Rule **not applied in succession matters** (e.g., "male descendants" ≠ female descendants under Chota Nagpur Tenancy Act, 1908).
 - Where a **specific gender word is used**, presumption is that **GCA 1897 doesn't apply** (e.g., "bullocks" ≠ "cows").

Question 20:

Whether the word '**bullocks**' could be interpreted to include '**cows**' under the **General Clauses Act, 1897**. [July 21-2 Marks]

Answer:

The word '**bullocks**' denotes a **specific gender**, and hence cannot be interpreted to include '**cows**', as the Act does not extend such meaning.

Question 21:

Whether **Mrs. Neelu Chandra (director of Laddoo Sweets Pvt. Ltd.)**, who accepted **secret commission (undue gain) from supplier**, can avoid liability by contending that **Section 166 of the Companies Act, 2013** (which states: "A director shall not achieve or attempt to achieve any undue gain or advantage either to himself, his relatives, partners or associates and if guilty shall be liable to pay an amount equal to that gain to the company") applies only to **male directors**. [RTP Nov 23]

Answer:

As per **Section 13 of the General Clauses Act, 1897**, words importing **masculine gender include females**; hence **Section 166 of the Companies Act, 2013** applies equally to **male and female directors**, and **Mrs. Neelu Chandra is bound to repay the undue gain to the company.**

Question 22:

Whether **Mr. Avinash**, already a **Whole-time director (KMP) at Moon Pharma Ltd.**, can also be appointed as **Whole-time director in X Ltd. and Y Ltd.**, when Moon Pharma holds **55% in X Ltd., 60% in Y Ltd., and 65% in Z Ltd.** (Nov 23 4 Marks)

OR

Whether **Purva**, serving as **CFO of Purva Buildcon Ltd. (PBL)**, can simultaneously hold the office of **CFO in its two subsidiary companies—Arihant Cements Ltd. (ACL) and Siddharth Bricks Ltd. (SBL)**—with reference to the **Companies Act, 2013** and the **General Clauses Act, 1897.** (May 25 - 4 Marks)

Answer:

As per **Section 2(87), Companies Act, 2013**, X Ltd., Y Ltd. and Z Ltd. are **subsidiaries of Moon Pharma Ltd.**; under **Section 203(3), Companies Act, 2013**, a Whole-time KMP cannot hold office in more than one company **except in its subsidiary company**; applying **Section 13, General Clauses Act, 1897** (singular includes plural), he can hold office in **more than one subsidiary** — thus, **Mr. Avinash's appointment in both X Ltd. and Y Ltd. is valid.**

OR

Purva may serve as CFO in both ACL and SBL simultaneously.

POWER AND FUNCTIONARIES [SECTION 14 TO SECTION 19]

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

Power given under any Central Act/Regulation (post-commencement of GCA) → exercisable **from time to time as occasion requires**, unless contrary intention.

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

- If legislation confers **power to appoint**, then unless expressly excluded:
 - Appointment can be **by name** or **ex-officio (by virtue of office)**.
- **Ex-officio meaning:** By virtue of one's position/office.
- If The Education Act is silent on appointment of regional directors, Section 15 applies:
- **By Name** → Board appoints Mr. A, Mr. B, Ms. C as directors.
- **By Office** → State Education Ministers automatically act as directors.

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

Section 16 – Power to appoint includes power to suspend/dismiss

- Authority having power to **appoint** → also has power to **suspend or dismiss** the appointee.
- Applies whether appointment made **by same authority** or **another authority** exercising that power.
- **Illustrations:**
 - **CPC, 1908 (Order 40, Rule 1(a))** – Power to appoint a receiver → includes power to remove receiver.
 - **Constitution, Art. 229(1)** – Chief Justice's power to appoint High Court staff → includes power to suspend/dismiss them.

Question 23:

Whether **Mr. Sharad (CEO of Cool Pvt. Ltd.)**, who was **authorized by the Board (through resolution) to appoint two employees (Mr. Suresh and Mr. Hemant) in the procurement department**, also had the **power to dismiss** them

when found **unsatisfactory and dishonest**, despite contention by **Mr. Suresh** that the **Board only empowered him to appoint, not dismiss**, under the **General Clauses Act, 1897**.

Answer:

As per **Section 16 of the General Clauses Act, 1897**, the authority having power to **appoint** also has power to **suspend or dismiss**, hence **Mr. Sharad** validly dismissed the employees, and **Mr. Suresh's argument fails**.

"Substitution of functionaries" [Section 17] (Substitutes post by title)

- Mention of **official title** of officer is enough → applies to whoever is holding/executing that office at the time.
- Ensures law applies even if officer changes.
- **Example:** Law needs DM's approval for curfew.
2020 → Mr. A is DM.
2025 → Mr. B is DM.
Law still applies (post matters, not person).

"Successors" [Section 18] (Focuses on continuity) ★★★

- Mention of functionaries/corporations in law → automatically covers their **successors**.
- Applies to corporations with **perpetual succession**.
- **Example:** Suppose a law passed in 1990 states:
"The Central Government may transfer certain properties to the Life Insurance Corporation of India (LIC)."
Now, decades later, LIC is still the same legal entity (a corporation with perpetual succession) but has a different chairperson and directors.
- The law still applies to LIC today, even though the people running it have changed.

Question 24:

Whether **Ms. Priya Sharma (Deputy Director of Digital Communications)**, who was **lawfully assigned the duties of Director** during **Mr. Arjun Patel's (Director) medical leave in Jan 2024**, could **validly investigate a major data breach, enforce penalties, and implement compliance measures under the Digital Communications Act**, despite the opposing party's claim that **only the Director had such authority**, in light of the **General Clauses Act, 1897**. [MTP Sep 2024 – Series I - 5 Marks]

Answer:

As per **Section 19 of the General Clauses Act, 1897 (Official chiefs and subordinates)**, a law relating to the **chief/superior of an office** applies equally to **deputies/subordinates lawfully performing those duties**, hence **Ms. Priya Sharma's actions were valid and enforceable**.

"Official Chiefs and subordinates" [Section 19] (Focuses on delegated)

- Law applicable to **chief/superior officer** → also applies to **deputies/subordinates** lawfully performing duties.
- **Case law:**
 - *K.G. Krishnayya v. State* – Successor authority can implement/continue schemes.
 - Preventive Detention Act – Change in Advisory Board → new board can decide pending cases.
- **Example:**
 - **Ex 1:** If Commissioner is absent, Deputy Commissioner can receive the report.
 - **Ex 2:** If RoC is on leave, Assistant RoC (authorized) can act as RoC.

PROVISION AS TO ORDERS, RULES ETC. MADE UNDER ENACTMENTS [SECTION 20 TO SECTION 24]

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

Section 20 – Construction of orders, rules, etc. under enactments

- Words/expressions used in **notifications, orders, schemes, rules, forms, by-laws** → have **same meaning** as in the parent Act/Regulation.
- Ensures **consistency** between Act and delegated legislation.

Example: "Collector" in Land Acquisition (Companies) Rules, 1963 → same meaning as in Sec. 3(c), Land Acquisition Act, 1894.

"Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws" [Section 21]

- Authority empowered to issue **notifications, orders, rules, by-laws** → also has power to **add, amend, vary, rescind** them.
- Such power to be exercised **in the like manner & subject to same sanction/conditions** as original issuance.
- Power is **continuing** → can be used from time to time.

Case law:

- *Rasid Javed v. State of U.P.* (2010 SC): Authority issuing notification also has power to rescind/modify it.
- *Shreesidhbal Steel Ltd. v. State of U.P.* (2011 SC): Power not limited to one-time use → can be exercised repeatedly as per exigencies.

"Making of rules or bye-laws and issuing of orders between passing and commencement of enactment" [Section 22]

- When an Act/Regulation is **passed but not yet in force**, power to:
 - **Make rules/bye-laws**
 - **Issue orders** (re: application, courts, judges, officers, time, place, manner, fees, etc.)
- Such power can be exercised **after passing** but rules/orders **take effect only from commencement**.
- **Purpose:** Enabling provision → facilitates preparatory rules/orders in advance of enactment coming into force.
- **Validation:** Rules/orders made **after passing but before commencement** are valid (operative only from commencement).

👉 **CruX:** Section 22 allows **preparatory rule-making/orders** before commencement of an Act, ensuring smooth implementation once it comes into force.

"Provisions applicable to making of rules or bye-laws after previous publications" [Section 23] [MTP Sep 2024 – Series II - 4 Marks]

1. **Draft publication mandatory** – authority must publish draft rules/bye-laws for affected persons.
2. **Mode of publication** – as authority deems sufficient, or as Govt. prescribes (if required).
3. **Notice with draft** – specify date on/after which draft will be considered.
4. **Consider objections/suggestions** – by rule-making authority (and sanctioning authority, if any) before finalizing.
5. **Official Gazette publication = conclusive proof** – rules deemed duly made; procedure presumed followed.

Additional points:

- Irregularities in draft publication **cannot be questioned** after Gazette notification.
- Authority can make **ancillary changes** before final issue → no need for re-publication if not foreign to subject matter.

👉 **Crux:** Section 23 ensures **transparency & participation** in rule-making, but once published in the Gazette, validity of rules **cannot be challenged on procedural grounds**.

Question 25:

Whether the **Ministry of Corporate Affairs (MCA)**, while amending Rules under the **Companies Act, 2013**, is (i) **required to publish a draft of proposed Rules**, (ii) whether **irregularities in publication can be questioned**, (iii) whether **MCA can make suitable changes in the draft**, and (iv) whether **re-publication is required when changes are only ancillary**, in light of the **General Clauses Act, 1897**. [May 22 – 4 Marks]

Answer:

As per **Section 23 of the General Clauses Act, 1897 (Making of rules or bye-laws after previous publication)**: (i) **Yes**, MCA must publish the draft, (ii) **No**, irregularities in draft publication cannot be questioned since Gazette publication is **conclusive proof** of compliance, (iii) **Yes**, MCA can make suitable changes in the draft before final publication, and (iv) **No**, re-publication is not necessary where changes are merely **ancillary**.

**"Continuation of orders etc., issued under enactments repealed and re-enacted"
[Section 24]:**

- General rule** – If a Central Act/Regulation is repealed & re-enacted (with or without modification), then:
 - Any **appointment, notification, order, scheme, rule, form, or bye-law** made under the repealed law → continues in force.
 - They are **deemed issued under the re-enacted law**, unless expressly provided otherwise.
- Extension & withdrawal cases** – If a law extended to an area (u/s 5 or 5A, Scheduled Districts Act, 1874 or similar law) is later withdrawn and re-extended → deemed as repealed & re-enacted in that area.
- Principle recognized** – Repeal + Re-enactment (substantially same) = **continuity preserved** (no interruption).
- Modification scenario** – If re-enactment modifies provisions → the changed parts of old law are considered **repealed to that extent**.
Example: Mines Act 1923 (age 13) → replaced by Mines Act 1952 (age 15). Old rule continues but modified to 15.
- Case law:**
 - State of Punjab v. Harnek Singh* (AIR 2002 SC 1074) – Notifications/authorizations under repealed law remain valid until **expressly superseded/withdrawn**.
 - Mines Act, 1923* → *Mines Act, 1952* – Rules under repealed Act continue until replaced.
- Clarification** – Even if old law said “rules shall have effect as if enacted in the Act,” such rules do **not lapse automatically** on repeal → Section 24 saves them.
Example: Electricity Act 1910 repealed by 2003 Act. Old rules don’t lapse; they survive until replaced/withdrawn.

"Recovery of fines" [Section 25]

- Applicability** –
 - Sections 63–70, IPC** (relating to fines) +
 - CrPC provisions** (on issue & execution of warrants for levy of fines) → apply to **all fines imposed** under any Act, Regulation, Rule, or Bye-law.
- Exception** – If the concerned Act/Regulation/Rule/Bye-law itself contains an **express contrary provision**, then Section 25 will not apply.

"Provision as to offence punishable under two or more enactments" [Section 26] [May 23 – 3 Marks] [RTP Sep 25] ★★★

- General Rule** –
 - If an act/omission is an **offence under 2+ enactments** → offender may be **prosecuted under either or any enactment**.

<ul style="list-style-type: none"> But cannot be punished twice for the <i>same offence</i>.
2. Relation with Constitution – <ul style="list-style-type: none"> Article 20(2), Constitution → <i>No double jeopardy</i>: no one shall be prosecuted & punished more than once for the same offence.
3. Judicial View – <ul style="list-style-type: none"> Supreme Court: <ul style="list-style-type: none"> No bar on trial/conviction under 2 enactments. Bar only on double punishment for the same offence. Case: State of M.P. v. V.R. Agnihotri (1957 SC) <ul style="list-style-type: none"> Alternative charges permissible (e.g., IPC 409 & PC Act 5(2)). Acquittal under one doesn't bar conviction under the other.
4. Limitation – <ul style="list-style-type: none"> Section 26 & Article 20(2) apply only when ingredients of both offences are identical. If offences are distinct → both provisions won't apply.

Example 1 – <i>Same offence (bar applies)</i>	Example 2 – <i>Distinct offences (bar does NOT apply)</i>
<ul style="list-style-type: none"> Situation: A public servant misappropriates money. Law applicable: <ul style="list-style-type: none"> Section 409, IPC – Criminal breach of trust by public servant. Section 13(1)(c), Prevention of Corruption Act – Criminal misconduct (misappropriation). Observation: Both offences have same ingredients (misappropriation of property by a public servant). Effect: He can be prosecuted under both, but punished only once. 	<ul style="list-style-type: none"> Situation: A person forges a document and then uses it to cheat. Law applicable: <ul style="list-style-type: none"> Section 463, IPC – Forgery. Section 420, IPC – Cheating. Observation: Ingredients are different – <ul style="list-style-type: none"> Forgery = making a false document. Cheating = inducing delivery of property by deception. Effect: Person can be punished separately under both because the offences are distinct.

Question 26:

In a **contract of sale**, where **Mr. A fraudulently sold unmarketable goods to Mr. B**, and the offence is punishable under **both the Indian Contract Act, 1872 and the Sale of Goods Act, 1930**, whether **punishment can be given under both Acts** in light of the **General Clauses Act, 1897**. [Sep 24 – 2 Marks]

Answer:

As per **Section 26 of the General Clauses Act, 1897** (Provision as to offences punishable under two or more enactments), **Mr. A may be prosecuted under either or any enactment, but cannot be punished twice for the same offence, i.e., no double punishment.**

"Meaning of Service by post" [Section 27] ★★

General Rule: 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.

Case Law Points

- United Commercial Bank v. Bhim Sain Makhija (1994):** If law requires *Registered Post A/D* but sent only by *Registered Post*, presumption of service **not valid**.

- **Jagdish Singh v. Natthu Singh (1992 SC):** If letter returned with endorsement of **refusal**, it is deemed as **valid service**.
- **Smt. Vandana Gulati v. Gurmeet Singh (2013 All HC):**
 - Notice sent to correct address by registered post is **deemed served** unless contrary proved.
 - Endorsement **"not claimed / not met"** = **deemed service**.

Question 27:

Mr. A (landlord, Delhi) rented his Bengaluru flat to Mr. B (tenant) for ₹2,20,000 per month payable annually, with an agreement requiring **1-month prior notice** for vacating. After **8 months**, Mr. A sent notice by **registered post**, which was **refused by Mrs. C (wife of B)**, and Mr. B denied receipt—issue is **whether notice is tenable** under the **General Clauses Act, 1897**.

Answer:

As per **Section 27 of the General Clauses Act, 1897** and supported by case law (**Smt. Vandana Gulati v. Gurmeet Singh; Jagdish Singh v. Nathu Singh**), service by **properly addressed, prepaid, registered post** is deemed effected; **refusal to accept = valid service**, hence **notice is tenable** if 1-month prior condition is met.

Question 28:

Notice served on Mr. P to appear in court could not be delivered as **his house was found locked**, and he did not appear—issue is **whether notice is validly served** under the **General Clauses Act, 1897**.

Answer:

As per **Section 27 of the General Clauses Act, 1897**, service by post is **deemed effected at the time it would ordinarily be delivered**; thus, even if house was locked, notice is **deemed properly served**, and it is for **Mr. P to prove non-service and lack of responsibility**.

Question 29:

Mr. Rachit purchased a new house but did not **update his address** with the **Income Tax Department**; a **show cause notice** (reply within **15 days**) was **properly sent by registered post** to his **old address** (as per records), but the **current owner refused** to accept; issue is whether this is **proper service of notice**. (**MTP May 24 (1) – 4 Marks**)

Answer:

As per **Section 27 of the General Clauses Act, 1897** and **Jagdish Singh vs. Natthu Singh**, service by **registered post at recorded address** is **deemed valid**, even if **refused by present occupant**; hence notice was **properly served**, and **Mr. Rachit cannot escape liability** since it was his duty to **update the address**.

Question 30:

When **statutory rules require** notice to be sent by **"registered post acknowledgment due"**, but it is instead sent only by **"registered post"**, whether **presumption of service** under the **General Clauses Act, 1897** is valid. [**RTP Nov 2019**]

Answer:

As per **Section 27 of the General Clauses Act, 1897**, if rules mandate **"registered post acknowledgment due"**, then sending by **registered post only** is **not valid service**; presumption of service is **not tenable** (supported by **United Commercial Bank v. Bhim Sain Makhija, AIR 1994 Del 181**). However, if rules did not specify **acknowledgment due**, then service by **registered post** alone would suffice.

"Citation of enactments" [Section 28]

General Rule

1. Citation of an enactment may be by:

- Title or short title, OR
- **Example:** The Companies Act, 2013
- Number and year of the enactment.
- **Example:** Act No. 18 OF 2013

2. Citation of a provision → by reference to **section or sub-section** in which it is contained.

Scope

3. Applies to:

- Any Central Act or Regulation.
- Any rule, bye-law, instrument, or document made under such Act/Regulation.

4. Unless contrary intention appears, **description/citation of a portion** of an enactment includes:
- The word/section/part mentioned as **beginning**, AND
 - The word/section/part mentioned as **end** of that portion.
 - **Example:** If a rule says "Sections 5 to 10 apply," → it covers **Sections 5, 6, 7, 8, 9, and 10** (both 5 and 10 included).

"Saving for previous enactments, rules and bye laws" [Section 29]

1. Provisions of **General Clauses Act** apply only to:
 - Acts, Regulations, rules or bye-laws **made after** its commencement.
2. **They do not affect:**
 - Construction of **any Act, Regulation, rule or bye-law** which was **already in force** before commencement, but
 - Is **continued or amended** by a later Act, Regulation, rule or bye-law.
3. **Example:** Indian Evidence Act, 1872

"Application of Act to Ordinances" [Section 30]

1. In **General Clauses Act**, expression "**Central Act**" includes **Ordinances**.
2. Exception → Does **not** include Ordinances in:
 - Section 5, and
 - The word '**Act**' in Section 3 clauses **(9), (13), (25), (40), (43), (53), (54)**, and
 - Section 25.
3. Ordinances covered:
 - By **Governor General** under:
 - Sec 23 of Indian Councils Act, 1861
 - Sec 72 of Government of India Act, 1915
 - Sec 42 of Government of India Act, 1935
 - By **President** under **Article 123 of Constitution**.