

MOST IMPORTANT QUESTIONS OF OTHER LAWS

CHAPTER 2 - INTERPRETATION OF STATUTES

RULE OF LITERAL CONSTRUCTION

Question 1

Sohel, a director of a Company, not being personally concerned or interested, financially or otherwise, in a matter of a proposed motion placed before the Board Meeting, did not disclose his interest although he has knowledge that his sister is interested in that proposal. He restrains from making any disclosure of his interest on the presumption that he is not required by law to disclose any interest as he is not personally interested or concerned in the proposal. He made his presumption relying on the 'Rule of Literal Construction'. Explaining the scope of interpretation under this rule in the given situation, decide whether the decision of Sohel is correct?

Answer

Normally, where the words of a statute are in themselves clear and unambiguous, then these words should be construed in their natural and ordinary sense and it is not open to the court to adopt any other hypothetical construction. This is called the rule of literal construction.

This principle is contained in the Latin maxim "absoluta sententia expositore non indeget" which literally means "an absolute sentence or preposition needs not an expositor". In other words, plain words require no explanation.

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

When we talk of disclosure of 'the nature of concern or interest, financial or otherwise' of a director or the manager of a company in the subject-matter of a proposed motion (as referred to in section 102 of the Companies Act, 2013), we have to interpret in its broader sense of referring to any concern or interest containing any information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decisions thereon.

What is required is a full and frank disclosure without reservation or suppression, as, for instance where a son or daughter or father or mother or brother or sister is concerned in any contract or matter, the shareholders ought fairly to be informed of it and the material facts disclosed to them. Here a restricted narrow interpretation would defeat the very purpose of the disclosure.

In the given question, Sohel (a director did not disclose his interest in a matter placed before the Board Meeting (in which his sister has interest), as he is not personally interested or concerned in the proposal.

Here, he ought to have considered broader meaning of the provision of law; and therefore, even though he was personally not interested or concerned in the proposal, he should have disclosed the interest.

HARMONIOUS CONSTRUCTION

Question 2

Briefly explain the meaning and application of the rule of "Harmonious Construction" in the interpretation of statutes?

Answer

Meaning of rule Harmonious Construction: When there is doubt about the meaning of the words of a statute, these should be understood in the sense in which they harmonise with the subject of the enactment and the object which the legislature had in view. Where there are in an enactment two or more provisions which cannot be reconciled with each other, they should be so interpreted, wherever possible, as to give effect to all of them. This is what is known as the Rule of Harmonious Construction.

It must always be borne in mind that a statute is passed as a whole and not in sections and it may well be assumed to be animated by one general purpose and intent. The Court's duty is to give effect to all the parts of a statute, if possible. But this general principle is meant to guide the courts in furthering the intent of the legislature, not overriding it.

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

HEYDONS/MISCHEIF/BENEFICIAL CONSTRUCTION

Question 3

Explain the Mischief Rule / the rule in Heydon's case for interpretation of statute. Also give four matters it considers in construing an Act.

Answer

Mischief Rule/ Heydon's Rule: Where the language used in a statute is capable of more than one interpretation, the most firmly established rule for construction is the principle laid down in the Heydon's case.

This rule enables, consideration of four matters in constituting an Act:

- (1) what was the law before making of the Act,
- (2) what was the mischief or defect for which the law did not provide,
- (3) what is the remedy that the Act has provided, and
- (4) what is the reason for the remedy.

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

Therefore, even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it.

If the object of any enactment is public safety, then its working must be interpreted widely to give effect to that object.

Thus, in the case of Workmen's Compensation Act, 1923 the main object being provision of compensation to workmen, it was held that the Act ought to be so construed, as far as possible, so as to give effect to its primary provisions.

EJUSDEM GENERIS

Question 4

Explain in reference to Interpretation of Statutes, the cases where Rule of Ejusdem Generis will not apply.

Answer

The Rule of Ejusdem Generis will not apply in the following situations:

1. If the preceding term is general, as well as that which follows this rule cannot be applied.
2. Where the particular words exhaust the whole genus.
3. Where the specific objects enumerated are essentially diverse in character.
4. Where there is an express intention of legislature that the general term shall not be read ejusdem generis the specific terms.

NOSCITUR A SOCIIS

Question 5

"Associate words to be understood in common sense manner." Explain this statement with reference to rules of interpretation of statutes.

Answer

Associated Words to be Understood in Common Sense Manner:

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

DOCTRINE OF CONTEMPORANEO EXPOSITIO

Question 6

Explain the Doctrine of Contemporanea Expositio

Answer

Doctrine of Contemporanea Expositio

This doctrine is based on the concept that a statute or a document is to be interpreted by referring to the exposition it has received from contemporary authority. The maxim "Contemporanea Expositio est optima et fortissima in lege" means "contemporaneous exposition is the best and strongest in the law." This means a law should be understood in the sense in which it was understood at the time when it was passed.

This maxim is to be applied for construing ancient statutes, but not to Acts that are comparatively modern.

PREAMBLE

Question 7A

When can the preamble be used as an aid to interpretation of a statute?

Answer

Preamble affords help in the matter of construction, if there is an ambiguity in the law. Courts refer to the preamble as an aid to construction in the following situations:

Situation 1: Where there is any ambiguity in the words of an enactment the assistance of the preamble may be taken to resolve the conflict.

Situation 2: Where the words of an enactment appear to be too general in scope or application then courts may resort to the preamble to determine the scope or limited application for which the words are meant.

Question 7B

'Preamble does not over-ride the plain provision of the Act. Comment. Also give suitable example.

Answer

Preamble: The Preamble expresses the scope, object and purpose of the Act more comprehensively. The Preamble of a Statute is a part of the enactment and can legitimately be used as an internal aid for construing it.

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

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

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

Question 7C

How far are (i) title and (ii) preamble in an enactment helpful in interpreting any of the parts of an enactment?

(i) **Title:** An enactment would have what is known as 'Short Title' and also a 'Long Title'. The short title merely identifies the enactment and is chosen merely for convenience. The 'Long title' describes the enactment and does not merely identify it. The Long title is a part of the Act and, therefore, can be referred to for ascertaining the object and scope of the Act.

(ii) **Preamble:** It expresses the scope and object of the Act more comprehensively than the long title. The preamble may recite the ground and the cause for making a statute and or the evil which

is sought to be remedied by it. The preamble like the Long title can legitimately be used for construing it. However, the preamble cannot override the provisions of the Act. Only if the wording of the Act gives rise to doubts as to its proper construction (e.g., where the words or a phrase has more than the one meaning and doubts arise as to which of the two meanings is intended in the Act) the preamble can and ought to be referred to arrive at the proper construction.

MARGINAL NOTES

Question 8

How far are 'marginal notes' in an enactment helpful in interpreting any of the parts of an enactment?

Answer

Marginal Notes: Although there is difference of opinion regarding resort to Marginal Notes for construing an enactment, the generally held view is that the Marginal Notes appended to a Section cannot be used for construing the Section.

In **C.I.T. vs. Ahmedbhai Umarbhai & Co., Patanjali Shastri, J.**, had declared: Marginal notes in an Indian statute, as in an Act, of Parliament cannot be referred to for the purpose of construing the statute", and the same view has been taken in many other cases.

Many cases show that reference to marginal notes may be permissible in exceptional cases for construing a section in a statute. [**Deewan Singh v. Rajendra Pd. Ardevi, Sarabjit Rick Singh v. Union of India**]

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

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

PROVISO V EXCEPTION V SAVING CLAUSE

Question 9A

What is the effect of proviso? Does it qualify the main provisions of the enactment? Explain it with reference to Interpretation of Statutes.

Question 9B

Explain the meaning of term 'Proviso'. Give the distinction between proviso, exception and Saving Clause.

Answer

Proviso: The normal function of a proviso is to **except something out of the enactment** or to qualify something stated in the enactment which would be within its purview if the proviso were not there.

The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule.

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

<p>Distinction between Proviso, exception and saving Clause</p> <p>There is said to exist difference between provisions worded as 'Proviso', 'Exception', or Saving Clause'.</p>		
Proviso	Exception'	Saving Clause
Exception' is intended to restrain the enacting clause to particular cases	'Proviso' is used to remove special cases from general enactment and provide for them specially	Saving clause' is used to preserve from destruction certain rights, remedies or privileges already existing
EXPLANATION		
<p>Question 10</p> <p>Does an explanation added to a section widen the ambit of a section?</p>		
<p>Answer</p> <p>Sometimes an explanation is added to a section of an Act for the purpose of explaining the main provisions contained in that section. If there is some ambiguity in the provisions of the main section, the explanation is inserted to harmonise and clear up the ambiguity in the main section. Something may added to or something may be excluded from the main provision by insertion of an explanation. But the explanation should not be construed to widen the ambit of the section.</p>		
DICTIONARY DEFINITIONS		
<p>Question 11</p> <p>Explain how 'Dictionary Definitions' can be of great help in interpreting / constructing an Act when the statute is ambiguous.</p> <p style="text-align: center; opacity: 0.5; font-size: 1.2em;">CS LLM ARJUN CHHABRA</p> <p>What is External Aid to interpretation? Explain how the Dictionary definitions are the External Aids to Interpretations?</p>		
<p>Answer</p> <p>Dictionary Definitions: First, we refer the Act in question to find out if any particular word or expression is defined in it. Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood. However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act.</p> <p>It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Further, judicial decisions laying down the meaning of words in construing statutes in 'pari materia' will have greater weight than the meaning furnished by dictionaries. However, for technical terms, reference may be made to technical dictionaries.</p>		
FOREIGN DECISION		
<p>Question 12</p> <p>Whether Foreign decisions can be used for construing Indian Statute? Explain.</p>		
<p>Answer</p> <p>Use of Foreign Decisions: Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts. However, prime importance is always to be given to the language of the Indian statute. Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.</p>		

HISTORICAL SETTING/ FOREIGN DECISION

Question 13

In what way are the following terms considered as external aid in the interpretation of statutes:

- (i) Historical Setting
- (ii) Use of Foreign Decisions

Answer

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

History in general and Parliamentary History in particular, ancient statutes, contemporary or other authentic works and writings all are relevant in interpreting and construing an Act.

DOCUMENT

Question 14

What is a Document as per the Indian Evidence Act, 1872?

Answer

As per Indian the Evidence Act, 1872: 'Document': Generally understood, a document is a paper or other material thing giving information, proof or evidence of anything.

The Law defines 'document' in a more technical form. As per Section 3 of the Indian Evidence Act, 1872, 'document' means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

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

INSTRUMENT

Question 15

How will you interpret the term "Instrument" used in a statutes?

Answer

'Instrument': In common parlance, 'instrument' means a formal legal document which creates or confirms a right or records a fact.

It is a **formal writing of any kind, such as an agreement, deed, charter or record, drawn up and executed in a technical form.** It also means a formal legal document having legal effect, either as creating liability or as affording evidence of it.

Section 2(14) of the Indian Stamp Act, 1899 states that 'instrument' includes every document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded.

"GRAMMATICAL" AND "LOGICAL" INTERPRETATION/ NATURAL & GRAMMATICAL

Question 16

Explain the "grammatical" and "logical" interpretation and state the situations where the courts adopt them while interpreting the Statutes in India.

Answer

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

Meaning: Grammatical interpretation concerns itself exclusively with the verbal expression of law. It does not go beyond the letter of the law, whereas Logical interpretation on the other hand, seeks more satisfactory evidence of the true intention of the legislature. In other words, the emphasis in grammatical interpretation is on “what the law says” and the logical interpretation seeks on the other hand, seeks to ascertain “what the law means.”

This rule, however, is subject to **some exceptions:**

1. Where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness.

As regard the defect to ambiguity, the Court is under a duty to travel beyond the letter of the law so as to determine from the other sources the true intention of the legislature.

In the case of the statutory expression being defective on account of inconsistency, the court must ascertain the spirit of the law.

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

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

The Court shall administer the law as it stands and shall not attempt an alternative interpretation based on logic that is ostensibly just or reasonable.

However, if there are two possible constructions of a clause, the Courts may prefer the logical construction.

USAGE OR PRACTICE

Question 17

At the time of interpreting a statutes what will be the effect of 'Usage' or 'Practice'?"

Answer

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

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

- (i) 'Optima Legum interpres est consuetudo' (the custom is the best interpreter of the law); and
- (ii) Contemporanea exposito est optima et fortissima in lege' (the best way to interpret a document is to read it as it would have been read when made).

Therefore, the best interpretation/construction of a statute or any other document is that which has been made by the contemporary authority. Simply stated, old statutes and documents should be interpreted as they would have been at the time when they were enacted/written.

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

DIRECTORY/MANDATORY

Question 18

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

Answer

Practically speaking, the distinction between a provision which is 'mandatory' and one which is 'directory' is that when it is **mandatory, it must be strictly observed**; when it is **directory** it would be **sufficient that it is substantially complied with**.

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

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

DOCUMENT? POWER OF ATTORNEY? CHEQUE?

Question 19

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?

- i. Power-of-attorney.
- ii. Cheque

Answer

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,

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

REPEAL VS DELETION

Question 20

'Repeal' of provision is different from 'deletion' of provision. Explain.

Answer

In Navrangpura Gam Dharmada Milkat Trust Vs. Rmtuji Ramaji, 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.

STATUTE SHOULD BE READ AS WHOLE

Question 21

The 'Statute should be read as a Whole'. Explain the statement.

Answer

'**Read the Statute as a Whole**': It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only. The deed/ statute must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with other provisions - if that interpretation does no violence to the meaning of which they are naturally susceptible. And the same approach would apply with equal force with regard to Acts and Rules passed by the legislature.

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

WITHOUT PREJUDICE

Question 22

Explain the meaning of 'Without Prejudice' as a Harmonious aid to interpretation of statutes. Support your answer with the help of an example.

Answer

When certain particular provisions follow general provisions and when it is stated that the particular provisions are without prejudice to those general provisions, the particular provisions would not restrict or limit the operation and generality of the preceding general provisions. **In other words, the particular provisions shall operate in addition to and not in derogation of the general provisions.**

Example: Section 4(3) of the Companies Act, 2013, "Without prejudice to the provisions of sub-section (2), a company shall not be registered with a name which contains....."

This implies that while registering (and deciding) the name of the company as per section 4(3)], provisions of section 4(2) shall also be operative.

Question 23

Differentiate between interpretation and construction.

Answer

'**Construction**' as applied to a written statute or document **means to determine from its known elements its true meaning or the intention of its framers.** Construction involves drawing conclusions beyond the actual expressions used in the text. This is done by referring to other parts of the enactment and the context in which the law was made. **Thus, when you construe a statute you are attempting to ascertain the intention of the legislature.**

Difference between Interpretation and Construction:

It would also be worthwhile to note, at this stage itself, the difference between the terms

'Interpretation' and Construction.

While **more often the two terms are used interchangeably** to denote a process adopted by the courts to ascertain the meaning of the legislature from the words with which it is expressed, these **two terms have different connotations.**

Interpretation is the **art of ascertaining the meaning of words** and the true sense in which the author intended that they should be understood. It is the drawing of conclusions from a statute that lie beyond the direct expression of the words used therein. [Bhagwati Prasad Kedia v. C.I.T] It is the duty of the courts to give effect to the meaning of an Act when the meaning can be equitably gathered from the words used. Words of legal import occurring in a statute which have acquired a definite and precise sense, must be understood in that sense. (State of Madras v. Gannon Dunkerly Co.)

Thus, where the Court adheres to the plain meaning of the language used by the legislature, it would be 'interpretation' of the words, but where the meaning is not plain, the court has to decide whether the wording was meant to cover the situation before the court. Here, the court would be resorting to 'construction'. Conclusions drawn by means of construction are within the spirit though not necessarily within the letter of the law.

In practice construction includes interpretation and the terms are frequently used synonymously.

RESTRICTIVE V EXTENSIVE / MEANS V INCLUDES

Restrictive and extensive definitions: The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

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

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

Thus,

(i) The definition is restrictive and exhaustive to the effect that **only an entity incorporated under the Companies Act, 2013 or under any previous Companies Act, shall be deemed to be company.**

(ii) The definition is inclusive in nature, thereby the meaning assigned to the respective word (here 'person') is extensive. It has a **wider scope to include other terms** into the ambit of the definition having regard to the object of the definition.