

Interpretation of Statutes and Agreements in India

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Skill Development Program
Organized by
Institute of Company Secretaries of India
Bhopal Chapter

On 12th February 2016
At ICSI Bhopal Chapter Office

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This Presentation gives only an indication of the various rules and practices related to interpretation.
It is not intended to be either complete or exhaustive narration of the subject

Preface

Interpretation of statutes is a subject that all legal professionals study as part of their academic curriculum. However, the subject is often perceived to be highly theoretical and esoteric. This is a subject that every legal professional is supposed to know and also claims to know, while being aware in his / her heart of never studying the subject to any great depth. Given this state of affairs among legal professionals, it is not surprising that non-legal professionals have no inkling of the subject.

This Guide is primarily meant for non-legal professionals like engineers, entrepreneurs, managers who often need to understand and interpret laws. Legal professionals (advocates, chartered accountants and company secretaries) as well students aspiring to become legal professionals may also find it useful.

Primary focus of this Guide is interpreting in the context of Indian laws and legal system, though there is not much difference in rules of interpretation in English-speaking countries.

Last but not the least, this Guide is not a replacement for good legal advice. Please consult a legal professional for any issues that you face.

Contents

- A. What is interpretation?
- B. Essentials of Interpretation
- C. Guiding Rules
- D. Subsidiary Rules
- E. Internal Aids
- F. External Aids

A. What is Interpretation

A1. Interpreting Statutes

A2. Problems with Interpretation of Statutes

A3. Interpreting Contracts, Deeds and Agreements

A4. Problems with Interpretation of Agreements

A5. Objectives of Interpretation

A6. Examples of Interpretation of disputes

A1. Interpreting Statutes

- Legislature makes laws, Judiciary Interprets them
- Advocates, as officers of court, assist judges to interpret
- Advocates, CA's and CS's interpret laws to suit the needs of their clients
- Advocates, CA's and CS's are required to interpret laws to advise clients the right course of action
- Advocates, CA's and CS's are required to interpret laws to prepare legal documents including forms, agreements, statements, declarations, affidavits etc.
- Advocates, CA's and CS's often serve as arbitrators where they are called to interpret laws

A2. Problems with Interpretation of Statutes

- Impossible for drafter of law to imagine all situations at the time of drafting
- Same word has different meanings in different contexts
- Language is constantly changing while words in a law remain fixed
- Ambiguity due to poor selection of words
- Ambiguity due to poor grammar
- Ambiguity due to poor punctuation
- Clash between different parts of a law
- Clash between different laws

A3. Interpreting Contracts, Deeds & Agreements

- Interpreting contracts, deeds and agreements are vital for any business
- Mindset at the time of preparing a document is different from the time when it is being interpreted later
- Both sides are trying to read into the document something that suits their interests
- Advocates, CA's and CS's have to think on behalf of their clients and interpret according to their interests while keeping in mind the possible judicial view
- Contracts, Deeds and Agreements can be interpreted only with reference to the laws of the land and not in vacuum. So, a knowledge of laws is essential

A4. Problems with Interpretation of Agreements

- Agreements are prepared between two persons who know each other. But are interpreted by others (professionals / judges) who neither know the persons nor the transaction nor the eco-system
- Often agreements are loosely drafted with undefined terms, underlying unstated assumptions and understandings.
- Agreements are often poorly drafted with key points missing; ambiguous words and expressions; and such other lacunae.
- Often there is excessive use of jargon, irrelevant terms and conditions, repetition of the same matter at many places leading to much confusion.
- Mistakes like different dates at top and bottom, inconsistencies between various parts (CUT PASTE culture in legal offices leads to many of the above)

A5. Objectives of Interpretation

- Understand intention of the legislature as stated in the words of the law.
- Understanding intention of the parties at the time of the Agreement and as stated in the Agreement.
- Helping to turn the words of the law / Agreement to the advantage of one's client.
- Try to guess the judicial interpretation of the words / expressions of the law / Agreement to advise one's client take the path that does not run foul of law / Agreement.
- Most professionals who are involved with interpretation are also involved with drafting of legal documents. One who can interpret well can generally draft well.

A6. Some examples of interpretation disputes

- “*accident arising out of and in the course of employment*” – Is murder included?
- Is telephone / mobile a telegraph?
- Does “*repair*” include cleaning and oiling?
- A plot of land was allotted for purpose of industry. A telecom company opened an office there and put some of its equipment there. Is the land use industrial one?
- Ringtone music received on mobile. Is it entertainment, liable to entertainment tax?
- Fundamental right to life – does life include right to privacy, right to sunlight, right to clean water?

B. Essentials of Interpretation

B1. Intention of the Legislature / Parties

B2. Read as a whole in context

B3. To be construed to make it effective and workable

B4. If meaning plain, effect must be given irrespective of consequences

B5. Principle of Plain Meaning

B1. Intention of the Legislature / Parties

- Words of language are not perfect scientific symbols.
- Central core meaning versus fringe / dim fringe meaning (Day – when does day start and end?)
- Innumerable contexts and circumstances, borderline cases
- Legislature cannot interpret or declare its intention except by a fresh law
- Literal meaning versus intention versus purposive interpretation
- Meaning vs. “Purpose and Object” vs. “Reason and Spirit”
- Legislative Intent is a legal fiction representing the attitude of judges in arriving at a balance between the words and spirit of the statute
- Judges are “finishers, refiners and polishers of legislation which comes to them in a state requiring varying degrees of processing”

B2. Read as a whole in context

- Elementary Rule / Compelling Rule / Settled Rule
- Context means, “the statute as a whole, the previous state of the law, other statutes in *pari materia* (Of the same subject), the general scope of the statute and the mischief that it was intended to remedy.
- To ascertain the meaning of a clause in a statute, the court must look at the whole statute, at what precedes and at what succeeds and not merely at the clause itself.
- Same word may mean one thing in one context and another in another context.
- Example – sale deed related to property made in Madras. Various parts of the transaction completed outside Madras. Did the sale take place in state of Madras? Key issue – definition of sale. Held: sale has various constituents and one has to look at the whole picture.

B2. Example of Read as Whole

- Section 13(a)(ii) of the Punjab Rent Restriction Act, 1949 enables a landlord to obtain possession in the case of rented land if *“(a) he requires it for his own use; (b) he is not occupying in the urban area for the purpose of his business any other such rented land; and (c) he has not vacated such rented land without sufficient cause ...”*
- High Court held that “for his own use” permitted landlord to claim eviction for his own use whatever may be the nature of the use.
- Supreme Court held that the three clauses were to be read together and (a) was restricted to business use as were (b) and (c).
- SC pointed out that if the restrictive meaning was not given to the words “for his own use”, the later two clauses would become inapplicable.

B3. To Be Construed to Make it Effective & Workable

- “Unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to find some meaning, and not declare them void for uncertainty”.
- “A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable”.
- Strive hard to give meaningful life to legislative enactments
- Courts may complain that the enactment is “mind-twisting” or an “enigma” yet they do not readily concede that no meaning can be given to it.
- Purposive construction

B3. Construed to Make Effective - Agreements

- Agreements often have garbled up clauses which appear to be senseless
- One of the party tends to interpret the clause to mean one thing while the other treats it as superfluous garbage.
- The key is to look at the subsequent actions of the parties. If the party claiming it as senseless acted in a way that supports the meaning assumed by the other party, the said party's claim of senselessness is not sustainable.
- In general, presumption against any clause being superfluous garbage. Favor the interpretation that treats it as effective workable clause.

B4. Meaning Plain, Effect Must Be Given

- “When a language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the Act speaks for itself”
- The results of the construction are then not a matter for the court, even though they may be strange or surprising, unreasonable or unjust or oppressive.
- “Hardship or inconvenience cannot alter the meaning of the language employed by the legislature if such meaning is clear on the face of the statute”.
- “The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the sections of the Act”.

B4. Plain Meaning - Examples

- Section 5(3) of Prevention of Corruption Act, 1947 lays down a rule of evidence enabling the Court to raise a presumption of guilt in certain circumstances – “the rule is a complete departure from the established principle of criminal jurisprudence that the burden always lies on the prosecution to prove all the ingredients of the offence charged and the burden never shifts on the accused to disprove the charge framed against him”. SC upheld the plain meaning.
- Vicarious criminal liability in case of cheque bouncing

B5. Plain Meaning

- “A provision is not ambiguous merely because it contains a word which in different contexts is capable of different meanings”.
- “A provision is ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning”.
- Unambiguous means “unambiguous in context”.
- Language which on its construction results in absurdity, inconsistency, hardship or strange consequences is not readily accepted as unambiguous.
- Examples of plain words subject of much dispute – sold, title / ownership of land

C. Guiding Rules

C1. Language to be read as it is

C2. Rule of Literal Construction

C3. Regard to Subject and Object

C4. Regard to Consequences

C1. Language to be read as it is

- **Avoiding addition or substitution of words**
- Casus omisus – A matter which should have been provided by the statute but has not been provided, cannot be provided by the court. “It is certainly not the duty of the court to stretch the words used by the legislature to fill in gaps or omissions in the provisions of the Act”.
- Addition of words permissible – “where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words”.
- Rejection of words when permissible – When presence of certain words in the statute results in apparent ineffectiveness of the language.

C2. Rule of Literal Construction

- Natural and grammatical meaning – words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context or in the object of the statute to suggest the contrary. The Golden Rule is that the words of a statute must *prima facie* be given their ordinary meaning.
- Natural or ordinary meaning has to be in relation to the subject matter with reference to which and the context in which they have been used in the statute.
- Exact meaning to be preferred to loose meaning – “contiguous” is taken to mean “touching” and not “neighboring”.
- Technical words in technical sense – special meanings in trade, business etc.; legal sense of words.

C3. Regard to Subject and Object

- Should be interpreted ordinarily in the sense that best harmonizes with the object of the statute and which effectuates the object of the legislature.
- Which advances the remedy and suppresses the mischief as the legislature envisioned
- **Heydon's case**; purposive construction; mischief rule:
 - 1st – What was the common law before the making of the Act?
 - 2nd – What was the mischief and defect for which the common law did not provide?
 - 3rd – What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth?
 - 4th – The true reason of the remedy.

C4. Regard to Consequences

- Hardship, inconvenience, injustice, absurdity and anomaly to be avoided – That the legislature should have used the word in that interpretation which least offends our sense of justice.
- Inconsistency and repugnancy to be avoided, harmonious construction – Duty of the courts to avoid “a head on clash” between two sections of the same Act and, “whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonize”.
- In case of absolute contradictions, the later to prevail. This has to be the last resort.
- Avoiding uncertainty, and friction on the system which the system purports to regulate

D. Subsidiary Rules

D1. Same word, same meaning

D2. Use of different words

D3. Rule of Last Antecedent

D4. Non Obstante Clause

D5. Legal Fiction

D6. Mandatory and Directory Provisions

D7. Use of “Or” and “And”

D8a. Construction of General Words

D8b. *Noscitur A Sociis*

D8c. *Ejusdem Generis*

D1. Same Word, Same Meaning

- Presumption that words are used in the same sense throughout a statute.
- Weak presumption, readily displaced by the context.
- Presumption is at its weakest when the word in question is of the kind that readily draws its precise import, its range of meanings from its immediate setting or the nature of the subject with regard to which it is employed.

D2. Use of Different Words

- When different words are used in the same statute, presumption that they are not used in the same sense.
- Example – “at the end of the previous year” and “in the course of such previous year” appearing in section 23A of Income Tax Act, 1922 were interpreted differently.

D3. Rule of Last Antecedent

- Relative and qualifying words, phrases and clauses are applied to the antecedent immediately preceding.
- Definition of “premises” in the Bombay Land Requisition Act, 1948 stated “any building or part of a building let or intended to be let separately”. It was held that the words, “let or intended to be let separately” did not qualify the word “building” but only the words “part of a building”.
- Rule subordinate to context
- Section 1(3)(a) of the Employees’ Provident Funds Act, 1952 reads, “*subject to the provisions contained in section 16, it (the Act) applies to every establishment which is a factory engaged in any industry specified in Schedule I and in which fifty or more persons are employed*”. Argued that 50 or more persons applied to industry and not to establishment. Held otherwise.

D4. Non Obstante Clause

- “Notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force”
- Later enactment prevails over the former.
- Special enactment prevails over the general one
- Resolves conflicts between laws

D5. Legal Fiction

- “when a statute enacts that something shall be deemed to have been done, which in fact and in truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to”.
- “Full effect must be given to the statutory fiction and it should be carried to its logical conclusion”
- A legal fiction created in terms enacted “for the purposes of this Act is normally restricted to that Act and cannot be extended to cover another Act”.

D6. Mandatory and Directory Provisions

- A mandatory enactment must be obeyed or fulfilled exactly but it is sufficient if a directory enactment be obeyed or fulfilled substantially.
- When consequences of nullification or failure provided in the statute, the statute is mandatory.
- Use of negative words usually mandatory. “Not less than three months notice” indicates a clear mandatory provision.
- Affirmative words can be used to exclude all that is not covered.
- The use of word “shall” generally indicates an imperative unless context shows otherwise.
- Use of word “may” indicates directory provision. Enabling provision.
- “must” is a stronger version of shall.

D7. Use of “Or” and “And”

- “Or” is normally disjunctive and “And” is conjunctive, but at times they are read as vice versa.
- “Owner and Master” to be guilty – Does a person have to be both owner and master of a ship to be held guilty? Or are both person guilty?
- Section 7 of the Official Secrets Act, 1920, reads: “Any person who attempts to commit any offence under the principal Act or this Act, or solicits or incites or endeavours to persuade another person to commit an offence, or aids or abets *and* does any act preparatory to the commission of an offence”. The word “and” printed in Italics was read as “or”, for by reading “and” as “and” the result produced was unintelligible and absurd and against the clear intention of the Legislature.

D8a. Construction of General Words

- Examples of general words – “in any legal proceeding whatsoever”, “any connection whatever”, “every place”, “in all its form”.
- Normal rule – general words must receive a general construction unless there is something in the Act itself such as the subject-matter with which the Act is dealing or the context in which the said words are used to show the intention of the Legislature that they must be given a restrictive meaning.
- Words and particularly general words cannot be read in isolation; their colour and content are derived from their context.
- General words and phrases, however wide and comprehensive they may be, in their literal sense must usually be construed as being limited to the actual object of the Act.

D8b. *Noscitur A Sociis*

- The meaning of a word is to be judged by the company it keeps.
- Rule of *Noscitur A Sociis* is wider than the rule of *Ejusdem Generis*, which is only an application of the former.
- Words that are coupled together take their colour from each other. The more general is restricted to the less general.
- Example – cows, bulls, goats, sheep and other animals. The expression “other animals” cannot refer to lions and tigers; it refers only to domestic animals.
- Example – old, discarded, unserviceable or obsolete machinery stores or vehicles including waste products. The expression “old” was construed to refer to machinery that had become non-functional or non-usable.

D8c. *Ejusdem Generis*

- When particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to things of the same kind.
- Specifically limits general words to the adjoining particular words.
- Example – Order banning arms, ammunition or gun powder or any other goods. In this order “any other goods” was construed to refer to goods similar to arms, ammunition or gun powder.
- Example – “Any person who entered into or works under a contract with an employer whether the contract be any way of manual labour, clerical work or otherwise ...”. Held that *ejusdem generis* is not applicable since “manual labour” and “clerical work” do not belong to a single limited genus.

E. Internal Aids

E1. Title

E2. Preamble

E3. Headings

E4. Punctuations and brackets

E5. Illustrations

E6. Definitions & interpretation clauses

E7. Proviso

E8. Exceptions

E9. Rules

E10. Explanation

E11. Schedule

E1. Title (Short & Long)

- Short Title is only a statutory nickname like The Companies Act, 2013. Can rarely be used as an aid to interpretation.
- Long Title comes before the Preamble and sums up the object of the Act.
- Title is part of the Act and not external to it.
- Assistance can be taken from Long Title.
- Short Title is only for the convenience of statutory reference.
- Title cannot override the clear meaning of the enactment.
- Title of Madras General Sales Tax Act, 1939 was utilized to indicate that the object of the Act is to impose taxes on sales that take place within the province.

E1. Title Example (Continued)

THE COMPANIES ACT, 2013

(No. 18 OF 2013)

[29th August, 2013.]

An Act to consolidate and amend the law relating to companies.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

E2. Preamble

- Expresses the scope, object and purpose of the Act more comprehensively than the Long Title.
- Recites the ground and cause of making the statute, the evil sought to be remedied or the doubts which may be intended to be settled.
- There may be no exact correspondence between preamble and enactment. The enactment may go beyond, or it may fall short of, the indications gathered from the Preamble.
- Cannot be resorted to, when the enacting part is clear.
- If the Preamble is clear one way and the enacting part is clear the other way, the latter shall prevail.
- Preamble of Constitution used for interpreting all laws in India.

E2. Preamble Example (Continued)

THE INFORMATION TECHNOLOGY ACT, 2000 (No. 21 OF 2000)

[9th June, 2000]

An Act to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the Indian Evidence Act, 1872, the Bankers' Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto.

WHEREAS the General Assembly of the United Nations by resolution A/RES/51/162, dated the 30th January, 1997 has adopted the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law;

AND WHEREAS the said resolution recommends *inter alia* that all States give favourable consideration to the said Model Law when they enact or revise their laws, in view of the need for uniformity of the law applicable to alternatives to paper-based methods of communication and storage of information;

AND WHEREAS it is considered necessary to give effect to the said resolution and to promote efficient delivery of Government services by means of reliable electronic records.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

E3. Headings

- Headings or Titles are prefixed to sections or groups of sections. Chapter headings are also included.
- A heading is to be regarded as giving the key to the interpretation of clauses ranged under it, unless the wording of section(s) is inconsistent with such interpretation.
- There are conflicting views on utility of headings. In general, “It is well settled that the headings prefixed to sections or entries (of a Tariff Schedule) cannot control the plain words of the provision”.
- To determine the sense of a doubtful expression; Indicates the general drift of clause.
- Example, a provision contained in Chapter on Winding Up (in Companies Act) cannot be used for Annual General Meeting.
- Marginal Notes to be treated as headings.

E3. Heading Example (Continued)

Indian Penal Code :-

CHAPTER XVI

OF OFFENCES AFFECTING THE HUMAN BODY

CHAPTER XVI

OF OFFENCES AFFECTING THE HUMAN BODY

Of offences affecting life

299.

Culpable homicide.

299. Culpable homicide.--Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

E4. Punctuation and Brackets

- These are minor elements in the construction of statute and very little attention is paid to them.
- Have relevance only when the statute is properly punctuated.
- If the section as punctuated leads to a conflict the punctuation must be ignored.
- Example – Section 27 of the Drugs and Cosmetics Act, 1940 provides that “*whoever manufactures for sale, sells, stocks or exhibits for sale or distributes a drug without license, is liable for punishment.*”

Does only stocking (as against ‘stocking for sale’) call for punishment? Held that since there is no comma after stocks, it is not an offence to only stock but is an offence to stock for sale.

E5. Illustrations

- Illustrations form a part of the statute and though do not form a part of the section, are relevant for interpretation.
- Illustrations should not be readily rejected as repugnant to the section.
- It shows the intention of framers of the Act and are useful for finding out the intention of the legislature.
- Example – Is a diary maintained by a deceased father containing date of births, death and marriages in his family a proof of age of his son under Indian Evidence Act?
Illustration to the relevant section provides that a letter from A's deceased father announcing the birth of A on a given day is a relevant fact. Held diary is relevant fact since diary similar to letter.

E5. Illustration Example (Continued)

THE CODE OF CIVIL PROCEDURE, 1908 (Act No. 5 of 1908)

19. Suits for compensation for wrongs to person or movable? Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

Illustrations

- (a) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.
- (b) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.

E6. Definitions & interpretation clause

- Definitions are used to extend the meaning of a word to include or cover something which is not normally covered or included.
- Definitions help in interpreting ambiguous words.
- Should not be borrowed from other statutes.
- Definitions may be restrictive (means) or extensive (includes).
- All statutory definitions must be read subject to the qualifications variously expressed in the provisions where they are used.
- In the absence of a definition, the General Clauses Act should be referred. If not defined there also, rules of interpretation shall come into play.

E6. Definitions Example (Continued)

Companies Act
– Section 2(29)

(29) “court” means—

(i) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any district court or district courts subordinate to that High Court under sub-clause (ii);

(ii) the district court, in cases where the Central Government has, by notification, empowered any district court to exercise all or any of the jurisdictions conferred upon the High Court, within the scope of its jurisdiction in respect of a company whose registered office is situate in the district;

(iii) the Court of Session having jurisdiction to try any offence under this Act or under any previous company law;

(iv) the Special Court established under section 435;

(v) any Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law;

E7. Proviso

- It is added to the enactment to qualify or create an exception.
- It does not state a general rule.
- It must be construed with reference to the preceding parts of the clause to which it is appended.
- Differs from 'exception' and 'saving clause' .
- It is subordinate to the main section.
- It is used to remove special cases from the general enactment and provide for them specifically.

E7. Proviso Example (Continued)

4. (1) The memorandum of a company shall state—

(a) the name of the company with the last word “Limited” in the case of a public limited company, or the last words “Private Limited” in the case of a private limited company:

Provided that nothing in this clause shall apply to a company registered under section 8;

THE COMPANIES ACT, 2013

E8. Exceptions and Saving Clauses

- Exception restrains the enacting clause to particular cases.
- The exception operates to affirm the operation of the statute to all cases not excepted and excludes all other exceptions.
- Saving Clause are generally added when a statute is repealed and re-enacted.
- Saving Clause is inserted to safeguard rights which would be lost by the general provision.
- A saving clause repugnant to the body of the Act is void.
- It does not give a further right to the party.

E8. Exceptions & Saving Example (Continued)

Exception :-

105. (1) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf:

Provided that a proxy shall not have the right to speak at such meeting and shall not be entitled to vote **except** on a poll:

Saving Clause :-

152. (1) Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed and in case of a One Person Company an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section.

(2) Save as otherwise expressly provided in this Act, every director shall be appointed by the company in general meeting.

Both examples from Companies Act, 2013

E9. Rules

- Rules should be treated as external aids. But modern statutes require rules to be read as a part of the act.
Recent example – *The Companies Act, 2013*
- Provide the means by which the general principles in the section may be applied.
- Expression used in rules should be construed in consonance with the act.

E10. Explanation

- It makes the meaning clear beyond dispute.
- It helps in interpreting the true intent of the enactment.
- It is not a substantive provision by itself.
- If an explanation is given at the end of the section, will it apply to all the provisions of the section?
Held- it should be seen as to which clause it applies.
- Explanation may be a negative one too.

E10. Explanation Example (Continued)

165. (1) No person, after the commencement of this Act, shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time:

Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

Explanation.— For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included.

The Companies Act, 2013

E11. Schedule

- Schedules form a part of the enactment.
- Division of a statute into sections and schedules is only for convenience. Schedule may contain substantive part of the Act.
- Often contains minute detail for working out the provisions of the enactment.
- Cannot prevail against the express enactment.
- If inconsistent with the enactment, the enactment shall prevail.

E11. Schedule Example (Continued)

ARBITRATION AND CONCILIATION ACT, 1996

Schedule 1 - THE FIRST SCHEDULE

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

ARTICLE I

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

ARTICLE II

2. The term "agreement in writing" shall include an arbitral clause in a contract or an **Arbitration** agreement, signed by the parties or contained in an exchange of letters or telegrams.

F. External Aids

F1. Dictionaries

F2. Translations

F3. Travaux Préparatoires

F4. Earlier and Later Acts

F5. English Law

F6. Stare Decisis

F1. Dictionaries

- Permissible to look in the absence of definition in the relevant statute.
- It gives all the meanings of the words.
- Selection of a particular meaning, relevant to the context is to be made.
- Not to be taken as authoritative exponents.
- Definition of a term in one statute, not a guide for construction of the same term in another statute.

F1. Dictionaries Example (Continued)

- Punjab General Sales Tax Act, 1948 allows exclusion of turnover of a product on which purchase tax has been paid from the turnover liable for payment of sales tax of the same product.
- Question arose - Will the turnover of paddy purchased to produce rice be excluded from the taxable turnover of rice? In other words, are rice and paddy same product?
- Held – paddy and rice are identical in terms of dictionary meaning but commercially paddy and rice are two different products. Thus deduction not available.
- In this case, the court ruled against using the dictionary meaning.

F2. Translations

- Constitution recognizes various languages.
- Official translations may be used as guide to interpretation.
- Contrasting views have been laid down as to validity of translated versions as an aid to interpretation.
- A translator might put his own interpretation while translating. Hence, translated version is a doubtful tool for interpretation.

F3. Travaux Preparatoires

- It means official records of negotiation and includes statement of objects and reasons, reports of selection committees, speeches and surrounding circumstances etc.
- These may be referred to determine the intention of the legislature in an extremely limited way.
- Parliamentary debates generally not considered relevant aid as it is ultimately the statute which prevails.
- Speeches made in the course of the debate on a Bill cannot reflect the mental process lying behind the majority votes which carried the Bill. Therefore cannot give a meaningful interpretation.

F3. Earlier and Later Acts

- When can Earlier / Later Acts be referred?
 - a) the subject matter of the statute is same
 - b) if the later act is a mere consolidation of the previous acts.
 - c) legislature provides for reference to the earlier/later act
- If a general act follows a special act, the special act cannot be said to have been repealed. (Company Secretaries Act, 1980 vs. Companies Act, 2013)
- If two notifications are issued under two Central Acts, the one issued subsequently shall prevail over the earlier one in case of any inconsistency.

F5. English Law

- Referred because they have the same system of jurisprudence as ours.
- Assistance in elucidating general principles and construing acts in pari materia.
- Indian statutes should be interpreted with reference to the facts of Indian life.
- Example – The Company law originated in Great Britain and the Companies Act of India is modelled on British law and experience.
- When the provisions of the Indian law and the English Acts are alike the decision of the English Courts throw good light and the reasons may be persuasive.

F6. *Stare Decisis*

- MEANS - “to stand by decisions and not to disturb what is settled”.
- A principle of law which has become settled by a series of decisions is generally binding on the courts and should be followed in similar cases.
- This doctrine is the basis of common law.
- The older the decision, the greater is its authority and the more truly it is accepted as stating correct law.
- A precedent by long recognition may mature into *Stare Decisis*.
- This maxim has less relevance in constitutional cases.

Thanks!

Wish you the best !

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