

13

CHAPTER

The General Clauses Act, 1897

LDR Questions



Q. 5 Q. 8 Q. 14 Q. 17 Q. 24 Q. 27 Q. 28 Q. 31 Q. 34 Q. 39 Q. 46 Q. 48 Q. 49

ICAI Module Descriptive Questions

1. What is “Financial Year” under the General Clauses Act, 1897?

Solution:

According to Section 3(21) of the General Clauses Act, 1897, ‘Financial Year’ shall mean the year commencing on the first day of April.

The term year has been defined under Section 3(66) as a year reckoned according to the British calendar.

Thus, as per the General Clauses Act, 1897, Year means calendar year which starts from January to December.

Hence, in view of both the above definitions, it can be concluded that Financial Year is a year which starts from first day of April to the end of March.

2. What is “Immovable Property” under the General Clauses Act, 1897?

Solution:

According to Section 3(26) of the General Clauses Act, 1897, ‘Immovable Property’ shall include:

- (i) Land,
- (ii) Benefits to arise out of land, and
- (iii) Things attached to the earth, or
- (iv) Permanently fastened to anything attached to the earth.

For example, trees are immovable property because trees are benefits arise out of the land and attached to the earth. However, timber is not immovable property as the same are not permanently attached to the earth. In the same manner, buildings are immovable property.

3. As per the provisions of the Companies Act, 2013, a whole-time Key Managerial Personnel (KMP) shall not hold office in more than one company except its subsidiary company at the same time. Referring to section 13 of the General Clauses Act, 1897, examine whether a whole-time KMP can be appointed in more than one subsidiary company?

Solution:

Section 203(3) of the Companies Act, 2013 provides that whole time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time.

With respect to the issue that whether a whole time KMP of holding company be appointed in more than one subsidiary companies or can be appointed in only one subsidiary company.

It can be noted that Section 13 of the General Clauses Act, 1897 provides that the word 'singular' shall include the 'plural', unless there is anything repugnant to the subject or the context. Thus, a whole time key managerial personnel may hold office in more than one subsidiary company as per the present law.

4. A notice when required under the Statutory rules to be sent by “registered post acknowledgment due” is instead sent by “registered post” only. Whether the protection of presumption regarding serving of notice by “registered post” under the General Clauses Act is tenable? Referring to the provisions of the General Clauses Act, 1897, examine the validity of such notice in this case.

Solution:

As per the provisions of Section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

- (i) Properly addressing,
- (ii) Pre-paying, and
- (iii) Posting by registered post.

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

Therefore, in view of the above provision, since the statutory rules itself provides about the service of notice that a notice when required under said statutory rules to be sent by 'registered post acknowledgement due', then, if notice was sent by 'registered post' only it will not be the compliance of said rules. However, if such provision was not provided by such statutory rules, then service of notice if by registered post only shall be deemed to be effected.

Furthermore, in similar case of *In United Commercial Bank v. Bhim Sain Makhija*, AIR 1994 Del 181, a notice when required under the statutory rules to be sent by 'registered post acknowledgement due' is instead sent by 'registered post' only, the protection of presumption regarding serving of notice under 'registered post' under this section of the Act is neither tenable nor based upon sound exposition of law.

5. X owned a land with fifty tamarind trees. He sold his land and the timber (obtained after cutting the fifty trees) to Y. X wants to know whether the sale of timber tantamount to sale of immovable property. Advise him with reference to the provisions of the General Clauses Act, 1897.



Solution:

“Immovable Property” [Section 3(26) of the General Clauses Act, 1897]:

‘Immovable Property’ shall include:

- (i) Land,
- (ii) Benefits to arise out of land, and
- (iii) Things attached to the earth, or
- (iv) Permanently fastened to anything attached to the earth.

It is an inclusive definition. It contains four elements: land, benefits to arise out of land, things attached to the earth and things permanently fastened to anything attached to the earth. Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in the General Clauses Act will apply to the expression given in that enactment.

In the instant case, X sold Land along with timber (obtained after cutting trees) of fifty tamarind

trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.

6. What is the meaning of service by post as per the provisions of the General Clauses Act, 1897?

Solution:

“Meaning of Service by post” [Section 27 of the General Clauses Act, 1897]: Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

- (i) properly addressing
- (ii) pre-paying, and
- (iii) posting by registered post.

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

7. Komal Ltd. declares a dividend for its shareholders in its AGM held on 27th September, 2022. Referring to provisions of the General Clauses Act, 1897 and the Companies Act, 2013, advice:

- (i) The dates during which Komal Ltd. is required to pay the dividend?
- (ii) The dates during which Komal Ltd. is required to transfer the unpaid or unclaimed dividend to the unpaid dividend account?

Solution:

As per section 9 of the General Clauses Act, 1897, for computation of time, the section states that in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

- (i) Payment of dividend: In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2022. Under the provisions of Section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28/09/2022 to 27/10/2022. In this series of 30 days, 27/09/2022 will be excluded and last 30th day, i.e. 27/10/2022 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2022 and 27/10/2022 (both days inclusive).
- (ii) Transfer of unpaid or unclaimed dividend: As per the provisions of Section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the “Unpaid Dividend Account” (UDA). Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28th October, 2022 to 3rd November, 2022 (both days inclusive).

8. ‘Repeal’ of a provision is different from ‘deletion’ of a provision. Explain as per the General Clauses Act, 1897.



Solution:

In Navrangpura Gam Dharmada Milkat Trust v. Rmtuji Ramaji, AIR 1994 Guj 75 case, it was decided that ‘Repeal’ of provision is in distinction from ‘deletion’ of provision. ‘Repeal’ ordinarily brings about complete obliteration (abolition) of the provision as if it never existed, thereby affecting

all incoherent rights and all causes of action related to the 'repealed' provision while 'deletion' ordinarily takes effect from the date of legislature affecting the said deletion, never to effect total effecting or wiping out of the provision as if it never existed.

9. The Companies Act, 2013 provides that the amount of dividend remained unpaid/unclaimed on expiry of 30 days from the date of declaration of dividend shall be transferred to the unpaid dividend account within 7 days from the date of expiry of such period of 30 days. If the expiry date of such 30 days is 30.10.2022, decide the last date on or before which the unpaid/unclaimed dividend amount shall be required to be transferred to a separate bank account in the light of the relevant provisions of the General Clauses Act, 1897?

Solution:

Section 9 of the General Clauses Act, 1897 provides that, for computation of time, in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to".

As per the facts of the question the company shall transfer the unpaid/unclaimed dividend to unpaid dividend account within the period of 7 days. 30th October, 2022 will be excluded and 6th November 2022 shall be included, i.e. 31st October, 2022 to 6th November, 2022 (both days inclusive).

10. Referring to the provisions of the General Clauses Act, 1897, find out the day/ date on which the following Act/Regulation comes into force. Give reasons also,
- (i) An Act of Parliament which has not specifically mentioned a particular date.
 - (ii) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1st January, 2016.

Solution:

- (i) According to section 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the President in case of an Act of Parliament.
- (ii) If any specific date of enforcement is prescribed in the Official Gazette, the Act shall come into enforcement from such date.

Thus, in the given question, the SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 shall come into enforcement on 1st January, 2016 rather than the date of its notification in the Gazette.

RTP, MTP and PYQ Descriptive Questions

11. Explain the following with reference to the provisions of the General Clauses Act, 1897: Affidavit (MTP May 25)

Solution:

"Affidavit" [Section 3(3) of the General Clauses Act, 1897]:

- (i) 'Affidavit' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.
- (ii) The above definition is inclusive in nature.

- (iii) It states that Affidavit shall include affirmation and declarations.
- (iv) In general parlance. Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority.

12. Elucidate the term “Commencement” as per the General Clauses Act, 1897. (MTP M 21)

Solution:

Section 3(13) of the General Clauses Act, 1897, defines the term “Commencement”.

“Commencement” used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force.

Coming into force or entry into force (also called commencement) refers to the process by which legislation; regulations, treaties and other legal instruments come to have a legal force and effect.

A law cannot be said to be in force unless it is brought into operation by legislative enactment, or by the exercise of authority by a delegate empowered to bring it into operation. The theory of a statute being “in operation in a constitutional sense” though it is not in fact in operation has no validity. (State of Orissa Vs. Chandrasekhar Singh Bhai — AIR1970)

13. Explain the following with reference to the provisions of the General Clauses Act, 1897: Good Faith (MTP May 25)

Solution:

“Good Faith” [Section 3(22) of the General Clauses Act, 1897]:

- (i) A thing shall be deemed to be done in “good faith” where it is in fact done honestly, whether it is done negligently or not.
- (ii) The question of good faith under the General Clauses Act is one of fact. It is to be determined with reference to the circumstances of each case.
- (iii) Thus, anything done with due care and attention, which is not malafide, whether it is done negligently or not is presumed to have been done in good faith.

14. CCTV recording of an incident can be considered as a document. Explain what do you understand by the word document and how will you justify your answer in accordance with the provision of the General Clauses Act, 1897? (MTP May 25)

Solution:

Law: As per Section 3 of the Indian Evidence Act, 1872, a document refers to any matter that is expressed or described upon a substance using letters, figures, or marks with the intention of recording information. Similarly, Section 3(18) of the General Clauses Act, 1897, states that a document includes any material on which information is written, expressed, or described through various means.

A document generally consists of four key elements:

- (a) Matter – The content or subject recorded in the document.
- (b) Record – The process of fixing or storing the matter on a particular medium.
- (c) Substance – The physical medium on which the information is recorded (paper, digital file, stone engraving, etc.).
- (d) Means – The method used to record the information, such as letters, numbers, symbols, or figures.

So, a contract agreement between two businesses is a document because it contains matter (terms and conditions of the agreement). It is recorded in writing on a substance (paper or electronic document). It is written using letters and symbols to communicate between the parties.

Conclusion: A CCTV recording of an incident is a document. Even though it is not written on paper, it is still a document because it records matter (the incident), is stored on a medium (hard drive or tape) and can be used as proof in a legal proceeding.

15. State what do you understand by the term 'Document' as per the General Clauses Act, 1897? Discuss which of the following will be treated as document? **(MTP MAY 2018)**

- (a) Power-of-attorney.
- (b) Cheque

Solution:

According to section 3(18) of the General Clauses Act, 1897, 'Document' shall include any matter written, expressed or described upon any substance by means of letters, figures or marks or by more than one of those means which is intended to be used or which may be used, for the purpose or recording that matter.

Thus,

- (a) Yes, power-of-attorney is a document.
- (b) Yes, cheque upon a banker is a document.

16. A confusion regarding the meaning of 'financial year' arose among the financial executive and accountant of a company. Both were having different arguments regarding the meaning of financial year & calendar year. What is the correct meaning of the financial year under the provision of the General Clauses Act, 1897? How it is different from calendar year? **(MTP May 24)**

Apar and Mr. New, both aspiring Chartered Accountants have met in a conference for CA students. Both are having an argument about the meaning of Financial Year. They have approached you as a senior in the profession to guide them about the meaning of Financial Year as per the provisions of the General Clauses Act, 1872. Also, brief them about the difference between a calendar year and financial year. **(RTP MAY 2021)**

Solution:

Financial Year: According to Section 3(21) of the General Clauses Act, 1897, financial year shall mean the year commencing on the first day of April.

The term Year has been defined under section 3(66) as a year reckoned according to the British calendar.

Thus, as per the General Clauses Act, 1897, year means calendar year which starts from January to December.

Difference between Financial Year and Calendar Year: Financial year starts from first day of April, but Calendar Year starts from first day of January.

17. What do you understand by the term 'Good Faith'. Explain it as per the provisions of the General Clauses Act, 1897. Mr. X purchased a watch from Mr. Y carelessly without proper enquiry. Whether the purchase made could said to be made in good faith. **(NOV 2019)**



Solution:

Law: As per Section 3(22) of the General Clauses Act, 1897, the term "good faith" means a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not;

The term "Good faith" has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term "good faith" and there the definition given in that particular enactment has to be followed.

The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case. Thus, anything done with due care and attention, which is not malafide is presumed to have been done in good faith.

Conclusion: In the given problem in the question, Mr. X purchased a watch from Mr. Y carelessly without proper enquiry. Such a purchase made could not be said to be made in good faith as it was done without due care and attention as is expected with a man of ordinary prudence. An honest purchase made carelessly without making proper enquiries cannot be said to have been made in good faith so as to convey good title.

- 18. M owned a land with fifty tamarind trees. He sold his land and the timber (obtained after cutting the fifty trees) to N. M wants to know whether the sale of timber tantamount to sale of immovable property. Advise him with reference to provisions of "General Clauses Act, 1897".**

(MTP MAY 2019) (3 Marks) (MTP M 21)

Solution:

Law: "Immovable Property" [Section 3(26) of the General Clauses Act, 1897]:

'Immovable Property' shall include:

- (i) Land,
- (ii) Benefits to arise out of land, and
- (iii) Things attached to the earth, or
- (iv) Permanently fastened to anything attached to the earth.

It is an inclusive definition. It contains four elements: land, benefits to arise out of land, things attached to the earth and things permanently fastened to anything attached to the earth. Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in the General Clauses Act will apply to the expression given in that enactment.

Conclusion: In the instant case, M sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.

- 19. Mr. N is caught stealing a bicycle, an offense punishable under the Indian Penal Code. According to Section 379 of the IPC, the punishment for theft was charged against him. Elaborate how the term "imprisonment" levied under the General Clauses Act, 1897, can be applied in line with the relevant law specified in the IPC?**

(RTP May 25)

Solution:

Law: According to section 3(27) of the General Clauses Act, 1897 states that 'Imprisonment' shall mean imprisonment of either description as defined in the Indian Penal Code. By section 53 of the Indian Penal Code, the punishment to which offenders are liable under that Code are imprisonment which is of two descriptions, namely, rigorous, that is with hard labor and simple. So, when an Act provides that an offence is punishable with imprisonment, the Court may, in its discretion, make the imprisonment rigorous or simple.

Conclusion: In this case:

If the court considers Mr. N's offense as a minor theft and believes it does not warrant harsh punishment, it might sentence him to simple imprisonment.

However, if the theft involved force, was committed in a violent manner, or if Mr. N has a history of criminal behavior, the court may decide to impose rigorous imprisonment.

- 20. Explain the following with reference to the provisions of the General Clauses Act, 1897:**

1. Movable Property
2. Oath

(MTP Jan 25)

Solution:

1. Movable Property

According to section 3(36) of the General Clauses Act, 1897, 'Movable Property' shall mean property of every description, except immovable property.

Thus, any property which is not immovable property is movable property. Debts, share, electricity are moveable property.

2. Oath

According to section 3(37) of the General Clauses Act, 1897, 'Oath' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

- 21. Yogveer Singh has a mango orchard at Manchanga Village, Bilaspur. The orchard has more than one hundred Mango trees. Yogveer Singh has sold orchard along with all the mango trees. Explain, in the lights of provisions of the General Clauses Act 1897, whether the sale of trees will be considered as sale of Immovable Property? (RTP May 24)**

Solution:

Law: According to section 3(36) of the General Clauses Act 1897, 'Movable Property' shall mean property of every description, except immovable property. While section 3(26) provides, 'Immovable Property' shall include:

- (i) Land,
- (ii) Benefits to arise out of land, and
- (iii) Things attached to the earth, or
- (iv) Permanently fastened to anything attached to the earth.

Conclusion: In the given question, Yogveer Singh has sold mango orchard along with all the mango trees. In the lights of provisions of the Act, as trees are benefits arise out of the land and attached to the earth, hence, mango trees are immovable property.

- 22. Define the term 'Official Gazette' as per the provisions of the General Clauses Act, 1897. (MTP Sep 24)**

Solution:

Official Gazette

According to section 3(39) of the General Clauses Act, 1897, 'Official Gazette' or 'Gazette' shall mean:

- (i) The Gazette of India, or
- (ii) The Official Gazette of a state.

The Gazette of India is a public journal and an authorised legal document of the Government of India, published weekly by the Department of Publication, Ministry of Housing and Urban Affairs. As a public journal, the Gazette prints official notices from the government. It is authentic in content, accurate and strictly in accordance with the Government policies and decisions. The gazette is printed by the Government of India Press.

- 23. Explain the following with reference to the provisions of the General Clauses Act, 1897: Person (MTP Jan 25)**

Solution:

Person

According to section 3(42) of the General Clauses Act, 1897, 'Person' shall include any company or association or body of individuals, whether incorporated or not.

-  24. The Parliament recently passed the Environment Protection Amendment Act, 2024, to strengthen regulations on industrial waste disposal. The Act specified the commencement date as 1st September, 2024. The President gave assent to the Act on 15th July, 2024.

Green Earth Limited, an industrial company, is uncertain about when the provisions of the Environment Protection Amendment Act, 2024, will start to apply. The company's legal team has raised question on whether they need to immediately comply with the new regulations or if they have a grace period until the commencement date. Give your answer in reference to the provisions of the General Clauses Act, 1897. **(RTP Jan 25)**

Solution:

Law: According to section 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the Governor General in case of a Central Acts made before the commencement of the Indian Constitution and/or, of the President in case of an Act of Parliament.

Conclusion: In the given question, the Environment Protection Amendment Act, 2024, received assent of President of India on 15th July, 2024. The commencement date is prescribed as 1st September 2024. Accordingly, the Environment Protection Amendment Act, 2024, shall come into enforcement 1st September, 2024.

25. Referring to the provisions of the General Clauses Act, 1897, answer the following questions: Whenever a new law is enacted by the Government of India, what shall be its date of coming into force? **(PYQ Sep 24)**

Solution:

As per section 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the Governor General in case of a Central Act made before the commencement of the Indian Constitution and/or, of the President, in case of an Act of Parliament.

Where, if any specific date of enforcement is prescribed in the Official Gazette, the Act shall into enforcement from such date

26. When does an enactment is said to have come into operation if the Act has not specified any particular date of its enforcement. Explain with the help of an example as per the provisions of the General Clauses Act, 1897. **(MTP MAY 2018)**

Solution:

“Coming into operation of enactment”: According to section 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the Governor General in case of a Central Acts made before the commencement of the Indian Constitution and/or, of the President in case of an Act of Parliament.

Example: The Companies Act, 2013 received assent of President of India on 29th August, 2013 and was notified in official gazette on 30th August, 2013 with the enforcement of section 1 of the Act. Accordingly, the Companies Act, 2013 came into enforcement on the date of its publication in the Official Gazette.

-  27. Referring to the provisions of the General Clauses Act, 1897, find out the day/ date on which the following Act/Regulation comes into force. Give reasons also.

- (i) An Act of Parliament which has not specifically mentioned a particular date.
- (ii) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1st January, 2016. (RTP NOV 2020)

Solution:

- (i) According to section 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the President in case of an Act of Parliament.
- (ii) If any specific date of enforcement is prescribed in the Official Gazette, the Act shall come into enforcement from such date.

Thus, in the given question, the SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 shall come into enforcement on 1st January, 2016 rather than the date of its notification in the gazette.

Conclusion: In the given question, the Environment Protection Amendment Act, 2024, received assent of

- 28. Whenever a new law is enacted to replace the existing law, it repeals the old enactment. Describe the points which shall not have any effect of repeal of the old enactment.** (PYQ Sep 24)



Solution:

According to section 6 of the General Clauses Act, 1897, where any Central legislation or any regulation made after the commencement of this Act repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:

- (i) Revive anything not enforced or prevailed during the period at which repeal is effected or;
- (ii) Affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (iii) Affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (iv) Affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (v) Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

- 29. 'Repeal' of provision is different from 'deletion' of provision. Explain as per the General Clauses Act, 1897.** (MTP NOV 2019)

Solution:

- (i) 'Repeal' of provision is in distinction from 'deletion' of provision.
- (ii) 'Repeal' ordinarily brings about complete obliteration (abolition) of the provision as if it never existed, thereby affecting all incoherent rights and all causes of action related to the 'repealed' provision. However while 'deletion' ordinarily takes effect from the date of legislature affecting the said deletion, never to effect total effecting or wiping out of the provision as if it never existed.
- (iii) Repeal has a retrospective effect, whereas deletion has a prospective effect

- 30. Excel Ltd. declared a dividend for its shareholders in its Annual General Meeting held on 30/09/2017. Under the provisions of the Companies Act, 2013, a company is required to pay declared dividends within 30 days from the date of declaration. As per the provisions of the General Clauses Act, 1897, discuss what will be the commencement and termination time for the posting of declared dividends.** (MTP MAY 2018)

Solution:

Law: As per the provisions of Section 9 of the General Clauses Act, 1897, in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

Section 127 of the Companies Act, 2013 uses the words, ‘thirty days from’.

Conclusion: Thus, in the given situation Excel Ltd. is required to pay declared dividend within 30 days from the date of declaration i.e. from 01/10/2016 to 30/10/2016. In this series of 30 days, 30/09/2016 will be excluded and last 30th day i.e. 30/10/2016 will be included.

31. Komal Ltd. declares a dividend for its shareholders in its Annual General Meeting held on 27th September, 2019. Referring to provisions of the General Clauses Act, 1897 and Companies Act, 2013, advice:



(a) The dates during which Komal Ltd. is required to pay the dividend?

(b) The dates during which Komal Ltd. is required to transfer the unpaid or unclaimed dividend to unpaid dividend account? **(MTP MAY 2020)**

Solution:

Law: As per section 9 of the General Clauses Act, 1897, for computation of time, the section states that in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

Conclusion:

- (i) Payment of dividend: In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2019. Under the provisions of Section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28/09/2019 to 27/10/2019. In this series of 30 days, 27/09/2019 will be excluded and last 30th day, i.e. 27/10/2019 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2019 and 27/10/2019 (both days inclusive).
- (ii) Transfer of unpaid or unclaimed dividend: As per the provisions of Section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the “Unpaid Dividend Account” (UDA). Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28th October, 2019 to 3rd November, 2019 (both days inclusive).

32. Define the following with reference to the provisions of the General Clauses Act, 1897:

1. Measurement of Distances

2. Duty to be taken pro rata in enactments

(MTP Sep 24)

Solution:

(1) Measurement of Distances

According to section 11 of the General Clauses Act, 1897, in the measurement of any distance, for the purposes of any Central Act or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

(2) Duty to be taken pro rata in enactments

According to section 12 of the General Clauses Act, 1897, where, by any enactment now in force or hereafter to be in force, any duty of customs or excise or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity.

Pro rata is a Latin term used to describe a proportionate allocation.

- 33.** Mr. Chaggan Lal is an importer dealing in luxury perfumes. Recently, a new enactment was passed which imposes a duty of 15% on the value of luxury goods, including perfumes.

Now Mr. Chaggan Lal has approached you to explain to him the provisions in relation to 'Duty to be taken pro rata in enactments' of the General Clauses Act, 1897. Also, help him to calculate the amount of duty on a Shipment of 100 bottles of perfumes, each valued at \$50. (RTP Sep 24)

Solution:

Law: According to section 12 of the General Clauses Act, 1897, where, by any enactment now in force or hereafter to be in force, any duty of customs or excise or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity.

Conclusion: The amount of duty would be= $(100 * 50) * 15\% = \$750$.

- 34.** Ms. Alka was director in Sweets Private Limited. Once while dealing with supplier of raw materials for company, she agreed to get some secret commission from supplier for making the deal.



Afterwards, on finding the facts, the company has filed the suit against Ms. Alka. She contended that section 166 of the Companies Act, 2013, provides "A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company." She contended that section 166 is applicable to male director only, she being female will not be liable.

In the light of the provisions of the General Clauses Act, 1897, decide whether she is bound by the provisions of section 166 of the Companies Act, 2013. (MTP May 25)

Solution:

Mrs. Neelu Chandra was director in Laddoo Sweets Private Limited. Once while dealing with supplier of raw materials for company, she agreed to get some secret commission from supplier for making the deal. Afterwards, on finding the facts, the company has filed the suit against Mrs. Neelu Chandra. She contended that section 166 of the Companies Act, 2013, provides "A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company." She contended that section 166 is applicable to male director only, she being female will not be liable.

- 35.** In the light of the provisions of the General Clauses Act, 1897, decide whether she is bound by the provisions of section 166 of the Companies Act, 2013? (RTP Nov 23)

Solution:

Law: By virtue of provisions of section 13 of the General Clauses Act, 1897, in all Central Acts or Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken to include females.

Conclusion: Ms. Alka, director in Sweets Private Limited, made an undue gain in the form of commission (from supplier for making the deal) in dealing for Sweets Private Limited but she

denied accepting the liability by saying that the language of section 166 provides penalty only for male directors not for females.

On the basis of provisions of the General Clauses Act, 1897 and facts of the case, the provisions of section 166 of the Companies Act, 2013, are not only applicable to males but also to females. Therefore, Ms. Alka is bound to comply by section 166 of the Companies Act, 2013.

36. Explain various provisions applicable to rules or bye-laws being made after previous publications as enumerated in Section-23 of the General Clauses Act, 1897. (MTP Sep 25) (NOV 2018)

Solution:

Making of rules or bye-laws after previous publications [Section 23 of the General Clauses Act, 1897]:

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

1. Make a draft manner decided by govt./authority
2. Notice annexed with the published draft: There shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;
3. Publish Draft mentioning time for suggestions/objections/comments from affected person and regulatory authorities
4. Consideration on suggestions/objections received from other authorities:
consider any objection or suggestion which may be received by the authority
5. Notified in the official gazette: The publication in the Official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye- laws have been duly made.

37. Mr. Ram, an advocate has fraudulently deceived his client Mr. Shyam, who was taking his expert advise on taxation matters. Now, Mr. Ram is liable to a fine for acting fraudulently both under the Advocates Act, 1961 as well as the Income Tax Act, 1961. State the provision as to whether his offence is punishable under the both the Acts, as per the General Clauses Act, 1897.

(RTP NOV 2018)

Solution:

Law: "Provision as to offence punishable under two or more enactments" [Section 26]: Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be punished twice for the same offence.

Conclusion: Thus, Mr. Ram shall be liable to punished under the Advocates Act, 1961 or the Income Tax Act, 1961, but shall not be punished twice for the same offence.

38. What is the meaning of service by post as per provisions of the General Clauses Act, 1897?

(RTP MAY 2021)

Solution:

Meaning of Service by post: According to section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

- (a) properly addressing
- (b) pre-paying, and
- (c) posting by registered post.

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

- 39.** Mr. Rachit purchased a new house and after some time he shifted to his new house. He was regularly filing his Income Tax Return but he did not update his address with the Income Tax Department. The Income Tax department sent a show cause notice to Mr. Rachit whereby the time limit for reply was 15 days from service of notice. The notice was properly sent by registered post to his address which was in the records of the Income Tax Department. The notice reached at old house and present owner of that house refused to accept that notice. After a certain period, the Income Tax Department took a penal action against Mr. Rachit. He requested the department, that he should not be charged as he did not receive the said notice. Advise in terms of the provisions of the General Clauses Act, 1897, whether sending of the show cause notice by the Income Tax Department would be considered proper service of notice? **(MTP May 24)**

Give your answer with reference to the provisions of the General Clauses Act, 1897.

Mr. Mike has lent his house property to Mr. Wise at a monthly rent of Rs. 15,0000 per month. The yearly rent agreement was due to expire in near future. However, Mr. Mike does not intend to continue this agreement and he has sent a notice to Mr. Wise for the termination of the agreement. Mr. Wise on the other hand does not want to vacate the property and hence has returned the notice with an endorsement of refusal. Now, Mr. Wise has contended that the no notice was served to him and hence there is no need for him to vacate the property. As per the provisions of the General Clauses Act, 1897, discuss whether a notice was served to Mr. Wise. **(MTP NOV 2018)**

Mr. Vyas is the owner of House No. 20 in Geeta Colony, Delhi. He has rented two rooms in this house to Mr. Iyer. The Income Tax Authority has served a show cause notice to Mr. Vyas. The said notice was received by Mr. Iyer and returned the notice with an endorsement of refusal.

Decide with reference to provisions of "General Clauses Act, 1897", whether the notice was rightfully served on Mr. Vyas. **(RTP MAY 2020)**

Solution:

Law: According to section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

- (i) properly addressing
- (ii) pre-paying, and
- (iii) posting by registered post.

Further, on the basis of the decision taken by the apex court in the case of Jagdish Singh vs Natthu Singh, where a notice is sent to the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served.

Conclusion: In the given case, the Income Tax Department sent the show cause notice properly by registered post at the address which was in the records of the department. Hence, it was a proper service of notice. Further, refusal by the current owner of the house to accept the notice will not amount to- that the notice was not properly served by the Income Tax Department. It was the duty of Mr. Rachit to update his address. Therefore, the Income Tax Department is correct in its decision.

- 40.** A notice was served on Mr. P for appearing in the court. However, the notice could not be served on account of the fact that the house of the Mr. P was found locked. Thus, Mr. P. did not appear in the court at the said date.

Examine the situation as per the provisions of the General Clauses Act, 1897 and determine whether Mr. P. will be liable in the given situation. **(MTP MAY 2019)**

Solution:

Law: According to section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

- (a) properly addressing
- (b) pre-paying, and
- (c) posting by registered post.

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

Conclusion: Hence, where the where the notice could not be served on account of the fact that the house of Mr P was found locked, it will be deemed that the notice was properly served as per the provisions of Section 27 of the General Clauses Act, and it would be for Mr. P to prove that it was not really served and that he was not responsible for such non-service.

- 41.** Kiran and Naman had a long dispute regarding the ownership of a land for which a legal suit was pending in the court. The court fixed the date of hearing on 29.04.2023, which was announced to be a holiday subsequently by the Government. What will be the computation of time of the hearing in this case under the General Clauses Act, 1897? **(MTP Sep. 23)**

Solution:

Law: "Computation of time" [Section 10]:

- ✦ Where any act or proceeding
- ✦ is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period
- ✦ then, if the Court or office is closed on that day or last day of the prescribed period,
- ✦ the act or proceeding shall be considered as done or taken in due time
- ✦ if it is done or taken on the next day afterwards on which the Court or office is open.

Note: Nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 applies.

Conclusion: Kiran and Naman can sue when the court reopens.

- 42.** ABC Limited operates a factory situated near a river. As per a recent Central Act, factories must be located at least 5 kilometers away from any river. A dispute arises when an environmental agency claims that ABC Limited's factory is only 4.5 kilometers away from the river, while ABC Limited contends that the distance is 5.3 kilometers as per the road distance measured along the winding path leading to the river.

Based on the provisions of the General Clauses Act, 1897, advise whether the contention of ABC Limited is correct. **(4 Marks) (MTP Dec 24)**

Solution:

Law: "Measurement of Distances" [Section 11]:

unless a different intention appears, be measured in a straight line on a horizontal plane.

Conclusion: In this case, the distance between ABC Limited's factory and the river must be measured in a straight line on a horizontal plane, not based on the road or path distance. The

environmental agency's claim that the factory is only 4.5 kilometers away in a straight line is correct. Since this measurement is less than the required 5 kilometers, the factory does not comply with the law. Therefore, ABC Limited's contention is not correct.

- 43.** Examine the validity of the following statements with reference to the General Clauses Act, 1897: Board of Directors of Sabarwal Construction Private Limited authorised by passing resolution in board meeting Mr. Munim to appoint five employees for accounts department of company. Mr. Munim appointed five employees including Mr. Rupal who was relative of one of the director of company. After one month, Mr. Munim observed that Mr. Rupal was not performing his duties honestly. Mr. Munim issued the order of dismissal of Mr. Rupal with proper reasons. Mr. Rupal filed a petition in the court that his dismissal order is not valid as Board of Directors had authorized Mr. Munim only for appointment of employees not for dismissal. Whether is Mr. Rupal correct with his words? **(April 22)(4 Marks)**

Solution:

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

The authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

Conclusion: No Mr. Rupal is not correct. Since Mr. Munim has power to appoint employees, if nothing is specified he has power to suspend or dismiss employee as well.

- 44.** In 2022, the Central Government enacted the "Digital Communications Act" to regulate and manage digital communications across the country. The Act provides specific duties and responsibilities for the Director of Digital Communications, including the oversight of digital infrastructure, enforcement of regulations, and ensuring compliance with data protection standards.

In 2023, the Director of Digital Communications, Mr. Arjun Patel, was appointed to lead the implementation of this Act. However, in January 2024, Mr. Patel took a medical leave of absence for six months. During his absence, Ms. Priya Sharma, the Deputy Director of Digital Communications, was lawfully assigned to perform the duties of the Director.

While Mr. Patel was on leave, a major data breach incident occurred involving a significant violation of the Digital Communications Act. Ms. Sharma took immediate action to investigate the breach, enforce penalties, and implement new compliance measures to prevent future incidents.

The actions taken by Ms. Sharma, while performing the duties of the Director, led to a legal challenge. The opposing party argued that only the Director, as specified in the Act, had the authority to enforce such penalties and measures, and that Ms. Sharma's actions were not valid.

Analyze the validity of Ms. Priya Sharma's actions in the context of the General Clauses Act, 1897, considering the provisions related to 'Official chiefs and subordinates'.

(4 Marks) (MTP July 24)

Solution:

Law: "Official Chiefs and subordinates" [Section 19]:

A law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

Conclusion: In the instant case, Ms. Priya, the Deputy Director of Digital Communications, was lawfully assigned to perform the duties of the Director. Hence, the actions taken by Ms. Priya Sharma were valid.

45.

- (i) The Board of Directors of Cool Private Limited, through a resolution passed in the board meeting, granted authorization to Mr. Sharad, the CEO of the company to appoint two employees for the procurement department. Subsequently, Mr. Sharad selected Mr. Suresh and Mr. Hemant for the positions. However, after one month, Mr. Sharad, noticing unsatisfactory performance and lack of honesty in their duties, issued dismissal orders for both employees, citing proper reasons. Mr. Suresh contested his dismissal in the court, arguing that the Board had only empowered Mr. Sharad for appointments and not for dismissals and hence the dismissal order is invalid.

Assess the validity of Mr. Suresh's argument under the provisions of the General Clauses Act, 1897.

- (ii) Mr. M issued a cheque of ₹3,00,00 dated 31.12.2023 at 10 a.m. to Mr. N as a consideration towards the medical services provided by the later. Mr. N presented the above cheque on 31.03.2024 during the banking business hours. The cheque was dishonoured taking the plea that it was not presented within the requisite time of 3 months as provided under section 138 of the Negotiable Instruments Act 1881.

Referring to the provisions of the General Clauses Act, 1897 decide, whether the plea for dishonouring the cheque was valid. (PYQ May 24)

Solution:

Law:


- (i) According to section 16 of the General Clauses Act, 1897, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.
- (ii) As per the section 9 of the General Clauses Act, 1897, in case any legislation or Regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

Conclusion:

- (i) In the given question, Mr. Sharad was granted authorization to appoint the said employees. This implies (in terms of the General Clauses Act, 1897) that he also had the power to dismiss or suspend these employees. Hence, Mr. Suresh's argument is not valid.
- (ii) The first day in series is 31.12.2023 and last day is 31.03.2024. Hence, applying the above provisions, 31.12.2023 is to be excluded and 31.03.2024 is to be included in calculation as per the General Clauses Act, 1897.

Since, the cheque has been presented within 3 months i.e. on 31.03.2024, it is eligible for honor and payment.

Hence, the plea of dishonouring the cheque is not valid.

-  **46.** Mr. Avinash currently holds the position of a Whole-time director (Key Managerial Personnel) at Moon Pharma Limited, a company that maintains substantial ownership stake in X Limited (55% shares), Y Limited (60% shares), and Z Limited (65% shares). Mr. Avinash has expressed his desire to expand his role as a Whole-time director to encompass both X Limited and Y Limited. Determine the validity of his appointment as a Whole-time director in these additional companies, as per the provisions of the General Clauses Act, 1897. (PYQ Nov 2023)

Solution:

Law:

As per section 2(87) of the Companies Act, 2013, Subsidiary company, in relation to any other company (that is to say the holding company), means a company in which the holding company-

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

Taking into account the above provision, X Limited, Y Limited and Z Limited are the subsidiary companies of Moon Pharma Limited.

Regarding the question, Mr. Avinash who is a Whole Time Director (KMP) in Moon Pharma Limited, wants to get appointed as Whole Time Director in X Limited and Y Limited.

Section 203(3) of the Companies Act, 2013 provides that whole time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time.

Conclusion: It can be noted that section 13 of the General Clauses Act, 1897 provides that the word 'singular' shall include the 'plural', unless there is anything repugnant to the subject or the context. Thus, a whole time key managerial personnel may hold office in more than one subsidiary company as per the present law.

Hence, Mr. Avinash can hold office of Whole Time Director also in X Limited and Y Limited.

47. Mr. A (landlord) staying in Delhi, rented his flat of Bengaluru to Mr. B (tenant) for ₹20,000 per month to be paid annually. An agreement was made between them that during the tenancy period, if A requires his flat to be vacated, one-month prior notice is to be given to Mr. B. After eight months a notice was sent by Mr. A to Mr. B to vacate his flat by registered post which was refused to be accepted by Mrs. C (wife of Mr. B) and Mr. B denied to vacate the flat on ground of non-receipt of notice. (PYQ Nov 2022)

Examine, as per the General Clauses Act, 1897, whether the notice is tenable?

Solution:

Law: According to Section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

- (i) Properly addressing
- (ii) Pre-paying, and
- (iii) Posting by registered post.

Case Laws

- (i) In Smt. Vandana Gulati Vs. Gurmeet Singh alias Mangal Singh, AIR 2013 All 69, it was held that where notice sent by registered post to person concerned at proper address is deemed to be served upon him in due course unless contrary is proved.
- (ii) In Jagdish Singh Vs. Nathu Singh, AIR 1992 SC 1604, it was held that where a notice is sent by the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served.

In other words, Endorsement 'not claimed/not met' is sufficient to prove deemed service of notice.

Conclusion: In the given question, Mr. A has served the notice to Mr. B by registered post which was refused to be accepted by Mrs. C (wife of Mr. B). However, Mr. B cannot deny to vacate the flat on ground of non- receipt of notice, since Mrs. C had refused to accept the notice served by Mr. A through registered post.

Hence, the notice served by Mr. A is tenable provided one- month prior notice given to Mr. B.

48. Define the term 'person' as per the General Clauses Act, 1897. Discuss which of the following will be treated as a person:



- (i) An idol
- (ii) A public body
- (iii) A company

(PYQ Jan 2025)

Solution:

Definition of the term "Person"

As per section 3(42) of the General Clauses Act, 1897, "Person" shall include:

- any company, or
- an association, or
- body of individuals, whether incorporated or not. From the above definition, we can conclude:
 - (i) An Idol: An idol is a juristic person. A juristic person is a legal entity with a legal personality that is recognized by law. Hence, an idol is a person.
 - (ii) A Public Body: A public body to be a person need not always be set-up by the statute. It may be set-up by the Government by exercising its executive function. A public body is a legal entity and is treated as a "person."
 - (iii) A Company: The definition of person includes a company. Thus, a company is a person.

49. The Ministry of Corporate Affairs (MCA) published in the Gazette of India, the proposed draft of Rules further to amend certain rules under the Companies Act, 2013. The MCA made some modifications in the draft Rules already published. In the light of the provisions of the General Clauses Act, 1897, answer the following:



- (i) Is it required for MCA to publish a draft of the proposed Rules?
- (ii) In case of any irregularities in the publication of the draft, can it be questioned?
- (iii) Is MCA entitled to make suitable changes in the draft?
- (iv) Is it necessary to re-publish the Rules in the amended form when the changes made are ancillary to the earlier draft?

(PYQ May 2022)

Solution:

The answer can be given in terms of section 23 of the General Clauses Act, 1897. Following shall be the answers in the light of the given information and the relevant legal provisions:

- (i) Yes, MCA is required to publish a draft of the proposed Rules for the information of persons likely to be affected thereby.
- (ii) No, in case of any irregularities in the publication of the draft, it cannot be questioned. The publication in the Official Gazette of a rule or bye-law after previous publication, shall be conclusive proof that the rule or bye-laws has been duly made. It raises a conclusive presumption that after the publication of the rules in the Official Gazette, it is to be inferred that the procedure for making the rules had been followed. Any irregularities in the publication of the draft cannot therefore be questioned.
- (iii) Yes, MCA is entitled to make suitable changes in the draft before finally publishing them.
- (iv) No, it is not necessary to re-publish the Rules in the amended form when the changes made are ancillary to the earlier draft.

