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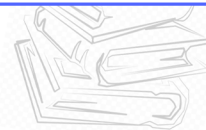
LAW REVISION NOTES

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REVISION NOTES



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CHAPTER - 14

THE GENERAL CLAUSES ACT, 1897

• BACKGROUND AND AIM OF THE ACT



» The General Clauses Act, 1897 was enacted on **11th March, 1897**



» Application of the General Clauses Act

1. The Act does not define any "territorial extent" clause.
2. It shall apply to every territory where a Central Act is applicable and would apply in the construction of that Central Act.

» Object, purpose and importance of the General Clauses Act:

1. The object of the act are several, namely:
 - a. To shorten the Language of Central Acts.
 - b. To provide, as far as possible, for uniformity of expression in Central Acts, by giving definitions of a series of terms in common use.
2. The General Clauses Act thus makes provisions as to the construction of General Acts and other Laws applicable to whole of India. The Act has also been called as the **"Law of all Laws"**. Thus, we can see that the purpose of this Act itself enshrines the importance of the Act.

• SOME BASIC UNDERSTANDINGS OF LEGISLATION



» **Definitions:** Every Act contains definition part for the purpose of that particular Act and that definition part are usually mentioned in the Section 2 of that Act but in some other Acts, it is also mentioned in Section 3 or in other initial sections. Hence, definitions are defined in the Act itself. However, if there may be words which are not defined in the definitions of the Act, the meaning of such words may be taken from General Clauses Act, 1897.

» "Means" and/or "include":

- a. Some definitions use the word "means". Such definitions are exhaustive definitions and exactly define the term:



The General Clauses Act, 1897

Example: Definition of 'Company' as given in section 2(20) of the Companies Act, 2013. It states, "Company" means a company incorporated under this Act or under any previous company Law.

b. Some definitions use the word "include". Such definitions do not define the word but are inclusive in nature. The word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

Example: Word 'debenture' defined in section 2(30) of the Companies Act, 2013 states that "debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not". This is a definition of inclusive nature.

» "Shall" and "May"

The word 'shall' is used to raise a presumption of something which is mandatory or imperative while the word 'may' is used to connote something which is not mandatory but is only directory or enabling

Example: Section 3 of the Companies Act, 2013 states that "A company may be formed for any lawful purpose by •"

Here, the word used "may" shall be read as "shall". Usage of word 'may' here makes it mandatory for a company for the compliance of section 3 for its formation.

• PRELIMINARY [SECTION 1]

This Act may be called the TheGeneral Clauses Act, 1897. Preliminary is the introductory part of any Law which generally contains Short Title, extent, commencement, application etc. The General Clauses Act contains only short title in the Preliminary part of the Act.

The General Clauses Act, 1897

• DEFINITIONS [SECTION 3]



Sec 3(2)	Act 'Act', used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions
Sec 3(3)	Affidavit 'Affidavit' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing. This definition does not define affidavit. However, we can understand his term in general parlance. Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority
Sec 3(7)	Central Act 'Central Act' shall mean an Act of Parliament, and shall include- (a) An Act of the Dominion Legislature or of the Indian Legislature passed before the commencement of the Constitution and (b) An Act made before such commencement by the Governor General in Council or the Governor General, acting in a Legislative capacity;
Sec 3(8)	Central Government 'Central Government' shall- (a) In relation to anything done before the commencement of the Constitution, mean the Governor General in Council, as the case may be; and shall include,- (i) In relation to functions entrusted to the Government of a Province, (ii) In relation to the administration of a Chief Commissioner's Province, & (b) In relation to anything done or to be done after the commencement of the constitution of the Constitution, mean the President; and shall include :-

The General Clauses Act, 1897

• DEFINITIONS [SECTION 3]



	(i) In relation to function entrusted under the Constitution, to the Government of a state, the State Government acting within the scope of the authority given to it under that clause; (ii) In relation to the administration before the commencement of the Constitution, the Chief Commissioner or the Lieutenant Governor or the Government of a neighbouring State or other authority acting within the scope of the authority given to him and In relation to the administration of a Union territory, the administrator thereof acting within the scope of the authority given to him.
Sec 3(13)	Commencement 'Commencement' used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force.
Sec 3(18)	Document 'Document' shall include any matter written, expressed or described upon any substance by means of letters, figures or marks or by more than one of those means which is intended to be used or which may be used, for the purpose or recording that matter. For example, book, file, painting, inscription and even computer files are all documents
Sec 3(19)	Enactment 'Enactment' shall include a Regulation or any Act (or a provision contained therein) made by the Union Parliament or the State Legislature.
Sec 3(21)	Financial year Financial year shall mean the year commencing on the first day of April. Difference between Financial Year and Calendar Year: Financial year starts from first day of April but Calendar Year starts from first day of January.

The General Clauses Act, 1897

• DEFINITIONS [SECTION 3]



Sec 3(22)	Good Faith A thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not. This definition of the good faith does not apply to that enactment which contains a special definition of the term "good faith" and there the definition given in that particular enactment has to be followed.
Sec 3(23)	Government 'Government' or 'the Government' shall include both the Central Government and State Government.
Sec 3(24)	Government securities 'Government securities' shall mean securities of the Central Government or of any State Government, but in any Act or Regulation made before the commencement of the Constitution.
Sec 3(26)	Immovable Property Immovable Property' shall include: i) Land, ii) Benefits to arise out of Land, and iii) Things attached to the earth, or iv) Permanently fastened to anything attached to the earth
Sec 3(27)	Imprisonment Imprisonment shall mean imprisonment of either description as defined in the Indian Penal Code (45 of 1860)
Sec 3(29)	Indian Law 'Indian Law' shall mean any Act, Ordinance, Regulation, rule, order, bye Law or other instrument which before the commencement of the Constitution, had the force of Law in any Province of India or part thereof.

The General Clauses Act, 1897

• DEFINITIONS [SECTION 3]



Sec 3(22)	Month <i>'Month' shall mean a month reckoned according to the British calendar;</i>
Sec 3(36)	Movable Property <i>'Movable Property' shall mean property of every description, except immovable property.</i>
Sec 3(37)	Oath <i>'Oath' shall include affirmation and declaration in the case of persons by Law allowed to affirm or declare instead of swearing.</i>
Sec 3(38)	Offence <i>'Offence' shall mean any act or omission made punishable by any Law for the time being in force.</i> <i>Any act or omission which is if done, is punishable under any Law for the time being in force, is called as offence.</i>
Sec 3(39)	Official Gazette <i>'Official Gazette' or 'Gazette' shall mean:</i> <i>(i) The Gazette of India, or</i> <i>(ii) The Official Gazette of a state</i>
Sec 3(42)	Person <i>'Person' shall include:</i> <i>(i) any company, or</i> <i>(ii) association, or</i> <i>(iii) body of individuals, whether incorporated or not</i>
Sec 3(49)	Registered <i>'Registered' used with reference to a document, shall mean registered in India under the Law for the time being force for the registration of documents</i>

The General Clauses Act, 1897

• DEFINITIONS [SECTION 3]



Sec 3(51)	Rule 'Rule' shall mean a rule made in exercise of a power conferred by any enactment, and shall include a Regulation made as a rule under any enactment.
Sec 3(52)	Schedule 'Schedule' shall mean a schedule to the Act or Regulation in which the word occurs.
Sec 3(54)	Section 'Section' shall mean a section of the Act or Regulation in which the word occurs.
Sec 3(61)	Sub-section 'Sub-section' shall mean a sub-section of the section in which the word occurs;
Sec 3(62)	Swear 'Swear', with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing. Note: The terms "Affidavit", "Oath" and "Swear" have the same definitions in the Act.
Sec 3(65)	Writing Expressions referring to 'writing' shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible forms;
Sec 3(66)	Year 'Year' shall mean a year reckoned according to the British calendar.



The General Clauses Act, 1897

» Application to foregoing definitions to previous enactments [Section 4]-

There are certain definitions in section 3 of the General Clauses Act, 1897 which would also apply to the Acts and Regulations made prior to 1897 i.e., on the previous enactments of 1868 and 1887. This provision is divided into two parts-

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

(2) Application of terms/expressions to all Central Acts and Regulations made on or after the fourteenth day of January, 1887- The relevant given definitions in the section 3 of the following words and expressions, that is to say, 'commencement', 'financial year', 'offence', 'registered', 'schedule', 'sub-section' and 'writing' apply also, unless there is anything repugnant in the subject or context, to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.

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

The definitions in section 3 of the expressions 'Central Act', 'Central Government', 'Gazette', 'Government', 'Government Securities', 'Indian Law', and 'Official Gazette', shall apply, unless there is anything repugnant in the subject or context, to all Indian Laws.

• GENERAL RULES OF CONSTRUCTION



1. Section 5 — Coming into operation of enactment.



The General Clauses Act, 1897

If no date of commencement is specified for any Central Act, then it shall be implemented from date on which it received assent from:

- a. Governor General — for Central Acts and /or
- b. President — for Act of Parliament



2. Section 6 — Effect of Repeal

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

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

State of Uttar Pradesh v. Hirendra Pal Singh, (2011), SC held that whenever an Act is repealed, it must be considered as if it had never existed. Object of repeal is to obliterate the Act from statutory books, except for certain purposes as provided under Section 6 of the Act.

Navrangpura Gam Dharmada Milkat Trust v. Ramtuji Ramaji, 'Repeal' of provision is in distinction from 'deletion' of provision. 'Repeal' ordinarily brings about complete obliteration of the provision as if it never existed, thereby affecting all incoherent rights and all causes of action related to the 'repealed' provision while 'deletion' ordinarily takes effect from the

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date of legislature affecting the said deletion, never to effect total effecting or wiping out of the provision as if it never existed. For the purpose of this section, the above distinction between the two is essential.

3. Section 6 (A) — Repeal of Act making textual amendment in Act or Regulation

Where any Act or repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

4. Section 7 — Revival of repealed enactments

If any enactment has been repealed either wholly or partially then it is necessary to expressly state the purpose for which the enactment has to be revived.

5. Section 8 — Construction of references to repealed enactments

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

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

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6. Section 9 — Commencement and termination of time

In any legislation or regulation the word "from" shall be used to exclude the first day and use the word "to" to include the last day.

Example: If a company declares dividend for its shareholder in its Annual General Meeting held on 30/09/2016. Under the provision of the Companies Act, 2013, company is required to pay declared dividend within 30 days from the date of declaration i.e. from 01/10/2016 to 30/10/2016. In this series of 30 days, 30/09/2016 will be excluded and last 30th day i.e. 30/10/2016 will be included.

7. Section 10 — Computation of time

If any proceeding is to take place on a particular day or within a prescribed period and if the court or office is closed on that day or last day of the prescribed period then the proceeding shall be conducted on the next day afterwards when the court or office is open.

8. Section 11 — Measurement of Distances

For the purposes of any Central Act or Regulation made after the commencement of this Act, any distance shall be measured in a straight line on a horizontal plane unless otherwise mentioned.

9. Section 12 — Duty to be taken pro rata in enactments

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

10. Section 13 — Gender and number

In all legislations and Regulations, all words having masculine gender shall

The General Clauses Act, 1897

• POWERS AND FUNCTIONARIES



1. Section 14 — Power conferred to be exercisable from time to time

a. Any power is conferred (given) by the Central Act or Regulation after commencement of this Act then the power shall be exercised from time to time as the occasion requires unless there is a different intention.



2. Section 15 — Power to appoint to include power to appoint ex-officio

- a. If Legislation or Regulation gives any power to appoint a person to fill any office or execute any function then any such appointment may be made either by name or by virtue of (as a result of) office.
- b. Ex-officio is a Latin word which means by virtue of one's position or office. Provision under this section states that where there is a power to appoint, the appointment may be made by appointing ex-officio as well.



3. Section 16 — Power to appoint to include power to suspend or dismiss

If the Legislation or Regulation gives any power to make appointments then it implies that Authority shall also have the power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

4. Section 17 — Substitution of functionaries

The act requires mentioning the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

5. Section 18 — Successors

In any functionaries or of corporations having perpetual succession, the Law of successors should be specified.



The General Clauses Act, 1897

3. Section 19 — Official Chiefs and subordinates

Any Law that shall be applicable to the chief or superior shall apply to the deputies and subordinates who are performing the duties of that office in place of the superior.

• PROVISION AS TO ORDERS, RULES ETC. MADE UNDER ENACTMENTS

1. Section 20 — Construction of orders, etc., issued under enactments

Any expression used in the notification, order, scheme, rule, form, or by-Law shall have the same meaning as in the Act or regulation unless otherwise mentioned.

2. Section 21— Power to issue, to include power to add, to amend, vary or rescind notifications, orders, rules or bye-Laws

Any power given by the Legislation or regulation to issue any notification, order, scheme, rule, form, or by-Law shall include the power to add, to amend, vary or rescind notifications, orders, rules or bye-Laws so issued.

3. Section 22— Making of rules or bye-Laws and issuing of orders between passing and commencement of enactment

Anything is to be done under the Act or Regulation is given as soon as the act is passed, though not immediately into force but shall not take effect till the commencement of the Act or Regulation.

4. Section 23 — Provisions applicable to making of rules or bye-Laws after previous publications

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

The General Clauses Act, 1897

- a. The authority having power to make the rules or bye-laws shall publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby.
- b. The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes.
- c. A notice shall be published with the draft specifying a date on or after which the draft will be taken into consideration.
- d. The authority having power to make the rules or bye-laws shall consider the objections and suggestions of the authority whose sanction, approval or concurrence is required with respect to the draft before the date so specified.
- e. The publication in the Official Gazette of a rule or bye-law shall be conclusive proof that the rule or bye-laws has been duly made.

5. Section 24 — Continuation of orders etc, issued under enactments repealed and reenacted

• MISCELLANEOUS



1. Section 25 — Recovery of Fines

Section 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule or byelaws, unless the Act, Regulation, rule or bye-law contains an express provision to the contrary.

2. Section 26 — Provision as to offence punishable under two or more enactments

Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be punished twice for the same offence.

The General Clauses Act, 1897

3. Section 27 — Meaning of Service by post

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:



- a. Properly addressing
- b. Pre paying
- c. 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.

4. Section 3 (28) — Citation of enactments

a. In any Central Act or Regulation, and in any rule, bye Law, instrument or document, made under, or with reference to any such Act or Regulation, any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and years thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.

5. Section 29— Saving for previous enactments, rules and bye Laws

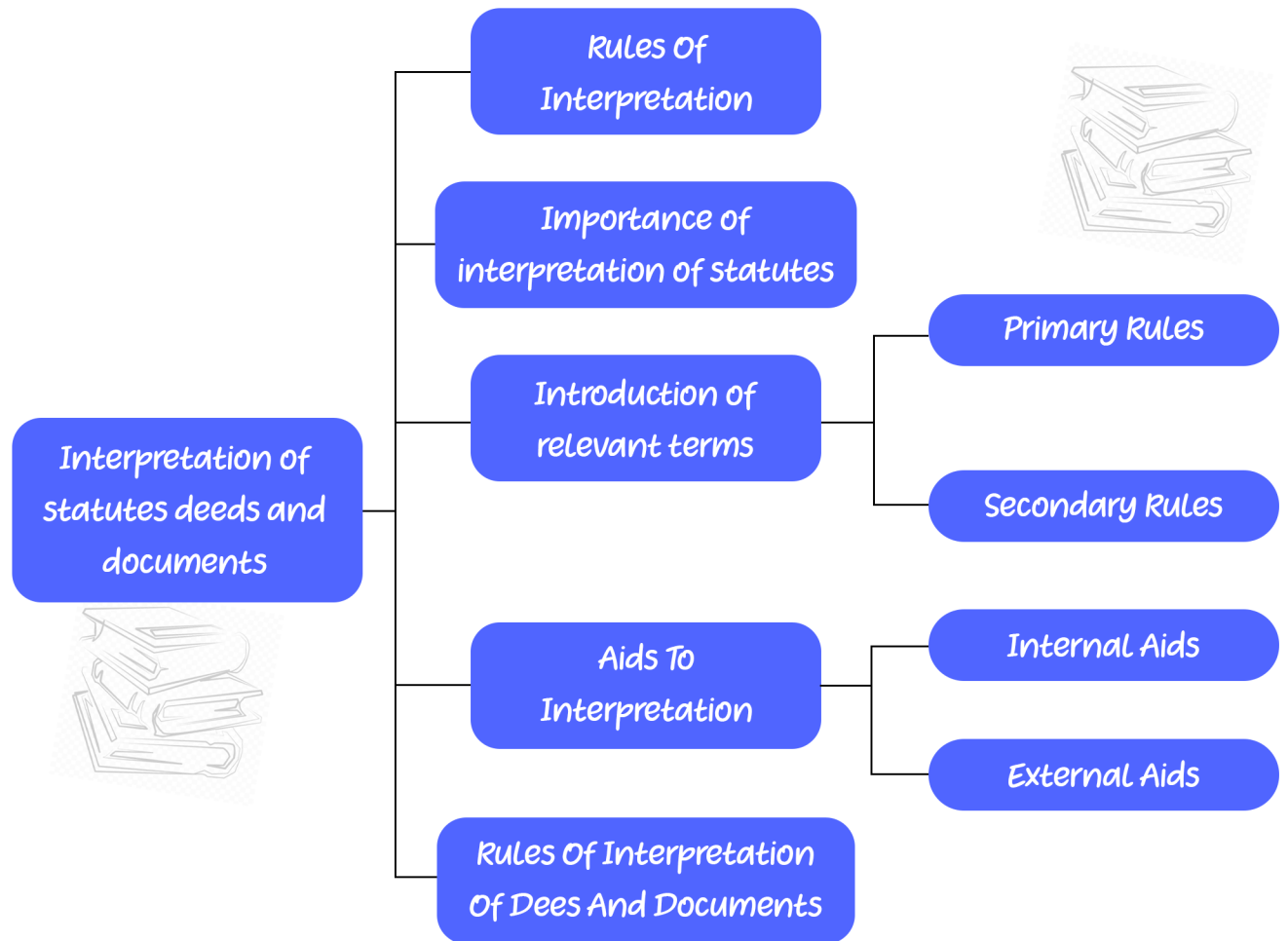
The provisions of this Act respecting the construction of Acts, Regulations, rules or byelaws made after commencement of this Act shall not affect the construction of any Act, Regulation, rule or bye-law is continued or amended by an Act, Regulation, rule or byelaw made after the commencement of this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

6. Section 30 — Application of Act to Ordinances



CHAPTER - 15

INTERPRETATION OF STATUTES



• MEANING OF 'STATUTE':

- ✓ A statute has been defined as 'the written will of the legislature'. A Statute is a Law established by the act of legislative power, i.e., an Act of legislature.
- ✓ The Constitution of India does not use the term 'Statute' but it uses the term 'Law', 'Law' includes any ordinance, order, bye-law, rule, regulations, notification, custom or usage having the force of Law.
- ✓ Thus, Statute or Law generally means the laws and regulations of every sort without considering the source from which they emanate.

INTERPRETATION OF STATUTES

• MEANING OF 'INTERPRETATION':



- ✓ Interpretation is the process of ascertaining the true meaning of the words used in a Statute.
- ✓ When the Language of a Statute is clear, there is no need for the rules of interpretation.



But, in certain cases more than one meaning may be derived from the same word or sentence. It is therefore necessary to interpret the Statute to find out the real meaning of the statute.

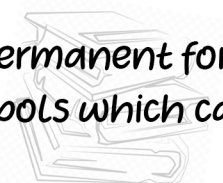
• DOCUMENT



- ✓ Generally understood, a document is a paper or other material thing giving information, proof or evidence of anything. The Law defines 'document' in a more technical form. Section 3 of the Indian Evidence Act, 1872 states that 'document' means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

- ✓ Generally, documents comprise of following four elements :

- a) Matter—This is the first element. Its usage with the word "any" shows that the definition of document is comprehensive.
- b) Record—This second element must be certain mutual or mechanical device employed on the substance. It must be by writing, expression or description.
- c) Substance—This is the third element on which a mental or intellectual elements comes to find a permanent form.
- d) Means—This represents forth element by which such permanent form is acquired and those can be letters, any figures, marks, symbols which can be used to communicate between two persons.



INTERPRETATION OF STATUTES

• DIFFERENCE BETWEEN INTERPRETATION AND CONSTRUCTION.



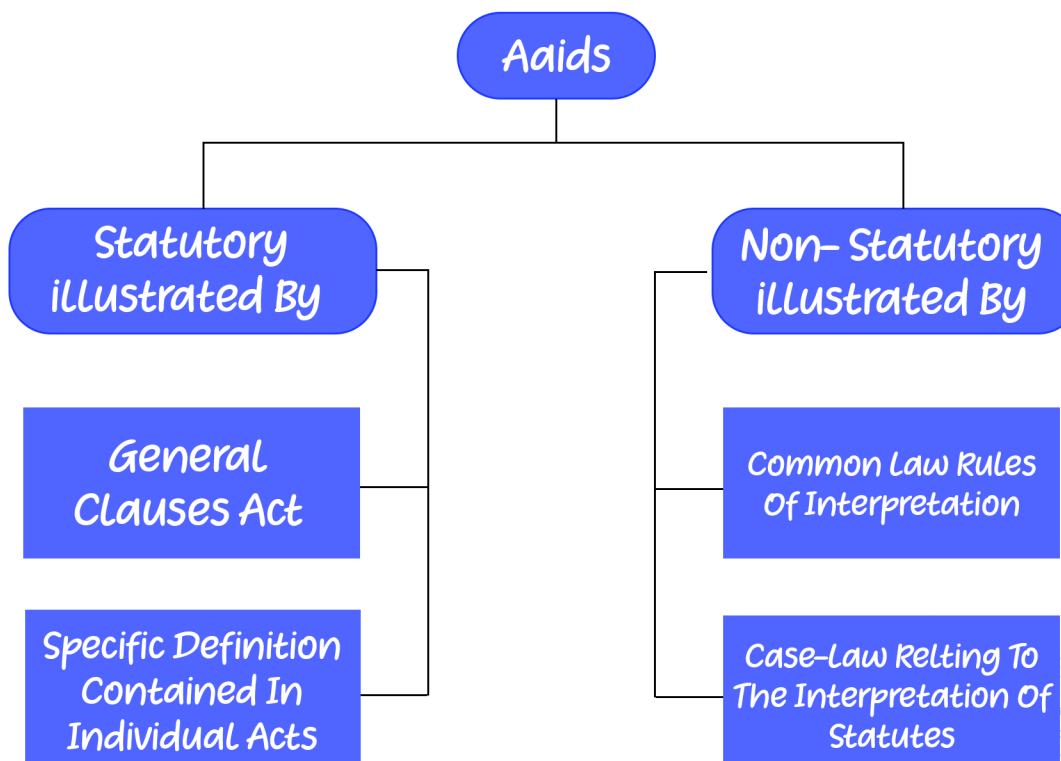
Interpretation differs from construction. Interpretation is of finding out the true sense of any form and the construction is the drawing of conclusion respecting subjects that lie beyond the direct expression of the text.

Where the Court adheres to the plain meaning of the language used by the legislature, it would be 'interpretation' of the words, but where the meaning is not plain, the court has to decide whether the wording was meant to cover the situation before the court. Here the court would be resorting to what is called 'construction'.

• PROCESS OF INTERPRETATION



Process Of Interpretation



INTERPRETATION OF STATUTES

• RULE OF INTERPRETATION:

(A) Primary rules:

1. Rule of Literal Construction,
2. Rule of Reasonable Construction,
3. Rule of Beneficial Construction,
4. Rule of Harmonious Construction,
5. Rule of Exceptional Construction,
6. Rule of Eiusdem Generis

(B) Secondary rules:

1. Noncitur a Sociis,
2. Expressio Unis Est Exclusio Alterius,
3. Contemporanea Expositio



(A) Primary rules:

1. Rule of Literal Construction / Grammatical Construction//,

1. Meaning of the word is clear: Where the words are clear, the language is plain, and only one meaning can be derived, then the words should be followed literally. The rule is called as 'litera legis', i.e., literal construction of law. The Court should adopt literal interpretation, unless the language is ambiguous, or literal sense would give rise to an anomaly or defeat the purpose of the Act.

2. Grammatical meaning: The language used in a Statute must be construed according to the rules of grammar unless the language is ambiguous or its literal sense gives rise to any anomaly.

3. Ordinary meaning: A Statute must be interpreted according to the clear words used. The words and sentences of a Statute must be given their ordinary and natural meaning.

4. Technical meaning: It is presumed that words and phrases in a technical legislation have a technical meaning and hence to be interpreted accordingly. However, if a word has no technical meaning, it is given the ordinary meaning.

INTERPRETATION OF STATUTES

5. Trade meaning: If a provision relates to a particular trade, the words used therein must be given that meaning which everybody conversant with that trade understands. Such meaning may differ from the ordinary or popular meaning.

6. Implications of the rule

(a) Every word to be given a meaning:

(b) Courts cannot legislate: If a matter has not been provided for in a Statute, it cannot be supplied by the Courts even if the Court finds that it should have been so provided.

(c) No reference to legal decisions: Literal construction involves arriving at the meaning of the words without reference to legal decision.

2. Rule of Reasonable construction /Logical Construction /HBCSHC

1. Narrow interpretation fails to achieve the purpose: Where the words of a Statute appear to be prima facie clear and unambiguous, but on close scrutiny they may turn out to be deficient in carrying out the intention of the legislature, reasonable construction should be resorted. If the ordinary meaning contradicts with the apparent purpose of the enactment, the Court may modify the meaning of the words and even the structure of the sentence

2. Giving effect to the intention of the legislature: While interpreting a Statute, it is the duty of the Court to find out the intention of the Statute. It has to look into the circumstances, which prevailed at the time when the Statute was passed and which necessitated the passing of the Statute.

3. Sensible meaning: The words of a statute must be constructed so as to lead to a rational, fair and sensible meaning. Ordinarily, the words of a Statute are given their ordinary and natural meaning. However, if the words are ambiguous, an attempt must be made to discover the intent of the legislature.

INTERPRETATION OF STATUTES

3. Haydon's Rule of Interpretation or "The Mischief Rule" or Rule of Beneficial Construction of this rule

1. Ambiguous words: Haydon's Rule may be applied if the words used in a Statute are ambiguous and are capable of more than one meaning. –

2. Literal interpretation defeats the object of the Act: If giving literal meaning to the words would defeat the object of the Legislature, the Court may depart from the dictionary meaning and instead give it a meaning which will advance the remedy and suppress the mischief.

3. Extended meaning is required: If the object of a Statute is public safety, words can be given a more extended meaning as compared to their ordinary meaning to give effect to that object. Similarly, the words in a penal Statute can be given a more extended meaning in order to suppress the mischief.

Essence of the rule/Methodology

1. Consideration of background of the statute:

The Court shall consider the historical background of the Statute, common Law before the Statute was enacted and the mischief, which the Statute intended to remedy. In particular, the Court shall consider the following four matters:

- (a) What was the Law before making of the Act?
- (b) What was the mischief or defect, which the Law did not provide?
- (c) What is the remedy that the Act has provided?
- (d) What is the reason for the remedy?

2. Suppress the mischief and advance the remedy:

After the Court has considered the above four matters, the rule requires the Court to adopt that construction which will suppress the mischief and advance the remedy.

INTERPRETATION OF STATUTES

4. Rule of Harmonious Construction

Basis of the Rule:

When there is a conflict between two or more provisions, harmonious construction is to be adopted.

Essence of Harmonious Construction:

1. Provisions to be reconciled: Where two provisions relate to the same subject matter, these should be reconciled and effect must be given to both of them. Any inconstancy either within a section or between two different sections of a Statute must be avoided.

2. Act to be read as a whole

Harmonious construction – Methodology:

1. Harmonize the provisions:

- (a) Any head-on clash between them should be avoided.
- (b) If it is not possible to harmonize the two conflicting provisions, they should be so interpreted that effect is given to all of them.
- (c) One section shall not be allowed to defeat the other provisions of the Act unless it is impossible to harmonize them or to give effect to all the provisions.

2. Course of action if it is impossible to harmonize:

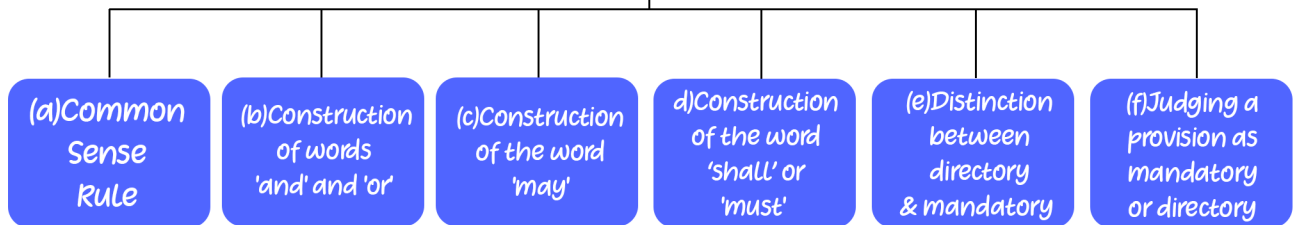
If it is impossible to harmonize the two conflicting provisions, the recourse shall be as follows:

- (a) The provision enacted or amended latter in point of time shall prevail.
- (b) The Court shall find out which provision is more general and which is more specific. The more specific provision shall be so construed as to exclude the more general provision.

INTERPRETATION OF STATUTES

5. Rule of Exceptional Construction

The rule of exceptional construction may be studied under the following heads:



(a) Common Sense Rule:

Full effect must be given to every word contained in a Statute. However, words in a Statute may be eliminated if no sensible meaning can be drawn.

(b) Construction of words 'and' and 'or':

The word 'and' is normally conjunctive, i.e., if two provisions are separated by the conjunction 'and', requirements of both the provisions should be satisfied. If two clauses are separated by the word 'or', satisfying the requirements of any of the two clauses would be sufficient.

(c) Construction of the word 'may'

Directory force: The word 'may' is generally construed to have a directory force only. Mandatory force: The word 'may' has a mandatory force in the following cases:

- (a) Where the subject involves a discretion coupled with an obligation, i.e., when a power is given, there is duty to discharge the obligation.
- (b) Where a remedy will be advanced and mischief will be suppressed.
- (c) Where giving a directory significance to the word 'may' will defeat the very object of the Act or cause material danger to the public or result in denial of benefit to the public.

(d) Construction of the word 'shall' or 'must'

Mandatory force: The word 'shall' is ordinarily construed to have a mandatory force. Where a provision in the Statute provides for a specific penalty, the Court has no discretion to determine whether such provision is directory or mandatory. It is to be taken as mandatory provision.

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Directory force: The word 'shall' has a directory force (a) where it has been used against the Government, unless a contrary intention is manifest in the Statute; or (b) where the intention of the Legislature so demands; or (c) where giving it a mandatory interpretation would result in absurd results.

e) Judging a provision as mandatory or directory

Whether a provision is a mere direction or a mandatory command depends upon the purpose of the Act, the intention of the Legislature and general inconvenience to the public. following generalizations may be drawn:

- (a) Prohibitory provisions (i.e., use of negative,, words in a provision) imply that the provision is mandatory.
- (b) If the non-compliance of a provision results in penalty, it implies mandatory intention of the Statute.
- (c) If a provision gives a power coupled with a duty, it is mandatory in nature.
- (d) If no public policy is involved, the procedure is treated only as directory.
- (e) Provisions enacted to prevent fraud and mischief is held as mandatory

6. Rule of Ejusdem Generis

Applicability of the Rule:

For application of the rule, all the following conditions need to be satisfied:

- (a) There must be an enumeration of certain specific words.
- (b) The specific words contained in the enumeration must constitute a class or category.
- (c) The specific words must be of the same kind or nature.
- (d) The specific words must not exhaust the whole category.

Meaning of the rule

1. The term 'Ejusdem Generis' means of the same class or species'.

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2. The rule states that general words following specific words are to be construed with reference to the words preceding them.

3. Where a Statute uses the words 'such as oxen, bulls, goat, cows, buffaloes, sheep, horses, etc.', the word 'etc' cannot include wild animals like lion and tiger. Also, all domestic animals would not be covered. The illustrations given relate to all four legged animals and hence other domestic animals like dogs, cats etc. can be included but not cock or hen has no similarity with the illustrations of other domestic animals given

(B) Secondary Rules:

1. Expression Unius Est Exclusio Alterius

a) The maxim means that express mention of one thing implies the exclusion of another.

b) As per this maxim, if two or more things belonging to a particular class are mentioned, other members of that class are silently excluded.

Examples: i. Where a Statute refers to 'Lands, house and coal mines, other mines except coal mine are excluded and 'other mines' cannot be made to fall within the general term 'Lands'.

2. Noscitur A Sociis (Construction of associated words)

a) The meaning of a word is derived from its associate words, i.e., the meaning of a word is to be judged by the company it keeps. The words in a Statute are construed with reference to the words found in immediate connection with them.

b) If two or more words which are capable of analogous (similar or parallel) meaning are grouped together, they should be understood in cognate sense, i.e., they take their colour from each other and are given a similar or related meaning.

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3. Contemporanea Expositio

Usage in the past: The maxim 'Contemporanea Expositio' means interpreting a Statute by reference to the exposition it has received from contemporary authority. Where the Language is ambiguous, the Court shall pay due regard to the interpretation that the Language of the Act has received over a long period of time. Expose the old Laws to new circumstances and technology.

• AIDS OF INTERPRETATION

(A) Internal Aids:

1. Title,
2. Preamble,
3. Headings & title of chapter
4. Marginal notes
5. Definitional Clauses
6. Illustrations
7. Proviso
8. Explanation
9. Schedules
10. Read the Statute as a Whole

(B) External Aids:

1. Historical setting
2. Consolidating Statutes and previous Law.
3. Usage
4. Earlier & Later Acts and Analogous Acts
5. Dictionary Definitions
6. Use of Foreign Decisions

Internal Aids of Interpretation

(1) Title

1. The purpose of short title is to identify the enactment and not to describe it. Short title is not used for interpreting the Statute.
2. The long title is a part of the Act and describes it..

(2) Preamble



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2. If the wording of a Statute is ambiguous, the preamble can and ought to be referred to ascertain the object and scope of the Act, in order to arrive at the proper construction. It can explain and elucidate the enactment.

(3) Headings and title of a chapter

1. A number of sections covering a particular subject are grouped together in the form of a chapter. Each chapter is given a heading, which represents the subject matter dealt with the chapter.
 2. The headings may be referred to for the purpose of construction of the enactment or its parts. However, headings cannot restrict the clear meaning of an enactment. Further, heading to one group of sections cannot be used to interpret another group of sections.
 3. There is a controversy regarding the weight to be given to headings while interpreting a Statute.
- The position is as under:

- (a) According to one view, a heading is a preamble to the provisions following it and therefore the heading is treated as a key to interpretation of sections covered by it.
- (b) The other view considers that heading may be referred to only when the enacting words are ambiguous.

(4) Marginal notes

1. Generally, marginal notes are printed at the left hand margin of the sections in an enactment. But, Acts published by private publishers show the marginal notes at the top of the section. Marginal notes are essentially a heading/title to the section. Marginal notes summarize the effect of a section.
2. In India, the Courts have given different views regarding the use of marginal notes in construction of a Statute. Many Courts have held that marginal notes cannot be referred to for the purpose of constructing a Statute. However,

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certain Courts have held that marginal notes may be used to understand the legislative intent, if the words of a Statute are ambiguous. But marginal notes cannot limit or restrict the meaning of clear words used in the section.

(5) Definitional Clauses

Statutory definition

1. A definition clause performs the following two functions: (a) It acts as a key to proper interpretation and thus avoids ambiguities, (b) It shortens the language and avoids repetition.
2. Where the meaning of a word or expression is defined in a Statute, it is that meaning alone which must be given to it. The Court cannot ignore the statutory definition and speculate as to what should be the true meaning of the expression, unless there is anything repugnant in the context.
3. A word defined in the Act bears the same meaning throughout the Act, unless by doing so any repugnancy is created in the subject or context.
4. Where a definition includes the words 'unless the context otherwise'
5. Where the language used in the definition itself is ambiguous, the definition should be construed in the light of the purpose of the Act and having regard to the ordinary connotation of the word defined.

Exhaustive definition

1. When a word is defined to 'mean' something, the definition is prima facie restrictive and exhaustive & the meaning of such word must be restricted to the meaning given in the definitional clause.
2. Where a definition is in the form of 'mean and include' something, the definition is exhaustive and restrictive.

Inclusive definition

1. Where an expression is defined to 'include' something, the definition is prima facie extensive and its meaning can also include something else in addition to the meaning assigned to it in the definitional clause.

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2. A definition in the form of 'is deemed to include' is an inclusive definition. As such, a legal fiction is created and the expression is deemed to include something, which it actually does not mean, when construed in a literal sense.
3. A definition in the form of 'to apply and to include' is an inclusive definition.

(6) Illustrations

1. Illustrations are examples appended to a section. Illustrations are inserted to clarify the scope and object of the section.
2. Illustrations are considered in constructing a neither curtail nor expand the ambit of the section. If there is a conflict between the section and illustration, the section will prevail.

(7) Proviso

1. The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment.
2. Distinction between Proviso, exception and saving Clause
There is said to exist difference between provisions worded as 'proviso', 'Exception', or 'Saving Clause'.

- ✓ 'Exception' is intended to restrain the enacting clause to particular cases.
- ✓ 'Proviso' is used to remove special cases from general enactment and provide for them specially.
- ✓ 'Saving clause' is used to preserve from destruction certain rights, remedies or privileges already existing

(8) Explanation

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1. An explanation is generally a clarification of the legislative mind. It explains the meaning of the words contained in the section.
2. Object of an explanation: The purpose of explanation is to
 - (a) include something within a section or to exclude something from it; or
 - (b) clarify any ambiguity in the main section; or
 - (c) explain the meaning the section; or
 - (d) make the main section more meaningful and purposeful.

(9) Schedules

The Schedules form part of an Act. Therefore, they must be read together with the Act for all purposes of construction. However, the expressions in the Schedule cannot control or prevail over the expression in the enactment. If there appears to be any inconsistency between the schedule and the enactment, the enactment shall always prevail.

(10) Read the Statute as a Whole

It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only.

External Aids of Interpretation

(1) Historical setting:

The history of the external circumstances which led to the enactment in question is of much significance in construing any enactment. We have, for this purpose, to take help from all those external or historical facts which are necessary in the understanding and comprehension of the subject matter and the scope and object of the enactment.

(2) Consolidating Statutes & Previous Law :

The Preambles to many statutes contain expressions such as "An Act to

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consolidate" the previous Law, etc. In such a case, the Courts may stick to the presumption that it is not intended to alter the Law. They may solve doubtful points in the statute with the aid of such presumption in intention, rejecting the literal construction.

(3) Usage :

Usage is also sometimes taken into consideration in construing an Act. The acts done under a statute provide quite often the key to the statute itself. It is well known that where the meaning of the language in a statute is doubtful, usage — how that language has been interpreted and acted upon over a long period — may determine its true meaning.

(4) Earlier & Later Acts and Analogous Acts:

Exposition of One Act by Language of Another :

The general principle is that where there are different statutes in 'parimateria' (i.e. in an analogous case), though made at different times, or even expired and not referring to each other, they shall be taken and construed together as one system and as explanatory of each other.

(5) Dictionary Definitions :

First we have to refer to the Act in question to find out if any particular word or expression is defined in it. Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood.

However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act.

(6) Use of Foreign Decisions:

Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing

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our own Acts. However, prime importance is always to be given to the language of the Indian statute. Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.

RULES OF INTERPRETATION/CONSTRUCTION OF DEEDS AND DOCUMENTS

1. Find out what a reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document.
2. The same word cannot have two different meanings in the same document, unless the context compels the adoption of such a rule.
3. Ascertain the intention of the parties to the instrument after considering all the words in the document/deed concerned in their ordinary, natural sense. For this purpose, the relevant portions of the document have to be considered as a whole.
4. It may also happen that there is a conflict between two or more clauses of the same document. An effort must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect to. If, however, it is not possible to give effect to all of them, then it is the earlier clause that will over-ride the latter one. Similarly, if one part of the document is in conflict with another part, an attempt should always be made to read the two parts of the document harmoniously, if possible. If that is not possible, then the earlier part will prevail over the latter one which should, therefore, be disregarded.

