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Other Laws

Interpretation of Statutes

Letter of Law: We will restrict ourselves to the verbal expression of law. (literal construction)

Spirit of Law: Interpret the law as per the intention to law maker (All other construction)

What is the need of Interpretation?

The language of the law cannot be drafted with mathematical precision (i.e. exactness) sometimes the legal language is **AUDI**.

A = Ambiguous (more than 1 meaning possible)

U = Unreasonable

DI = Defeat the intention of legislation (law maker)

What is interpretation?

- It is a process by which real meaning of statutes is ascertained & intention of legislative (law maker) is ascertained.
- Statute means written will of legislative (i.e. law of India)
- Legislative means authority who makes laws & regulations to permit or prohibit anything. (i.e. Parliament & the president for internal Act)

Example of Interpretation

Case law: Sailuch Harilal Shah v/s Makushree Textiles Ltd.

Fact: (a) Notice of G.M. was given few days short. (< 21 days)

(b) However, overwhelming majority attended & voted at G.M.

(c) Even the complainant did not suffer any loss due to few days short notice.

Demand: Complainant wants the court to declare the G.M. as invalid

Letter of Law: Notice of G.M must be given 21 clear days in advance.

Spirit of Law: Intention of Law-maker (The Shareholder must get sufficient time to plan & attend the G.M)

Vindict: The length of notice i.e. 21 clear days is not mandatory but directory. Subject to other conditions being satisfied. The court followed the rule of reasonable construction & went against the letter of law.

Definition

① **Document means** (Evidence Act / Includes G.C.A)

- Any Matter (Information)
- **Written, expressed or described (WED)** upon any substance (i.e. paper, plastic, metal, cloth, skin etc.) by means of **letters, figures or marks (FLM)** for the purpose of recording it.
- Generally, documents comprises of following 4 elements:
(i) Matter (ii) Record (iii) Substances (iv) Means

② **Instruments includes**

- Every document through which a right or liability is created, transferred or record.

Ex: Negotiable Instrument (N.I)

③ **Deed means**

Animal Skin

- A writing on paper, **vellum** or parchment
- Signed, Sealed & Delivered (SSD)
- whereby an interest, right or property (IRP)
- is transferred.

Ex: Transfer deed / Partnership deed, gift deed, conveyance deed.



Interpretation

- Letter of law
- Court refuses to travel beyond the written expression of law.
- Court Believes that law maker would have chosen the words very carefully while drafting law.

Construction

- Spirit of law
- Court travel beyond the written expression to find out the **real intention of law maker**.
- Court believes that language of law in AUDI & words must be modified to derive its true meaning.

NOTE: Throughout the chapter the 2 words are used interchangeably.

General Classification of Interpretation

Legal (Sources)

Authentic

When rule of interpretation is derived from the **legislator himself**.

↓
Eg. Internal Aids

Usual

When rule of interpretation is derived from some other sources such as **customs or case law**.

↓
Eg. External Aids

Doctrinal

(Rule of Interpretation)

Grammatical

- ↓
- Letter of law
 - When court applies only the **ordinary rule of speech**.
 - It does not go beyond the letter of law.
 - Language of law is plain.
 - Grammar.

Logical

- ↓
- Spirit of law
 - When court goes beyond the words & tries to discover the intention of the statutes in some other way.
 - Purpose of law.
 - Language of law in AUDI.



1. Rule of Interpretation

Primary Rules (7)

- (i) Rule of literal construction
- (ii) Rule of reasonable construction
- (iii) Rule of harmonious construction
- (iv) Rule of beneficial construction or rule of liberal construction
- (v) Mischief Rule or Heydon's rule or Rule of purposive construction
- (vi) Rule of exceptional construction
- (vii) Rule of Eiusdem generis

viii

Secondary Rules (2)

- (i) Doctrine of Noscitur or Sociis.
- (ii) Doctrine of Contemporanea Expositio.

1. Literal Construction

(Letter of the law)

Based on 'Latin Maxim' "Absoluta Sententia expostore non indeget" which literally means plain words required no explanation.

Meaning It is the cardinal rule (Primary Rule) of construction that words, sentences & phrases of a statute & phrases of a statute should be read in their ordinary, natural & grammatical meaning unless the context suggest otherwise.

{ Not add or remove word. }

{ Not give your own color. }

Technical Words Technical Words : Apply technical meaning.

Non-Technical Words : Apply ordinary, popular meaning.

Case law: "Ramavtar v/s Assistant Sales tax officer
(Sales tax will be imposed on betel leaves.)

• Betel leaves → Technical → Supari Leaves
→ Ordinary → Paan Ka Patta.



Narrow vs
wide

If narrow interpretation fails to achieve the purpose of law, adopt the wider interpretation.

Ex: Explanatory Statement along with notice of G.M.V/3 102.

• Disclose interest of promoter / KMP / director / relative.

≥ 2% shareholding in any other co.

Non-
applicability

If the language of law is **AUDI**.

Reason
behind this
rule

Court believes that law makers must have chosen the **words** **very carefully**, while drafting the law.

2. Rule of Reasonable Construction

• Sensible / logical / Spirit of law

Points

Details

Basis

"Ut Res Magis Valeat Quam Pereat"

It is better for a thing to have effect than to be made void.

[meaning (better)

Word [Void x

• This rule is known as golden rule of interpretation.

x

applicability

• If the language of law is **AUDI**

Meaning

This means that if the words in the statute are capable of more than one interpretation then the court should:

- Discard the interpretation which is not consistent with the purpose of statute & makes the statute vague & meaningless.
- Adopt the interpretation which is consistent with the purpose of statute & makes the statute certain & meaningful.

Object

- How should the language of MOA be interpreted?
- MOA of a company must be made fairly and its meaning derived from a reasonable interpretation of the language. The Object clause should be reasonably construed neither with rigidity nor with laxity.

Non-Applicability

- The Ordinary meaning is clear.
- Reasonable construction is absurd.

Case Law

"Smith v/s Hughes"

The defendant were prostitutes who had been charged under the Street Offences Act, 1959, which made it an offence, to solicit in a public place.

Mischief: The prostitutes were soliciting from private premises in windows or on balconies so could be seen by Public.

Interpretation of Court: The court applied "Reasonable Rule" holding that activities of defendant were within mischief the Act was aimed at even though under a literal interpretation they would be in private place.

- Logical meaning must be given.
- Spirit of law override the letter of law in this case.

3. Rule of Harmonious Construction



It is the opposite of Conflict.

Points	Details
Meaning	When two or more provisions of the same statute cannot be reconciled with one another then they should be interpreted in such a way that effect given to all of them.
Reason	The Statute is passed as a whole & not in a parts & all its provisions are colored with a common purpose.
Example	Company $\xrightarrow{\text{Loan and Investment}}$ Any Person Sec 179 requires B.R in B.M. Sec 186 requires UBR (Unanimous Board Resolution) Applying the rule of harmonious construction, the company should pass 'UBR' in B.M.
Non-Applicability	S = Superior Section $\rightarrow$ Non obstante clause $\rightarrow$ 'Not with Standing' in spite of anything contained in any other section. S = Specific $\rightarrow$ Without prejudice to "<i>Generalia Specialibus non derogant</i>" A specific rule will override General Rule. S = Subordinate Section $\rightarrow$ Subject to (This Section is Subordinate to another section)
Applicability	When there is a conflict between two provisions of a Statute, this rule is applied.
Example	Section 13 Change MDA • Change Name • SA + CO1 Section 4 Name should not be identical undesirable indicating Govt. Patronage. Section 13 is subordinate to Section 4.

4. Rule of Beneficial Construction or Rule of Liberal Construction

Points

Details

Meaning

This rule specifically applies to "welfare legislation" for improving the conditions of certain classes of people who are under privileged or who have not been treated fairly in the past.

Eg. Workers, Woman etc.

Applicability

Beneficial Construction will be given to a statute which bring into effect provisions for improving the conditions of certain classes of people who are under privileged or who have not been treated fairly in the past.

Example

① Maternity Benefit Act, 1961

- Avg. daily wages for the period of her actual absence immediately preceding & including the day of her delivery & for 6 weeks immediately following that day. The court held that Sunday must also be included it was not only to subsist but also make up for her dissipated energy & take care of child.

② Gratuity = 15/26.

6. Rule of Exceptional Construction

Meaning Read the opposite in exceptional circumstances

1. **AND** Conjunctive All the conditions must be satisfied.

OR Disjunctive One of the condition must be satisfied.

2. **Shall** Mandatory legal provisions must be strictly followed.

may Directory/Discretion legal provisions must be substantially followed.

Example ① Definition of Govt. Company v/s 2(45):

A govt. company means a company in which atleast 51% of PUSC is held by:

(a) CG

(b) One or more SG's

(c) Partly by CG & partly by one or more SG's
and = or interpret

• Subsidiary of a govt. co. is also a govt. co.

③ A company may be formed for any lawful purposes.

Here the word used **may** must be read as **shall**.

Question How will you understand whether a provision in a statute is **mandatory** or **directory**?

Answer: Factors to be considered by court:

N 1. The **nature** of thing empowered to be done (activity)

O 2. The **object** for which its done. (Purpose)

B 3. The person for whose **benefit** the power to be exercised.

L 4. Most important of all, whether the object of **legislation** be defeated.

S 5. Where a **specific** penalty is provided in **statute** itself its mandatory.

7. Rule of 'Ejusdem Generis'



Means of the same kind or species.

Example • Arms, Ammunitions, Gunpowder & other goods.
 Here 1, 2, 3 = Specific words of same species.
 4 = General word

Meaning where specific words are used & after those specific words, some general words are used, the general words would take their colour from specific words used earlier.

**** Applicability** This rule applies when:

1. The statute contains an enumeration of specific words
2. The subject of enumeration (example) constitutes a class or category (same species).
3. That class or category is not exhausted by the enumeration.
4. General term follows the enumeration &
5. There is no indication of a different legislative intent (not unless otherwise is used.)

Non-Applicability 1. If all the words in the sequence are general, this rule cannot be applied.

2. Where the particular words exhaust the whole category.
3. Where the specific objects enumerated are diverse in character.
4. Where there is an express intention of legislature that general terms shall not be read 'ejusdem generis' the specific.

Secondary Rule of Interpretation / Construction

I. Doctrine of "Noctiter A Sociis"

Example manufactured beverages including fruit juice, bottle water, syrups.

Case law

- Commissioner of Custom & Excise v/s Savay Hotel Ltd.
- All the above words are specific & of same category.
- 3 out of 4 words above have some sense (common sense) i.e. they are packaged drinks (mang. beverage, bottle water, syrups).
- All the 4 words should have same sense.
- Hence, fruit juice above will imply packaged fruit juice & not freshly pressed juice.

Meaning when specific words of same category imply same sense, common sense then all the associated words shall be interpreted in that same sense.

- Associated words to be understood in common sense manner.
- It's known by its associate.
- The meaning of a word is to be judged by the company it keeps.

Example Private dispensary (charity) of a doctor is not a commercial establishment.

II. Doctrine of Contemporanea Expotio

Meaning The best way to interpret a document is to read it as it would have been read when made.

Based On Maxim "Optima legum interpretatio commetude"
Simply means, "Custom is the best interpreter of law".

Example Pre Conception & Pre Natal Diagnostic technique Act, 1994
PCPNDT Act

- Prevent to determine sex of child.

Aids of Interpretations

10 = Internal aids

- Tool of interpretation that are inside the statute itself.
- They are part of the statute itself.

7 = External aids

- Tool of interpretation that are outside the statute. They are not the part of the statute.

Internal aids to Interpretation / construction

- Long Title**
- It describes the enactments
 - It is to ascertain scope, object & purpose of the Act.

Ex. The supreme court advocate practice in high court, 1951 → S.T
 str. Act to authorize advocate of S.C. to practice as a matter of right in any high court → L.T

- Short Title**
- It merely identifies the enactment
- Ex. The Companies Act, 2013.

- Preamble**
- Preamble is more comprehensive than long title. However, the word long title & preamble have been interchangeable used.
 - It is part of enactment & can legitimately be used for interpreting it.
 - However, the preamble does not override the plain provisions of Act. (Sec.)

- Example**
- The preamble of the Hindu Marriage Act, 1955.
 - str. Act to amend and codify the law relating to marriage among Hindus.
 - When ambiguity arose regarding the use of the word may in Sec. 5 of the said Act, which provide that a marriage may be solemnized between 2 Hindus. It has been constructed to be mandatory in the sense that both

parties to the marriage must be Hindus, as defined in Sec. 2 of the Act.

Case Law "Gulli Polli Sownia Raj v/s Bandaru Pavani"

Fact: Hence, resorting to the preamble it was held that a marriage between Christian Male & Hindu female solemnized under the Hindu marriage Act is void.

Heading & title of a chapter

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 or title.

It might be treated as preamble to the sections / provisions following
Ex: Companies Act.

Chapter	Heading	Section Range
<u>VI</u>	Registration of Charges	77 to 87
<u>X</u>	Audit & Auditors	139 to 148.

Marginal Notes

• marginal notes appended (added) to the Articles of the constitution as passed by constituent assembly & therefore have been made use of in interpreting the articles, but not to interpret the section.

** • marginal note is used only for interpreting constitution of India. It acts as internal aid of interpretation not for any other law.

Definition / Sections / Clauses

• Five sources of definition

① Direct definition in the statute itself company v/s 2(20); Small Co. v/s 2(85).

② Indirect definition in the statute by reference to another statute.
Ex: In company law, "Digital Signature" have same meaning given in Information Technology Act, 2000.

③ Special Statutes: The word "Digital Signature" used in companies act shall be construed as per Sec. 2(1)(p) of the Information Technology Act, 2000.

④ General Clauses Act, 1897: The word "Affidavit" used in Sec. 7 of The Companies Act shall derive its meaning from the word "Affidavit" as defined in GCA, 1897.

⑤ Legal dictionary (Lexicon): If none of the above is available, then we may refer legal dictionary.

Purpose • The purpose of a definition clause is two fold

(i) To shorten the language of law.

(ii) To provide a key to the proper interpretation of the enactment.

Ex: Small Co., Dormant Co.

Generally (A) Inclusive definition / Extensive definition:

Includes

• Body corporate includes a co. incorporated outside India.

(B) Exhaustive definition / Restrictive definition / means / means & includes

Ex: Company means.

Illustration • Illustrations do form a part of the statute & are considered to be of relevant & values in construing the text of the sections.

Example of

Ex to • It cannot have the effect of modifying the language of the section. It can neither curtail nor expand the ambit (~~sp~~ scope) of section.

Explanation ① It is added to a section to explain the meaning of the text of the section.

It is a ② It provides an additional support.

Verification ③ It may be added to include something within the section or to exclude something

to the section ④ Clarify any ~~consequences~~ vagueness.

Exclude or ⑤ It should normally be so read or to harmonize with & clear up any ambiguity in the meaning of the section, means suppress the mischief & advances the object of the Act.

Include something ⑥ It cannot take away a statutory right.

Proviso

Exception

- It qualifies the body of the section.
- It creates an exception to the main section.
- There are 3 types of proviso as shown below with example.
- It usually contain the words 'Provided that' or 'Save as' or 'Except as'.
- It gives a reverse situation to the section.

Schedule

- They are given at the end of the statute after the section.
- Amendment of schedule is easy compared to amendment in sections.
- Changes could be made by MCA notification not by parliament.
- In case of conflict between Section & Schedule → Section win.

Read the Statute or a whole

- It's the elementary principle that statute is to be made of all its parts taken together & not of one only.

* External aids to interpretation

Historical Setting

- History in general + also parliamentary history.
- Similar to Contemporanea Expositio.

Consolidating Statute and Provisional

- Is it necessary that a director should be a shareholder?
- Now → NO (As per the CA, 2013)
- Previous law → Yes, Director must have to hold qualification shares (AQA)
- So that he should be SH's of a company to be a director.

Usage

- Whenever any law is followed by public for several years, the court should be very unwilling to change that interpretation unless they see strong reasons for doing so.

Analogue

Acts (Similar Statute)

- Paramotopia: Same Matter / material
- UK Companies Act, 2006.
- Director may be an individual or body corporate
- Sec 149 = Director must be an individual.

Case Law Ex: *Baiterh Harilal Shah v/s Matushree textile Ltd.* (Indian decision)

Salomon v/s Salomon & Co. Ltd. (Foreign decision)

Dictionary use of Dictionary.

Definition

* Interpretation of Deed & Documents

- while interpreting 6 factors must kept in mind.

Reasonable first & foremost point in what a reasonable man who has taken care to
Informed inform himself of the surrounding circumstances of a deed.
Person

Another It's not wise to construe the term of one deed by reference to the terms
Deed of another deed.

Same Word Some word ~~may~~ cannot have two different in the same document unless
same Meaning otherwise provided.

Status & Training of the parties Some word may be used by an ordinary persons in one sense & by a trained person or a specialist in quite another & special sense.

Ex: Judge | Magistrate | Justice

↓

Ordinary person / Specialist = Different meaning.

Words with double meaning → Rule of Reasonable construction apply.

Conflict b/w clauses • First apply harmonious construction.
• If not then earlier clause shall prevail.