

6. THE GENERAL CLAUSES ACT, 1897

PREVIOUS EXAM QUESTIONS OF CA INTER

YEAR	QUESTION	MARKS
NOV 18	Explain various provisions applicable to rules or bye-law being made after previous publications as enumerated in section -23 of General Clauses Act, 1897	4
NOV 18	Komal Ltd. declares a dividend for its shareholders in its AGM held on 27 th 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 dividend to unpaid dividend account.	4
May 19	The Companies Act, 2013 provides that the amount dividend remained unpaid / unclaimed on expiry of 30 days from the date of declaration of dividend shall be transferred to 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 30.10.2018, 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?	2
May 19	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, An Act of parliament which has not specifically mentioned a particular date. 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	2

INTRODUCTION:

- The General Clauses Act, 1897 was enacted on 11th March, 1897.
- It is consolidation and extension of General Clauses Act, 1868 and 1887.
- The General Clauses Act, 1897 contains definitions of some words and also some general principles of interpretation.
- The definitions given to the words are applicable to all Central Acts and Regulations, if these Acts and Regulations do not define those words properly.
- The General Clauses Act, 1897 has been enacted to avoid the repetition of the same words.
- Act is meant to avoid the excessive details of language in a statute wherever it is possible to do so.

Wherever the law provides that **court will have the power to appoint, suspend or remove a receiver**, the legislature simply enacted that **wherever convenient the court may appoint receiver** and it was implied within that language that it may also remove or suspend him.

Rayarappan V. Madhavi Amma

Q.No.1. WHAT IS THE OBJECT OR PURPOSE OF GENERAL CLAUSES ACT? (A) (NEW SM)

OBJECTIVES: The objects of the Act are:

- To shorten the language used in Central Acts;
- To provide, as far as possible, for uniformity of expressions in Central Acts, by giving definitions of a series of terms in common use.

PURPOSE: The purpose of the General Clauses Act is to place different provisions as regards to interpretation of words and legal principles in one single statute, which would otherwise, specified separately in many different Acts and Regulations.

IMPORTANCE:

- The Act applies to all Central Acts.
- It seeks to introduce the certainty in the application of law and it has been called as "Law of all Laws.

Q.No.2. WRITE ABOUT APPLICABILITY OF THE GENERAL CLAUSES ACT? (A) (NEW SM)

1. The Act applies to all Central legislations and also to rules and regulations made under a Central Act.
2. If a Central Act is extended to any territory, the General Clauses Act would also be applicable in that territory and would apply to understand of that Central Act.
3. The Supreme Court had observed in the case of Chief Inspector of Mines vs. K.C. Thapar "Whatever the General Clauses Act says, whether as regards the meanings of words or as regards to legal principles, has to be read into every Act to which it applies".
4. The application of General Clauses Act, 1897 explains through the following sections.

E.g.: Section 3 of the General Clauses Act, which deals with the definitional clause, applies to the General Clauses Act itself and to all Central Acts and Regulations made after the commencement of the General Clauses Act in 1897. Similarly section 4 of the General Clauses Act which deals with the application of foregoing definitions to previous enactment, applies to Central Acts and after January 3, 1868 and to regulations made after January 14, 1887.

5. So there is a difference in the applicability of each section as regards the statutes to which it applies.
6. The language of each section of the General Clauses Act has to be referred to ascertain to which class of instruments or enactment it applies. In certain cases, even if no section of the general clauses Act applies to particular case, the court applies the general principles of the General clauses Act.
7. It may note that this Act does not apply to State laws. It is evident that the State General Clauses Acts should confirm to the General Clauses Act of 1897, for, otherwise, divergent rules of construction and interpretation would apply, and, as a result, great confusion might ensue.

SIMILAR QUESTIONS:

1. *The Indian Contract Act enacted in the year 1872, does the General Clauses Act, 1897 applicable for knowing the meaning of the terms, which are not defined in Indian Contract Act, 1872?*
- A. *No, purpose of the General Clauses Act is to place different provisions as regards to interpretation of words and legal principles in one single statute, which would otherwise, specified separately in many different Acts and Regulations*
2. *Andhra Pradesh Government enact a law and in which some of the words does not define properly by the legislature, then the General Clauses Act, 1897 applicable for knowing the meaning of the terms?*
- A. *No, It applies to all Central Acts, and Regulations made thereunder*

Q.No.3. WRITE A NOTE ON PREAMBLE?

- a) Every Act has a preamble which expresses the scope, object and purpose of the Act.
- b) It is the main source for understanding the intention of lawmaker behind the Act.
- c) Whenever there is ambiguity in understanding any provision of Act, Preamble is accepted as an aid to construction of the Act.
- d) The Preamble of a Statute is a part of the enactment and can legitimately be used for understanding (construing) it.
- e) However, the Preamble does not over-ride the plain provision of the Act.

f) 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.

Examples:

- (1). Preamble of the Negotiable Instruments Act, 1881 states - "An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques."
- (2). Preamble of the Companies Act, 2013 states – "An Act to consolidate and amend the law relating to companies."

SIMILAR QUESTIONS:

1. *The word used in the legislation having two different meanings, then how will the same rectified?*
- A. *Refer Point "f" above.*
2. *In a legislation the legislature used the word 'Crane', which contains two meanings i.e. bird and lifting the object. Then how to define the word 'Crane'?*
- A. *Where the words or phrase has more than one meaning then preamble can and ought to be referred to in order to arrive at the proper construction.*

Q.No.4. HOW THE ACT COMES OUT FROM THE LEGISLATURE?

- a) Act is a bill passed by both the houses of Parliament and assented to by the President.
- b) Whereas 'Bill' is a draft of a legislative proposal put in the proper form which, when passed by both houses of Parliament and assented to by the President becomes an Act.
- c) On getting assent from President, an Act is notified in the Official Gazettes of India.

E.g.: Companies Bill, 2012 was introduced and Passed by Lok Sabha on 18-12-2012. Passed by Rajya Sabha on 8-8-2013. Act received assent of President on 29-08-2013 as Companies Act, 2013. Notified in Gazette on 30-08-2013.

SIMILAR QUESTIONS:

1. *Define the word bill?*
- A. *Refer Point "b" above*

Q.No.5. HOW DEFINITIONS CAN BE UNDERSTOOD UNDER THE G.C.A?

- a) Every Act contains definition part for the purpose of understanding the Act and that definition part are usually mentioned in the Section 2 of that Act but in some other Acts, it is also mentioned in Section 3 or in other initial sections.
- b) Hence, definitions are defined in the Act itself. However, if there may be words which are not defined in the definitions of the Act, the meaning of such words may be taken from General Clauses Act, 1897.

Examples:

- Section 2(95) of the Companies Act, 2013 clearly says that: Words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 shall have the meanings respectively assigned to them in those Acts.
- Word 'Security' used in the Companies Act, not defined in the respective Act. It has been defined under section 2(h) of the Securities Contracts (Regulations) Act, 1956. This word is equivalent applicable on the Companies Act, 2013. Similarly, the word 'Digital signature' used in the Companies Act, shall be construed as per the section 2(1)(p) of the Information Technology Act, 2000.
- The word 'Company' used in the Companies Act, is defined in section 2(20) of the respective Act.
- The word 'Affidavit' used in section 7 during the incorporation of company, in the Companies Act, 2013, shall derive its meaning from the word 'Affidavit' as defined in the General Clauses Act, 1897.

1. “Means”: Some definitions use the word “means”. Such definitions are exhaustive definitions and exactly define the term.

Examples:

- Definition of ‘Company’ as given in section 2(20) of the Companies Act, 2013. It states, “Company” means a company incorporated under this Act or under any previous company law.
- Section 2(34) of the Companies Act, 2013 defines the term director as “director” means a director appointed to the Board of a company.

2. “Include”.

- Some definitions uses the word includes, such definitions do not define the word but are inclusive in nature.
- Where the word is defined to ‘include’ such and such, the definition is ‘prima facie’ extensive.
- 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.

Examples:

- Word ‘debenture’ defined in section 2(30) of the Companies Act, 2013 states that “debenture” includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not”. This is a definition of inclusive nature.
- “Body Corporate” or “Corporation” includes a company incorporated outside India. [Section 2(11) of the Companies Act, 2013]

The above definition of Body Corporate does not define the term Body Corporate, but just states that companies incorporated outside India will also cover under the definition of Body Corporate, apart from other entities which are called as Body Corporate.

3. “Means & Includes”: Some definitions uses the words ‘means and includes’ and such definitions would be exhaustive.

E.g.: Share defined under section 2(84) of the Companies Act, 2013, states that “Share” means a share in the share capital of a company and includes stock.

SIMILAR QUESTIONS:

1. *If the companies act, 2013 does not contain the meaning of a particular word, then how to define that word and if the meaning of the word is in General Clauses Act, 1897 can you apply that meaning or not?*

A. Yes, Refer Point “b” above

2. *The word ‘Affidavit’ is not define in companies act, and from which source you can assess the meaning of it?*

A. Refer Point “b” above

3. *At the time of defining the word ‘means’ the term is used. If so the meaning considers as exhaustive or restrictive? Justify your answer?*

A. Refer Point “3” above

4. *“debenture” includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not”. This definition is inclusive or exhaustive in nature?*

A. Refer Point “3” above

5. *Share defined under section 2(84) of the Companies Act, 2013, states that “Share” means a share in the share capital of a company and includes stock. This definition is inclusive or exhaustive in nature?*

A. Refer Point “f” above

5.1 “PRELIMINARY (SECTION 1)”: Preliminary is the introductory part of any law which generally contains Short Title, Extent, Commencement, Application etc. The General Clauses Act contains only short title in the Preliminary part of the Act.

5.2 “Short title” {Section 1 (1)}: This Act may be called the General Clauses Act, 1897.

Q.No.6. DEFINE THE TERM ACT? (A)

(NEW SM)

“Act” [Section 3(2)]: ‘Act’, used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions;

Q.No.7. DEFINE THE TERM AFFIDAVIT [Section 3(3)]

(MTP M18 II)

- a) 'Affidavit' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.
- b) There are two important points derived from the above definition:
 - Affirmation and declaration,
 - In case of persons allowed affirming or declaring instead of swearing.
- c) The above definition is inclusive in nature. It states that Affidavit shall include affirmation and declarations. This definition does not define affidavit.
- d) In general parlance, Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority.

Q.No.8. DEFINE THE TERM CENTRAL ACT.

[Section 3(7)] : 'Central Act' shall mean an Act of Parliament, and shall include-

- a) An Act of the Dominion Legislature or of the Indian Legislature passed before the commencement of the Constitution*, and
- b) An Act made before such commencement by the Governor General in Council or the Governor General, acting in a legislative capacity;

*The date of the commencement of the Constitution is 26th January, 1950.

Q.No.9. DEFINE THE TERM CENTRAL GOVERNMENT?

[Section 3(8)]: 'Central Government' shall

1. in relation to anything done before the commencement of the Constitution, mean the Governor General or the Governor General in Council, as the case may be; and shall include,-
 - a) in relation to functions entrusted under sub-section (1) of Section 124 of the Government of India Act, 1935, to the Government of a Province, the Provincial Government acting within the scope of the authority given to it under that sub-section; and
 - b) in relation to the administration of a Chief Commissioner's Province, the Chief Commissioner acting within the scope of the authority given to him under sub-section (3) of section 94 of the said Act; and
2. In relation to anything done or to be done after the commencement of the constitution of the Constitution, mean the President; and shall include ;
 - a) In relation to function entrusted under clause (1) of the article of the Constitution, to the Government of a state, the State Government acting within the scope of the authority given to it under that clause; and
 - b) In relation to the administration of a Union territory, the administrator thereof acting within the scope of the authority given to him under article 239 of the Constitution;

Q.No.10. WHAT TO YOU UNDERSTAND BY COMMENCEMENT OF ACT?

[Section 3(13)] 'Commencement' used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force;

Q.No.11. DEFINE THE WORD DOCUMENT.

(MTP M18 I)

[Section 3(18)] : '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, the term "Document" include any substance upon which any matter is written or expressed by means of letters or figures for recording that matter. **E.g.:** book, file, painting, inscription and even computer files are all documents.

SIMILAR QUESTIONS:

1. **Discuss which of the following will be treated as document?**

(i) Power-of-attorney.

(ii) Cheque

A. (i) Yes, power-of-attorney is a document.

(ii) Yes, cheque upon a banker is a document

Q.No.12. DEFINE THE TERM ENACTMENT

[Section 2(19)] : 'Enactment' shall include any Act, Regulation or any provision contained in any Act or in any Regulation.

Q.No.13. DEFINE THE WORD FINANCIAL YEAR

(MTP M18 II)

[Section 3(21)]: 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 General Clauses Act, 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.

Q.No.14. HOW DO YOU DEFINE THE WORD GOOD FAITH? [Section 3(22)]

(MTP M19 I) (MTP N18 I)

- a) 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;
- b) The term "Good faith" has been defined differently in different enactments.
- c) The above definition of the good faith does not apply to that enactment which contains a special definition of the term "good faith"
- d) The above definition may be applied only if there is nothing repugnant in subject or context, and if that is so, the definition is not applicable.
- e) The definition of good faith as is generally understood in the civil law and which may be taken as a practical guide in understanding the expression in the contract Act is that nothing is said to be done in good faith which is 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.

SIMILAR QUESTIONS:

1. **How it can be understood the word good faith used in section 9 of Negotiable Instrument Act?**

A. Refer Point " a " above

Q.No.15. DEFINE THE TERM GOVERNMENT.

[Section 3(23)]: 'Government' or 'the Government' shall include both the Central Government and State Government.

Q.No.16. DEFINITIONS GIVEN TO THE FOLLOWING WORDS UNDER GENERAL CLAUSES ACT. (MTP M19 I) (MTP M19 II) (M18 4M)

1. “**Government Securities**” [Section 3(24)]: ‘Government securities’ shall mean securities of the Central Government or of any State Government.
2. “**Immovable Property**” [Section 3(26)]: ‘Immovable Property’ shall include:
 - a) Land,
 - b) Benefits to arise out of land, and
 - c) Things attached to the earth, or
 - d) Permanently fastened to anything attached to the earth.

Examples:

- 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.
- Right of way to access from one place to another may come within the definition of Immovable property whereas to right to drain of water is not immovable property. Any machinery fixed to the soil, standing crops can be held as immovable property according to the General Clauses Act, 1897.

SIMILAR QUESTIONS:

1. **Is timber is immovable property or not?**

A. No, Refer Point " Example " above
2. **Under sale of goods act, only the movable property is subject matter of contract of sale and not immovable, then how to define the word immovable?**

A. Refer Point " 2 " above
3. **“Imprisonment” [Section 3(27)] :** ‘Imprisonment’ shall mean imprisonment of either description as defined in the Indian Penal Code (45 of 1860);
4. **“Indian law” [Section 3(29)] :** ‘Indian law’ shall mean any Act, Ordinance, Regulation, rule, order, bye law or other instrument which before the commencement of the Constitution, had the force of law in any Province of India or part thereof or thereafter has the force of law in any Part A or Part C State or part thereof, but does not include any Act of Parliament of the United Kingdom or any Order in Council, rule or other instrument made under such Act;
5. **“Month” [Section 3(35)] :** ‘Month’ shall mean a month reckoned according to the British Calendar;
6. **“Movable Property” [Section 3(36)] :** ‘Movable Property’ shall mean property of every description, except immovable property.
7. **“Oath” [Section 3(37)]:** ‘Oath’ shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.
8. **“Offence” [Section 3(38)]:** ‘Offence’ shall mean any act or omission made punishable by any law for the time being in force.
9. **“Official Gazette” [Section 3(39)] :** ‘Official Gazette’ or ‘Gazette’ shall mean:
 - a) The Gazette of India, or
 - b) The Official Gazette of a state.
10. **“Person”[Section 3(42)] :** “Person” shall include:
 - a) any company, or
 - b) association, or
 - c) body of individuals, whether incorporated or not

SIMILAR QUESTIONS:

- Under Peoples Representative Act, a person cast the vote of dead person, is he commits any offence or not, justify your answer?
- Yes, Refer Point " 10 " above
- “Registered” [Section 3(49)]: ‘Registered’ used with reference to a document, shall mean registered in India under the law for the time being force for the registration of documents.
- “Rule” [Section 3(51)]: ‘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.
- “Schedule” [Section 3(52)]: ‘Schedule’ shall mean a schedule to the Act or Regulation in which the word occurs;
- “Section” [Section 3(54)]: ‘Section’ shall mean a section of the Act or Regulation in which the word occurs;
- “Sub-section” [Section 3(61)]: ‘Sub-section’ shall mean a sub-section of the section in which the word occurs;
- “Swear” [Section 3(62)]: “Swear”, with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing.

Note: The terms “Affidavit”, “Oath” and “Swear” have the same definitions in the Act. 27.

- “Writing” [Section 3(65)]: Expressions referring to ‘writing’ shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible forms; and
- “Year” [Section 3(66)]: ‘year’ shall mean a year reckoned according to the British calendar.

Q.No.17.1 WHEN DOES A LEGISLATION OR AN ENACTMENT COMES INTO FORCE?

(NEW SM) (M19 2M)

Coming into operation of enactment [Section 5]: 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.

Examples:

- 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. Where, if any specific date of enforcement is prescribed in the Official Gazette, Act shall come into enforcement from such date.
- SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1 January, 2016. Here, this regulation shall come into enforcement on 1st January, 2016 rather than the date of its notification in the gazette.

SIMILAR QUESTIONS:

- 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. Then from which date this legislation comes into force?
 - Any act came into enforcement on the date of its publication in the official Gazette, therefore from 30th August, 2013 it came into enforcement
- SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1 January, 2016. When it will consider that the regulation shall come into operation?
 - Refer SEBI Example Point Above

Q.No.17.2 EXPLAIN THE EFFECT OF REPEAL.

(NEW SM)

Effect of Repeal [Section 6]: 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.

 SC held that whenever an Act is repealed, it must be considered as if it had never existed. Object of repeal is to wipe out (obliterate) the Act from statutory books, except for certain purposes as provided under Section 6 of the Act.

State of Uttar Pradesh v. Hirendra Pal Singh, (2011), 5 SCC 305

 Supreme Court held that Section 6 only applies to repeals and not to omissions and applies when the repeal is of a Central Act or Regulation and not of a Rule.

Kolhapur Canesugar Works Ltd. V, Union of India, AIR 2000, SC 811,

 'Repeal' of provision is in distinction from 'deletion' of provision. 'Repeal' ordinarily brings about complete obliteration 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. For the purpose of this section, the above distinction between the two is essential.

Navranabura Gam Dharmada Milkat Trust v. Rmtuui Ramaili. AIR 1994 Gui 75

SIMILAR QUESTIONS:

1. Is the repealed legislation useful? If it is useful, then what are those purposes?

A. Refer Point " 17.2 " above

Q.No.17.3 EXPLAIN THE CONSTRUCTION OF REFERENCES TO REPEALED ENACTMENTS [SECTION 8]

(NEW SM)

Construction of references to repealed enactments [Section 8]-

1. Where this Act or Central Act or Regulation made after the commencement of this Act, repeals and the same reenact, with or without modification, then provision in former enactment is reference to new one, unless different intention appears.
2. Where before the fifteenth day of August, 1947, any Act of Parliament of the United Kingdom repealed and re-enacted, with or without modification, any provision of a former enactment, then reference in any Central Act or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

E.g.: In section 115 JB of the Income tax Act, 1961, for calculation of book profits, the Companies Act, 1956 are required to be referred. With the advent of Companies Act, 2013, the corresponding change has not been made in section 115 JB of the Income tax Act, 1961. On referring of section 8 of the General Clauses Act, book profits to be calculated under section 115 JB of the Income Tax Act will be as per the Companies Act, 2013.

SIMILAR QUESTIONS:

1. *In section 115 JB of the Income tax Act, 1961, for calculation of book profits, the Companies Act, 1956 are required to be referred. With the advent of Companies Act, 2013, the corresponding change has not been made in section 115 JB of the Income tax Act, 1961. Then for calculating the book profits, what law will apply?*

A. Refer Point "Example" above

Q.No.17.4 HOW TO CALCULATE COMMENCEMENT AND TERMINATION OF TIME?

(NEW SM) (MTP M18 I) (MTP N18 II) (N18 4M) (M19 2M)

Commencement and termination of time [Section 9]: If any provision in a legislation for the purpose of calculation states "from" the date of, which means the date is to be excluded and states "to", which means to include. The following is example.

E.g.: If a company declares dividend for its shareholder in its Annual General Meeting held on 30/09/2016. Under the provisions of the Companies Act, 2013, company 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.

SIMILAR QUESTIONS:

1. *If a company declares dividend for its shareholder in its Annual General Meeting held on 30/09/2016. Under the provisions of the Companies Act, 2013, company 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 what days are included and what days are excluded?*

A. Refer Point "Example" above

Q.No.17.5 EXPLAIN COMPUTATION OF TIME [SECTION 10].

(NEW SM)

Computation of time [Section 10]: Where by any legislation it is directed to be done a particular work on a certain day, if the Court or office is closed on that day or last day of the prescribed period, it is done on the next day on which the Court or office is open.


It was held by Madras High Court that since the last date of the prescribed period was subsequent to the date of notification, declared to be a holiday on the basis of the principles laid down in this section the last date of prescribed period for obtaining the tender schedules was extended to the next working day.

K. Soosalrathnam v. Div. Enainee. N.H.C. Tirunelveli

SIMILAR QUESTIONS:

1. *Payee of the promissory note intends to sue the Maker on failure of repayment and wants to sue the Maker on last day of limitation period (3 years). But on the last day court closed because of national holiday. Advice Payee?*

A. Refer Point "17.5" above

Q.No.17.6 HOW TO MEASURE DISTANCES?

(NEW SM)

Measurement of Distances [Section 11]: 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.

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Q.No.17.7 DUTY TO BE TAKEN PRO RATA IN ENACTMENTS

(NEW SM)

Duty to be taken pro rata in enactments [Section 12]: 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 gender or less quantity.

Q.No.17.8 EXPLAIN GENDER AND NUMBER [SECTION 13].

(NEW SM) (MTP M18 II) (MTP N18 I)

17.8. “Gender and number” [Section 13]: In all legislations and regulations, unless there is anything repugnant in the subject or context-

- (1). Words importing the masculine gender shall be taken to include females, and
- (2). Words in singular shall include the plural and vice versa.

Q.No.18. POWER AND FUNCTIONARIES (SECTION 14 To SECTION 19) (A)

(NEW SM)

- 1. Power conferred to be exercisable from time to time [Section 14] :** (1) Where, by any Central Act or Regulation made after the commencement of this Act, any power is conferred, then unless a different intention appears that power may be exercised from time to time as occasion requires. (2) This section applies to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.
- 2. Power to appoint to include power to appoint ex-officio [Section 15] :** Where by any legislation or regulation, a power to appoint any person to fill any office or execute any function is conferred, then unless it is otherwise expressly provided, any such appointment, may be made either by name or by virtue of office. Ex-officio is a Latin word which means by virtue of one's position or office. Provision under this section states that where there is a power to appoint, the appointment may be made by appointing ex-officio as well. Eg: Vice- President of India acts as chairman of Rajyasabha.
- 3. 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.
- 4. Substitution of functionaries [Section 17] :** Whatever the functions exercised by the authority under the official position, the same powers conferred to the authority who is in charge of the same.
- 5. Successors [Section 18] :** Whatever the functions exercised by the authority under the official position, the same powers conferred to the authority who is successor to that authority.
- 6. 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.

Q.No.19.1 EXPLAIN THE CONSTRUCTION OF ORDERS ETC.,ISSUED UNDER ENACTMENTS.

(NEW SM)

Construction of orders, etc., issued under enactments [Section 20]: Where, by any legislation or regulation, a power to issue any notification, order, scheme, rule form, or bylaw is conferred, then expression used in the notification, order, scheme, rule, form or byelaw, shall, unless there is anything repugnant in the subject or context, have the same respective meaning as in the Act or regulation conferring power.



It was held that 'Notification' in common English acceptation mean and imply a formal announcement of a legally relevant fact and "notification publish in Official Gazette" means notification published by the authority of law. It is a formal declaration and should be in accordance with the declared policies or statute. Notification cannot be substituted by administrative instructions.

Subhash Ram Kumar v. State of Maharashtra, AIR 2003 SC 269

SIMILAR QUESTIONS:

1. Differentiate the administrative instruction and notification under General Clauses Act, 1897?

A. Refer Point " 19.1 " above

Q.No.19.2 EXPLAIN THE POWER TO ISSUE, TO INCLUDE POWER TO ADD TO, AMEND, VARY OR RESCIND NOTIFICATIONS, ORDERS, RULES OR BYE-LAWS. (NEW SM)

Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws [Section 21]: Where by any legislations or regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add, to amend, vary or rescind any notifications, orders, rules or bye laws so issued.



Supreme Court held that under Section 21 of the Act, an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in the like manner.

Rasid Javed v. State of Uttar Pradesh, AIR 2010 SC 2275.



Supreme Court held that power under section 21 of the Act is not so limited as to be exercised only once power can be exercised from time to time having regard to exigency of time.

Shreesidhbali Steels Ltd. V. State of Uttar Pradesh, AIR 2011 SC 1175.

Q.NO.19.3 EXPLAIN THE POWER TO MAKE RULES OR BYE-LAWS AND ISSUE ORDERS BETWEEN PASSING AND COMMENCEMENT OF ENACTMENT. (NEW SM)

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 there under, 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.

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Q.No.19.4 WHAT ARE THE PROVISIONS APPLICABLE TO MAKING OF RULES OR BYE-LAWS AFTER PREVIOUS PUBLICATIONS. (NEW SM) (N18 4M)

Provisions applicable to making of rules or bye-laws after previous publications [Section 23] : 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:-

- a) The authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;
- b) The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes;
- c) There shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;
- d) The authority having power to make the rules or bye-laws, and, where the rules or byelaws are to be made with the sanction, approval or concurrence of another authority, that authority also shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;
- e) 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 has been duly made.

Q.No.19.5 CONTINUATION OF ORDERS ETC, ISSUED UNDER ENACTMENTS REPEALED AND RE-ENACTED. (NEW SM)

Continuation of orders etc., issued under enactments repealed and re-enacted [Section 24] : Where any Central Act or Regulation, is, after, the commencement of this Act, repealed and re-enacted with or without modification, then unless it is otherwise expressly provided any appointment notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act, continue in force, and be deemed to have been made or issued under the notification, order, scheme, rule, form or bye-law, made or issued under the provisions so re-enacted and when any Central Act or Regulation, which, by a notification under section 5 or 5A of the Scheduled District Act, 1874, or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from the re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section.



It was held that investigation conducted by Inspectors of Police, under the authorization of notification issued under Prevention of Corruption Act, of 1947 will be proper and will not be quashed under new notification taking the above power, till the aforesaid notification is specifically superseded or withdrawn or modified under the new notification.

State of Punjab v. Harnek Singh. AIR 2002 SC 1074.

Q.No.20. MISCELLANEOUS PROVISIONS (SECTION 25 To SECTION 30) (B) (NEW SM) (RTP M19) (MTP M19 I) (MTP M19 II) (MTP N18 I) (RTP N18) (RTP M18) (M18 2M)

1. **“Recovery of fines” [Section 25]:** Section 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule or bye-laws, unless the Act, Regulation, rule or bye-law contains an express provision to the contrary.

2. “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.
3. “Meaning of Service by post” [Section 27]: 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:
 - properly addressing
 - pre-paying, and
 - 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.

 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 neither tenable not based upon sound exposition of law.

United Commercial Bank v. Bhim Sain Makhija, AIR 1994 Del 181

 It was held that 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.

Jagdish Singh v. Natthu Singh, AIR 1992 SC 1604

 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. Endorsement 'not claimed/not met' is sufficient to prove deemed service of notice.

Smt. Vandana Gulati v. Gurmeet Singh alias Mangal Singh, AIR 2013 All 69

4. “Citation of enactments” [Section 3(28)] :

- a) In any Central Act or Regulation, and in any rule, bye law, instrument or document, made under, or with reference to any such Act or Regulation, any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and years thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.
- b) In this Act and in any Central Act or Regulation made after the commencement of this Act, a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

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The End