CHAPTER 4

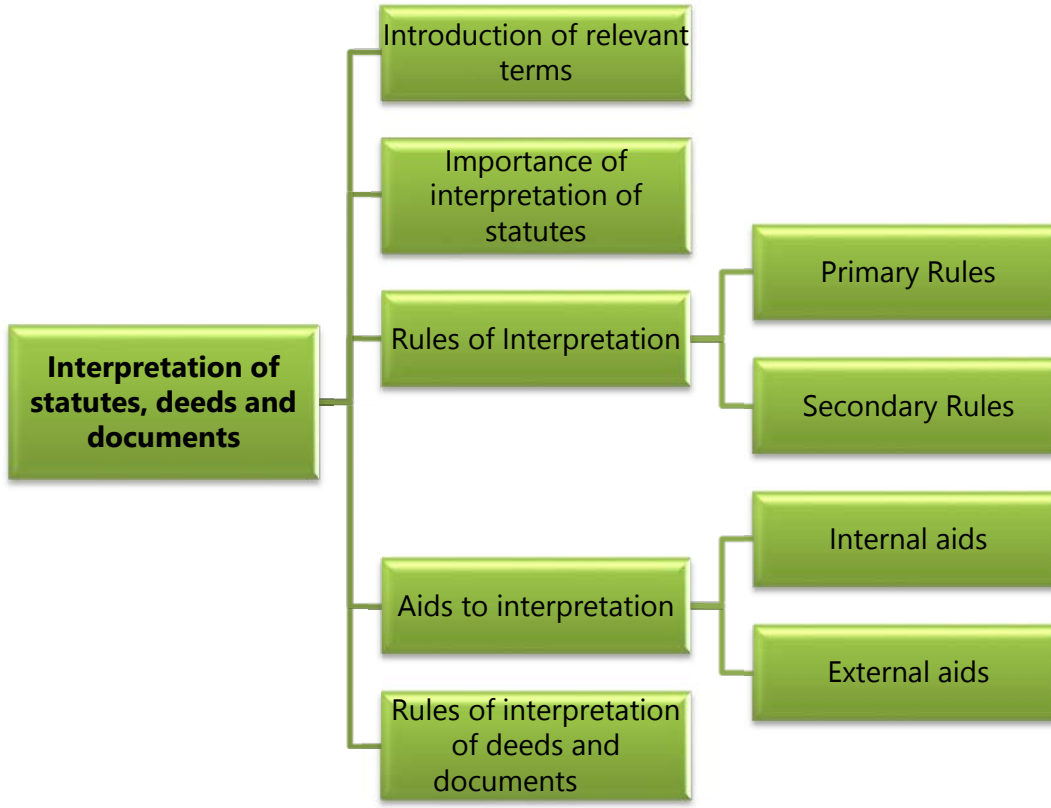
INTERPRETATION OF STATUTES

LEARNING OUTCOMES

At the end of this chapter, you will be able to:

- Know the need for interpretation of statutes.
- Explain the various Rules of Interpretation of Statutes.
- Know of various internal and external aids to interpretation.
- Understand Rules of Interpretation of Deeds and Documents.

CHAPTER OVERVIEW



1. INTRODUCTION

This study relates to **'Interpretation of Statutes, Deeds and Documents'**. So, first of all we must understand what these terms and some other terms denote. It would, therefore, be important for us at this stage itself to understand the terms **'Statute', 'Document', 'Instrument', 'Deed'** and **'Interpretation'**.

'Statute': To the common man the terms **'Statute'** generally means the laws and regulations of every sort without considering from which source they emanate.

However, the term **'Statute'** has been defined as the written will of the legislature solemnly expressed according to the forms necessary to constitute it the law of the State. Normally, the term denotes an Act enacted by the legislative authority (e.g. Parliament of India).

The Constitution does not use the terms 'statute' though one finds the terms 'law' used at many places. The terms 'law' is defined as including any ordinance, order, bye-law, rule, regulation, notification, and the like.

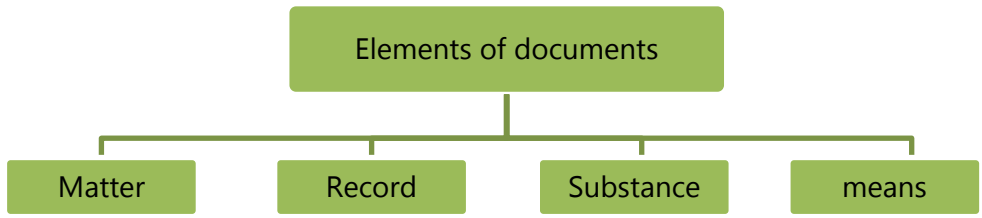
In short 'statute' signifies written law in contradiction to unwritten law.

'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.

Example: A writing is a document, any words printed, photographed are documents.

Section 3(18) of the General Clauses Act, 1897 states that the term '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 of recording this matter.

Generally, documents comprise of following four elements:



(i) **Matter**—This is the first element. Its usage with the word "any" shows that the definition of document is comprehensive.

(ii) **Record**—This second element must be certain mutual or mechanical device employed on the substance. It must be by writing, expression or description.

(iii) **Substance**—This is the third element on which a mental or intellectual elements comes to find a permanent form.

(iv) **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.

'Instrument': In common parlance, 'instrument' means a formal legal document which creates or confirms a right or records a fact. It is a formal writing of any kind,

such as an agreement, deed, charter or record, drawn up and executed in a technical form. It also means a formal legal document having legal effect, either as creating liability or as affording evidence of it. Section 2(14) of the Indian Stamp Act, 1899 states that 'instrument' includes every document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded.

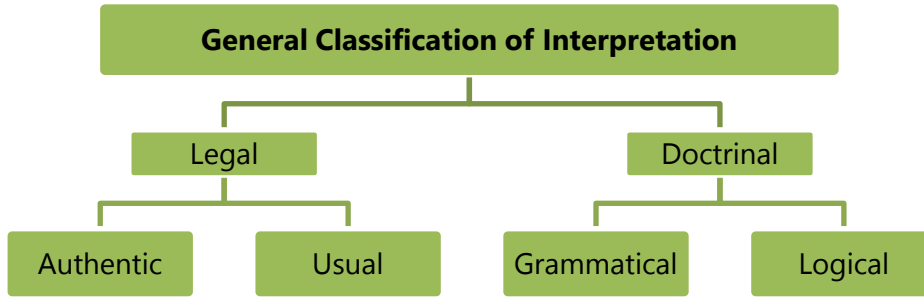
'Deed': The Legal Glossary defines 'deed' as an instrument in writing (or other legible representation or words on parchment or paper) purporting to effect some legal disposition. Simply stated deeds are instruments though all instruments may not be deeds. However, in India no distinction seems to be made between instruments and deeds.

'Interpretation': By interpretation is meant the process by which the Courts seek to ascertain the meaning of the legislature through the medium of the authoritative forms in which it is expressed. Simply stated, 'interpretation' is the process by which the real meaning of an Act (or a document) and the intention of the legislature in enacting it (or of the parties executing the document) is ascertained. 'Interpretation' signifies expounding the meaning of abstruse words, writings, etc., making out of their meaning, explaining, understanding them in a specified manner. A person is there by aided in arguing, contesting and interpreting the proper significance of a section, a proviso, explanation or schedule to an Act or any document, deed or instrument.

Importance of Interpretation: Interpretation, thus, is a familiar process of considerable significance. In relation to statute law, interpretation is of importance because of the inherent nature of legislation as a source of law. The process of statute making and the process of interpretation of statutes take place separately from each other, and two different agencies are concerned. An interpretation of Act serves as the bridge of understanding between the two.

Judicial determination of questions of law requires the use of materials of various types, depending on the nature of the question. In the interpretation of statutory provisions the material used will naturally have a sharply legal haracter, as distinct from the application of a general common law doctrine where it may have a more diffused character. In statutes, greater accuracy is, therefore, required. The process of interpretation is more legalistic and makes more intensive use of the legal technique in statutory interpretation, as contrasted with the application of common law rules.

Classification of Interpretation:



Jolowicz, in his **Lectures on Jurisprudence** (1963 ed., p. 280) speaks of interpretation thus: Interpretation is usually said to be either 'legal' or 'doctrinal'. It is **'legal'** when there is an actual rule of law which binds the Judge to place a certain interpretation of the statute. It is **'doctrinal'** when its purpose is to discover 'real' and 'true' meaning of the statute. 'Legal' interpretation is sub-divided into 'authentic' and 'usual'. It is 'authentic' when rule of interpretation is derived from the legislator himself; it is 'usual' when it comes from some other source such as custom or case law. Thus when Justinian ordered that all the difficulties arising out of his legislation should be referred to him for decision, he was providing for 'authentic' interpretation, and so also was the Prussian Code, 1794, when it was laid down that Judges should report any doubt as to its meaning to a Statute Commission and abide by their ruling.

'Doctrinal' interpretation may again be divided into two categories: 'grammatical' & 'logical'. It is 'grammatical' when the court applies only the ordinary rules of speech for finding out the meaning of the words used in the statute. On the other hand, when the court goes beyond the words and tries to discover the intention of the statute in some other way, then it is said resort to what is called a 'logical' interpretation.

According to **Fitzerald**, interpretation is of two kinds – 'literal' and 'functional'. The literal interpretation is that which regards conclusively the verbal expression of the law. It does not look beyond the 'literaligis'. The duty of the Court is to ascertain the intention of the legislature and seek for that intent in every legitimate way, but first of all in the words and the language employed. 'Functional' interpretation, on the other hand, is that which departs from the letter of the law and seeks elsewhere for some other and more satisfactory evidence of the true intention of the legislature. In other words, it is necessary to determine the relative claims of the letters and the spirit of the enacted law. In all

ordinary cases, the Courts must be content to accept the letter of the law as the exclusive and conclusive evidence of the spirit of the law **(Salmon: Jurisprudence**, 12th ed., pp. 131-132). It is essential to determine with accuracy the relations which subsist between the two methods.

Interpretation and Construction: It would also be worthwhile to note, at this stage itself, the difference between the terms **'Interpretation' and Construction**. While more often than not the two terms are used interchangeably to denote a process adopted by the courts to ascertain the meaning of the legislative form in which it is expressed, these two terms have different connotations.

The cardinal rule of construction of a statute is to read it literally, which means by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If such reading leads to absurdity and the words are susceptible of another meaning, the court may adopt the same. If no such alternative construction is possible, the court must adopt the ordinary rules of literal interpretation.

Whereas cardinal law of interpretation is that if the language is simple and unambiguous, it is to be read with the clear intention of the legislation. *[CWT v. Smt. Muthu Zulaika(2000)]*

For the purpose of construction of a statute the same has to be read as a whole. *[State of Bihar v. CIT, (1993) 202 ITR 535, 550 (Pat)]*

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. *[Bhagwati Prasad Kedia v. C.I.T,(2001)]*

It is the duty of the courts to give effect to the meaning of an Act when the meaning can be equitably gathered from the words used. Words of legal import occurring in a statute which have acquired a definite and precise sense, must be understood in that sense. *(State of Madras v. Gannon Dunkerly Co. AIR 1958)*

When the legislature uses certain words which have acquired a definite meaning over a period of time, it must be assumed that those words have been used in the same sense.

Thus, 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', however, the two terms – 'interpretation' and 'construction' –

overlap each other and it is rather difficult to state where 'interpretation' leaves off and 'construction' begins.

2. WHY DO WE NEED INTERPRETATION/ CONSTRUCTION?

No doubt in modern times, the enacted laws are drafted by legal experts, yet they are expressed in language and no language is so perfect as to leave no ambiguities. Further, by its very nature, a statute is an edict of the legislature and many-a-time the intent of the legislature has to be gathered not only from the language but the surrounding circumstances that prevailed at the time when that particular law was enacted. If any provision of the statute is open to two interpretations, the Court has to choose that interpretation which represents the true intention of the legislature. Also, it is not within human powers to foresee the manifold set of facts which may arise in the future and even if it were so it is not possible to provide for them in terms free from all ambiguity. All these aspects add to give great prominence to the subject of interpretation and construction in the practical administration of the law.

It would be worthwhile to note what **Denning L.J.** has said on the need for statutory interpretation: It is not within human powers to foresee the manifold sets of facts which may arise; and that, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges' trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a judge can not simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this, not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature.

It has been rightly said that a statute is the will of the legislature. The fundamental rule of interpretation of a statute is that it should be expounded according to the intent of those that made it. In the event of the words of the

statute being precise and unambiguous in themselves it is only just necessary to expound those words in their natural and ordinary sense: thus far and no further. This is because these words distinctly indicate the intention of the legislature. The purpose of interpretation is to discern the intention which is conveyed either expressly or impliedly by the language used. If the intention is express, then the task becomes one of 'verbal construction' alone. But in the absence of any intention being expressed by the statute on the question to which it gives rise and yet some intention has to be, of necessity, imputed to the legislature regarding it, then the interpreter has to determine it by inference based on certain legal principles. In such a case, the interpretation has to be one which is commensurate with the public benefit. Consequently, if a statute levies a penalty without expressly mentioning the recipient of the penalty, then, by implication, it goes to the officers of the State.

The subject of the interpretation of a statute, therefore, seems to fall under two general heads:

(a) What are the principles which govern the construction of the language of an Act of Parliament?

(b) What are those principles which guide the interpreter in gathering the intention on those incidental points on which the legislature is necessarily presumed to have entertained an opinion but on which it has not expressed any?

Through the process of interpretation, the Court seeks to discern the meaning of the legislation through the medium of authoritative forms in which it is expressed.

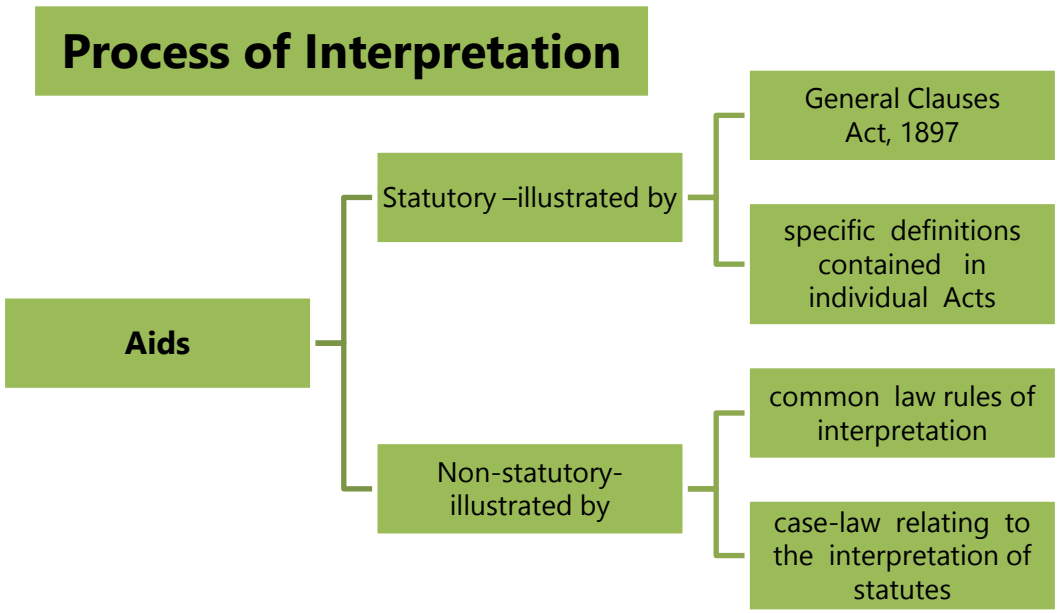
As we have noted earlier, 'interpretation' may be either 'grammatical' or 'logical'. 'Grammatical interpretation' concerns itself exclusively with the verbal expression of the law: it does not go beyond the letter of the law. 'Logical interpretation', on the other hand, seeks more satisfactory evidence of the true intention of the legislature.

In all ordinary cases, 'grammatical interpretation' is the sole form allowable. The Court cannot take from or add to modify the letter of the law. This rule is, however, subject to some expectations: firstly, where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness. As regard the defect to ambiguity, the Court is under a duty to travel beyond the letter of the law so as to determine from the other sources the true intention of the legislature. In the case of the statutory expression being defective on account of inconsistency, the court must ascertain the spirit of the law. Secondly, if the

text leads to a result which is so unreasonable that it is self-evident that the legislature could not mean what it says, the court may resolve such impasse by inferring logically the intention of the legislature.

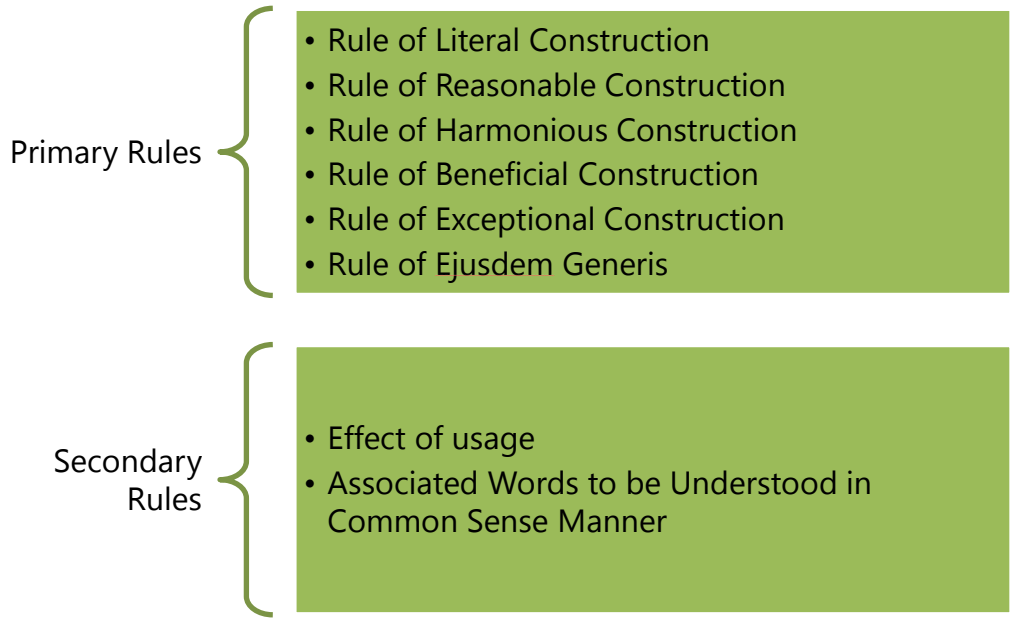
About one thing there seems to be no controversy at all, a statute is enforceable at law, howsoever unreasonable it may be. The duty of the court is to administer the law as it stands. It is not within its jurisdiction to see whether the law is just or unreasonable. The ascertainment of the justification or reasonableness of law is the exclusive domain of the legislature and it alone can consider alteration or modification of the law passed by it. Until it is altered or modified or amended, the court has no choice but to enforce the law as it is.

In this process of interpretation, several aids are used. They may be statutory or non-statutory. The former category (statutory aids) is illustrated by the General Clauses Act, and by specific definitions contained in individual Acts, as also by certain provisions of a general nature which are, for example, contained in the Indian Penal Code", and are relevant to the construction of penal enactments. The latter is illustrated by common law rules of interpretation (including certain presumptions relating to interpretation), and also by case-law relating to the interpretation of statutes.



3. RULES OF INTERPRETATION/ CONSTRUCTION

Over a period, certain rules of interpretation/construction have come to be well recognized. However, these rules are considered as guides only and are not inflexible. These rules can be broadly classified as follows:



(A) PRIMARY RULES

(1) Rule of Literal Construction: It is the cardinal rule of construction that words, sentences and phrases of a statute should be read in their ordinary, natural and grammatical meaning so that they may have effect in their widest amplitude. At the same time, the elementary rule of construction has to be borne in mind that words and phrases of technical nature are *'prima facie'* used in their technical meaning, if they have any, and otherwise in their ordinary popular meaning.

When the language of the statute is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the Act speaks for itself. The meaning must be collected from the expressed intention of the legislature *(State of U.P. v. Vijay Anand, AIR 1963 SC 946)*. A word which has a definite and clear meaning should be interpreted with that meaning only, irrespective of its consequences.

Sometimes, occasions may arise when a choice has to be made between two interpretations – one narrower and the other wider or bolder. In such a situation, if the narrower interpretation would fail to achieve the manifest purpose of the legislation, one should rather adopt the wider one.

For **example**, when we talk of disclosure of **the nature of concern or interest, financial or otherwise'** of a director or the manager of a company in the subject-matter of a proposed motion (as referred to in section 102 of the Companies Act, 2013), we have to interpret in its broader sense that any concern or interest containing any information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon. Whatever, What is required is a full and frank disclosure without reservation or suppression, as, for instance where a son or daughter or father or mother or brother or sister is concerned in any contract or matter, the shareholders ought fairly to be informed of it and the material facts disclosed to them. Here a restricted narrow interpretation would defeat the very purpose of the disclosure.

Further, the phrase and sentences are to be construed according to the rules of grammar. This was emphasized in no uncertain terms by the Supreme Court in the case of *S.S. Railway Company vs. Workers Union (AIR 1969 S.C. at 518)* when it is stated that the courts should give a literal meaning to the language used by the legislature unless the language is ambiguous or its literal sense gives rise to any anomaly or results in something which may defeat the purpose of the Act. It is the duty of the court to give effect to the intent of the legislature and in doing so, its first reference is to the literal meaning of the words employed. Where the language is plain and admits of only one meaning, there is no room for interpretation and only that meaning is to be enforced even though it is absurd or mischievous, the maxim being ***'absoluta sententia expositore non indiget'*** (which means a simple preposition needs no expositor i.e., when you have plain words capable of only one interpretation, no explanation to them is required).

Similarly, when a matter which should have been, but has not been, provided for in a statute cannot be supplied by courts as to do so would amount to legislation and would not be construction.

For **example:** Section 71 of the U.P. District Boards Act, 1922 provided that a Board may dismiss its secretary by special resolution which in certain cases required sanction of the Local Government. Section 90 of the same Act conferred a power to suspend the secretary pending, *inter alia*, the orders of any authority whose sanction was necessary for his dismissal. Section 71 of the Act was

amended in 1931 and it then provided that a resolution of dismissal was not to take effect till the expiry of the period of appeal or till the decision of the appeal, if it was so presented. However Section 90 of the Act was not correspondingly amended. The Supreme Court observed that it was unfortunate that when the legislature came to amend the old Section 71 of the Act it forgot to amend Section 90 in conformity with the amendment of Section 71. The Court, however emphasized that while no doubt it is the duty of the Court to try and harmonise the various provisions of an Act passed by the legislature, it is certainly not the duty of the court to stretch the word used by the legislature to fill in gaps or omissions in the provisions of an Act.

However, sometimes the courts may look at the setting or the context in which the words are used and the circumstances in which the law has come to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used. If there are two possible constructions of a clause, one a mere mechanical and literal construction based on the rules of grammar and the other which emerges from the setting in which the clause appears and the circumstances in which it came to be enacted and also from the words used therein, the courts may prefer the second construction which, though may not be literal, may be a better one. *(Arora vs. State of U.P., AIR 1964 S.C. 1230 at 1236-37).*

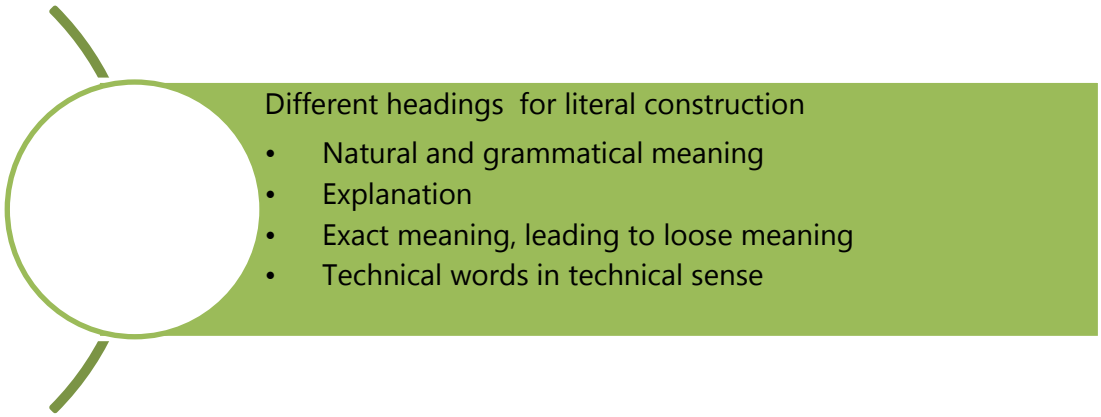
Words used in the popular sense: It dealing with mattes regarding the general public, statute are presumed to use words in their popular sense. But to deal with particular business or transaction, words are presumed to be used with the particular meaning in which they are used and understood in the particular business. However, words in statutes are generally construed in their popular meaning and not in their technical meaning.

It is the general rule that omissions are not likely to be inferred. From this it brings another rule that nothing is to be added to or taken away from a statute unless there are some adequate grounds to justify the inference that the legislature intended something which it omitted to express. "It is a wrong thing to add into an Act of Parliament words which are not there and, in the absence of clear necessity, it is a wrong thing to do." If a case has not been provided for in a statute. It is not to be dealt with merely because there seems to be no good reason why it should have been omitted, and the omission appears to be consequentially unintentional.

Reasonable corrections are not to over-ride plain terms of a statute. A construction that will render ineffective any part of the language of a statute will normally be rejected.

For example, if an Act plainly gave a right of appeal from one Court of Quarter Sessions to another, it was held that such a provision though extraordinary and perhaps an oversight could not be eliminated.

This Rule of literal interpretation can be read and understood under the following headings:



(I) Natural and grammatical meaning: Statute are to be first understood in their natural, ordinary, or popular sense and must be construed according to their plain, literal and grammatical meaning. If there is an inconsistency with any express intention or declared purpose of the statute, or it involves any absurdity, repugnancy, inconsistency, the grammatical sense must then be modified, extended or abridged only to avoid such an inconvenience, but no further. *[(State of HP v. Pawan Kumar(2005)]*

Example: In a question before the court whether the sale of betel leaves was subject to sales tax. In this matter SC held that betel leaves could not be given the dictionary, technical or botanical meaning when the ordinary and natural meaning is clear and unambiguous. Being the word of everyday use it must be understood in its popular sense by which people are conversant with it as also the meaning which the statute dealing with the matter would attribute to it. Therefore, the sale of betel leaves was liable to sale tax. *(Ramavtar V. Assistant Sales Tax Officer, AIR 1961 SC 1325)*

(II) Explanation of the Rule: When it is said that words are to be understood first in their natural, ordinary or popular sense, it is meant that the words must be qualified that natural, ordinary or popular meaning which they have

in relation to the subject matter with reference to which and the context in which they have been used in the statute. The meaning of a word depend upon its text and context. In the construction of statutes, the context means the statute as a whole and other statutes *in pari materia* (where two enactments have common purpose in an analogous case).

Example: In construing of the Andhra Pradesh General Sales Tax Rules, 1957, the words "Livestock" means all domestic animals will not include 'chicks' construing in the popular sense although in literal sense animal refers to any and every animate object as distinct from inanimate object. (*Royal Hatcheries Pvt. Ltd v. State of AP, AIR 1994 SC 666)*

(III) Exact meaning preferred to loose meaning: This is the another point regarding the rule of literal construction that exact meaning is preferred to loose meaning in an Act of Parliament. As every word has a secondary meaning too. Therefore, in applying this rule one should be careful not to mix up the secondary meaning with the loose meaning. Wherever the secondary meaning points to that meaning which statute meant, preference should be given to that secondary meaning.

Example: Word 'obtain 'in it general sense means some request or effort to acquire or get something but its secondary meaning is to acquire or get without any qualification and if in a statute the secondary meaning is preferred, it cannot be said that preference has been given to loose meaning.

(IV) Technical words in technical sense: This point of literal construction is that technical words are understood in the technical sense only.

Example, in construing of word 'practice' in Supreme Court Advocates Act, 1951, it was observed that practice of law generally involves the exercise of both the functions of acting and pleading on behalf of a litigant party. When legislature confers upon an advocate the right to practice in a court, it is legitimate to understand that expression as authorizing him to appear and plead as well as to act on behalf of suitors in that court.*(Ashwini Kumar Ghose V. Arabinda Bose AIR 1952 SC 369)*

(2) Rule of Reasonable Construction: According to this Rule, the words of a statute must be construed ***'ut res magis valeat quam pereat'*** meaning thereby that words of statute must be construed so as to lead to a sensible meaning. Generally the words or phrases of a statute are to be given their ordinary meaning. A statute must be construed in such a manner so as to make it effective

and operative on the principle of *ut res magis valeat quam pereat*. So while interpreting a law, two meanings are possible, one making the statute absolutely vague and meaningless and other leading to certainty and a meaningful interpretation, in such case the later interpretation should be followed.*(Pratap Singh v State of Jharkhand(2005)3 SCC 551)*

Example, in the case of *Dr. A.L. Mudaliar vs. LIC of India (1963) 33 Comp Cas. 420 (SC)*, it was held that the Memorandum of Association of a company must be read fairly and its import derived from a reasonable interpretation of the language which it employs. Further, in order to determine whether a transaction is intra vires the objects of a company, the objects clause should be reasonably construed: neither with rigidity nor with laxity. *[Waman Lal Chotanlal Parekh vs. Scindia Steam Navitation Co. Ltd. (1944) 14 Comp. Cas. 69 (Bom.)]*.

Thus, if the Court finds that giving a plain meaning to the words will not be a fair or reasonable construction, it becomes the duty of the court to depart from the dictionary meaning and adopt the construction which will advance the remedy and suppress the mischief provided the Court does not have to resort to conjecture or surmise. A reasonable construction will be adopted in accordance with the policy and object of the statute.

(3) Rule of Harmonious Construction: When there is doubt about the meaning of the words of a statute, these should be understood in the sense in which they harmonise with the subject of the enactment and the object which the legislature had in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used and the object to be attained.

Where there are in an enactment two or more provisions which cannot be reconciled with each other, they should be so interpreted, wherever possible, as to give effect to all of them. This is what is known as the Rule of Harmonious Construction. An effort should be made to interpret a statute in such a way as harmonises with the object of the statute.

Example: As per the facts given in the *Raj Krishna V. Binod AIR1954 SC 202*, there was a conflict between section 33(2) and 123(8) of the Representation of People Act, 1951. Section 33(2) stated that a government servant may nominate or second a candidate seeking election, whereas section 123(8) provided that a government servant is not entitled to assist a candidate in an election in any manner except by casting his vote. SC observed that both these provision should be harmoniously interpreted and held that a government servant was entitled to

nominate or second a candidate seeking election to the state legislature assembly. This harmony could be achieved only if section 123(8) of the Act is interpreted as conferring power on a government servant of voting as well as of proposing and seconding a candidature and forbidding him from assisting a candidate in any other manner.

Example: Conflict between section 17(1) and section 18(1) of the Industrial Disputes Act, 1947 applies the principal of Harmonious construction by harmonizing apparent conflict between two or more of its provisions. Section 17 of the Act provides that (1) Every report of a Board or court together with any minute of dissent recorded therewith, every arbitration award and every award of a Labour Court, Tribunal or National Tribunal shall, within a period of thirty days from the date of its receipt by the appropriate government, be published in such manner as the appropriate government thinks fit. Whereas sub-section (2) provides that the award published under sub-section (1) shall be final and shall not be called in question by any court in any manner whatsoever.

Section 18(1) of the Act provides that a settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

In case where a settlement is arrived after receipt of the award of the Labour Tribunal by the Government before its publication, the issue was whether the Government was still required by section 17(1) to publish the award. On construction of these two provisions, Supreme Court held that settlement which becomes effective from the date of signing, the industrial dispute comes to an end and the award becomes ineffective and the government cannot publish it. *[Sirsilk Ltd. V. Govt. of Andhra Pradesh, AIR 1964 SC160]*

It must always be borne in mind that a statute is passed as a whole and not in sections and it may well be assumed to be animated by one general purpose and intent. The Court's duty is to give effect to all the parts of a statute, if possible. But this general principle is meant to guide the courts in furthering the intent of the legislature, not overriding it. When rigid adherence to the general rule would require disregard of clear indications to the contrary, this rule must be applied. The sections and sub-sections must be read as parts of an integral whole and being inter-dependent. Therefore, importance should not be attached to a single clause in one section overlooking the provisions of another section. If it is impossible to avoid inconsistency, the provision which was enacted or amended later in point of time must prevail.

The Rule of Harmonious Construction is applicable only when there is a real and not merely apparent conflict between the provisions of an Act, and one of them has not been made subject to the other. When after having construed their context the words are capable of only a single meaning, the rule of harmonious construction disappears and is replaced by the rule of literal construction.

(4) Rule of Beneficial Construction or the Heydon's Rule: Where the language used in a statute is capable of more than one interpretation, the most firmly established rule for construction is the principle laid down in the *Heydon's case (1584) 3 Co. Rep 7a 76 ER 637*. The rule which is also known as 'purposive construction' or mischieve rule, enables consideration of four matters in construing an Act:

(1) what was the law before the making of the Act;

(2) what was the mischief or defect for which the law did not provide;

(3) what is the remedy that the Act has provided; and

(4) what is the reason for the remedy.

The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy.'

Therefore, even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it. If, however, the circumstances show that the phraseology in the Act is used in a larger sense than its ordinary meaning then that sense may be given to it. If the object of a statute is public safety then its working must be interpreted widely to give effect to that object. Thus, the legislature having intended, while passing the Workmen's Compensation Act, 1923 that every workman in the prescribed trade should be entitled to compensation, it was held that the Act ought to be so construed, as far as possible, as to give effect to its primary provisions.

Statutes which require something to be done.

Example, a statute which requires notice of action for anything done, are to be construed as including an omission of an act which ought to be done as well as the commission of a wrongful act. Where a statute requires something to be done by a person, it would generally be sufficient compliance with it if the thing is done by another person on his behalf and by his authority, for it would be presumed that the statute does not intend to prevent the application of the general principle of law: ***'qui facit per alium facit per se'*** (he who acts though another is

deemed to act in person).This would be so unless there is something in either the language or the object of the statute which shows that personal act alone was intended.

However, it has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning *(CIT vs. Sodra Devi, 1957 SC 832)*.

Example of application of this mischief rule is also well-found in the construction of section 2(d) of the Prize Competition Act, 1955. This section defines 'prize competition' as "any competition in which prizes are offered for the solution of any puzzle based upon the building up arrangement, combination or permutation of letters, words or figures". The issue is whether Act applies to competitions which involve substantial skill and are not in the nature of gambling. Supreme Court, after referring to the previous state of law, to the mischief that continued under that law and to the resolutions of various states under Article 252(1) authorizing Parliament to pass the Act. It was stated that having regard to the history of the legislation, the declared object thereof and the wording of the statute, we are of opinion that the competitions which are sought to be controlled and regulated by the Act are only those competitions in which success does not depend on any substantial degree of skill. *(RMD Chamarbaugwalla V. Union of India, AIR 1957 SC 628)*.

The correct principle is that after the words have been construed in their context and it is found that the language is capable of bearing only one construction, the rule in Heydon's case ceases to be controlling and gives way to the plain meaning rule. Lord Simon explains this aspect that Heydon's case is available at two stages:

(i) before ascertaining the plain and primary meaning of the statute, and

(ii) secondly, at the stage when the court reaches the conclusion that there is no such plain meaning.

(5) Rule of Exceptional Construction: The rule of exceptional construction stands for the elimination of statutes and words in a statute which defeat the real objective of the statute or make no sense. It also stands for construction of words 'and', 'or', 'may', 'shall' & 'must'.

This rule has several aspects, viz.:

(a) ***The Common Sense Rule:*** Despite the general rule that full effect must be given to every word, if no sensible meaning can be fixed to a word or phrase, or if it would defeat the real object of the enactment, it should be eliminated. The words of a statute must be so construed as to give a

sensible meaning to them, if at all possible. They ought to be construed ***'utres magis valeat quam pereat'*** meaning thereby that it is better for a thing to have effect than to be made void.

(b) ***Conjunctive and Disjunctive Words 'or' 'and':*** The word **'or'** is normally disjunctive and **'and'** is normally conjunctive. However, at times they are read as *vice versa* to give effect to the manifest intention of the legislature as disclosed from the context. This would be so where the literal reading of the words produces an unintelligible or absurd result. In such a case 'and' may by read for 'or' and 'or' for 'and' even though the result of so modifying the words is less favourable to the subject, provided that the intention of the legislature is otherwise quite clear.

Example: In the Official Secrets Act, 1920, as per section 7 any person who attempts to commit any offence under the principal Act or this Act, or solicits or incites or endeavours to persuade another person to commit an offence, or aids or abets **and** does any act preparatory to the commission of an offence'. Here, the word 'and' in bold is to be read as 'or'. Reading 'and' as 'and' will result in unintelligible and absurd sense and against the clear intention of the Legislature. *[R v. Oakes, (1959)]*

(c) ***'May', 'must' and 'shall':*** Before discussing this aspect, it would be worth-while to note the terms **'mandatory'** and **'directory'**. Practically speaking, the distinction between a provision which is **'mandatory'** and one which is **'directory'** is that when it is mandatory, it must be strictly observed; when it is 'directory' it would be sufficient that it is substantially complied with. However, we have to look to the substance and not merely the form: an enactment in mandatory form might substantially be directory and, conversely, a statute in directory form may in substance be mandatory. Hence, it is the substance that counts and must take precedence over mere form. If a provision gives a power coupled with a duty, it is mandatory: whether it is or is not so would depend on such consideration as:

— the nature of the thing empowered to be done,

— the object for which it is done, and

— the person for whose benefit the power is to be exercised

(i) 'May': It is well settled that enabling words are construed as compulsory, wherever the object of the power is to give effect to a legal right: the use of the word 'may' in a statutory provision would not by itself show that the provision is directory in nature. In some cases, the legislature may use the word 'may' as a

matter of pure conventional courtesy and yet intend a mandatory force. Therefore, in order to interpret the legal import of the word 'may', we have to consider various factors,

Example the object and the scheme of the Act, the context or background against which the words have been used, the purpose and advantages of the Act sought to be achieved by use if this word and the like.

Where the word 'may' involves a discretion coupled with an obligation or where it confers a positive benefit to the general class of subjects, or where a remedy would be advanced and a mischief suppressed, or where giving the word a directory significance would defeat the very object of the Act then word 'may' should be interpreted to convey a mandatory force. Thus, where a discretion is conferred upon a public authority coupled with an obligation, the word 'may' should be construed to mean a command. Similarly when an order of the Government or a statute confers a power on an authority in the discharge of a public duty, and though such power appears to be merely permissive, it is imperative that the authority should exercise that power in the discharge of its duties: there the word 'may' assumes mandatory force.

The, word **'may' is often read as 'shall' or 'must'** when there is something in the nature of the thing to be done, which makes it the duty of the person on whom the power is conferred to exercise the power. No general rule can be laid down for deciding whether any particular provision in a statute is mandatory, meaning thereby that non-observance thereof involves the consequences of invalidity, or only directory, i.e. a discretion, non-observance of which does not entail the consequence of invalidity, whatever other consequences may occur. But in each case the Court has to decide the legislature's intent. Did the legislature intend in making the statutory provision that non observance of this would entail invalidity or did it not? To decide this, we have to consider not only the actual words used, but the scheme of the statute, the intended benefit to the public or what is enjoined by the provisions and the material danger to the public by the contravention of the scheme. The use of the expression 'shall' or 'may' is not decisive. Having regard to the context, the expression 'may' has varying significance. In one context, it may be purely permissive, while in another context it may confer a power and make it obligatory upon the person invested with the power to exercise it as laid down. Therefore, while undoubtedly the word 'may' generally does not mean 'must' or 'shall' yet the same word 'may' is capable of meaning 'must' or 'shall' in the light of the context in which it occurs.

(ii) Shall: the use of the word shall would not of itself make a provision of the act mandatory. It has to be construed with reference to the context in which it is used. Thus, as against the Government the word 'shall' when used in statutes is to be construed as 'may' unless a contrary intention is manifest. Hence, a provision in a criminal statute that the offender shall be punished as prescribed in the statute is not necessarily to be taken as against the Government to direct prosecution under that provision rather than under some other applicable statute.

Therefore, generally speaking when a statute uses the word 'shall' *prima facie* it is mandatory but it is sometimes not so interpreted if the context or intention of the legislature otherwise demands. Thus, under certain circumstances the expression 'shall' is construed as 'may'. Yet, it has to be emphasized that the term 'shall' in its ordinary significance, is mandatory and the Court shall ordinarily give that interpretation to the term, unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature to be collected from other parts of the Act.

For ascertaining the real intention of the legislature, the Court may consider amongst other things:

— the nature and design of the statute,

— the consequence which would flow from construing it one way or the other,

— the impact of other provisions by resorting to which the necessity of complying with the provision in question can be avoided,

— whether or not the statute provides any penalty if the provision in question is not complied with,

— if the provision in question is not complied with, whether the consequences would be trivial or serious, and

— most important of all, whether the object of the legislation will be defeated or furthered.

Where a specific penalty is provided in statute itself for non-compliance with the particular provision of the Act, no discretion is left to the Court to determine whether such provision is directory or mandatory – it has to be taken as mandatory.

The use of word 'shall' with respect to one matter and use of word 'may' with respect to another matter in the same section of at statute, will normally lead to the conclusion that the word 'shall' imposes an obligation, whereas word 'may

'confers a discretionary power *(Labour Commr., M.P.V. Burhanpur Tapti Mill, AIR, 1964 SC1687).*

(6) Rule of Ejusdem Generis: The term **'ejusdem generis'** means **'of the same kind or species'.** Simply stated, the rule means:

(i) Where any Act enumerates different subjects, general words following specific words are to be construed (and understood) with reference to the words that precede them. Those general words are to be taken as applying to things of the same kind as the specific words previously mentioned, unless there is something to show that a wider sense was intended. Thus, the rule of **ejusdem generis** means that where specific words are used and after those specific words, some general words are used, the general words would take their colour from the specific words used earlier.

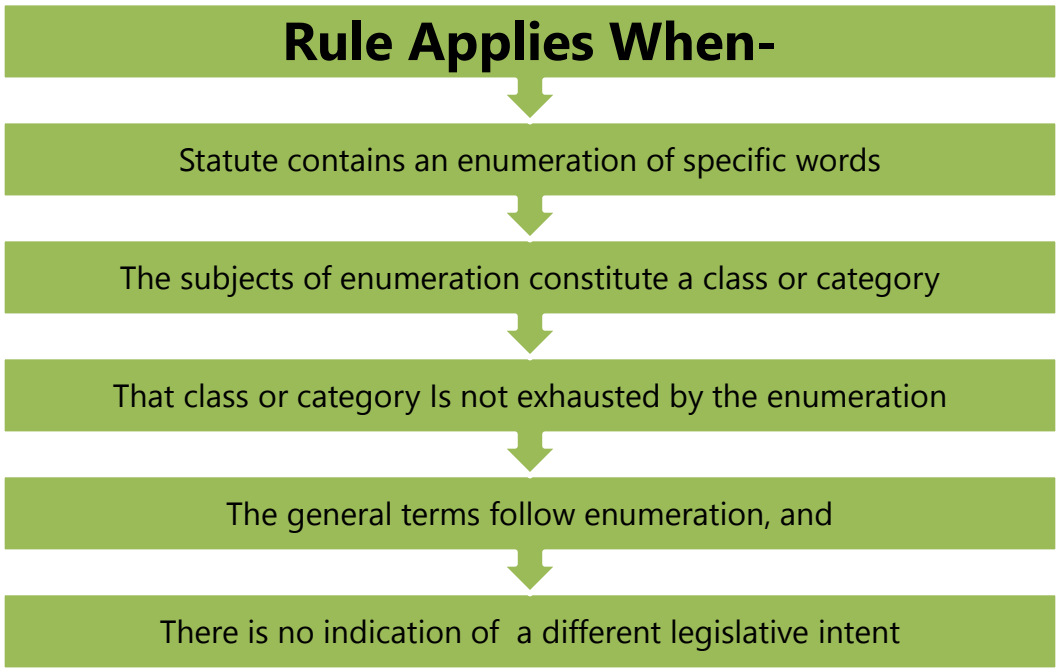
For instance 'in the expression in consequence of war, disturbance or any other cause', the words 'any other cause' would take colour from the earlier words 'war, disturbance' and therefore, would be limited to causes of the same kind as the two named instances. Similarly, where an Act permits keeping of dogs, cats, cows, buffaloes and other animals, the expression 'other animals' would not include wild animals like lions and tigers, but would mean only domesticated animals like horses, etc.

Where there was prohibition on importation of 'arms, ammunition, or gunpower or any other goods' the words 'any other goods' were construed as referring to goods similar to 'arms, ammunition or gun powder' *(AG vs. Brown (1920), 1 KB 773)*.

(ii) If the particular words used exhaust the whole genus (category), then the general words are to be construed as covering a larger genus.

(iii) We must note, however, that the general principle of 'ejusdem generis' applies only where the specific words are all the same nature. When they are of different categories, then the meaning of the general words following those specific words remains unaffected-those general words then would not take colour from the earlier specific words.

In the expression charges, rates, duties and taxes', the term charges was read ejusdem generis taking colour from the succeeding terms rates, duties, and taxes. Here, the general category preceded the enumeration of specific categories and so rule of ejusdem generis was technically not applicable and the court in fact applied the more general rule- *Noscitur a sociis* and rightly limited the meaning of the term charges.



It is also to be noted that the courts have a discretion whether to apply the 'ejusdem generis' doctrine in particular case or not. **For example**, the 'just and equitable' clause in the winding-up powers of the Courts is held to be not restricted by the first five situations in which the Court may wind up a company.

(B) OTHER (SECONDARY) RULES OF INTERPRETATION.

(1) Effect of usage: Usage or practice developed under the statute is indicative of the meaning recognized to its words by contemporary opinion. A uniform notorious practice continued under an old statute and inaction of the Legislature to amend the same are important factors to show that the practice so followed was based on correct understanding of the law. When the usage or practice receives judicial or legislative approval it gains additional weight.

In this connection, we have to bear in mind two Latin maxims:

(i) *'Optima Legum interpres est consuetude'* (the custom is the best interpreter of the law); and

(ii) *'Contempranea exposito est optima et fortissinia in lege'* (the best way to interpret a document is to read it as it would have been read when made). Therefore, the best interpretation/construction of a statute or any other document is that which has been made by the contemporary authority.

Simply stated, old statutes and documents should be interpreted as they would have been at the time when they were enacted/written.

Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as contemporanea exposition to interpret not only ancient but even recent statutes in India.

Example: Documents issued by the Government simultaneously with the notification under section 16(1) of the Securities Contracts (Regulation) Act, 1956 were used as contemporanea expositio of the notification. *[DeshBandhu Gupta & Co. v. Delhi Stock Exchange Association Ltd., AIR 1979 SC]*

(2) Associated Words to be Understood in Common Sense Manner: When two words or expressions are coupled together one of which generally excludes the other, obviously the more general term is used in a meaning excluding the specific one. On the other hand, there is the concept of ***'Noscitur A Sociis'*** ('it is known by its associates'), that is to say 'the meaning of a word is to be judged by the company it keeps'. When two or more words which are capable of analogous (similar or parallel) meaning are coupled together, they are to be understood in their cognate sense (i.e. akin in origin, nature or quality). They take, as it were, their colour from each other, i.e., the more general is restricted to a sense analogous to the less general. It is a rule wider than the rule of ejusdem generis, rather ejusdem generis is only an application of the noscitur a sociis. It must be borne in mind that nocitur a sociis, si merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider.

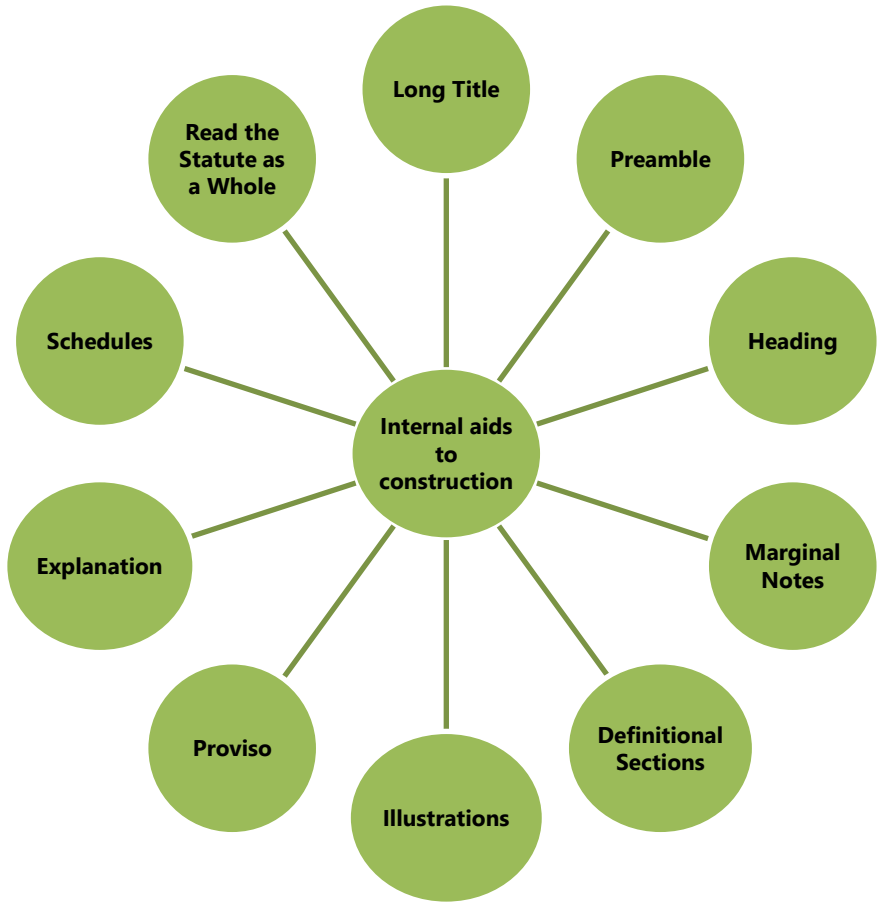
For **example**, in the expression 'commercial establishment means an establishment which carries on any business, trade or profession', the term 'profession' was construed with the associated words 'business' and 'trade' and it was held that a private dispensary was not within the definition. *(Devendra M. Surti (Dr.) vs. State of Gujrat, AIR 1969 SC 63 at 67)*.

The term 'entertainment' would have a different meaning when used in the expression 'houses for public refreshment, resort and entertainment' than its generally understood meaning of theatrical, musical or similar performance. Similarly, the expression 'place of public resort' would have one meaning when coupled with the expression 'roads and streets' and the same express 'place of public resort' would have quite a different meaning when coupled with the word 'houses'.

In construing of the terms powers, privileges and immunities of a house of the Legislature of a state conferred in the Article 194 of the Constitution, the Supreme court said that the word 'powers' must take its colour from words in immediate connection with it and that it should be construed to refer not to legislative powers but to powers of a house which are necessary for the conduct of its business. *[State of Karnataka v. Union of India, AIR 1978 SC]*

4. INTERNAL AIDS TO INTERPRETATION/ CONSTRUCTION

Every enactment has its Title, Preamble, Heading, Marginal Notes, Definitional Sections/Clauses, Illustrations etc. They are known as 'internal aids to construction' and can be of immense help in interpreting/construing the enactment or any of its parts.



(a) **Long Title:** An enactment would have what is known as a 'Short Title' and also a 'Long Title'. The 'Short Title' merely **identifies** the enactment and is chosen merely for convenience, the 'Long Title' on the other hand, **describes** the enactment and does not merely identify it.

It is now settled that the Long Title of an Act is a part of the Act. We can, therefore, refer to it to ascertain the object, scope and purpose of the Act and so is admissible as an aid to its construction.

Example: Full title of the Supreme Court Advocates (Practice in High Courts) Act, 1951 specify that this is an Act to authorize Advocates of the Supreme Court to practice as of right in any High Court.

So, the title of a statute is an important part of the Act and may be referred to for the purpose of ascertaining its general scope and of throwing light on its construction, although it cannot override the clear meaning of the enactment. *[Aswini kumar Ghose v. Arabinda Bose, AIR 1952 SC]*

(b) **Preamble:** The Preamble expresses the scope, object and purpose of the Act more comprehensively than the Long Title. The Preamble may recite the ground and the cause of making a statute and the evil which is sought to be remedied by it.

Like the Long Tile, the Preamble of a Statute is a part of the enactment and can legitimately be used for construing it. However, the Preamble does not over-ride the plain provision of the Act but if the wording of the statute gives rise to doubts as to its proper construction, **for example**, where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction.

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

Example: Use of the word 'may' in section 5 of the Hindu Marriage Act, 1955 provides that "a marriage may be solemnized between two Hindus....." has been construed to be mandatory in the sense that both parties to the marriage must be Hindus as defined in section 2 of the Act. It was held that a marriage between a Christian male and a Hindu female solemnized under the Hindu Marriage Act was void. This result was reached also having regard to the preamble of the Act which reads: 'An Act to amend and codify the

law relating to marriage among Hindus" [*Gullipoli Sowria Raj V. Bandaru Pavani, (2009)1 SCC714]*

(c) **Heading and Title of a Chapter:** If we glance through any Act, we would generally find that a number of its sections applicable to any particular object are grouped together, sometimes in the form of Chapters, prefixed by Heading and/or Titles. These Heading and Titles prefixed to sections or groups of sections can legitimately be referred to for the purpose of construing the enactment or its parts. However, there is a conflict of opinion about the weightage to be given to them. While one section of opinion considers that a heading is to be regarded as giving the key to the interpretation of the clauses ranged under it and might be treated as 'preambles to the provisions following it', the other section of opinion is emphatic that resort to the heading can only be taken when the enacting words are ambiguous. According to this view headings or titles prefixed to sections or group of sections may be referred to as to construction of doubtful expressions, but cannot be used to restrict the plain terms of an enactment.

We must, however, note that the heading to one group of sections cannot be used to interpret another group of sections.

Example: Chapter contained in the Code of Criminal Procedure, 1973 read as 'Limitation for taking cognizance of certain offences', was not held to be controlling and it was held that a cumulative reading of various provisions in the said chapter clearly indicated that the limitation prescribed therein was only for the filing of the complaint or initiation of the prosecution and not for taking cognizance. *[Bharat Damodar Kale v. State of A.P., air 2003 SC]*

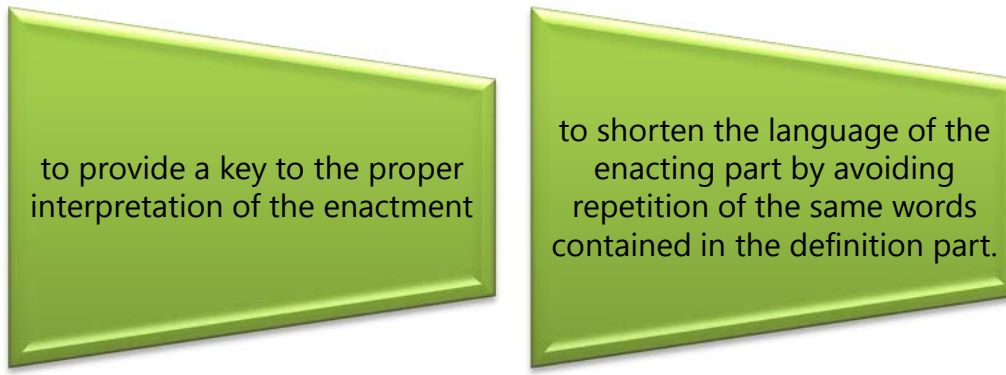
(d) **Marginal Notes:** Although there is difference of opinion regarding resort to Marginal Notes for construing an enactment, the generally held view is that the Marginal Notes appended to a Section cannot be used for construing the Section. In *C.I.T. vs. Ahmedbhai Umarbhai & Co. (AIR 1950 SC 134 at 141)*, Patanjali Shastri, J., had declared: "Marginal notes in an Indian statute, as in an Act, of Parliament cannot be referred to for the purpose of construing the statute", and the same view has been taken in many other cases. Many cases show that reference to marginal notes may be permissible in exceptional cases for construing a section in a statute. [*Deewan Singh v. Rajendra Pd. Ardevi, (2007)10 SCC , Sarabjit Rick Singh v. Union of India, (2008) 2 SCC]*

However, marginal notes appended to Articles of the Constitution have been held to be part of the Constitution as passed by the Constituent Assembly and therefore have been made use of in construing the Articles.

Example: Article 286 of the constitution furnishing "prima facie", some clue as to the meaning and purpose of the Article *[Bengal Immunity Co. Ltd. v. State of Bihar, AIR1955SC]*

(e) **Definitional Sections/Interpretation Clauses:** The legislature has the power to embody in a statute itself the definitions of its language and it is quite common to find in the statutes 'definitions' of certain words and expressions used in the body of the statute. When a word or phase is defined as having a particular meaning in the enactment, it is that meaning alone which must be given to it in interpreting a Section of the Act unless there be anything repugnant in the context. The Court cannot ignore the statutory definition and try and extract what it considers to be the true meaning of the expression independently of it.

The purpose of a definition clause is two-fold: (i) to provide a key to the proper interpretation of the enactment, and (ii) to shorten the language of the enacting part by avoiding repetition of the same words contained in the definition part every time the legislature wants to refer to the expressions contained in the definition.



Construction of definitions may understood under the following headings:

(i) Restrictive and extensive definitions

(ii) Ambiguous definitions

(iii) Definitions subject to a contrary context

(i) Restrictive and extensive definitions: The definition of a word or

expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

When a word is defined to **'mean'** such and such, the definition is *'prima facie'* restrictive and exhaustive we must restrict the meaning of the word to that given in the definition section.

But where the word is defined to **'include'** such and such, the definition is *'prima facie'* extensive: here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

We may also find a word being defined as **'means and includes'** such and such: here again the definition would be exhaustive.

On the other hand, if the word is defined '**to apply to and include',** the definition is understood as extensive.

Example: The usage of word 'any' in the definition connotes extension for 'any' is a word of every wide meaning and prima facie the use of it excludes limitation.

It has been a universally accepted principle that where an expression is defined in an Act, it must be taken to have, throughout the Act, the meaning assigned to it by the definition, unless by doing so any repugnancy is created in the subject or context.

Example: Inclusive definition of lease given under section 2(16)(c) of the Stamp Act, 1899 has been widely construed to cover transaction for the purpose of Stamp Act which may not amount to a lease under section 105 of the Transfer of property Act, 1882. *[State of Uttarakhand v. Harpal Singh Rawat,(2011) 4 SCC 575]*

Section 2(m) of the Consumer Protection Act, 1986 contains an inclusive definition of 'person'. It has been held to include a 'company' although it is not specifically named therein *[Karnataka Power Transmission Corporation v. Ashok Iron Works Pvt. Ltd., (2009)3 SCC 240]*

A definition section may also be worded as '**is deemed to include'** which again is an inclusive or extensive definition as such a words are used to bring in by a legal fiction something within the word defined which according to its ordinary meaning is not included within it.

For example: If A is deemed to be B, compliance with A is in law compliance with B and contravention of A is in law contravention of B

(ii) Ambiguous definitions: Sometime we may find that the definition section may itself be ambiguous, and so it may have to be interpreted in the light of the other provisions of the Act and having regard to the ordinary meaning of the word defined. Such type of definition is not to be read in isolation. It must be read in the context of the phrase which it defines, realising that the function of a definition is to give accuracy and certainty to a word or phrase which would otherwise be vague and uncertain but not to contradict it or depose it altogether.

Example: Termination of service of a seasonal worker after the work was over does not amount to retrenchment as per the Industrial Disputes Act, 1947. *[Anil Bapurao Karase v. Krishna Sahkari Sakhar Karkhana, AIR 1997 SC 2698]*. But the termination of employment of a daily wager who is engaged in a project, on completion of the project will amount to retrenchment if the worker had not been told when employed that his employment will end on completion of the project. *[S.M. Nilajkarv.Telecom District Manager Karnataka, (2003)4 SCC]*.

(iii) Definitions subject to a contrary context: When a word is defined to bear a number of inclusive meanings, the sense in which the word is used in a particular provision must be ascertained from the context of the scheme of the Act, the language of the provision and the object intended to be served thereby.

(f) **Illustrations:** We would find that many, though not all, sections have illustrations appended to them. These illustrations follow the text of the Sections and, therefore, do not form a part of the Sections. However, illustrations do form a part of the statute and are considered to be of relevance and value in construing the text of the sections. However, illustrations cannot have the effect of modifying the language of the section and can neither curtail nor expand the ambit of the section.

Example: In holding that section 73 of the Indian Contract Act , 1872 does not permit the award of interest as damages for mere detention of debt, the privy Council rejected the argument that illustration given in the Act can be used for arriving at a contrary result. It was observed that nor can an illustration have the effect of modifying the language of the section which alone forms the enactment.

In a case the Supreme court took the aid of illustration appended to section 43 of the Transfer of Property Act, 1882 for conclusion that the said provision applies to transfer of spes succession is and enables the transferee to claim the property, provided other conditions of the sections are satisfied. Venkatarama Aiyer, J., observed that it is not to be readily assumed that an illustration to a section is repugnant to it and rejected. *[Jumma Masjid v. Kodimaniandra Deviah, AIR 1962 SC 847]*

(g) **Proviso:** 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. Ordinarily a proviso is not interpreted as stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. *(Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax, AIR 1955 SC 765)*.

Distinction between Proviso, exception and saving Clause

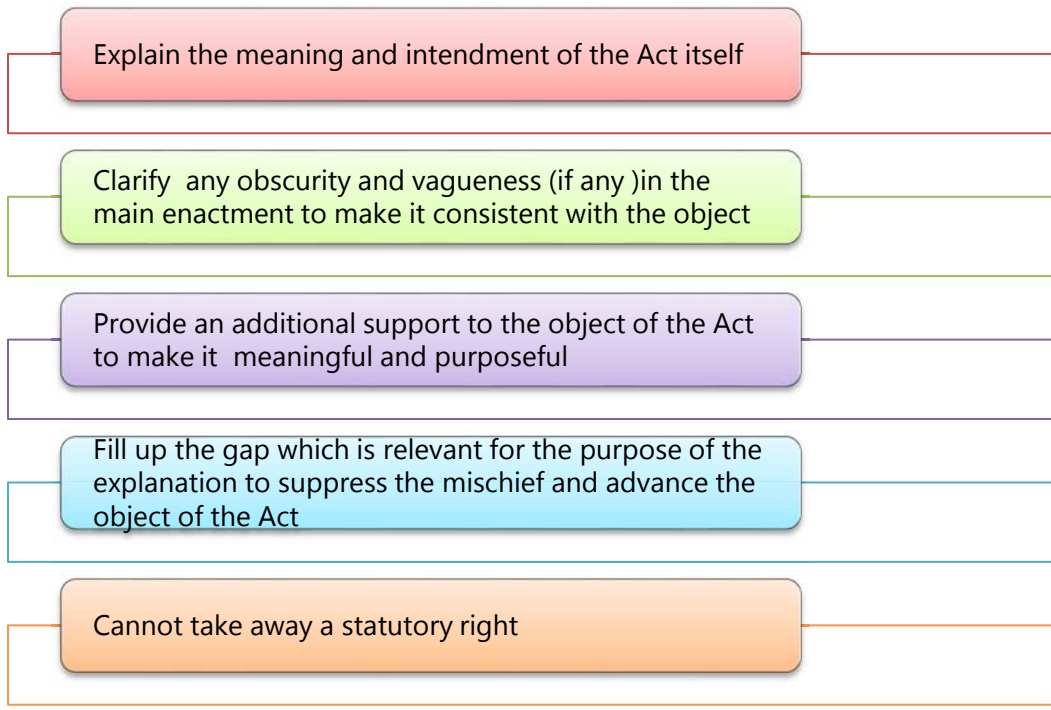
There is said to exist difference between provisions worded as 'proviso',' Exception', or 'Saving Clause'.

Differences		
'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

(h) **Explanation:** An Explanation is at times appended to a section to explain the meaning of the text of the section. An Explanation may be added to include something within the section or to exclude something from it. An Explanation should normally be so read as to harmonise with and clear up

any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.

In *Sundaram Pillai v. Pattabiraman, Fazal Ali*, J. gathered the following objects of an explanation to a statutory provision:



However, it would be wrong to always construe an explanation limited to the aforesaid objects. The meaning to be given to an explanation will really depend upon its terms and not on any theory of its purpose.

(i) **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. They often contain details and forms for working out the policy underlying the sections of the statute **for example** schedules appended to the Companies Act, 2013, to the Constitution of India.

(j) **'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. Lord Waston, speaking with regard to **deeds** had

stated thus: The deed must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with other provisions – if that interpretation does no violence to the meaning of which they are naturally susceptible. And the same approach would apply with equal force with regard to Acts and Rules passed by the legislature.

One of the safest guides to the construction of sweeping general words is to examine other words of like import in the same enactment or instrument to see what limitations must be imposed on them. If we find that a number of such expressions have to be subjected to limitations and qualifications and that such limitations and qualifications are of the same nature, that circumstance forms a strong argument for subjecting the expression in dispute to a similar limitation and qualification.

For example, if one section of an Act requires 'notice' should be given, then a verbal notice would generally be sufficient. But, if another section provides that 'notice' should be 'served' on the person or 'left' with him, or in a particular manner or place, then it would obviously indicate that a written notice was intended.

5. EXTERNAL AIDS TO INTERPRETATION/ CONSTRUCTION

Society does not function in a void. Everything done has its reasons, its background, the particular circumstances prevailing at the time, and so on. These factors apply to any enactment as well. These factors are of great help in interpreting/construing an Act and have been given the convenient nomenclature of **'External Aids to Interpretation'**. Apart from the statute itself there are many matters which may be taken into account when the statute is ambiguous. These matters are called external aids. Some of these factors are enumerated below:

External Aids					
Historical Setting	Consolidating Statutes & Previous Law	Usage	Earlier & Later Acts and Analogous Acts	Dictionary Definitions	Use of Foreign Decisions

(a) **Historical Setting:** The history of the external circumstances which led to the enactment in question is of much significance in construing any enactment. We have, for this purpose, to take help from all those external or historical facts which are necessary in the understanding and comprehension of the subject matter and the scope and object of the enactment. History in general and Parliamentary History in particular, ancient statutes, contemporary or other authentic works and writings all are relevant in interpreting and construing an Act. We have also to consider whether the statute in question was intended to alter the law or leave it where it stood before.

(b) **Consolidating Statutes & Previous Law:** The Preambles to many statutes contain expressions such as "An Act to 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.

(c) **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. It has been emphasized that when a legislative measure of doubtful meaning has, for several years, received an interpretation which has generally been acted upon by the public, the Courts should be very unwilling to change that interpretation, unless they see cogent reasons for doing so.

(d) **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 *'pari materia'* (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.

If two Acts are to be read together then every part of each Act has to construed as if contained in one composite Act. But if there is some clear discrepancy then such a discrepancy may render it necessary to hold the later Act (in point of time) had modified the earlier one. However, this does not mean that every word in the later Act is to be interpreted in the same way as in the earlier Act.

Where the later of the two Acts provides that the earlier Act should, so far as consistent, be construed as one with it then an enactment in the later statute that nothing therein should include debentures was held to exclude debentures from the earlier statute as well.

Where a single section of one Act (say, Act 'A') is incorporated into another statute (say Act 'B'), it must be read in the sense which it bore in the original Act from which it is taken consequently, it would be legitimate to refer to all the rest of Act 'A' to ascertain what that Section means, though one Section alone is incorporated in the new Act (Act 'B').

Suppose the earlier bye-law limited the appointment of the chairman of an organisation to a person possessed of certain qualifications and the later bye-law authorises the election of any person to be the chairman of the organisation. In such a case, the later bye-law would be so construed as to harmonise and not to conflict with the earlier bye-law: the expression 'any person' used in the later bye-law would be understood to mean only **any eligible person** who has the requisite qualifications as provided in the earlier bye-law.

- **Earlier Act Explained by the Later Act:** Not only may the later Act be construed in the light of the earlier Act but it (the later Act) sometimes furnishes a legislative interpretation of the earlier one, if it is '*pari materia*' and if, **but only if**, the provisions of the earlier Act are ambiguous.

  Where the earlier statute contained a negative provision but the later one merely omits that negative provision: this cannot by itself have the result of substantive affirmation. In such a situation, it would be necessary to see how the law would have stood without the original provision and the terms in which the repealed sections are re-enacted.

  The general rules and forms framed under an Act which enacted that they should have the same force as if they had been included in it any may also be referred to for the purposes of interpretation of the Act.

- **Reference to Repealed Act:** Where a part of an Act has been repealed, it loses its operative force. Nevertheless, such a repealed part of the Act may still be taken into account for construing the un-repealed part. This is so because it is part of the history of the new Act.

(e) **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. It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Further, judicial decisions laying down the meaning of words in construing statutes in '*pari materia*' will have greater weight than the meaning furnished by dictionaries. However, for technical terms reference may be made to technical dictionaries.

(f) **Use of Foreign Decisions:** Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts. However, prime importance is always to be given to the language of the Indian statute. Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.

6. RULES OF INTERPRETATION/ CONSTRUCTION OF DEEDS AND DOCUMENTS

The first and foremost point that has to be borne in mind is that one has to 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.

It is inexpedient to construe the terms of one deed by reference to the terms of another.

Further, it is well established that the same word cannot have two different meanings in the same document, unless the context compels the adoption of such a rule.

The Golden Rule is to 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. The circumstances in which the particular words had been used have also to be taken into account. Very often, the status and training of the parties using the words have also to be taken into account as the same words may be used by an ordinary person in one sense and by a trained person or a specialist in quite another special sense. It has also to be considered that very

many words are used in more than one sense. It may happen that the same word understood in one sense will give effect to all the clauses in the deed while taken in another sense might render one or more of the clauses ineffective. In such a case the word should be understood in the former and not the latter sense.

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.

SUMMARY

Enacted laws, Acts and Rules are drafted by legal experts and so it is expected that the language used will leave little room for interpretation of construction. Interpretation or construction of statutes helps in finding of the meaning of ambiguous words and expressions given in the statutes and resolving inconsistency lying therein. If any provision of the statute is open to two interpretations, the Court has to choose that interpretation which represents the true intention of the legislature. The best interpretation of statutes is possible by adoption of various guiding rules of construction and aids to construction of statutes. The courts are the best interpreters. They strongly lean against a construction which reduces the statute to a futility. A statute or any enacting provision therein must be so construed as to make it effective and operative on the principle expressed in the maxim: *ut res magis valeat quam pereat*.

TEST YOUR KNOWLEDGE

Multiple Choice Questions

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

   (a) Document

   (b) Deed

   (c) Statute

   (d) Instrument

2. Which among the following is the cardinal rule of construction of statutes—
   (a) Harmonious Rule of construction
   (b) Beneficial Rule of construction
   (c) Literal Rule of construction
   (d) Reasonable Rule of construction
3. Rule of Reasonable Construction is based on the maxim—
   (a) Absolut asentenia expositor non indigent
   (b) Ut res magis valeat quam pareat
   (c) Quo facit per alium facit per se
   (d) contemporanea expositio
4. Rule of Beneficial construction is also known as—
   (a) Purposive construction
   (b) Mischieve Rule
   (c) Heydons's Rule
   (d) All of the Above
5. Pick the odd one out of the following aids to interpretation—
   (a) Preamble
   (b) Marginal Notes
   (c) Proviso
   (d) Usage
6. Which rule of construction is applicable where there is a real and not merely apparent conflict between the provisions of an Act, and one of them has not been made subject to the other—
   (a) Rule of Beneficial construction
   (b) Rule of Literal construction
   (c) Rule of Harmonious construction
   (d) Rule of Exceptional construction

7. An internal aid that may be added to include something within the section or to exclude something from it, is—

   (a) Proviso

   (b) Explanation

   (c) Schedule

   (d) Illustrations

8. An aid that expresses the scope, object and purpose of the Act—

   (a) Title of the Act

   (b) Heading of the Chapter

   (c) Preamble

   (d) Definitional sections

Answer to MCQs

1. (d) **2.** (c) **3.** (b) **4.** (d) **5.** (d) **6.** (c)
7. (b) **8.** (c)

QUESTION AND ANSWER

Question 1

Explain the rule of 'beneficial construction' while interpreting the statutes quoting an example.

Answer

Where the language used in a statute is capable of more than one interpretation, the most firmly established rule for construction is the principle laid down in the Heydon's case. This rule enables, consideration of four matters in constituting an act :

(1) what was the law before making of the Act,

(2) what was the mischief or defect for which the law did not provide,

(3) what is the remedy that the Act has provided, and

(4) what is the reason for the remedy.

The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. Therefore even in a case where

the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it. If the object of any enactment is public safety, then its working must be interpreted widely to give effect to that object. Thus in the case of Workmen's Compensation Act, 1923 the main object being provision of compensation to workmen, it was held that the Act ought to be so construed, as far as possible, so as to give effect to its primary provisions.

However, it has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning *[CIT v. Sodra Devi (1957) 32 ITR 615 (SC)]*.

Question 2

Explain the principles of "Grammatical Interpretation" and "Logical Interpretation" of a Statute. What are the duties of a court in this regard?

Answer

Principles of Grammatical Interpretation and Logical Interpretation: In order to ascertain the meaning of any law/ statute the principles of Grammatical and Logical Interpretation is applied to conclude the real meaning of the law and the intention of the legislature behind enacting it.

Meaning: Grammatical interpretation concerns itself exclusively with the verbal expression of law. It does not go beyond the letter of the law, whereas Logical interpretation on the other hand, seeks more satisfactory evidence of the true intention of the legislature.

Application of the principles in the court: In all ordinary cases, the grammatical interpretation is the sole form allowable. The court cannot delete or add to modify the letter of the law. However, where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness, the court is under a duty to travel beyond the letter of law so as to determine the true intentions of the legislature. So that a statute is enforceable at law, however, unreasonable it may be. The duty of the court is to administer the law as it stands rather it is just or unreasonable.

However, if there are two possible constructions of a clause, the courts may prefer the logical construction which emerges from the setting in which the clause appears and the circumstances in which it came to be enacted and also the words used therein.

Question 3

(i) What is the effect of proviso? Does it qualify the main provisions of an Enactment?

(ii) Does an explanation added to a section widen the ambit of a section?

Answer

(i) Normally a Proviso is added to a section of an Act to except something or qualify something stated in that particular section to which it is added. A proviso should not be, ordinarily, interpreted as a general rule. A proviso to a particular section carves out an exception to the main provision to which it has been enacted as a Proviso and to no other provision. *[Ram Narian Sons Ltd. Vs. Commissioner of Sales Tax AIR (1955) S.C. 765]*

(ii) Sometimes an explanation is added to a section of an Act for the purpose of explaining the main provisions contained in that section. If there is some ambiguity in the provisions of the main section, the explanation is inserted to harmonise and clear up and ambiguity in the main section. Something may added be to or something may be excluded from the main provision by insertion of an explanation. But the explanation should not be construed to widen the ambit of the section.

Question 4

Gaurav Textile Company Limited has entered into a contract with a Company. You are invited to read and interpret the document of contract. What rules of interpretation of deeds and documents would you apply while doing so?

Answer

The rules regarding interpretation of deeds and documents are as follows :

First and the foremost point that has to be borne in mind is that one has to find out what 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.

It is inexpedient to construe the terms of one deed by reference to the terms of another. Further, it is well established that the same word cannot have two different meanings in the same documents, unless the context compels the adoption of such a rule.

The Golden Rule is to ascertain the intention of the parties of the instrument after considering all the words in the documents/deed concerned in their ordinary,

natural sense. For this purpose, the relevant portions of the document have to be considered as a whole. The circumstances in which the particular words have been used have also to be taken into account. Very often, the status and training of the parties using the words have also to be taken into account as the same words maybe used by a ordinary person in one sense and by a trained person or a specialist in quite another sense and a special sense. It has also to be considered that very many words are used in more than one sense. It may happen that the same word understood in one sense will give effect to all the clauses in the deed while taken in another sense might render one or more of the clauses ineffective. In such a case the word should be understood in the former and not in the latter sense.

It may also happen that there is a conflict between two or more clauses of the same documents. An effect must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect. If, however, it is not possible to give effect of all of them, then it is the earlier clause that will override the latter one.

Question 5

How will you interpret the definitions in a statute, if the following words are used in a statute ?

(i) Means, (ii) Includes

Give one illustration for each of the above from statutes you are familiar with.

Answer

Interpretation of the words "Means" and "Includes" in the definitions- The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

When a word is defined to 'mean' such and such, the definition is 'prima facie' restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.

But where the word is defined to 'include' such and such, the definition is 'prima facie' extensive, here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

Example—

Definition of Director [section 2(34) of the Companies Act, 2013]—Director means a director appointed to the board of a company. The word "means" suggests exhaustive definition.

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

Question 6

Differentiate Mandatory Provision from a Directory Provision. What factors decide whether a provision is directory or mandatory?

Answer

Practically speaking, the distinction between a provision which is 'mandatory' and one which is 'directory' is that when it is mandatory, it must be strictly observed; when it is 'directory' it would be sufficient that it is substantially complied with. However, we have to look to the substance and not merely the form, an enactment in mandatory form might substantially be directory and, conversely, a statute in directory form may in substance be mandatory. Hence, it is the substance that counts and must take precedence over mere form. If a provision gives a power coupled with a duty, it is mandatory: whether it is or is not so would depend on such consideration as:

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

Question 7

Define Grammatical Interpretation. What are the exceptions to grammatical interpretation?

Answer

Grammatical Interpretation and its exceptions: 'Grammatical interpretation' concerns itself exclusively with the verbal expression of the law, it does not go beyond the letter of the law. In all ordinary cases, 'grammatical interpretation' is the sole form allowable. The Court cannot take from or add to modify the letter of the law.

This rule, however, is subject to some exceptions:

(i) Where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness. As regard the defect to ambiguity, the Court is under a duty to travel beyond the letter of the law so as to determine from the other sources the true intention of the legislature. In the case of the statutory expression being defective on account of inconsistency, the court must ascertain the spirit of the law.

(2) If the text leads to a result which is so unreasonable that it is self-evident that the legislature could not mean what it says, the court may resolve such impasse by inferring logically the intention of the legislature.

Question 8

Write short note on:

(i) Provision

(ii) Explanation,

with reference to interpretation of Statutes, Deeds and Documents.

Answer

(i) **Proviso:** 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. Ordinarily a proviso is not interpreted as stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision.

(ii) **Explanation:** An Explanation is at times appended to a section to explain the meaning of the text of the section. An Explanation may be added to include something within the section or to exclude something from it. An Explanation should normally be so read as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.

The meaning to be given to an explanation will really depend upon its terms and not on any theory of its purpose.

Question 9

Explain 'Mischieve Rule' for interpretation of statute. Also, give four matters it considers in construing an Act.

Answer

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

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

It enables consideration of four matters in construing an Act:

(1) what was the law before the making of the Act;

(2) what was the mischief or defect for which the law did not provide;

(3) what is the remedy that the Act has provided; and

(4) what is the reason for the remedy.

Question 10

Explain how 'Dictionary Definitions' can be of great help in interpreting / constructing an Act when the statute is ambiguous.

Answer

Dictionary Definitions: First we refer 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. It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Further, judicial decisions laying down the meaning of words in construing statutes *in pari materia* will have greater weight than the meaning furnished by dictionaries. However, for technical terms, reference may be made to technical dictionaries.