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**INTERMEDIATE LEVEL
PAPER 2: CORPORATE AND OTHER LAWS**

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‘Interpretation of Statutes, Deeds and Documents

“The essence of law lies in the spirit, not its letter, for the letter is significant only as being the external manifestation of the intention that underlies it” - Salmond

Statute’: In a common parlance ‘Statute’ means the laws and regulations of every sort without considering from which source they emanate.

Legally it is defined as the *written will of the legislature* solemnly expressed according to the forms prescribed in the constitution; (Maxwell, 11th Edn, P.1) ; an act of the legislature (e.g. Parliament of India).

The terms ‘law’ is defined as including any ordinance, order, bye-law, rule, regulation, notification, custom or usage having the force of law. [Article 13 (3) (a) of the Constitution of India].



Interpretation of Statutes, Deeds and Documents

‘Document’: Generally understood, a document is a paper or other material thing giving information, proof or evidence of anything. The Law defines ‘document’ in a more technical form.

Section 3 of the General Clauses Act of 1897, states that ‘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 : A written document; words printed, lithographed ,photographed; a map or a plan is a document, an encryption on a metal plate is a document ;a caricature is a document



Interpretation of Statutes, Deeds and Documents

Instrument': In common parlance, 'instrument' means a formal legal document which creates or confirms a right or records a fact. It is a formal writing of any kind, such as an agreement, deed, charter or record, drawn up and executed in a technical form. It also means a formal legal document having legal effect, either as creating liability or as affording evidence of it.

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

Example: Marriage Certificate, Partnership Deed, Sale Deed, PoA



Interpretation of Statutes, Deeds and Documents

Deed': The Legal Glossary defines 'deed' as an instrument in writing (or other legible representation or words on parchment or paper) purporting to effect some legal disposition. Simply stated deeds are instruments though all instruments may not be deeds. However, in India no distinction seems to be made between instruments and deeds.



Interpretation of Statutes, Deeds and Documents

‘Interpretation’: The term has been derived from the Latin term ‘interpretari’, which means to explain, expound, understand, or to translate. Interpretation is the process of explaining, expounding and translating any text or anything in written form. This basically involves an act of discovering the true meaning of the language which has been used in the statute. Various sources used are only limited to explore the written text and clarify what exactly has been indicated by the words used in the written text or the statutes.

Interpretation means the art of finding out the true sense of an enactment by giving the words of the enactment their natural and ordinary meaning.



Interpretation of Statutes, Deeds and Documents

Interpretation of statutes is the **correct understanding of the law**. This process is commonly adopted by the courts for determining the exact intention of the legislature. Because the objective of the court is not only merely to read the law but is also to apply it in a meaningful manner to suit from case to case. It is also used for ascertaining the actual connotation of any Act or document with the actual intention of the legislature.

It is the process of ascertaining the true meaning of the words used in a statute.

The Court is not expected to interpret arbitrarily and therefore there have en certain principles which have evolved out of the continuous exercise by the Courts. These principles are sometimes called 'rules of interpretation'.



Interpretation of Statutes, Deeds and Documents

As stated by Salmond Interpretation is” *the process by which the Courts seek to ascertain the meaning of the legislature through the medium of authoritative forms in which it is expressed*”. It involves unfolding the meaning of ambiguous words and expressions and resolving inconsistencies

In the process of interpretation, several aids are used. They may be statutory or non-statutory. Statutory aids may be illustrated by the General Clauses Act, 1897 and by specific definitions contained in individuals Acts

non-statutory aids are illustrated by common law rules of interpretation (including certain presumptions relating to interpretation) and also by case-laws relating to the interpretation of statutes.



Need for Interpretation

Necessity of interpretation would arise only where the **language of a statutory provision is ambiguous, not clear or where two views are possible or where the provision gives a different meaning defeating the object of the statute.**

If the language is clear and unambiguous, no need of interpretation would arise. In this regard, a Constitution Bench of five Judges of the **Supreme Court in R.S. Nayak v A.R. Antulay, [5]** has held:

“... If the words of the Statute are clear and unambiguous, it is the plainest duty of the Court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the Statute would be self-defeating.”



Need for Interpretation

Supreme Court in **Grasim Industries Ltd. v Collector of Customs, Bombay [6]**, has followed the same principle and observed:

“Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for court to take upon itself the task of amending or altering the statutory provisions.”

The purpose of Interpretation of Statutes is to help the Judge to ascertain the intention of the Legislature – not to control that intention or to confine it within the limits, which the Judge may deem reasonable or expedient.



Need for Interpretation

The correct is one that best harmonises the words with the object of the statute. As stated by Iyer J. *“to be literal in meaning is to see the skin and miss the soul.* The judicial key of construction is the composite perception of the deha and the dehi of the provision.” [Deha means the body, Dehi means the soul]

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Need for Interpretation

Denning L.J. in Seaford Court Estate Ltd. V Asher (1949) 2 All ER 155 has said on the need for statutory interpretation:

“It is not within human powers to foresee the manifold sets of facts which may arise; and that, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges’ trouble if Acts of Parliament were drafted with divine prescience and perfect clarity.”

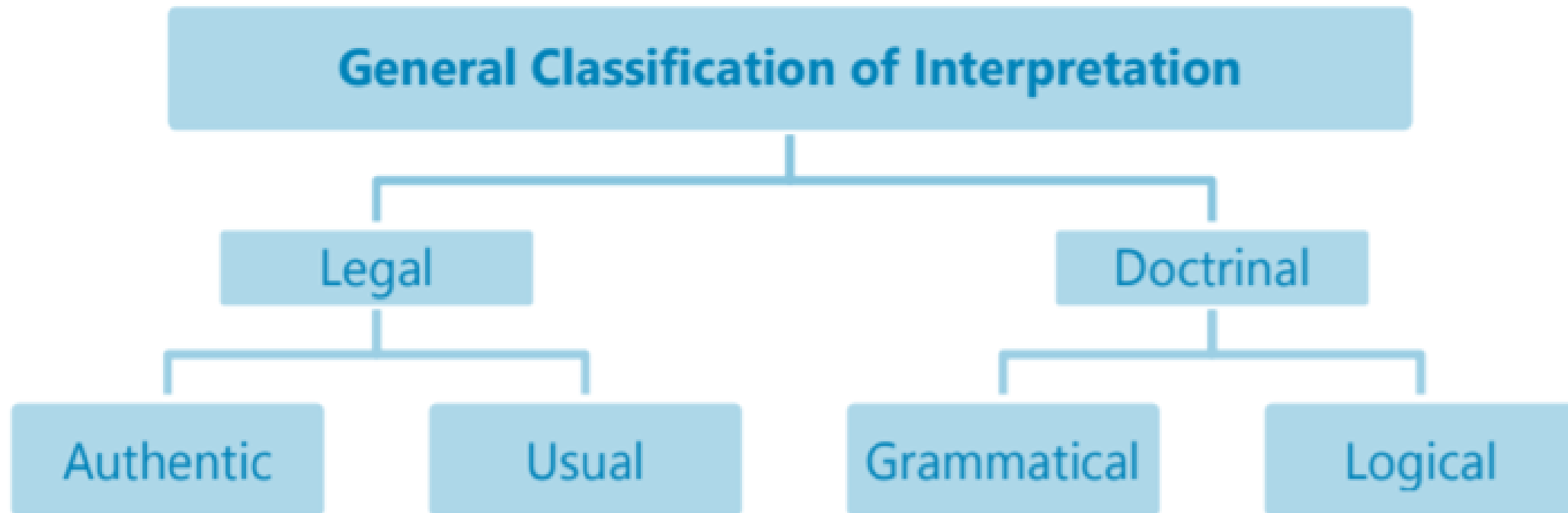


Need for Interpretation

In the absence of it, when a defect appears, a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this, not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature.'



GENERAL CLASSIFICATION OF INTERPRETATION





GENERAL CLASSIFICATION OF INTERPRETATION

Jolowicz, in his Lectures on Jurisprudence (1963 ed., p. 280) speaks of interpretation :

Interpretation is usually said to be either **'legal'** or **'doctrinal'**.

It is **'legal'** when there is an actual rule of law which binds the Judge to place a certain interpretation of the statute.

It is **'doctrinal'** when its purpose is to discover 'real' and 'true' meaning of the statute.

'Legal' interpretation is subdivided into **'authentic'** and **'usual'**.



GENERAL CLASSIFICATION OF INTERPRETATION

It is '**authentic**' when rule of interpretation is derived from the legislator himself;

it is '**usual**' when it comes from some other source such as customs or case law

'Doctrinal' interpretation may again be divided into two categories: '**grammatical**' & '**logical**'.

It is 'grammatical' when the court applies only the ordinary rules of speech for finding out the meaning of the words used in the statute.

On the other hand, when the court goes beyond the words and tries to discover the intention of the statute in some other way, then it is said resort to what is called a '**logical**' interpretation.



GENERAL CLASSIFICATION OF INTERPRETATION

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According to Fitzgerald, interpretation is of two kinds – ‘literal’ and ‘functional’.

The **literal interpretation** is that which regards conclusively the verbal expression of the law. It does not look beyond the ‘literalis’. The duty of the Court is to ascertain the intention of the legislature and seek for that intent in every legitimate way, but first of all in the words and the language employed. ‘

Functional’ interpretation is that which departs from the letter of the law and seeks elsewhere for some other and more satisfactory evidence of the true intention of the legislature



GENERAL CLASSIFICATION OF INTERPRETATION

Functional' interpretation is that which departs from the letter of the law and seeks elsewhere for some other and more satisfactory evidence of the true intention of the legislature

In all ordinary cases, the Courts must be content to accept the letter of the law as the exclusive and conclusive evidence of the spirit of the law (Salmon: Jurisprudence, 12th ed., pp. 131-132).

It is essential to determine with accuracy the relations which subsist between the two methods.



INTERPRETATION AND CONSTRUCTION

The term interpretation and construction are same according to almost all the authors. However, some authors like *Cooley* maintain that the two terms are different

Interpretation: Actual way of finding the true meaning of a particular word in a statute.

Construction: It refers to the drawing of conclusions, which are in the spirit though not within the letter of the law. So, it is not necessary to look into each and every word of statute.

It is the duty of the courts to give effect to the meaning of an Act when the meaning can be equitably gathered from the words used. Words of legal import occurring in a statute which have acquired a definite and precise sense must be understood in that sense. (***State of Madras v. Gannon Dunkerly Co. AIR 1***)



INTERPRETATION AND CONSTRUCTION

When the legislature uses certain words which have acquired a definite meaning over a period of time, it must be assumed that those words have been used in the same sense.

Thus, where the Court adheres to the plain meaning of the language used by the legislature, it would be ‘interpretation’ of the words, but where the meaning is not plain; the court has to decide whether the wording was meant to cover the situation before the court. Here the court would be resorting to what is called ‘construction’, however, the two terms – ‘interpretation’ and ‘construction’ – overlap each other and it is rather difficult to state where ‘interpretation’ leaves off and ‘construction’ begins.



INTERPRETATION AND CONSTRUCTION

BASIS FOR COMPARISON	INTERPRETATION	CONSTRUCTION
Meaning	Interpretation implies the identification of true sense of the statute.	Construction means drawing inferences about the subject, that are above the direct expression of text.
Determines	Linguistic meaning	Legal effect
Used when	Court complies with simple meaning of the legal text.	Legal text exhibits ambiguous meaning and the court has to decide whether the words used in the legal text covers the case or not.



BASIC PRINCIPLES OF INTERPRETATION

i. **Intention of the Legislature:** . A statute is to be construed according to the intent of those that make it and the duty of the judicature is to act upon the true intention of the legislature- the *mens or sentential legis*.

The intention of the legislature thus assimilates two aspects:

Concept of “*meaning*”- i.e. What the words mean.

Concept of “*purpose and object*” or “*reason and spirit*” pervading through the statute.



BASIC PRINCIPLES OF INTERPRETATION

ii. Statute must be read as a whole in its context:

When the question arises as to the meaning of a certain provision in a statute, it is proper to read that provision in its context. The context here means, the statute as a whole, the previous state of the law, other statutes *pari materia*, the general scope of the statute and the mischief that it was intended to remedy.

In Poppatlal shah v State of Madras AIR 1953 SC 274, Court said” It is a settled rule of construction that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose of the act itself”.



BASIC PRINCIPLES OF INTERPRETATION

iii. Statute to be construed to make it effective and workable:

- At the time of interpretation of the statute the court strongly lean against a construction which reduces the statute to a futility. A statute or any enacting provision therein must be so construed as to make it effective and operative on the principle expressed in the maxim : *ut res magis valeat quam pereat*.

iv. If meaning is plain, effect must be given to it irrespective of consequences:

When the words of the statute are clear, plain or unambiguous i.e. they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences. The result of the construction is then not a matter for the court, even though they may be strange or surprising, unreasonable or unjust or oppressive.



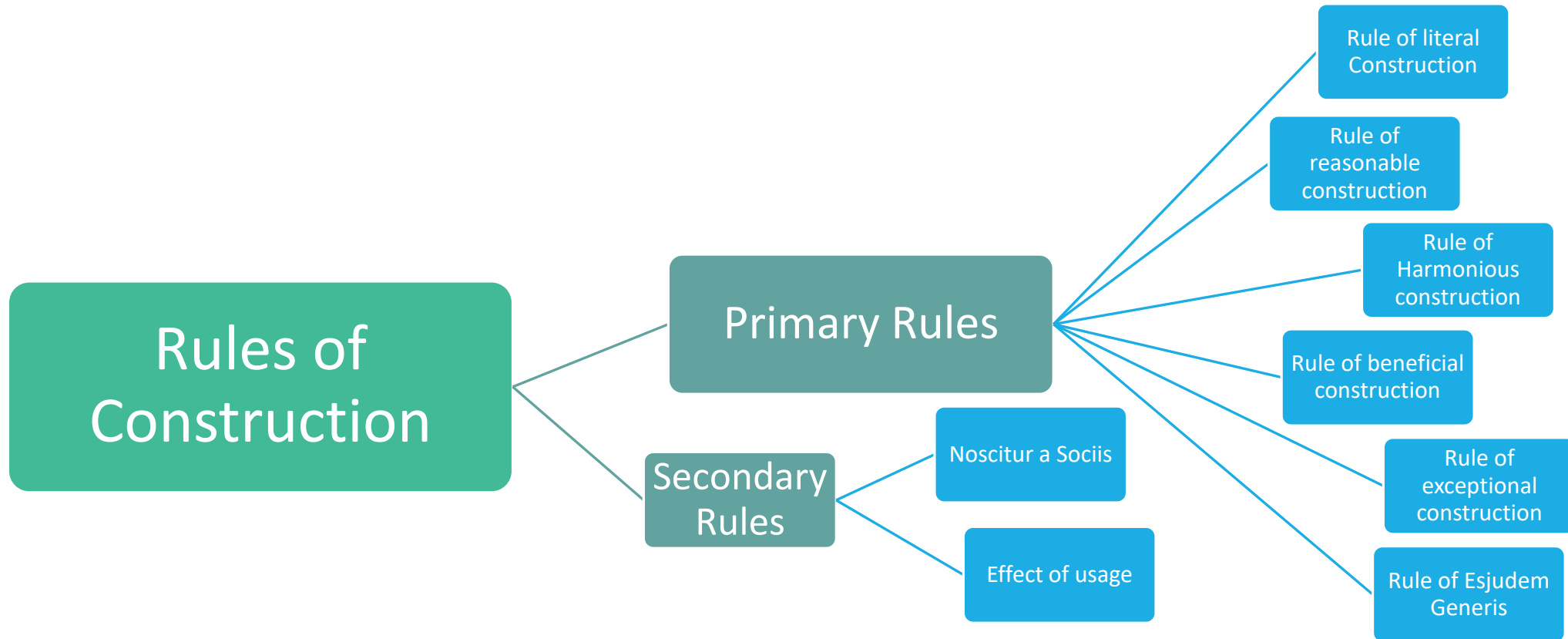
BASIC PRINCIPLES OF INTERPRETATION

v. Language of the statute must be read as it is:

: The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said and also to what has not been said. As a consequence a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided.



RULES OF CONSTRUCTION





PRIMARY RULES

(1) Rule of Literal Construction/ Grammatical construction:

- cardinal rule of construction
- words, sentences and phrases of a statute should be read in their ordinary, natural and grammatical meaning so that they may have effect in their widest amplitude.
- At the same time, the elementary rule of construction has to be borne in mind that words and phrases of technical nature are '*prima facie*' used in their technical meaning, if they have any, and otherwise in their ordinary popular meaning.



LITERAL CONSTRUCTION

When the language of the statute 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 meaning must be collected from the expressed intention of the legislature (*State of U.P. v. Vijay Anand, AIR 1963 SC 946*). A word which has a definite and clear meaning should be interpreted with that meaning only, irrespective of its consequences.

The phrase and sentences are to be construed according to the rules of grammar This was emphasized in no uncertain terms by the Supreme Court in the case of *S.S. Railway Company vs. Workers Union (AIR 1969 S.C. at 518)* where it was stated that the courts should give a literal meaning to the language used by the legislature unless the language is ambiguous or its literal sense gives rise to any anomaly or results in something which may defeat the purpose of the Act.



LITERAL CONSTRUCTION

It is the duty of the court to give effect to the intent of the legislature and in doing so, its first reference is to the literal meaning of the words employed. Where the language is plain and admits of only one meaning, there is no room for interpretation and only that meaning is to be enforced even though it is absurd or mischievous, the maxim being '**absoluta sententia expositore non indiget**' (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).

Similarly, when a matter which should have been, but has not been, provided for in a statute cannot be supplied by courts as to do so would amount to legislation and would not be construction



LITERAL CONSTRUCTION

However, sometimes the courts may look at the setting or the context in which the words are used and the circumstances in which the law has come to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used. If there are two possible constructions of a clause, one a mere mechanical and literal construction based on the rules of grammar and the other which emerges from the setting in which the clause appears and the circumstances in which it came to be enacted and also from the words used therein, the courts may prefer the second construction which, though may not be literal, may be a better one. (***Arora vs. State of U.P.***, AIR 1964 S.C. 1230 at 1236-37).

[Golden Rule: A modification of literal rule- If the strict grammatical interpretation gives rise to an absurdity or inconsistency such interpretation should be discarded and an interpretation which will give effect to the purpose of litigation will be put on the words, if necessary even by modification of language used”



Words used in the popular sense: In dealing with matters regarding the general public, statute is presumed to use words in their popular sense. But to deal with particular business or transaction, words are presumed to be used with the particular meaning in which they are used and understood in the particular business. However, words in statutes are generally construed in their popular meaning and not in their technical meaning.

It is the general rule that **omissions** are not likely to be inferred. From this it brings another rule that nothing is to be added to or taken away from a statute unless there are some adequate grounds to justify the inference that the legislature intended something which it omitted to express. “It is a wrong thing to add into an Act of Parliament words which are not there and, in the absence of clear necessity, it is a wrong thing to do.” If a case has not been provided for in a statute.

Reasonable corrections are not to over-ride plain terms of a statute. A construction that will render ineffective any part of the language of a statute will normally be rejected



Different headings for literal construction

- Natural and grammatical meaning
- Explanation
- Exact meaning, leading to loose meaning
- Technical words in technical sense



(I) Natural and grammatical meaning: Statute is to be first understood in their natural, ordinary, or popular sense and must be construed according to their plain, literal and grammatical meaning. If there is an inconsistency with any express intention or declared purpose of the statute, or it involves any absurdity, repugnancy, inconsistency, the grammatical sense must then be modified, extended or abridged only to avoid such an inconvenience, but no further. **[(State of HP v. Pawan Kumar(2005)]**

Example: In a question before the court whether the sale of betel leaves was subject to sales tax. In this matter SC 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 statute dealing with the matter would attribute to it. Accordingly, beetel leaves are not vegetables . Therefore, the sale of betel leaves was liable to sale tax.(**Ramavtar V. Assistant Sales Tax Officer, AIR 1961 SC 1325**)



(II) Explanation of the Rule: When it is said that words are to be understood first in their natural, ordinary or popular sense, it is meant that the words must be qualified that natural, ordinary or popular meaning which they have in relation to the subject matter with reference to which and the context in which they have been used in the statute. The meaning of a word depends upon its text and context. In the construction of statutes, the context means the statute as whole and other statutes *in pari materia* (where two enactments have common purpose in an analogous 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 literal sense animal refers to any and every animate object as distinct from inanimate object. (*Royal Hatcheries Pvt. Ltd v. State of AP, AIR 1994 SC 666*)



(III) Exact meaning preferred to loose meaning: This is the another point regarding the rule of literal construction that exact meaning is preferred to loose meaning in an Act of Parliament. As every word has a secondary meaning too. Therefore, in applying this rule one should be careful not to mix up the secondary meaning with the loose meaning. Wherever the secondary meaning points to that meaning which statute meant, preference should be given to that secondary meaning.

Example: Word 'obtain 'in it general sense means some request or effort to acquire or get something but its secondary meaning is to acquire or get without any qualification and if in a statute the secondary meaning is preferred, it cannot be said that preference has been given to loose meaning.



(IV) Technical words in technical sense: 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 V. Arabinda Bose AIR 1952 SC 369*)



Applicability of Rule of Literal Interpretation:

- When the words are clear
- Language is plain.
- Only 1 meaning is possible.

Non – Applicability of Rule of Literal Interpretation:

- Ambiguous language
- Meaning is absurd
- Such interpretation defats the purpose of the statute



REASONABLE CONSTRUCTION

RULE OF REASONABLE CONSTRUCTION (logical/ functional interpretation)

- .According to this rule, the words of a statute must be construed *ut res magis valeat quam pareat*, (It is better for a thing to have effect than to be made void.) so as to give a sensible meaning to them.
- A provision of law cannot be so interpreted as to divorce it entirely from common sense; every word or expression used in an Act should receive a natural and fair meaning
- *It is the duty of a Court in constructing a statute to give effect to the intention of the legislature.* If, therefore, giving of literal meaning to a word used by the draftsman particularly in penal statute would defeat the object of the legislature, which is to suppress a mischief, the Court can depart from the dictionary meaning which will advance the remedy and suppress the mischief



REASONABLE CONSTRUCTION

It is only when the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship of injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence (***Tirath Singh v. Bachittar Singh***, A.I.R. 1955 S.C)

Courts can depart from dictionary meaning of a word and give it a meaning which will advance the remedy and suppress the mischief provided the Court does not have to conjecture or surmise.

A construction will be adopted in accordance with the policy and object of the statute (***Kanwar Singh v. Delhi Administration***, AIR 1965 S.C. 871).



REASONABLE CONSTRUCTION

To make the discovered intention fit the words used in the statute, actual expression used in it may be modified (**Newman Manufacturing Co. Ltd. v. Marrables**, (1931) 2 KB 297, *Williams v. Ellis*, 1880 49 L.J.M.C.).

If the Court considers that the *litera legis* is not clear, it, must interpret according to the purpose, policy or spirit of the statute (*ratio-legis*). It is, thus, evident that no invariable rule can be established for literal interpretation.



REASONABLE CONSTRUCTION

In **RBI v. Peerless General Finance and Investment Co. Ltd. (1987) 1 SCC 424**. The Supreme Court stated that if a statute is looked at in the context of its enactment, with the glasses of the statute makers provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clauses each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act.(See also Chairman Indira Vikas Pradhikaran v. Pure Industrial Coke and Chemicals Ltd., AIR 2007 SC 2458).



REASONABLE CONSTRUCTION

Example, in the case of *Dr. A.L. Mudaliar vs. LIC of India (1963) 33 Comp Cas. 420 (SC)*, it was held that the Memorandum of Association of a company must be read fairly and its import derived from a reasonable interpretation of the language which it employs. Further, in order to determine whether a transaction is intra vires the objects of a company, the objects clause should be reasonably construed neither with rigidity nor with laxity. [*Waman Lal Chotanlal Parekh vs. Scindia Steam Navigation Co. Ltd. (1944) 14 Comp. Cas. 69 (Bom.)*].



REASONABLE CONSTRUCTION

Thus, if the Court finds that giving a plain meaning to the words will not be a fair, 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 provided the Court does not have to resort to conjecture or surmise. A reasonable construction will be adopted in accordance with the policy and object of the statute.

Non Applicability:

- When words are clear.
- When reasonable interpretation results in injustice
- When intention of law can't be gathered precisely



REASONABLE CONSTRUCTION

ICAI vs PWC (1997)

- ▶ The council of ICAI referred a complaint of professional misconduct to its Disciplinary Committee. The rules provided that if the disciplinary committee reports the respondents as guilty, the council of ICAI could direct a further enquiry. If literal interpretation is adopted, it would mean that council has no power to direct further enquiry in case the DC reports the respondents as non guilty. However, the council of ICAI is a body superior to DC. It is charged with the duty of maintaining discipline amongst its members. Reasonable construction was applied and it was held that council could direct further enquiry even if the disciplinary committee had reported the respondents as non guilty.



HARMONIOUS CONSTRUCTION





RULE OF HARMONIOUS CONSTRUCTION

When there is a conflict between two or more statutes or two or more parts of a statute then the rule of harmonious construction needs to be adopted.

The rule follows a very simple premise that every statute has a purpose and intent as per law and should be read as a whole. The interpretation consistent of all the provisions of the statute should be adopted. In the case in which it shall be impossible to harmonize both the provisions, the court's decision regarding the provision shall prevail.



In the words of the Apex Court, courts should avoid “a headon clash”, between the different parts of an enactment and conflict between the various provisions should be sought to be harmonized.

The normal presumption should be consistency and it should not be assumed that what is given with one hand by the legislature is sought to be taken away by the other

The rule of harmonious construction has been tersely explained by the Supreme Court thus, “When there are, in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted, that if possible, effect should be given to both”. A construction which makes one portion of the enactment a dead letter should be avoided since harmonization is not equivalent to destruction.



Harmonious Construction should be applied to statutory rules and courts should avoid absurd or unintended results. It should be resorted to making the provision meaningful in the context. It should be in consonance with the intention of Rule makers.

Rule of Harmonious construction is applicable to subordinate legislature also.

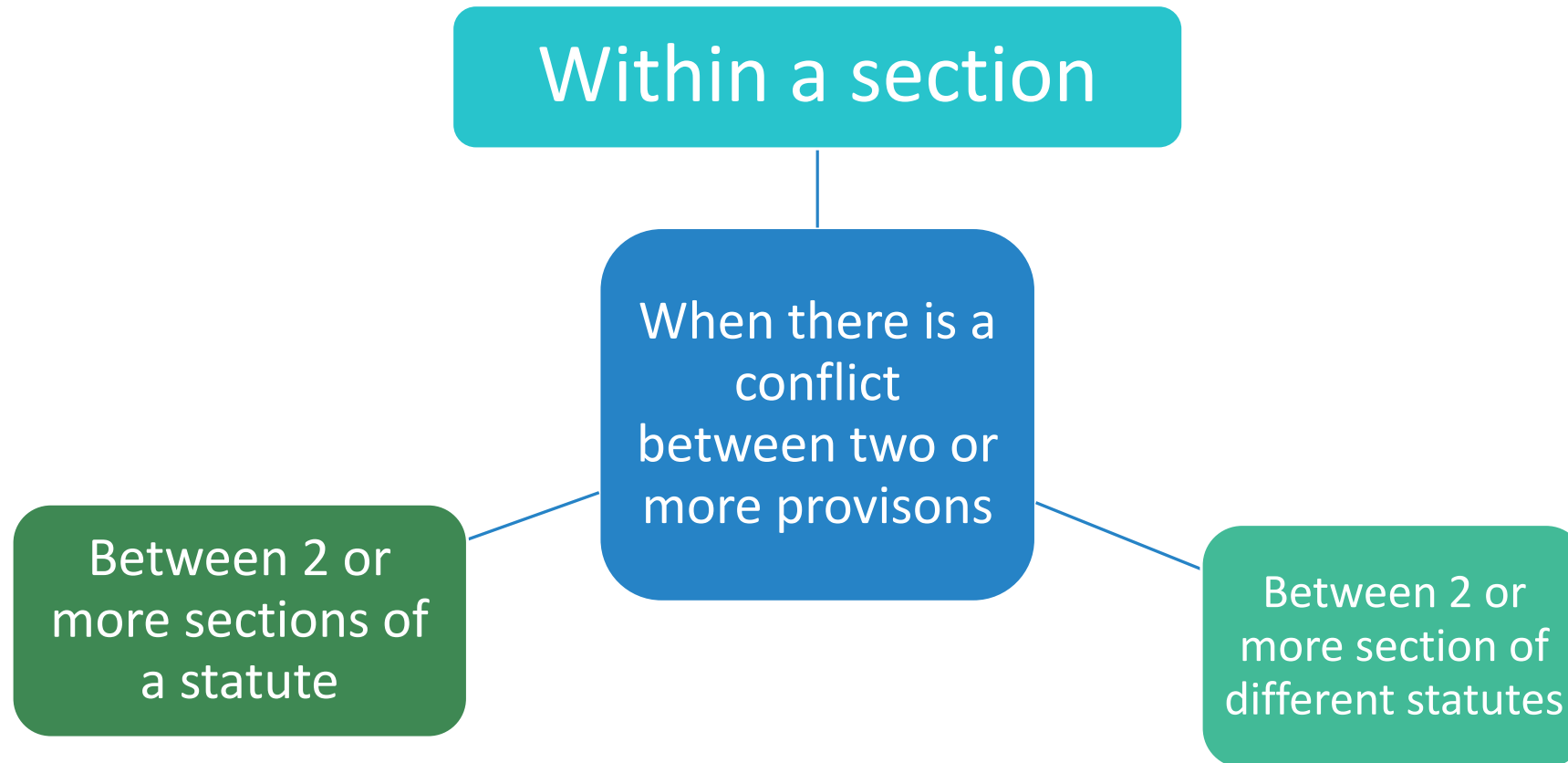


The Supreme Court laid down five principles of rule of Harmonious Construction in the landmark case of ***CIT v Hindustan Bulk Carriers:***

- The courts must avoid a head on clash of seemingly contradicting provisions and they must construe the contradictory provisions so as to harmonize them.
- The provision of one section cannot be used to defeat the provision contained in another unless the court, despite all its effort, is unable to find a way to reconcile their differences. When it is impossible to completely reconcile the differences in contradictory provisions, the courts must interpret them in such as way so that effect is given to both the provisions as much as possible.
- Courts must also keep in mind that interpretation that reduces one provision to a useless number or dead is not harmonious construction.
- To harmonize is not to destroy any statutory provision or to render it fruitless.



HARMONIOUS CONSTRUCTION





EXAMPLE

As per the facts given in the ***Raj Krishna V. Binod AIR1954 SC 202***, 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. SC observed that both these provision should be harmoniously interpreted and held that a government servant was entitled to nominate or second a candidate seeking election to the state legislature assembly. This harmony could be achieved only if section 123(8) of the Act is interpreted as conferring power on a government servant of voting as well as of proposing and seconding a candidature and forbidding him from assisting a candidate in any other manner.



EXAMPLE

Conflict between section 17(1) and section 18(1) of the Industrial Disputes Act, 1947 applies the principal of Harmonious construction by harmonizing apparent conflict between two or more of its provisions.

Section 17 of the Act provides that (1) Every report of a Board or court together with any minute of dissent recorded therewith, every arbitration award and every award of a Labour Court, Tribunal or National Tribunal shall, within a period of thirty days from the date of its receipt by the appropriate government, be published in such manner as the appropriate government thinks fit. Whereas sub-section (2) provides that the award published under sub-section (1) shall be final and shall not be called in question by any court in any manner whatsoever



Section 18(1) of the Act provides that a settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

In case where a settlement is arrived after receipt of the award of the Labour Tribunal by the Government before its publication, the issue was whether the Government was still required by section 17(1) to publish the award. On construction of these two provisions, Supreme Court held that settlement which becomes effective from the date of signing, the industrial dispute comes to an end and the award becomes ineffective and the government cannot publish it. ***[Sirsilk Ltd. V. Govt. of Andhra Pradesh, AIR 1964 SC160]***



It must always be borne in mind that a statute is passed as a whole and not in sections and it may well be assumed to be animated by one general purpose and intent. The Court's duty is to give effect to all the parts of a statute, if possible. But this general principle is meant to guide the courts in furthering the intent of the legislature, not overriding it. When rigid adherence to the general rule would require disregard of clear indications to the contrary, this rule must be applied. The sections and sub-sections must be read as parts of an integral whole and being 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 provision 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 and not merely apparent conflict between the provisions of an Act, and one of them has not been made subject to the other. When after having construed their context the words are capable of only a single meaning, the rule of harmonious construction disappears and is replaced by the rule of literal construction



RULE OF BENEFICIAL CONSTRUCTION OR HEYDONS RULE

It is the oldest rule of construction.

It is also known as ‘purposive construction’ or mischief rule

It was laid down in *Heydon’s case (1584) 3 Co. Rep 7a 76 ER 637* that for the sure and true interpretation of all statutes in general, four things are to be discerned:

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

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



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

If, however, the circumstances show that the phraseology in the Act is used in a larger sense than its ordinary meaning then that sense may be given to it.

. If the object of a statute is public safety then its working must be interpreted widely to give effect to that object.

Thus, the legislature having intended, while passing the Workmen's Compensation Act, 1923 that every workman in the prescribed trade should be entitled to compensation, it was held that the Act ought to be so construed, as far as possible, as to give effect to its primary provisions



In the case of ***CIT vs. Sundaradevi (1957) (32 ITR 615) (SC)***, it was held by the Apex Court that unless there is an ambiguity, it would not be open to the Court to depart from the normal rule of construction which is that the intention of the legislature should be primarily to gather from the words which are used. It is only when the words used are ambiguous that they would stand to be examined and considered on surrounding circumstances and constitutionally proposed practices.

Thus, the rule applies only if the words in a statute are ambiguous and capable of more than one meaning. If the words are clear and afford only one meaning the courts would adopt rule of literal interpretation.

Also, the rule normally does not apply to fiscal statutes. Fiscal statutes are given their plain meaning.



The Supreme Court in ***Bengal Immunity Co v State of Bihar*** (AIR 1955 SC 661), applied the mischief rule in construction of Article 286 of the Constitution of India. The SC observed that to arrive at the true intention of the legislature, an enactment should be interpreted in the light of the history of legislation, the mischief intended to suppress and the provisions of the statute.



EXAMPLE

Section 2(d) of the Prize Competition Act, 1955 defines ‘prize competition’ as “any competition in which prizes are offered for the solution of any puzzle based upon the building up arrangement, combination or permutation of letters, words or figures”.

The **issue** is whether Act applies to competitions which involve substantial skill and are not in the nature of gambling. The Supreme Court, stated that having regard to the history of the legislation, the declared object thereof and the wording of the statute, we are of opinion that the 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.



Thus, those prize competitions in which some skill was required were exempt from the definition of 'prize competition' under **s 2(d)** of the Act. Hence, in the aforementioned case, the Supreme Court has applied the Heydon's Rule in order to suppress the mischief was intended to be remedied, as against the literal rule which could have covered prize competitions where no substantial degree of skill was required for success. (***RMD Chamarbaugwalla V. Union of India, AIR 1957 SC 628***).



The correct principle is that after the words have been construed in their context and it is found that the language is capable of bearing only one construction, the rule in Heydon's case ceases to be controlling and gives way to the plain meaning rule. Lord Simon explains this aspect that Heydon's case is available at two stages:

- (i) before ascertaining the plain and primary meaning of the statute, and
- (ii) secondly, at the stage when the court reaches the conclusion that there is no such plain meaning.



SMITH V HUGHES (1960)

Facts

- Police officers preferred two information's against Marie Theresa Smith and four information's against Christine Tolan alleging that on various dates, they, being common prostitutes, did solicit in a street for the purpose of prostitution contrary to section 1(1) of the Street Offences Act, 1959.
- The defendant was a common prostitute who lived at No. 39 Curzon Street, London, and used the premises for the purposes of prostitution.
- On November 4, 1959, between 8.50 p.m. and 9.05 p.m. the defendant solicited men passing in the street, for the purposes of prostitution, from a first-floor balcony of No. 39 Curzon Street (the balcony being some 8–10 feet above street level).



-
- The defendant's method of soliciting the men was
 - (i) to attract their attention to her by tapping on the balcony railing with some metal object and by hissing at them as they passed in the street beneath her and
 - (ii) having so attracted their attention, to talk with them and invite them to come inside the premises with such words as 'Would you like to come up here a little while?' at the same time as she indicated the correct door of the premises.



Issue

- It was contended on behalf of the defendant, inter alia, that the balcony was not 'in a street' within the meaning of section 1(1) of the Street Offences Act, 1959, and that accordingly no offence had been committed.



Provision

- section 1(1) of the Act of 1959 are in this form: ***'It shall be an offence for a common prostitute to loiter or solicit in a street or public place for the purpose of prostitution.'***



Held

- Interpreted literally, there would therefore be no offence. Applying the mischief rule, it did not matter that the women were not on the street themselves, as they were still soliciting men in the street, which was what the Act was designed to prevent. They were therefore found guilty. The mischief was them tapping on the balcony seeking attention from the street.
- Lord Parker said: 'Everybody knows that this was an Act intended to clean up the streets... I am content to base my decision on that ground and that ground alone'.



Advantages –

- 1) The Law Commission sees it as a far more satisfactory way of interpreting acts as opposed to the Golden or Literal rules.
- 2) It usually avoids unjust or absurd results in sentencing.

Disadvantages –

- 1) It is considered to be out of date as it has been in use since the 16th century, when common law was the primary source of law and parliamentary supremacy was not established.
- 2) It gives too much power to the unelected judiciary which is argued to be undemocratic.
- 3) In the 16th century, the judiciary would often draft acts on behalf of the king and were therefore well qualified in what mischief the act was meant to remedy. 4) It can make the law uncertain.



RULE OF EXCEPTIONAL CONSTRUCTION

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. It also stands for construction of words ‘and’, ‘or’, ‘may’, ‘shall’ & ‘must’.

This rule has several aspects, viz.:

- *(a) The Common Sense Rule:* Despite the general rule that full effect must be given to every word, if no sensible meaning can be fixed to a word or phrase, or if it would defeat the real object of the enactment, it should be eliminated. The words of a statute must be so construed as to give a sensible meaning to them, if at all possible. They ought to be construed ‘**ut res magis valeat quam pereat**’ meaning thereby that it is better for a thing to have effect than to be made void.



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- **Conjunctive and Disjunctive Words ‘or’ ‘and’:** The word ‘or’ is normally disjunctive and ‘and’ is normally conjunctive. However, at times they are read as *vice versa* to give effect to the manifest 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. In such a case ‘and’ may be read for ‘or’ and ‘or’ for ‘and’ even though the result of so modifying the words is less favourable to the subject, provided that the intention of the legislature is otherwise quite clear.



Example: In the Official Secrets Act, 1920, as per section 7 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’. 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 .*[R v. Oakes,(1959)]*



'May', 'must' and 'shall':

- when a provision is **mandatory**, it must be strictly observed.
- ; when it is '**directory**' it would be sufficient that it is substantially complied with.
- Non observance of mandatory provision involves the consequence – invalidating but non observance of directory provision does not involve the consequence of invalidating
- Substance over form
- If a provision gives a power coupled with a duty, it is mandatory:
- whether it is or is not so would depend on such consideration as:
 - the nature of the thing empowered to be done,
 - the object for which it is done, and
 - the person for whose benefit the power is to be exercised



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- **(i) 'May'**: It is well settled that enabling words are construed as compulsory, wherever the object of the power is to give effect to a legal right: the use of the word 'may' in a statutory provision would not by itself show that the provision is directory in nature. In some cases, the legislature may use the word 'may' as a matter of pure conventional courtesy and yet intend a mandatory force. Therefore, in order to interpret the legal import of the word 'may', we have to consider various factors.
 - **Example** 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 by use of this word.



Where the word ‘may’ involves

- ‘a discretion coupled with an obligation “
- 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 a directory significance would defeat the very object of the Act

then word ‘may’ should be interpreted to convey a mandatory force.

Thus, where a discretion is conferred upon a public authority coupled with an obligation, the word ‘may’ should be construed to mean a command.



Similarly when an order of the Government or a statute confers a power on an authority in the discharge of a public duty, and though such power appears to be merely permissive, it is imperative that the authority should exercise that power in the discharge of its duties: there the word ‘may’ assumes mandatory force.

(ii) Shall:

- the term ‘shall’ in its ordinary significance, is mandatory, however, 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.
- Thus, as against the Government the word ‘shall’ when used in statutes is to be construed as ‘may’ unless a contrary intention is manifest.



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- For ascertaining the real intention of the legislature, the Court may consider amongst other things:
 - the nature and design of the statute,
 - the consequence which would flow from construing it one way or the other,
 - the impact of other provisions by resorting to which the necessity of complying with the provision in question can be avoided,
 - whether or not the statute provides any penalty if the provision in question is not complied with,
 - if the provision in question is not complied with, whether the consequences would be trivial or serious, and
 - most important of all, whether the object of the legislation will be defeated or furthered



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- 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.
 - 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 (***Labour Commr., M.P.V. Burhanpur Tapti Mill, AIR, 1964 SC1687***).



RULE OF EJUSDEM GENERIS

‘ejusdem generis’ means ‘of the same kind or species’

According to the Black's Law Dictionary (8th edition, 2004) the principle of Ejusdem Generis is where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned.

The rule means:

- Where any Act enumerates different subjects, general words following specific words are to be construed (and understood) with reference to the words that precede them. Those general words are to be taken as applying to things of the same kind as the specific words previously mentioned, unless there is something to show that a wider sense was intended.



Thus, the rule of **ejusdem generis** 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.

For instance ‘in the expression in consequence of war, disturbance or any other cause’, the words ‘any other cause’ would take colour from the earlier words ‘war, disturbance’ and therefore, would be limited to causes of the same kind as the two named instances.

Similarly, where an Act permits keeping of dogs, cats, cows, 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.

Where there was prohibition on importation of ‘arms, ammunition, or gunpowder or any other goods’ the words ‘any other goods’ were construed as referring to goods similar to ‘arms, ammunition or gun powder’ (*AG vs. Brown (1920), 1 KB 773*).



If the particular words used exhaust the whole genus (category), then the general words are to be construed as covering a larger genus.

Note: the general principle of '*ejusdem generis*' applies 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.



Rule Applies When-

Statute contains an enumeration of specific words

The subjects of enumeration constitute a class or category

That class or category is not exhausted by the enumeration

The general terms follow enumeration, and

There is no indication of a different legislative intent



It is also to be noted that the courts have a discretion whether to apply the '*ejusdem generis*' 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 situations in which the Court may wind up a company:

- When the company is unable to pay its debts
- If the Company by special resolution has resolved that the company be wound up by the tribunal.
- If the company has acted against the interest, integrity or morality of India, security of the state, or has spoiled any kind of friendly relations with foreign or neighbouring countries.
- If the company is in any way indulges in fraudulent activities or any other unlawful business, or management connected with formation of the company is found guilty of fraud, or any kind of misconduct.
- If tribunal by any means finds that it is just and equitable that the company should be wound up or not



The Supreme Court in ***Siddeshwari Cotton Mills (P) Ltd v UOI, AIR 1989 SC 1019***, while interpreting the expression 'any other process' appearing along-with the words 'bleaching, mercerizing, dyeing, printing, water-proofing, rubberizing, shrink-proofing, organic processing in section 2(f) of the Central Excise & Salt Act, 1944 (as it stood prior to its substitution by Central Excise Tariff Act, 1985) read with Notification No 230 and 231 dated 15th July, 1977 with the aid of the principle of *Ejusdem Generis* has said that the foregoing words, which precede the expression 'or any other process' contemplate process, which import a change of a lasting nature must share one or the other of these incidents.



Kerala High Court in the case of **Kerala Cooperative Consumers' Federation Ltd v CIT (1988) 170 ITR 455 (Ker)**, was required to interpret the meaning of the phrase 'Body of Individuals'. It has said that in construing the words 'Body of Individuals' occurring in section 2(31) of the Income Tax Act along-side the words 'Association of Persons', the words 'Body of Individuals' would have to be understood in the same background, context and meaning given to the words "Association of Persons".



The rule of Eiusdem Generis applies as mentioned by the Supreme Court in **Amarchandra Chakraborty v Collector of Excise, AIR 1972 SC 1863** when:

- The statute contains an enumeration of specific words.
- The subjects of enumeration constitute a class or category.
- That class or category is not exhausted by the enumeration.
- The general item follows the enumeration.
- There is no indication of a different legislative intent.

Cooked Breakfast (Fictitious) Act 2015

This Act applies to:

Bacon, Sausages, Fried egg or similar foods



Which of the following foods the Act covers?

Burger



Toast



Candy





McBoyle v. United States
283 U.S. 25 (1931)





Facts

- McBoyle transported a plane that he knew to be stolen from Ottawa, Illinois to Guymon, Oklahoma.
- He was accused of violating the National Motor Vehicle Theft Act.



Facts

- McBoyle transported a plane that he knew to be stolen from Ottawa, Illinois to Guymon, Oklahoma.
- He was accused of violating the National Motor Vehicle Theft Act.



-
- McBoyle claimed that since the act did not specifically mention aircraft, it did not apply to aircraft.
 - The District Court held that “any other self-propelled vehicle not designed for running on rails” includes airplanes.
 - Airplanes are self-propelled and not designed for running on rails.
 - McBoyle appealed to the Supreme Court



Held

- Opinion by Justice Oliver Wendell Holmes: “No doubt etymologically it is possible to use the word to signify a conveyance working on land, water or air ...
- But in everyday speech ‘vehicle’ calls up the picture of a thing moving on land. So here, the phrase under discussion calls up the popular picture. For after including automobile truck, automobile wagon and motor cycle, the words ‘any other self-propelled vehicle not designed for running on rails’ still indicate a vehicle in the popular sense, that is a vehicle running on land is the theme. It is a vehicle that runs, not something, not commonly called a vehicle, that flies. Airplanes were well known in 1919 when this statute was passed, but it is admitted that they were not mentioned in the reports or in the debates in Congress.”
- Reversed



OTHER SECONDARY RULES OF INTERPRETATION

(1) Effect of usage: Usage or practice developed under the statute is indicative of the meaning recognized to its words by contemporary opinion.

A uniform notorious practice continued under an old statute and inaction of the Legislature to amend the same are important factors to show that the practice so followed was based on correct understanding of the law.

When the usage or practice receives judicial or legislative approval it gains additional weight.



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

- (i) '*Optima Legum interpretest consuetudo*' (the custom is the best interpreter of the law); and
- (ii) '*Contemporanea Expositio Est Optima Et Fortissima in Lege*' (the best way to interpret a document is to read it as it would have been read when made). The maxim means that a contemporaneous exposition is the best and strongest in law. Where the words used in a statute have undergone alteration in meaning in course of time, the words will be construed to bear the same meaning as they had when the statute was passed on the principle .



(2) *Noscitur a Sociis*: **Noscitur a Sociis** literally means “It is known from its associates”

- Under the doctrine of "*noscitur a sociis*" the questionable meaning of a word or doubtful words can be derived from its association with other words within the context of the phrase. I.e. meaning of a word is to be judged by the company it keeps.
- This rule is explained in Maxwell on the interpretation of statutes (12th edition) in following words – When two or more words susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. The words take their colour from and are quantified by each other, the meaning of the general words being restricted to a sense analogous to that of the less general.



In ***Foster v Diphwys Casson***((1887) 18 QBD 428), the case involved a statute which stated that explosives taken into a mine must be in a "case or canister". Here the defendant used a cloth bag. The courts had to consider whether a cloth bag was within the definition. Under *noscitur a sociis*, it was held that the bag could not have been within the statutory definition, because parliament's intention in using 'case or container' was referring to something of the same strength as a canister. When two words or expressions are coupled together one of which generally excludes the other, obviously the more general term is used in a meaning excluding the specific once.



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- For **examples**, in the expression ‘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. (***Devendra M. Surti (Dr.) vs. State of Gujrat, AIR 1969 SC 63 at 67***).
 - The term ‘entertainment’ would have a different meaning when used in the expression ‘houses for public refreshment, resort and entertainment’ than its generally understood meaning of theatrical, musical or similar performance



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- Similarly, the expression ‘place of public resort’ would have one meaning when coupled with the expression ‘roads and streets’ and the same express ‘place of public resort’ would have quite a different meaning when coupled with the word ‘houses’
 - In construing of the terms powers, privileges and immunities of a house of the Legislature of a state conferred in the Article 194 of the Constitution, the Supreme court said that the word ‘powers’ must take its colour from words in immediate connection with it and that it should be construed to refer not to legislative powers but to powers of a house which are necessary for the conduct of its business. ***[State of Karnataka v. Union of India, AIR 1978 SC]***



Relying on the above maxim **Noscitur a Sociis**, in the case of **Commissioner of Income Tax v. Bharti cellular** it was held that term ‘technical services’ used in section 194J of the Income Tax Act is unclear. The word technical would take colour from the words managerial & consultancy between which it is sandwiched. These terms ‘managerial services’ & ‘consultancy services’ necessarily involve a human intervention . So applying **noscitur a sociis** the word ‘technical’ would also have to be construed as involving a human element. Thus, interconnection & port access services rendered by the assessee do not involve any human interface & therefore cannot be regarded as technical services u/s 194J of the Income Tax Act.



Delhi Tribunal in the case of, **Parsons Brinckerhoff India (P.) Ltd. vs. Asstt. DIT (Int. Tax)** applying the rule of **Noscitur a Sociis** held that, the words ‘model’ and ‘design’ cannot fall under definition of ‘royalty’ under Explanation 2 to section 9 (I) (VI) of the Income Tax Act. They have to take colour from the other words surrounding them, such as, patent, invention, secret formula or process or trade mark, which are all species of intellectual property.



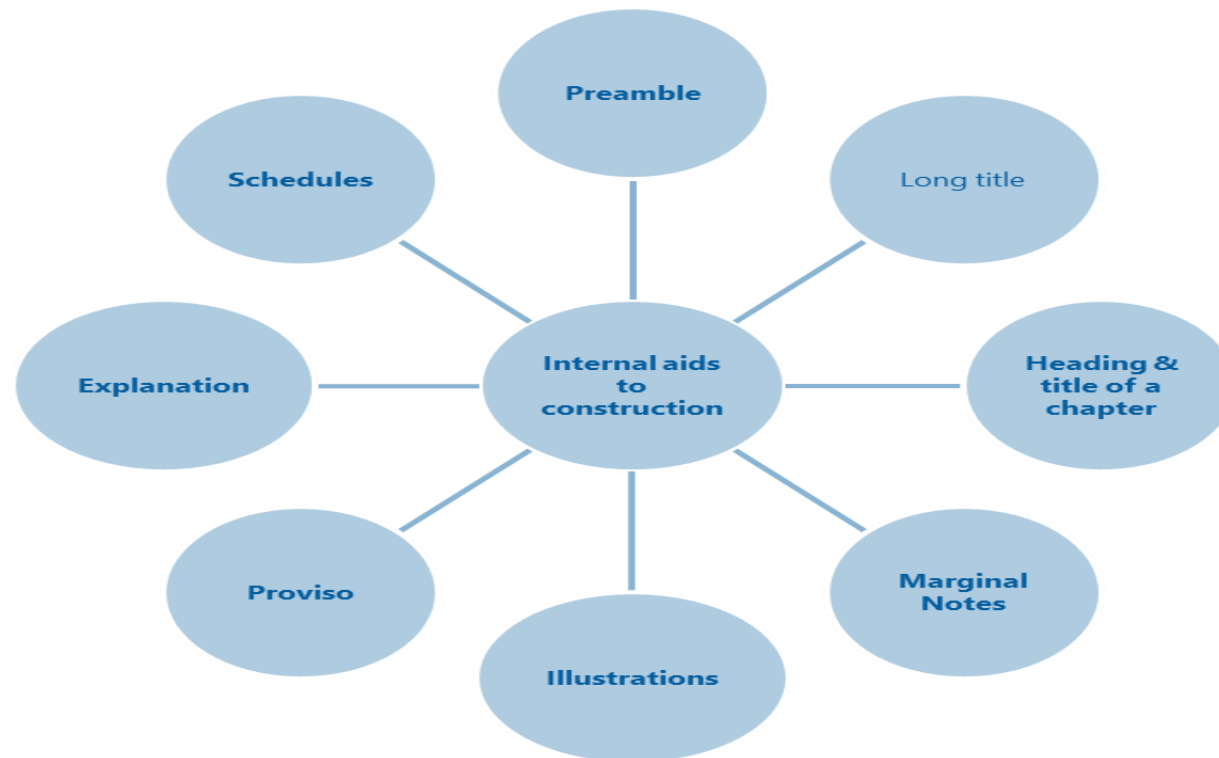
Limitation of the Application of this doctrine

- *where the intent of the legislature is clear or the meaning of the word is not doubtful, the maxim has no application.*
- *Where the words in a statute have been given a wider connotation intentionally, the doctrine cannot be invoked to narrow down the meaning of words used in the definition of terms in the statute.*



INTERNAL AIDS TO CONSTRUCTION

Internal aid” means those materials which are available in the statute itself, though they may not be part of the enactment. These internal aids include:.





(a) **Long Title:** An enactment would have what is known as a **‘Short Title’** and also a **‘Long Title’**. The **‘Short Title’** merely **identifies** the enactment and is chosen merely for convenience, the **‘Long Title’** on the other hand, **describes** the enactment and does not merely identify it.

It is now settled that 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



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.

So, the title of a statute is an important part of the Act and may be referred to for the purpose of ascertaining its general scope and of throwing light on its construction, although it cannot override the clear meaning of the enactment. ***[Aswini kumar Ghose v. Arabinda Bose, AIR 1952 SC]***



(b) Preamble: The **Preamble** expresses the scope, object and purpose of the Act more comprehensively than the Long Title. The Preamble may recite the ground and the cause of making a statute and the evil which is sought to be remedied by it.

Like the Long Title, the Preamble of a Statute is a part of the enactment and can legitimately be used for construing it. However, the Preamble does not over-ride the plain provision of the Act but if the wording of the statute gives rise to doubts as to its proper construction,

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 the Hindu Marriage Act, 1955 provides that “a marriage may be solemnized between two Hindus....” has been construed to be mandatory in the sense that both parties to the marriage must be Hindus as defined in section 2 of the Act. It was held that a marriage between a Christian male and a Hindu female solemnized under the Hindu Marriage Act was void. This result was reached also having regard to the preamble of the Act which reads: ‘An Act to amend and codify the law relating to marriage among Hindus’ [*Gullipoli Sowria Raj V. Bandaru Pavani, (2009)1 SCC714*]



(c) Heading and Title of a Chapter:

- If we glance through any Act, we would generally find that a number of its sections applicable to any particular object are grouped together, sometimes in the form of Chapters, prefixed by Heading and/or Titles. These 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
- **Example:** Chapter contained in the Code of Criminal Procedure, 1973 read as ‘Limitation for taking cognizance of certain offences’, was not held to be controlling and it was held that a cumulative reading of various provisions in the said chapter clearly indicated that the limitation prescribed therein was only for the filing of the complaint or initiation of the prosecution and not for taking cognizance. [*Bharat Damodar Kale v. State of A.P., air 2003 SC*]



Marginal Notes: Marginal notes means those notes which are printed at the side of section of an act, which summarizes the effect of the section, have sometimes been used as an aid to interpretation.

Courts have given different views regarding use of marginal notes.

One view is that if the words of a statutes are ambiguous marginal notes can be used for interpretation. But marginal notes cannot limit or restrict the meaning of clear words used in the section.



Generally held view is that marginal notes appended to a section cannot be used for constructing the section. In ***C.I.T. vs. Ahmedbhai Umarbhai & Co.*** (AIR 1950 SC 134 at 141), Patanjali Shastri, J., had declared: “Marginal notes in an Indian statute, as in an Act, of Parliament cannot be referred to for the purpose of construing the statute

Exception: Marginal notes appended to articles of constitution of India have been held to be a part of constitution and thus it should be referred for interpretation.

Example: Article 286 of the constitution furnishing “prima facie”, some clue as to the meaning and purpose of the Article [*Bengal Immunity Co. Ltd. v. State of Bihar*, AIR1955SC



(e) Definition /Interpretation Clauses: When a word or phrase is defined as having a particular meaning in the enactment, it is that meaning alone which must be given to it in interpreting a Section of the Act unless there be anything repugnant in the context.

The purpose of a definition clause is two-fold: (i) to provide a key to the proper interpretation of the enactment, and (ii) to shorten the language of the enacting part by avoiding repetition of the same words contained in the definition part every time the legislature wants to refer to the expressions contained in the definition.



Construction of definitions may understood under the following headings:

- **(i) Restrictive and extensive definitions:** The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.
- When a word is defined to ‘mean’ such and such, the definition is ‘prima facie’ restrictive and exhaustive we must restrict the meaning of the word to that given in the definition section.
- word is defined to ‘include’ such and such, the definition is ‘prima facie’ extensive: here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.



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- ‘means and includes’- exhaustive.
 - ‘to apply to and include’- extensive

Ambiguous definitions: Sometime we may find that the definition section may itself be ambiguous, and so it may have to be interpreted in the light of the other provisions of the Act and having regard to the ordinary meaning of the word defined. Such type of definition is not to be read in isolation. It must be read in the context of the phrase which it defines, realising 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.

[Anil Bapurao Karase v. Krishna Sahkari Sakhar Karkhana, AIR 1997 SC 2698]. But the termination of employment of a daily wager 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. [S.M. Nilajkar v. Telecom District Manager Karnataka, (2003) 4 SCC].

Definitions subject to a contrary context: When a word is defined to bear a number of inclusive meanings, the sense in which the word is used in a particular provision must be ascertained from the context of the scheme of the Act, the language of the provision and the object intended to be served thereby



Illustrations: We would find that many, though not all, sections have illustrations appended to them. These illustrations follow the text of the Sections and, therefore, do not form a part of the Sections. However, illustrations do form a part of the statute and are considered to be of relevance and value in construing the text of the 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.

Example: In holding that section 73 of the Indian Contract Act , 1872 does not permit the award of interest as damages for mere detention of debt, the privy Council rejected the argument that illustration given in the Act can be used for arriving at a contrary result. It was observed that nor can an illustration have the effect of modifying the language of the section which alone forms the enactment.



(g) Proviso: The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general.

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*).



Distinction between Proviso, exception and saving Clause:

Differences

'Exception' is intended to restrain the enacting clause to particular cases

'Proviso' is used to remove special cases from general enactment and provide for them specially

'Saving clause' is used to preserve from destruction certain rights, remedies or privileges already existing



(h) Explanation: An Explanation is at times appended to a section to explain the meaning of the text of the section. An Explanation may be added to include something within the section or to exclude something from it. An Explanation should normally be so read as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.

In *Sundaram Pillai v. Pattabiraman, Fazal Ali*, J. gathered the following objects of an explanation to a statutory provision:



Explain the meaning and intendment of the Act itself

Clarify any obscurity and vagueness (if any)in the main enactment to make it consistent with the object

Provide an additional support to the object of the Act to make it meaningful and purposeful

Fill up the gap which is relevant for the purpose of the explanation to suppress the mischief and advance the object of the Act

Cannot take away a statutory right



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- **EXAMPLE :** "Interest" means the rates of interest payable by the promoter or the allottee, as the case may be.
 - Explanation.—
 - (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;
 - (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the, allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;



(i) Schedules: The Schedules form part of an Act. Therefore, 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. They often contain details and forms for working out the policy underlying the sections of the statute **for example** schedules appended to the Companies Act, 2013, to the Constitution of India.



5. External Aids to Interpretation/ Construction

HISTORICAL
SETTING

REFERENCE TO
COMMITTEE
REPORTS

CONSOLIDATING
STATUTES AND
PREVIOUS LAW

USAGE

EARLIER ACTS,
LATER ACTS,
ANALOGOUS ACTS,

DICTIONARY
DEFINITIONS

FOREIGN
DECISIONS



THANK YOU