

**7. INTERPRETATION OF STATUTES, DEEDS AND DOCUMENTS****PREVIOUS EXAM QUESTIONS OF CA INTER**

YEAR	QUESTION	MARKS
MAY18	Explain briefly the distinction between 'mandatory' and 'directory' provisions in a statute. How the court deals with them differently?	4
NOV 18	Write short note on i) Proviso ii) Explanation, with reference to interpretation of statutes, Deeds and Documents.	4
	Explain how 'Dictionary Definitions' can be of great help in interpreting / constructing an Act when the statute is ambiguous.	2
MAY 2019	It is defined as a) Company means a company incorporated under the companies Act, 2013 or under any previous company law b) Person includes under the consumer protection Act, 1986. How would you interpret or construct the nature and scope of above definitions.	3
	How will you understand whether a provision in a statute is 'mandatory' or 'directory'?	3

**Q.No.1. Define the term "Statute"? (B)****(NEW SM)**

1. To the common person, '**Statute**' means the laws and regulations of every kind without considering from which source they derive.
2. But, 'Statute' is the written will of the legislature, made by following appropriate procedure.
3. The term includes an Act enacted by the legislative authority (e.g. Parliament of India, like Indian Contract Act).
4. The Constitution substitute law in the place of statute.
5. The term 'law' includes ordinance, order, byelaw, rule, regulation, notification and the like.

**SIMILAR QUESTIONS:**

1. Explain the meaning of the word 'statute'.
2. What is meant by 'Statute'? Whether constitution recognizes it?
3. "Statute is the written will of legislature" Do you agree with the statement. Explain.

**Q.No.2. Define the term "Document"? (B)****(NEW SM)**

- a) For common man, a document is a paper giving information, which helps to prove a particular fact.
- b) Section 3 of the Indian Evidence Act, 1872 states that 'document' means **any matter** expressed or described upon any substance by means of letter, 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 the matter. Section 3(18) of The General Clauses Act, 1897 also gives similar definition to the word 'document'.
- c) Generally, documents contain the following four elements:
  - i) **Matter:** This is the first element, which states that there must be some matter. The word **any matter** in definition reveals that the definition of document is exhaustive.
  - ii) **Record:** This is the second element. The matter recorded on substance must be in writing, expression, or description.

iii) **Substance:** This is the third element. The matter recorded must be on a permanent substance. It includes mental or intellectual elements.

iv) **Means:** This represents forth element. Matter recorded on a substance is in the form of letters, any figures, marks, symbols, which communicate something to others.

#### SIMILAR QUESTIONS:

1. What do you understood by the term 'Document'?
2. How various statutes define the term 'Document'?
3. Decompose the term 'Document'.
4. What are the 4 elements of 'Document'?

Q.No.3. Define the term "Instrument"? (B)

(NEW SM)

- a) In general, 'instrument' means a legal document, which creates or confirms a right. It used for recording a particular fact.
- b) It is useful to prove liability and exempt a person from liability.
- c) It is in the nature of an agreement, deed, contract (charter) and executed by following proper procedure.
- d) 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

#### SIMILAR QUESTIONS:

1. How the term "instrument" is defined by Indian Stamp Act, 1899.
2. "Every document includes instruments but every instrument need not include document" Do you agree with the statement. Explain

Q.No.4 Define the term "Deed"? (B)

(NEW SM)

- a. According to the Legal Dictionary, 'deed' is an instrument in writing purporting to effect some legal disposition.
- b. Simply stated, deeds are instruments.
- c. There is no distinction between instruments and deeds.

#### SIMILAR QUESTIONS:

1. How the term 'Deed' differs from the term 'Instrument'?

Q.No.5. What is meant by Interpretation and the Significance of Interpretation? (A) (NEW SM)

'Interpretation' is the process by which the real meaning of an Act or a document can be ascertained. It helps to know the intention of the legislature for enacting law and intention of the parties executing the document.

#### SIGNIFICANCE/IMPORTANCE:

- a. 'Interpretation' uses for clarifying the meaning of complex words.
- b. It helps to understand the real sense of legislature.
- c. It helps to argue the importance of a section, a proviso, explanation, or schedule in an Act or any document, deed or instrument.
- d. The process of making statute and process of interpretation of statutes are separate. These two tasks entrusted to two different agencies concerned. (Making statutes is the power of legislature and interpretation of statutes by judiciary).

- e. Interpretation acts as a bridge between legislature and judiciary.
- f. The process of interpretation helps in implementation of common law rules.

**SIMILAR QUESTIONS:**

1. What do you mean by interpretation of Statutes? What is the need for interpretation of Statute?
2. "Interpretation acts as a bridge between legislature and judiciary" Explain clearly the significance of Interpretation.

**Q.No.6. Classification of interpretation (C)****(NEW SM)**

- a. According to Jolowicz, interpretation is classified into 'Legal' or 'Doctrinal'.
- b. According to Fitzgerald, interpretation is classified into 'Literal and 'Functional'.

**Q.No.7. Jolowicz classification of Legal Interpretation. (B)****(NEW SM)**

**Legal Interpretation:** Interpretation by following certain legal rules considers as legal interpretation. Comply certain rules for interpretation binds the judge in certain limits. It sub-divides into two.

- a. **AUTHENTIC:** It is authentic when rule of interpretation is derived from the legislator himself. Interpretation is always within the words given in text and not beyond.
- b. **USUAL:** It is usual when it comes from some other source such as custom or case law.

*Custom: Zamindari died without male issue (child). To safeguard the assets of Zamindari, Widow Parvatha Vardini adopts a son with the consent of husband's Sapindas. Later she also dead and collector issued notice by alleging that Zamindar died without children, and then the assets of Zamindar escheated by government. Then adopted son files a petition by contending that adoption is with the consent of Sapindas, which is a valid custom in their area. Privy Council held that the adoption is valid based on customary law. "COLLECTOR OF MADURA vs. MOOTOO RAMALINGA SETHUPATHY".*

**Q.No.8. Jolowicz classification of Doctrinal Interpretation (B)****(NEW SM)**

**Doctrinal Interpretation:** According to it, purpose of interpretation is to discover real and true meaning of statute and to ascertain the intention of the legislature. It again divided into two categories.

**1. Grammatical:**

- According to it, court relying on ordinary rules of speech for finding out the meaning of the words used in the statute.
- Court does not go beyond the letter of the law.
- The court cannot delete or add to modify the letter of the law while applying this interpretation.
- In all ordinary cases, the grammatical interpretation is the sole form allowable.

**2. logical:**

- When the court goes beyond the words and tries to discover the intention of the statute in some other way, then it is said to be logical interpretation.
- It helps to know true intention of legislature.

**SIMILAR QUESTIONS:**

1. Explain the principles of "Grammatical interpretation" and "Logical Interpretation." What would be the duties of court in this regard?

CA-F-M12-4M

**Q.No.9 Fitzgerald classification - Literal and Functional Interpretation (B)****(NEW SM)**

- a) The 'literal interpretation' is based on verbal expression of the law.
- b) It does not look beyond the letter of law ('literalities'). Court ascertains the intention of the legislature from the words used in the context.
- c) In all cases, courts must accept the letter of law as conclusive evidence of the spirit of the law.
- d) 'Functional interpretation', on the other hand, is that which departs from the letter of the law and seeks elsewhere for some other and more satisfactory evidence to ascertain the true intention of the legislature.

**Q.No.10. What is Construction and how it differs from interpretation (A)****(NEW SM)**

- a. One, who intends to know about interpretation, must know about construction. The differences between these two terms are as follows.
- b. The fundamental idea behind interpretation is that if the language is simple and unambiguous; apply it as it is considering intention of the legislature (CWT vs. Smt. Muthu Zulaika).  
In case of construction to clear the ambiguity in statute apply the other concepts like custom etc., (State of Bihar Vs. CIT).
- c. Court adopts these two terms to ascertain the meaning of particular text.  
*For example, let us say that you and I agree that I will sell you my car. I say that I will sell you my car for \$100, and you accept. I deliver my 1984 Honda to you. You are angry, because you do not want this car. You thought I was selling my new, 2013 Cadillac. When you sue me for breach of contract, the court will follow certain guidelines, or rules of construction, in an attempt to determine what each of us intended.*  
*In the given example court interpret I will sell you my car, by using certain guidelines, which are called as construction.*
- d. Interpretation is finding out the true sense of a provision in statute. The construction is the drawing of conclusion, based on subjects that lie beyond the direct expression of the text.
- e. It is the duty of the courts to give effect to the meaning of an Act when the meaning can be gathered from the words used. Words in a statute have a definite and precise sense must understand in that sense only. Thus, where the court follows plain meaning of the language to clear ambiguity, it would be interpretation.  
Where the meaning is not plain, the court would resort on other aspects, to what is called construction.
  - a) The two terms – interpretation and construction – overlap each other and it is rather difficult to state where 'interpretation' leaves off and 'construction' begins.

**SIMILAR QUESTIONS:**

1. Difference between Interpretation and Construction?
2. In what way does the interpretation differ from construction?

**Q.No.11. why do we need Interpretation/Construction? (A)****(NEW SM)**

- a) Now days, the enacted laws are drafted by legal experts and there is a possibility, that language used in it contains ambiguity and not perfect.
- b) Further, by its very nature, a statute is an edict of legislature. So for ascertaining intention of legislature not only relies on language but also consider surrounding circumstances prevail at the time when law enacted.
- c) If any provision of the statute is open to two interpretations, the court has to choose that interpretation which represents the true intention of the legislature.

- d) It is not within human powers to foresee the manifold set of facts, which may arise in the future. Even if it were so, it is not possible to enact free from all ambiguity.
- e) Human mind not to presume what will happened in future, even presumes it is difficult task to frame law without ambiguity – Denning L.J.
- f) The English language is not an instrument of mathematical accuracy. Our literature would be much poorer and it leads to criticize, the drafters of Acts of Parliament.
- g) A judge, believing him to be fettered by the supposed rule that he must look to the language and nothing else leads to ambiguity.
- h) When a defect appears, a judge cannot simply fold his hands and blame the draftsman. He must find out the intention of the legislature, considering the social conditions at the time of preparing legislation.
- i) Judge must give 'force and life' to the intention of the legislature.
- j) The statute is the will of the legislature. The fundamental rule of interpretation of a statute is statute, should explain according to the intent of legislature.
- k) In the event of the words of the statute being precise and unambiguous, then to explain those words in their natural and ordinary sense.
- l) The purpose of interpretation is to determine the intention which is conveyed either expressly or impliedly through language used in it.
- m) If the intention is express, then the task becomes one of verbal construction alone. If not expressed, then interpreter has to determine it by assumption based on certain legal principles. In such a case, the interpretation has to be one which is corresponding with the public benefit.
- n) Consequently, if a statute levies a penalty without expressly mentioning the recipient of the penalty, then, by implication, it goes to the officers of the State.
- o) The subject of interpretation of a statute, fall under two heads i.e. principles governing the construction of language of an Act and principles helpful to interpreter to gather intention of legislature for understanding the language.

Through the process of interpretation, the court seeks to detect the meaning of the legislation through the medium of authoritative form in which it is expressed. Court at the time of interpretation of ambiguous words first to apply its true meaning and if it is not suitable then can go beyond the letter of law and determine the meaning based on other sources, which is based on logic. Duty of the court is to administer law and not to see whether the law is just or unreasonable. Until it is altered or modified or amended, the court has no choice but to enforce the law as it is.

All these aspects add to give great importance to the subject of interpretation and construction in the practical administration of the law.

### SIMILAR QUESTIONS:

#### **1. Necessity of Interpretation and Construction.**

**Q.No.12. What are the rules of Interpretation/Construction of Statutes? (B)**

**(NEW SM)**

Over a period, certain rules of interpretation/construction have come to be well recognized. However, these rules are considered as guides only and are not rigid. These rules can be broadly classified as follows:

#### **a. PRIMARY RULES:**

- Rule of Literal Construction
- Rule of Reasonable Construction
- Rule of Harmonious Construction
- Rule of Beneficial Construction
- Rule of Exceptional Construction
- Rule of Ejusdem Generic etc.

## b. SECONDARY RULES

- Effect of usage
- Associated words to be understood in Common Sense Manner

## Q.No.13. Explain the Rule of Literal Construction (A)

(NEW SM)

PRIMARY RULES:

- It is the important rule of construction that words, sentences and phrases of a statute should be read in their ordinary, natural and grammatical meaning. At the same time the words and phrases are technical in nature then the technical meaning only taken into consideration.
- When the language of the statute is plain and unambiguous and admits of only one meaning, no question of construction of statute arises. The meaning must be collected from the expressed intention of the legislature. A word which has a definite and clear meaning should be interpreted with that meaning only, irrespective of its consequences.
- Sometimes, occasions may arise when a choice has to be made between two interpretations- one narrower and the other wider. 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.

**Example:** Director or manager of a company to disclose the nature of concern interest, financial or otherwise in a company u/s 102 of the Companies Act, 2013. These words can be interpreted that 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.

- Court applying this rule follow the Latin Maxim '*absolute sentential expositor non indigent*', which means a simple preposition needs no expositor i.e. when you have plain words capable of only one interpretation, no explanation to them is required.
- Court not to add or delete words while interpretation, which leads to intervention of judiciary into the functions of legislature.

Rule of literal interpretation can be read and understood under the following headings:

a) **Natural and grammatical meaning:**

- Statute is too understood (construed) in their natural, ordinary, or popular sense.

**Example:** In a question before the court whether the sale of betel leaves was subject to sales tax. In this matter, Supreme Court held that betel leaves could not be given the dictionary, technical or botanical meaning when the ordinary and natural meaning is clear and unambiguous. Being the word of everyday use it must be understood in its popular sense by which people are conversant with it as also the meaning which the statue dealing with the matter would attribute to it. Therefore, the sale of betel leaves was liable to sale tax. (Ramavtar vs. Assistant Sales Tax Officer).

- The meaning of a word depends upon its context. In the construction of statutes, the context means the statute as whole and other statutes in '*pair material*' (where two enactments have common purpose in an analogous (similar) case).

**Example:** In construing of the Andhra Pradesh General Sales Tax Rules, 1957, the words 'Livestock means all domestic animals will not include 'chicks' construing in the popular sense although in liter sense animal refers to any and every animate object as distinct from inanimate object (Royal Hatcheries Pvt. Ltd. Vs. State of AP).

b) **Exact meaning preferred to loose meaning:**

Exact meaning is preferred to loose meaning in an Act of Parliament. As every word has a secondary meaning too. **Example:** Crane (it is a bird as well as lifting object).

c) **Technical words are construed in technical sense only.**

This point of literal construction is that technical words are understood in the technical sense only.

**Example:** In construing of word 'practice' in Supreme Court Advocates Act, 1951, it was observed that practice of law generally involves the exercise of both the functions of acting and pleading on behalf of a litigant party. When legislature confers upon an advocate the right to practice in a court, it is legitimate to understand that expression as authorizing him to appear and plead as well as to act on behalf of suitors in that court. (Ashwini Kumar Ghose vs. Arabinda Bose).

**CRITICISM: WHITELY V CHAPPEL (1868) LR 4 QB 147:** A statute made it an offence 'to impersonate any person entitled to vote.' The defendant used the vote of a dead man. The statute relating to voting rights required a person to be living in order to be entitled to vote. Held: The literal rule was applied and the defendant was thus acquitted.

**SIMILAR QUESTIONS:**

1. State the Grammatical Construction Rule.
2. The duty of the court is to administer the law as it stands and not to find out whether the law is just or reasonable.

**Q.No.14. Explain rule of reasonable Construction/Golden Rule of Interpretation (A) (NEW SM)**

- a) According to this rule, the words of a statute must understood by considering the Latin maxim, '*ut res magis valet qualm pereat*', which means the words of statute must be understood based on reasonable meaning.
- b) While interpreting a law, two meanings are possible, one making the statute vague and meaningless and other leading to certainty and a meaningful interpretation, in such case the interpretation which is certain should be followed. (Pratap Singh vs. State of Jharkhand).
- c) A reasonable construction will be adopted in accordance with the policy and object of the statute.
- d) If the court finds that giving a plain meaning to the words will not be a fair or reasonable then, it becomes the duty of the court to depart from the dictionary meaning and adopt the construction, which will advance the remedy and suppress the mischief.

**SIMILAR QUESTIONS:**

1. Explain the Golden Rule of Interpretation
2. Explain the rule of 'Reasonable construction' under the interpretation of statutes, deeds etc. CA-F-N10-4M

**Q.No.15. Explain Rule of Harmonious Construction (A) (NEW SM)**

- a) 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.
- b) When there is doubt about the meaning of the words in a statute, these should be understood by harmonizing with the subject and object of the enactment, which the legislature had in view.
- c) Importance should not be attached to a single clause in one section overlooking the provisions of another section.
- d) If it is impossible to avoid inconsistency, the provision which was enacted or amended later in point of time must prevail.
- e) The rule is not applicable when the words have only one clear meaning. In such a case harmonious construction is replaced by literal construction.

**Example:** As per the facts given in the *Raj Krishna vs. Binod*, there was a conflict between section 33 (2) and 123(8) of the Representation of People Act, 1951. Section 33 (2) stated that a government servant may nominate or second a candidate seeking election, whereas section 123(8) provided that a government servant is not entitled to assist a candidate in an election in any manner except by casting his vote. Supreme Court applies Harmonious Construction in this aspect. Accordingly, a government servant can vote as well as of proposing and seconding a candidature and forbidding him from assisting a candidate in any other manner.

Keep in mind that a statute is passed as a whole and not in sections. It may assume that enactment is of one general purpose and intent. The courts duty is to give effect to all the parts of a statute, if possible. Court considers that the sections and sub-sections as they are inter-dependent. Therefore importance should not be attached to a single clause in one section overlooking the provisions of another section. If it is impossible to avoid inconsistency, the provisions which was enacted or amended later in point of time must prevail. The Rule of Harmonious construction is applicable only when there is a real conflict between the provisions of an Act, and one of them has not been made subject to the other. If the context and the words are only have single meaning then this rule not applicable.

### SIMILAR QUESTIONS:

1. Explain the meaning and application of the rule of “Harmonious Construction” in interpretation of statutes? CA-F-N12-4M

**Q.No.16. Rule of Beneficial Construction or Haydon’s Rule or Purposive Construction (B)**  
(NEW SM)

- a) Where the language used in a statute is capable of more than one interpretation, the court must adopt that construction which ‘shall suppress the mischief and advance the remedy’.
- b) This rule requires the court to consider the following matters in construing an Act:
  - i) What was the law before the making of the Act;
  - ii) What was the mischief or defect for which the law did not provide;
  - iii) What is the remedy that the Act has provided; and
  - iv) What is the reason for the remedy?
- c) This rule does not normally apply to financial (fiscal) statute like Income tax Act. While construing a fiscal statute the words of the statute are given the plain meaning. If a taxpayer is within the plain meaning of the terms of an exemption, he cannot be denied the benefit by resorting to any supposed intention of the exempting authority. The Supreme Court in the case of Hemraj Gordhandas vs. H.H. Dave held this.
- d) 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.

*In the landmark case of B SHAH Vs. PRESIDING OFFICER, LABOUR COURT, court applied beneficial rule of construction in construing section 5 of the Maternity Benefit Act, 1961, which makes the employer liable to pay maternity benefit to woman worker at the rate of average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for six weeks immediately following that day. The court held that Sundays must also be included and held that the Act was intended not only subsist but also make up for her dissipated energy and take care of child. The Act was read in the light of Article 42.*

**Example:** Where a statute requires something to be done by a person, it would generally be sufficient compliance with it if the thing is done by another person on his behalf and by his authority, for it would be presumed that the statute does not intend to prevent the application of the general principle of law. *Quo facit per alium facit per se* is a Latin maxim, which means he who acts through another is deemed to act in person.

**Example:** This rule can be studied considering section 2 (d) of the Prize Competition Act, 1955. This section defines ‘prize competition as any competition in which prizes are offered for the solution of any puzzle in combination of letters, words or figures. The question is it amounts to skill based one or not. Court opines that competitions which are sought to be controlled and regulated by the Act are only those competitions in which success does not depend on any substantial degree of skill (RMD Chamarbaugwalla vs. Union of India AIR 1957 SC 628).

### SIMILAR QUESTIONS:

1. What is Mischief rule of interpretation?
2. Explain the rule of purposive construction?



## Q.No.17. Rule of Exceptional Construction (B)

(NEW SM)

- a) The rule of exceptional construction stands for the elimination of words in a statute, which defeat the real objective of the statute or make no sense.
- b) It also stands for construction of words 'and', or, 'may', 'shall' and 'must'. This rule has several aspects viz.,
- i) **Common sense rule:** Despite the general rule that full effect must be given to every word in statute. If no reasonable meaning fixed to a word, or the word would defeat the real object of the enactment, it should be eliminated.
- ii) **Conjunctive and disjunctive words 'or' 'and':** The word **or** is normally disjunctive and is normally conjunctive (**junction**). However, at times **they are read as vice versa** to give effect to the clear intention of the legislature as disclosed from the context. This would be so where the literal reading of the words produces an unintelligible or absurd result.
- Example: In the Official Secrets Act, 1920, any person who attempts to commit any offence under the Act, or solicits or incites or endeavors (activities) to persuade (influence) another person to commit an offence, or aids or abets **and** does any act preparatory to the commission of an offence. Here, the word and in bold is to be read as '**or**'. Reading and as and will result in unintelligible and absurd sense and against the clear intention of the legislature.
- iii) **Mandatory vs. directory provisions:** When a provision is mandatory, it must be strictly observed. When a provision is directory, it would be sufficient that it is substantially complied with.

## Q.No. 17.1 EXPLAIN BRIEFLY THE DISTINCTION BETWEEN 'MANDATORY' AND 'DIRECTORY' PROVISIONS IN A STATUTE. HOW THE COURT DEALS WITH THEM DIFFERENTLY? (A) (New SM)

- a) The distinction between a mandatory and directory is that when it is mandatory, it must be strictly complied and when it is directory, it may apply considering the circumstances of each case.
- b) **Non-observance of mandatory provisions invalidates the decision.** But non-observance of **directory provision does not invalidate the decision.**
- c) **No rule** laid down in law to **decide** a provision in a statute is **mandatory or directory**. In each case the court has to decide based on intention of legislature.
- d) Where a specific penalty is provided in a statute for non-compliance with particular provision of the statute, **no discretion** left to the court to determine whether such provision is directory or mandatory- it has to be **taken as mandatory**.

SIMILAR QUESTIONS:

1. Distinguish between mandatory provision and a directory provision. CA-F-M13-4M

## Q.No. 17.2 WRITE A SHORT NOTE ON INTERPRETATION OF WORDS "MAY AND SHALL". (A) (NEW SM).

- a) The use of the word 'May' in a statutory provision would not by itself show that the provision is directory in nature.
- b) In some cases, the legislature may use the word 'May' as a matter of pure conventional courtesy (convention between judiciary and legislature) and yet intend a mandatory force.
- c) In order to interpret the word 'May' various factors have to be considered such as the object and the scheme of the Act, the context or background against which the words have been used, the purpose and advantages of the act sought to be achieved.
- d) Where the word 'may' involves a discretion coupled with an obligation or  
Where it confers a positive benefit to the general class of subjects, or  
Where a remedy would be advanced and a mischief suppressed, or

Where giving the word directory significance would defeat the very object of the Act then word 'May' should be interpreted to convey a mandatory force.

- e) Therefore, while undoubtedly the word 'may' generally does not mean 'must' or 'shall' yet the same word 'may' is capable of meaning 'must' or 'shall' in the light of the context in which it occurs.

#### SHALL:

- a) The use of the word **shall** would not of itself make a provision of the act **mandatory**. It has to be **construed with reference to the context** in which it is used.
- b) As **against the Government** the word '**shall**' when **used** in statutes is to be construed as '**may**' unless a **contrary** intention is noticeable. **Eg: A provision in a criminal statute that the offender shall be punished as prescribed in the statute is not necessary to be taken as against the government to direct prosecution under the provision rather under some other applicable statute.**
- c) When a statute uses the word '**shall**' as **mandatory**, not to interpret all times as mandatory, it can be changed into directory if the context or intention of the legislature demands.
- d) Where a specific **penalty** is **provided in statute** itself for non-compliance with the particular provision of the act, **no discretion** is left to the **Court** to determine whether such provision is directory or mandatory- **it has to be taken as mandatory**.
- e) The **use of word 'shall'** with respect to one matter and use of word '**may**' with respect to another matter **in the same section** of a statute, will normally lead to the conclusion that the word '**shall**' imposes an obligation, whereas word '**may**' confers a discretionary power.

#### SIMILAR QUESTIONS:

1. The word 'may' does not mean 'shall', yet the word 'may' under certain circumstances mean 'shall'. Comment on the statement.

**Q.No. 18 EXPLAIN THE RULE OF "EJUSDEM GENERIS" WITH REFERENCE TO THE INTERPRETATION OF STATUTES. STATE THE CASES IN WHICH THIS RULE IS NO APPLICABLE (A) (NEW SM)**

- a) The rule of Ejusdem generic means that where specific words are used and after those specific words, some general words are used, the general words would take their Colour from the specific words used earlier.
- b) For instance, where an Act permits keeping of dogs, cats, cow, buffaloes and other animals, the expression 'other animals' would not include wild animals like lions and tigers, but would mean only domesticated animals like horses, etc.,
- c) Where there was prohibition on importation of arms, ammution, or gunpowder or any other goods. The words any other goods were construed as referring to goods similar to arms, ammution or gun powder. (AG vs. Brown (1920), 1 KB 773).
- d) The general principles of Ejusdem generic apply only where the specific words are all the same nature. When they are of different categories, then the meaning of the general words following those specific words remains unaffected – those general words then would not take Colour from the earlier specific words.
- e) The courts have discretion whether to apply the Ejusdem generic doctrine in particular case or not. For example, the just and equitable clause in the winding-up powers of the courts is held to be not restricted by the first five situation in which the court may wind up a company.
- When the company is unable to pay its debts
  - If the company has by special resolution resolved that the company is wound up by the tribunal.
  - If the company has acted against the interest of the integrity or morality of India, security of the state, or has spoiled any kind of friendly relations with foreign or neighboring countries.
  - If the company has not filled its financial statements or annual returns for preceding 5 consecutive financial years.

- If the company in any way is indulged in fraudulent activities or any other unlawful business, or any person or management connected with the formation of company is found guilty of fraud, or any kind of misconduct.
- If the tribunal by any means finds that it is just & equitable that the company should be wound up.

**SIMILAR QUESTIONS:**

1. Do the courts have a discretionary power to apply the rule of 'Ejusdem Generic' in a given situation?

**Q.No. 19 WHAT IS THE EFFECT OF USAGE? (B)****(NEW SM)**

- a. Usage or practice adopted for understanding the meaning of the words in statute.
- b. Accordingly, a uniform practice continued under an old statute and inaction of legislature to amend the same then apply the same practice in understanding new legislation.
- c. When the usage or practice receives judicial or legislative approval it gains additional weight:
- d. In this connection, we have to bear in mind two Latin Maxims:
  - i) 'Optima Legume intersperses consuetude' (the custom is the best interpreter of the law); and
  - ii) 'Contemporaneous expositors optima et fortissimo in loge' (the best way to interpret a document is to read it as it would have been read when made).

**Example:** Documents issued by the Government simultaneously with the notification under section 16 (1) of the Securities Contracts (Regulation) Act, 1956 were used as Contemporaneous exposition of the notification.

**SIMILAR QUESTIONS:**

1. In what way is 'usage' helpful in the interpretation of a Statute?

**Q.No.20. ASSOCIATED WORDS TO BE UNDERSTOOD IN COMMON SENSE MANNER- EXPLAIN. (B)****(New SM)**

- a. When two words or expressions are associated together, the meaning is based on association and not specifically.
- b. The Latin Maxim, Noscitur A Socials (it is known by its associates), reveals 'the meaning of a word is to be judged through words associated.
- c. When two or more words which are capable of similar meaning are coupled together, they are to be understood in their nature or quality.

**Example:** Commercial establishment means an establishment which carries on any business, trade or profession, the term profession was construed with the associated words business and trade and it was held that a private dispensary was not within the definition.

**SIMILAR QUESTIONS:**

1. Explain the term 'Noscitur A socials'?
2. "Associate words should be understood in common sense matter" Explain the statement in light of rules of interpretation of statutes. CA-F – M11 – 4M

**Q.No.21 WHAT ARE THE INTERNAL AND EXTERNAL AIDS TO INTERPRETATION OF STATUTES? GIVE FIVE EXAMPLES EACH OF INTERNAL AND EXTERNAL AIDS (C) (NEW SM)**

Internal aids to interpretation/construction are those which are found within the text of the statutes. On the other hand external aids of interpretation are those factors which are external to the text of the statute but are of great help.

**Examples of internal aids to interpretation:**

1. Long title and short title
2. Preambles
3. Heading and title of chapter
4. Marginal Notes
5. Definitional sections and clauses
6. Illustrations
7. Provisos
8. Explanations
9. Schedules
10. Reading the statute as a whole.

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**Examples of external aids to interpretation:**

1. Historical setting (Background)
2. Consolidating statute & Previous law
3. Usage
4. Earlier & later analogous acts
  - a. Earlier acts explained by the later act
  - b. Reference to repealed acts
5. Dictionary definition
6. Use of foreign decisions

**Q.No.22. TITLES OF THE ACT (C)****(NEW SM)**

- a. An enactment would have what is known as 'Short Title and also a 'Long Title'
- b. The 'Short Title' merely identifies the enactment and is chosen merely for convenience.
- c. The 'Long Title' describes the enactment and does not merely identify it. **Example:** Full title of the Supreme Court Advocates (Practice in High Courts) Act, 1951 specify that this is an act to authorize Advocates of the Supreme Court to practice as of right in any High court.
- d. The Long Title of an Act is a part of the Act. We can, therefore, refer to it to ascertain the object, scope and purpose of the Act and so is admissible as an aid to its construction.

**INTERNAL AIDS TO INTERPRETATION/CONSTRUCTION****Q.No. 23. EXPLAIN THE USEFULNESS OF PREAMBLE IN INTERPRETING A STATUTE (B)(NEW SM)**

- a. The Preamble expresses the scope, object and purpose of the Act more comprehensively than the Long Title.
- b. The Preamble uses to know the cause of making a statute and the evil which is sought to be remedied by it.
- c. The Preamble of a Statute is a part of the enactment and can legitimately be used for understanding a statute. However, the Preamble does not over-ride the plain provision of the Act. If wording of statute are ambiguous, 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.

**Example:** Use of the word 'may' in section 5 of 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 vs. Bandaru Pavani, (2009)}

### **SIMILAR QUESTIONS:**

1. The preamble to an Act discloses the primary intention of the Legislature, but it cannot over-ride the provisions of the Act. Explain

**Q.No.24. EXPLAIN THE USEFULNESS OF 'HEADING AND TITLE OF A CHAPTER IN AN ACT AND MARGINAL NOTES OF A SECTION' AS INTERNAL AIDS IN INTERPRETING THE PROVISIONS OF A STATUTE (B) (NEW SM)**

#### 1. **HEADINGS & TITLES**

- a) A number of sections in an Act applicable to any particular object are grouped together, sometimes in the form of chapters, pre-fixed by Heading and/or Titles.
- b) Heading and Titles prefixed to sections or groups of sections can legitimately be referred to for the purpose of construing the enactment or its parts.
- c) The heading to one group of sections cannot be used to interpret another group of sections.

#### 2. **MARGINAL NOTES**

- a) Marginal notes means titles to the section.
- b) In C.I.T vs. Ahmedbhai Umarbhai & Co. case it has been held that "Marginal notes in an Indian statute, as in an Act, of Parliament cannot be referred to for the purpose of construing the statute.
- c) Many cases show that reference to marginal notes may be permissible in exceptional cases for construing a section in a statute. (Dee wan Singh vs. Rajendra Pd. Ardevi) (Sarabjit Rick Singh vs. Union of India).
- d) In Uttam Das Chela Sunder Das vs. SGPC AIR 1996 SC 2133, it was observed that 'Marginal notes undoubtedly, part and parcel of legislation and the language used therein provides the key to the legislative intent.'
- e) Marginal note is legislative and not editorial exercise C Bhagirath vs. Delhi Admn. AIR 1985 SC 1050. It gives an indication as to what was exactly the mischief that was intended to be remembered and throws light on the intention of legislature.
- f) It helps to understand the ambit of the section. Shree Sajjan Mills Ltd. vs. CIT (1985) 156 ITR 585 (SC).
- g) 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.

**Q.No.25. WHAT WAY ARE DEFINITIONAL SECTIONS HELPFUL IN THE INTERPRETATION OF STATUTES (B) (NEW SM)**

- a. The legislation contains the definitions to a word at the earliest. The meaning of the word is alike wherever the word is used in that legislation.
- b. Court at the time of interpretation of the ambiguous word not to substitute its own meaning by ignoring the meaning given in the legislation.
- c. Purpose of definition clause is two-folds i.e., to interpret properly the Act and Shorten the language by using 'word' that defined.
- d. **RESTRICTIVE & EXTENSIVE DEFINITIONS:**
  - In definition, word 'mean' used, either it may exhaustive or restrictive, restrictive meaning only consider.

**Example:** Director means a director appointed to the board of a company. Even word director is exhaustive, meaning of it only consider in restrictive way- Section 2(34) of Companies Act, 2013.

- Word 'include' used in the definition, then definition is exhaustive.

**Example(1):** Section 3 (18) of the General Clauses Act, 1897 states that the term '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 of recording this matter.

**Example (2):** Definition of Whole time director {Section 2 (94) of the Companies Act, 2013}- Whole time director includes a director in the whole time employment of the company. The word includes suggests extensive definition. Other directors may be included in the category of the whole time director.

- Where the word is defined as "means and includes", then definition is exhaustive.
- Where the word is defined "to apply to and include", definition understand as extensive.
- Definition section worded as "is deemed to include" may use as inclusive or exhaustive.

**e. AMBIGUOUS DEFINITION:**

- When definition is ambiguous, interpret it with help of other provisions of Act and not to read in isolation. It must be read in the context of the phrase which it defines, realizing that the function of a definition is to give accuracy and certainty to a word or phrase which would otherwise be vague and uncertain but not to contradict it or depose it altogether. **Example:** Termination of service of a seasonal worker after the work was over does not amount to retrenchment as per the Industrial disputes Act, 1947. But the termination of employment of a daily wagger who is engaged in a project, on completion of the project will amount to retrenchment if the worker had not been told when employed that his employment will end on completion of the project.

**f. DEFINITIONS SUBJECT TO CONTRARY CONTEXT:**

- Word contains several meaning the meaning nearer to objects of the Act only to consider.

**SIMILAR QUESTIONS:**

1. The definition of a word in a statue may be either restrictive or extensive. Elaborate this with reference to definition of "Officer" in companies Act, 2013.

**Q.No.26. Explain the usefulness of 'Heading and Title of a chapter in an Act and Marginal notes of a section' as internal AIDS in interpreting the provisions of a statute (B) (NEW SM)**

**3. HEADINGS & TITLES**

- d) A number of sections in an Act applicable to any particular object are grouped together, sometimes in the form of chapters, pre-fixed by Heading and/or Titles.
- e) Heading and Titles prefixed to sections or groups of sections can legitimately be referred to for the purpose of construing the enactment or its parts.
- f) The heading to one group of sections cannot be used to interpret another group of sections.

**4. MARGINAL NOTES**

- h) Marginal notes means titles to the section.
- i) In C.I.T vs. Ahmedbhai Umarbhai & Co. case it has been held that "Marginal notes in an Indian statute, as in an Act, of Parliament cannot be referred to for the purpose of construing the statute.
- j) Many cases show that reference to marginal notes may be permissible in exceptional cases for construing a section in a statute. (Dee wan Singh vs. Rajendra Pd. Ardevi) (Sarabjit Rick Singh vs. Union of India).
- k) In Uttam Das Chela Sunder Das vs. SGPC AIR 1996 SC 2133, it was observed that 'Marginal notes or captions undoubtedly, part and parcel of legislative exercise and the language employed therein provides the key to the legislative intent. The words employed are not mere surplus age'.

- l) Marginal note is legislative and not editorial exercise C Bhagirath vs. Delhi Admn. AIR 1985 SC 1050. It gives an indication as to what was exactly the mischief that was intended to be remembered and throws light on the intention of legislature.
- m) It is relevant factor to be taken into consideration in construing the ambit of the section. Shree Sajjan Mills Ltd. vs. CIT (1985) 156 ITR 585 (SC).
- n) 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.

**Q.No.27. In what way are Definitional Sections helpful in The Interpretation of Statutes (B)**  
(NEW SM)

- a) The legislation contains the definitions to a word at the earliest. The meaning of the word is alike wherever the word is used in that legislation.
- b) Court at the time of interpretation of the ambiguous word not to substitute its own meaning by ignoring the meaning given in the legislation.
- c) Purpose of definition clause is two-folds i.e., to interpret properly the Act and Shorten the language by using 'word' that defined.
- d) **RESTRICTIVE & EXTENSIVE DEFINITIONS:**
  - In definition, word 'mean' used, either it may exhaustive or restrictive, restrictive meaning only consider.  
**Example:** Director means a director appointed to the board of a company. Even word director is exhaustive, meaning of it only consider in restrictive way- Section 2(34) of Companies Act, 2013.
  - Word 'include' used in the definition, then definition is exhaustive.  
**Example (1):** Section 3 (18) of the General Clauses Act, 1897 states that the term '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 of recording this matter.  
**Example (2):** Definition of Whole time director {Section 2 (94) of the Companies Act, 2013}- Whole time director includes a director in the whole time employment of the company. The word includes suggests extensive definition. Other directors may be included in the category of the whole time director.
  - Where the word is defined as "means and includes", then definition is exhaustive.
  - Where the word is defined "to apply to and include", definition understand as extensive.
  - Definition section worded as "is deemed to include" may use as inclusive or exhaustive.
- e) **AMBIGUOUS DEFINITION:** When definition is ambiguous, interpret it with help of other provisions of Act and not to read in isolation.
- f) **DEFINITIONS SUBJECT TO CONTRARY CONTEXT:** Word contains several meaning the meaning nearer to objects of the Act only to consider.

**Q.No.28. Illustrations (B)**

(NEW SM)

Illustrations appended to the section, form part of the statute and are considered to be of relevance and value in construing the text of sections. However, illustrations cannot have the effect of modifying the language of the section and can neither curtail nor expand the ambit of the section.

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**Q.No.29. Explain the importance of Proviso as an internal aid to interpretation. (B) (NEW SM)**

- a) 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.
- b) A proviso should not be, ordinarily, interpreted as a general rule.
- c) Proviso carves out an exception to the main provision to which it has been enacted and to no other.
- d) 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, AIR 1955 SC 765*).

**SIMILAR QUESTIONS:**

1. Explain the function of proviso while carrying out the interpretation.
2. What is the effect of a proviso? Does it qualify the main provisions of an Enactment?
3. What are the rules to be followed in the interpretation of a proviso in a Statute?

**Q.No.30. Why an Explanation is added to a Section. (B)****(NEW SM)**

- a) An Explanation should normally be so read as to harmonize with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.
- b) Following are the objects of adding an explanation to the section:
  - i) Explain the meaning and intendment of the Act itself.
  - ii) Clarify any vagueness in the main enactment to make it consistent with the object.
  - iii) Provide an additional support to the object of the Act to make it meaningful and purposeful.
  - iv) Fill up the gap which is relevant for the purpose of the explanation to suppress the mischief and advance the object of the Act.
  - v) It cannot take away a statutory right.

**SIMILAR QUESTION:**

1. Does an explanation added to a section widen the ambit of a Section?
- A. Refer above answer.

**Q.No.31.Schedules (B)****(NEW SM)**

- a) The Schedules form part of an Act.
- b) They must be read together with the Act for all purposes of construction. However, the expressions in the Schedule cannot control or prevail over the expression in the enactment. If there appears to be any inconsistency between the schedule and the enactment, the enactment shall always prevail.

**EXTERNAL AIDS TO INTERPRETATION/ CONSTRUCTION****Q.No.32.Historical Setting (C)****(NEW SM)**

- a) In construing any enactment, we have 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.
- b) 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.



**Q.No.33.Consolidating Statutes & Previous Law (C)****(NEW SM)**

The Preambles too many statutes contain expressions such as “An Act to consolidate” the previous law, etc. In such a case, the Courts may stick to the presumption that it is not intended to alter the law.

**Q.No.34. Usage (B)****(NEW SM)**

Where the meaning of the language in a statute is doubtful, usage – how that language has been interpreted and acted upon over a long period – may determine its true meaning.

**Q.No.35. Earlier & Later Acts and Analogous Acts. (C)****(NEW SM)**

- a) Where there are different statutes in ‘primavera’ (i.e. in an analogous case), though made at different times, or even expired and not referring to each other, they shall be taken and construed together as one system and as explanatory of each other.
- b) In case of discrepancy between two Acts, then the Act enacted later in point of time, shall prevail.

**Q.No.36. Earlier Act Explained by the Later Act (C)****(NEW SM)**

Sometimes, later Act furnishes a legislative interpretation of the earlier one, if it is ‘pair material’ and if, but only if, the provisions of the earlier Act are ambiguous.

**Q.No.37. Reference to Repeal Act. (C)****(NEW SM)**

Where a part of an Act has been repealed, it loses its operative force. Nevertheless, such a repealed part of the Act may still be taken into account for construing the unrepealed part. This is so because it is part of the history of the new Act.

**Q.No.38. Dictionary Definitions (B)****(NEW SM, N18(N)- 2M)**

- a) Where 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.
- b) 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. 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.
- c) Judicial decisions laying down the meaning of words in construing statutes in ‘Pari material’ will have greater weight than the meaning furnished by dictionaries.
- d) For technical terms reference may be made to technical dictionaries.

**Q.No.39.Use of Foreign Decisions (A)****(NEW SM)**

- a) 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.
- b) Where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.

## Q.No.40. Discuss the rules of interpretation/construction of deeds and documents. (A) (NEW SM)

- a) Find out what a reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope, would understand by the words used in that deed or document.
- b) Terms of one deed cannot be construed by reference to the terms of another deed.
- c) The same word cannot have two different meanings in the same document.
- d) Ascertain the intention of the parties to the instrument after considering all the words in the document/deed concerned in their ordinary, natural sense.
- e) The circumstances in which the particular words had been used have also to be taken into account.
- f) The status and training of the parties using the words have also to be taken into account as the same words may be used by an ordinary person in one sense and by a trained person or a specialist in quite another special sense.
- g) It may happen that the same word understood in one sense will give effect to all the clauses in the deed while taken in another sense might render one or more of the clauses ineffective. In such a case the word should be understood in the former and not the latter sense.
- h) It may also happen that there is a conflict between two or more clauses of the same document. An effort must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect to. If, however, it is not possible to give effect to all of them, then it is the earlier clause that will over-ride the latter one.
- i) Similarly, if one part of the document is in conflict with another part, an attempt should always be made to read the two parts of the document harmoniously, if possible. If that is not possible, then the earlier part will prevail over the latter one which should, therefore, be disregarded.

**SIMILAR QUESTIONS:**

1. Gaurav Textiles Ltd has entered into a contract with the company. You are invited to read and interpret the documents of the contract. What are the rules of interpretation of deeds and documents would you apply while doing so?

CA-F-M10-6M

**SUMMARY**

- In the olden days i.e. in **Primitive Age**, the rulers regulate the law and order in the State according to 'Dharma Sastras', which are based on what is good and what is bad. Later, in **Middle Age**, Monarchic form of governments comes into existence and in which, ruler enjoyed all the powers like, enacting legislations, implementation of the legislations and punishment awarded to the violators of legislation.
- Whereas in **Modern Age**, as the democratic form of governments comes into force the powers required to be separated for implementation of welfare legislations. At this juncture, Montesquieu a French Political Philosopher, profound a theory of **separation of powers**, which paved path to separate the powers and allocates to three organs. Legislative powers vest with legislature, power of implementation of legislation exercised by Executive and the power of punishment bestow on judiciary. He opines that the object of democracy only achieved when one organ not to interfere with the other.
- Function of judiciary is eminence in democratic form of governments. It exercises not only the power of awarding punishment, but also the power of interpretation of legislations for better implementation of the same. At the time of enacting and implementation of legislations, there is no problem either to legislature or to executive regarding lacunas in legislation. However, at the time of adjudication by the court, the wrongdoer may escape from the clutches of judiciary by using such lacunas. Therefore, the **judiciary** as far as possible to avoid such escapism by **interprets the legislation** in right way by not deviating the legislative intention.
- While interpreting the legislation judicial authority not to add or delete the words in legislation, which leads to interference in powers of one organ into other organ. It must concentrate on implementation of statute rather than struck down the same with an object to **clear ambiguity** in right way. Judiciary avoids injustice to either party and to follow principles of natural justice, when

