

MOST IMPORTANT QUESTIONS OF OTHER LAWS

CHAPTER 1 -The General Clauses Act,1897

DEFINITIONS

FINANCIAL YEAR

Question 1

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 financial year under the provision of the General Clauses Act, 1897? How it is different from calendar year?

Answer

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.

OFFICIAL GAZETTE

Question 2

What is the meaning of 'Official Gazette' as per the provisions of the General Clauses Act, 1897?

Answer

"Official Gazette" [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.

RULE/OATH/PERSON

Question 3

Give the definition of the following as per the General Clauses Act, 1897:

- (i) "Rule"
- (ii)"Oath"
- (iii)"Person"

Answer

- (i) **Rule:** As per section 3(51) of the General Clauses Act, 1897, 'Rule' shall mean a rule made in exercise of a power conferred by any enactment, and shall include a Regulation made as a rule under any enactment.

- (ii) **Oath:** As per 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.
- (iii) **Person:** As per section 3(42) of the General Clauses Act, 1897, "Person" shall include:
- any company, or
 - association, or
 - body of individuals, whether incorporated or not.

IMMOVABLE PROPERTY

Question 4

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

Answer

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

- Land,
- Benefits to arise out of land, and
- Things attached to the earth, or
- 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.

Question 5

Examine the validity of the following statements with reference to the General Clauses Act, 1897:

- Insurance Policies covering immovable property have been held to be immovable property.
- The word "bullocks" could be interpreted to include "cows".

Answer

- Insurance Policies covering immovable property have been held to be immovable property: This statement is not valid.** Insurance policy is a written document containing an agreement between the insurer and insured. It includes a matter intended to be used or may be used for the purpose or recording of the matter. Hence, the insurance policies covering immovable property is not covered under the definition of immovable property.
- The word 'bullocks' could be interpreted to include 'cows':** This statement is not valid. Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of General Clauses Act, 1897 do not apply. Thus, the word 'bullocks' could not be interpreted to include 'cows'.

GOOD FAITH AND AFFIDAVIT

Question 6

Define the following terms with reference to the General Clauses Act, 1897:

- Good Faith
- Affidavit

Answer

- (i) **"Good Faith" [Section 3(22) of the General Clauses Act, 1897]:** 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 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. 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.

- (ii) **"Affidavit" [Section 3(3) of the General Clauses Act, 1897]:** 'Affidavit' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

The above definition is inclusive in nature. It states that Affidavit shall include affirmation and declarations. This definition does not define affidavit. However, we can understand this term in general parlance. Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority.

GOVERNMENT

Question 7

Income Tax Act, 1961 provides that the gratuity paid by the government to its employees is fully exempt from tax. You are required to explain the scope of the term 'government' and clarify whether the exemption from gratuity income will be available to the State Government Employees? Give your answer in accordance with the provisions of the General Clauses Act, 1897.

Answer

According to section 3(23) of the General Clauses Act, 1897, 'Government' or 'the Government' shall include both the Central Government and State Government.

Hence, wherever, the word 'Government' is used, it will include Central Government and State Government both.

Thus, when the Income Tax Act, 1961, provides that gratuity paid by the government to its employees is fully exempt from tax, the exemption from gratuity income will be available to the State Government employees also.

Commencement

Question 8

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

Answer

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).

COMING INTO OPERATION OF ENACTMENTS -SECTION 5

Question 9

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,

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

Answer

- 1) **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.
- 2) 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.

EFFECT OF REPEAL – SECTION 7

Question 10

Explain briefly any four effects by repeal of an existing Act by central legislation enumerated in Section-6 of The General Clauses Act, 1897.

Answer

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:**

- **Revive** anything not enforced or prevailed during the period at which repeal is effected or;
- **Affect the prior management of any legislation** that is repealed or anything performed or undergone or;
- **Affect any claim, privilege, responsibility**, or debt obtained, ensued or sustained under any legislation so repealed or;
- **Affect any punishment, forfeiture or penalty** sustained with regard to any offence committed as opposed to any legislation or
- **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.

CONSTRUCTION OF REFERENCES TO REPEALED ENACTMENTS – SECTION 8

Question 11

Section 2(18) (aa) of the Income Tax Act, 1961, provides that a company is said to be a company in which the public are substantially interested, if it is a company which is registered under section 25 of the Companies Act, 1956. After the advent of Companies Act, 2013, the corresponding change

has not been made in section 2(18) of the Income tax Act, 1961. Explain, with reference to the provisions of the General Clauses Act 1897, how will the provisions of section 2(18) (aa) of the Income Tax Act, 1961, will be considered after the enactment of the Companies Act 2013?

Answer

According to section 8 of the General Clauses Act, 1897, where this Act or Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

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

As per the facts of the question, even after the advent of the Companies Act 2013, no corresponding amendment was done in section 2(18) (aa) of the Income Tax Act, 1961, which provides that a company is said to be a company in which the public are substantially interested, if it is a company which is registered under section 25 of the Companies Act, 1956.

In the given situation, as per section 8 of the General Clauses Act, 1897 and the decision of case of Gauri Shankar Gaur v. State of U.P., for section 2(18) (aa) of the Income Tax Act, 1961, provisions of the Companies Act, 2013 will be applicable in place of the Companies Act, 1956.

COMMENCEMENT AND TERMINATION OF TIME – SECTION 9

Question 12

Komal Ltd. declares a dividend for its shareholders in its AGM held on 27th September, 2018. Referring to provisions of the General Clauses Act, 1897 and 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 unpaid dividend account?

Answer

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 27/09/2018. 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 28/09/2018 to 27/10/2018. In this series of 30 days, 27/09/2018 will be excluded and last 30th day, i.e. 27/10/2018 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2018 and 27/10/2018 (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, 2018 to 3rd November, 2018 (both days inclusive).

COMPUTATION OF TIME – SECTION 10

Question 13

Ajit was supposed to submit an appeal to High Court of Kolkata on 30th March, 2020, which was the last day on which such appeal could be submitted. Unfortunately, on that day High Court was closed due to total Lockdown all over India due to Covid-19 pandemic. Examine the remedy available to Ajit under the provisions of the General Clauses Act, 1897.

Answer

Where by any legislation or regulation, 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**.

In the question, Ajit was supposed to submit an appeal to High Court on 30th March 2020, which was the last day of filing the same. On that day High Court was closed due to total lockdown all over India. **In line with said provision, Ajit can submit an appeal on the day on which the High Court is open.**

MEASUREMENT OF DISTANCES – SECTION 11

Question 14

There are two ways to reach city A from city B. The distance between the two cities by roadways is 100 kms and by water ways 80 kms. How is the distance measured for the purpose of any Central Act under the provisions of the General Clauses Act, 1897?

Answer

Measurement of Distances" [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**.

GENDER V NUMBER – SECTION 13

Question 15

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.

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?

Answer

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.

Mrs. Neelu Chandra, director in Laddoo Sweets Private Limited, made an undue gain in the form of commission (from supplier for making the deal) in dealing for Laddoo 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, Mrs. Neelu Chandra is bound to comply by section 166 of the Companies Act, 2013.

MAKING OF RULES OR BYE-LAWS AND ISSUING OF ORDERS BETWEEN PASSING AND COMMENCEMENT OF ENACTMENT – SECTION 22

Question 16

What is the effect on the implementation of the Rules that are issued between passing and commencement of enactment. Explain as per the provisions of the General Clauses Act, 1897.

Answer

“Making of rules or bye-laws and issuing of orders between passing and commencement of enactment” [Section 22]: Where, by any Central Act or Regulation which is not to come into force immediately, on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation or with respect to the establishment of any Court or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.

PROVISIONS APPLICABLE TO MAKING OF RULES OR BYE-LAWS AFTER PREVIOUS PUBLICATION – SECTION 23

Question 17

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?

Answer

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.

PROVISION AS TO OFFENCES PUNISHABLE UNDER TWO OR MORE ENACTMENTS – SECTION 26

Question 18

"No shall be prosecuted and punished for the same offence more than once." Explain in the light of provisions of section 26 of the General Clauses Act, 1897.

Answer

"Provision as to offence punishable under two or more enactments" [Section 26 of the General Clauses Act, 1897]:

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.

Even **Article 20(2)** of the Constitution states that no person shall be prosecuted and punished for the same offence more than once.

Provisions of section 26 of General Clauses Act, 1897 read with Article 20(2) of the Constitution apply only when the two offences which form the subject of prosecution is the same, i.e., the ingredients which constitute the two offences are the same. If the offences under the two enactments are distinct and not identical, none of these provisions will apply.

MEANING OF SERVICE BY POST – SECTION 27

Question 19

Mr. A (landlord) staying in Delhi, rented his flat of Bengaluru to Mr. B (tenant) for 220,000 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. Examine, as per the General Clauses Act, 1897, whether the notice is tenable?

Answer

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 affected by:

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

Case Laws

In **Smt. Vandana Gulati Vs. Gurmeet Singh alias Mangal Singh**, 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.

In **Jagdish Singh Vs. Nathu Singh**, 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.

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 R

Question 19A

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.

Answer

According to section 27 of the General Clauses Act, 1897: Same as above

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.

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.