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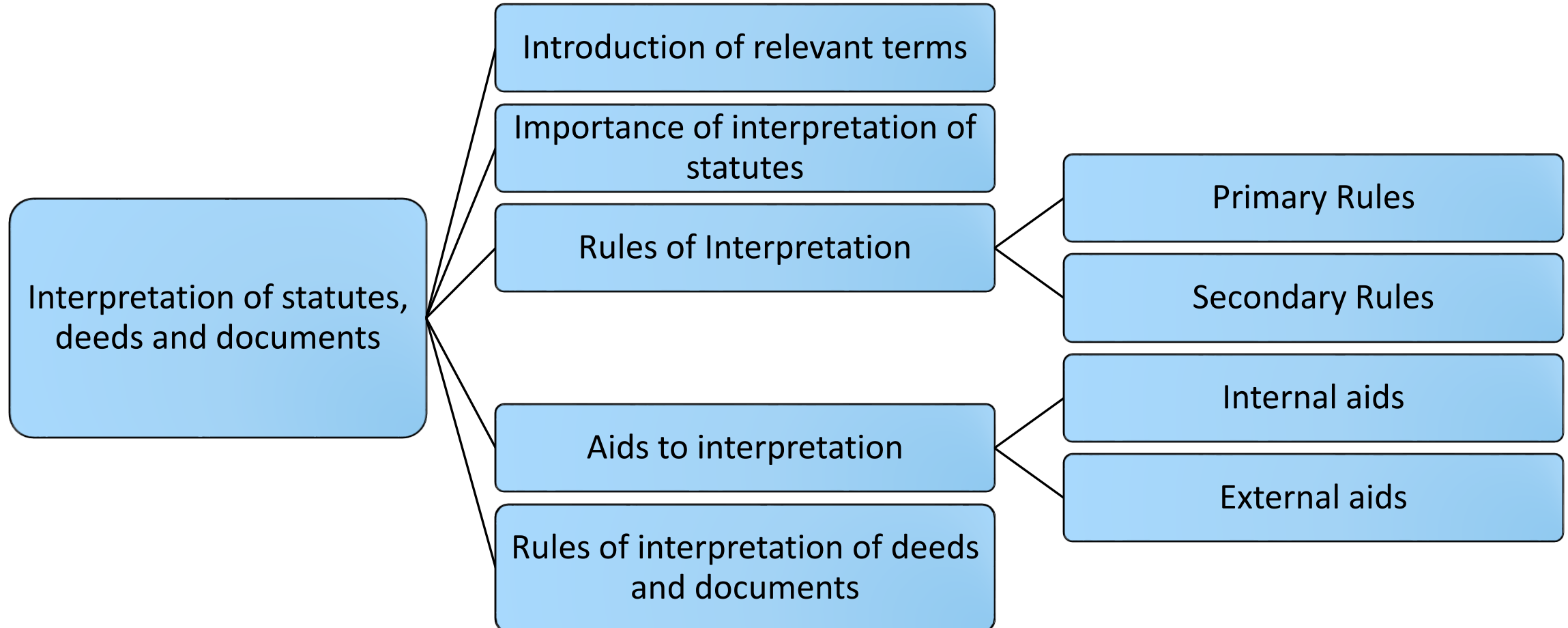
**VIRTUAL COACHING CLASSES  
ORGANISED BY BOS, ICAI**

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

**Faculty: CA. S. Srikanth**



# Overview





# Basic Terminologies : Statute

To the common man the terms '**Statute**' generally means the laws and regulations of every sort without considering from which source they emanate.

The term '**Statute**' has been defined as the written will of the legislature solemnly expressed according to the forms necessary to constitute it the law of the State. Normally, **the term denotes an Act enacted by the legislative authority (e.g. Parliament of India).**

**In short 'statute' signifies written law in contradiction to unwritten law.**



# Basic Terminologies : Document

Section 3 of the Indian Evidence Act, 1872 states that

- ‘Document’ means **any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means**, intended to be used, or which may be used, for the purpose of recording that matter.

Section 3(18) of the General Clauses Act, 1897 states that

- The term ‘document’ **shall include** any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording this matter.



# Basic Terminologies : Instruments

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, 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.**



# Basic Terminologies : 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.**



# Basic Terminologies : Interpretation

‘Interpretation’ is the process by which the real meaning of an Act (or a document) and the intention of the legislature in enacting it (or of the parties executing the document) is ascertained.

‘Interpretation’ signifies expounding the meaning of abstruse words, writings, etc., making out of their meaning, explaining, understanding them in a specified manner.

A person is there by aided in arguing, contesting and interpreting the proper significance of a section, a proviso, explanation or schedule to an Act or any document, deed or instrument.



# Importance of Interpretation

In relation to statute law, interpretation is of importance because of the **inherent nature of legislation as a source of law**.

The process of statute making and the process of interpretation of statutes take place separately from each other, and two different agencies are concerned.

An interpretation of an enactment **serves as the bridge of understanding** between the two.





# Interpretation and Construction

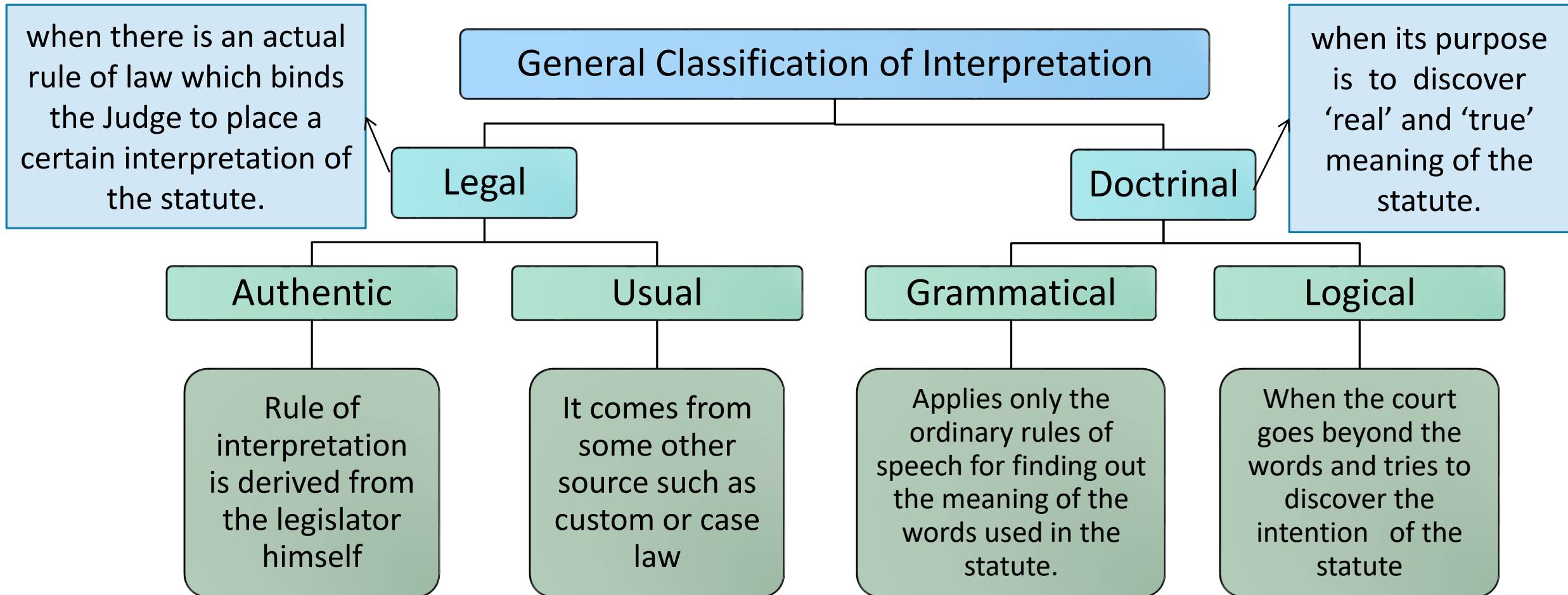
Both terms are generally used interchangeably, but these two terms have different connotations.

**The cardinal rule of construction** of a statute is to read it literally, which means by giving to the words used by the legislature their ordinary, natural and grammatical meaning

**The cardinal law of interpretation** is that if the language is simple and unambiguous, it is to be read with the clear intention of the legislation.



# Classification of Interpretation





# Difference between Interpretation and Construction

Interpretation is of finding out the true sense of any form and the construction is the drawing of conclusion respecting subjects that lie beyond the direct expression of the text. ***[Bhagwati Prasad Kedia v. C.I.T,(2001)]***

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’.

**‘Interpretation’ and ‘Construction’ overlap each other and it is rather difficult to state where ‘interpretation’ leaves off and ‘construction’ begins.**



# Need for Interpretation/ Construction

**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.**

**DENNING L.J.**



# Need for Interpretation/ Construction

**It would certainly save the judges' trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. 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.**

**DENNING L.J.**



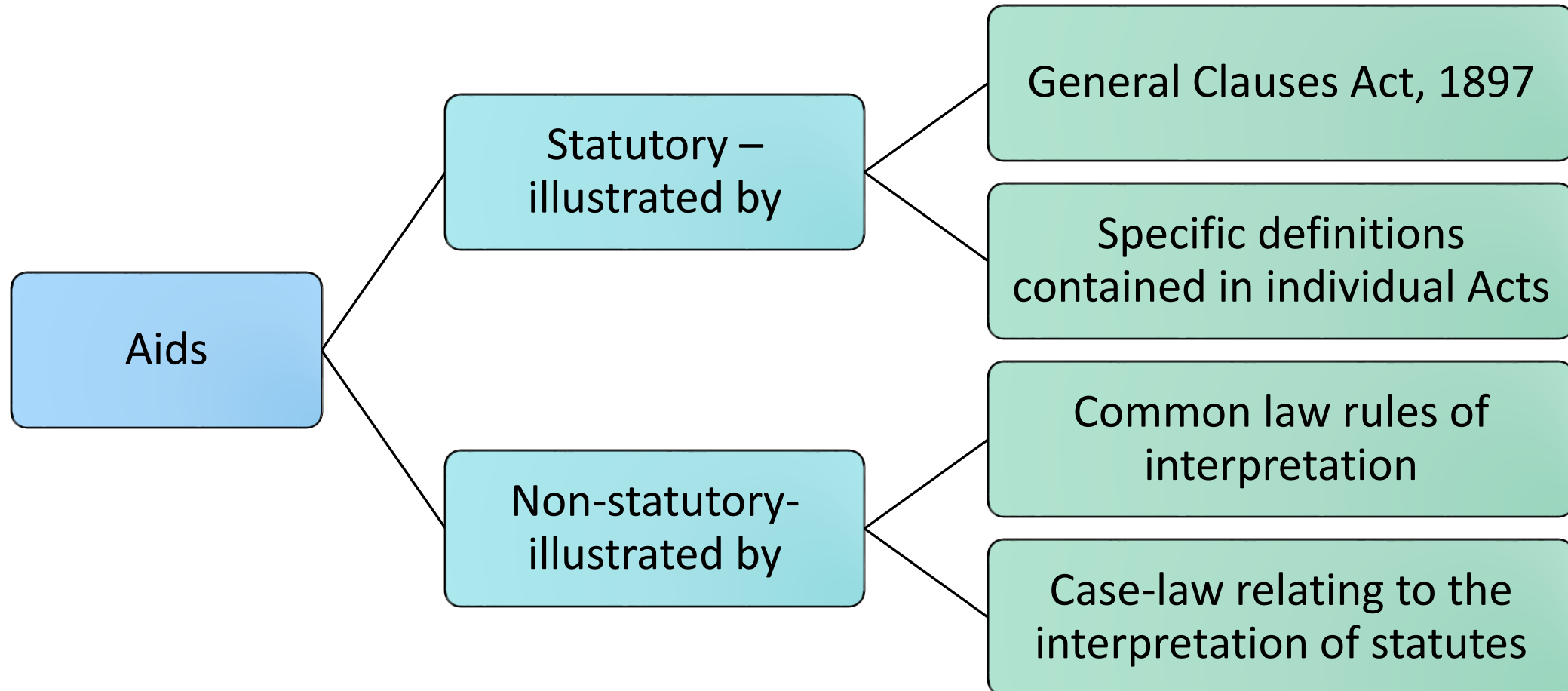
# Need for Interpretation/ Construction

The subject of the interpretation of a statute, therefore, seems to fall under two general heads:

- a. What are the principles which govern the construction of the language of an Act of Parliament?
- b. What are those principles which guide the interpreter in gathering the intention on those incidental points on which the legislature is necessarily presumed to have entertained an opinion but on which it has not expressed any?



# Process of Interpretation





# Rules of Interpretation/Construction

## Primary Rules

- Rule of Literal Construction
- Rule of Reasonable Construction
- Rule of Harmonious Construction
- Rule of Beneficial Construction
- Rule of Exceptional Construction
- Rule of Ejusdem Generis

## Secondary Rules

- Effect of usage
- Associated Words to be Understood in Common Sense Manner





# Rule of Literal Construction

It is the **cardinal rule** of construction that 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.



# Rule of 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.



# Rule of 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'***

***'Absoluta sententia expositore non indiget'*** means a clear proposition needs no expositor i.e., when you have plain words capable of only one interpretation, no explanation to them is required.



# Rule of Literal Construction

## Words used in the popular sense:

- It dealing with matter regarding the general public, statutes are 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.

[Contd.]



# Rule of Reasonable Construction

Generally the words or phrases of a statute are to be given their ordinary or “literal” meaning.

But when the grammatical or literal construction leads to a **manifest absurdity** then the courts shall interpret the statute so as to **resolve the inconsistency and make the enactment a consistent whole**.

This principle is based on the rule that the words of a statute must be construed **reasonably** so as to give effect to the enactment rather than reduce it to a futility. (**Interpretatio fienda est ut res magis valeat quam pereat**)

**Hence this rule is called the Rule of Reasonable Construction.**

So, while interpreting a law, two meanings are possible, one making the statute absolutely vague and meaningless and other leading to certainty and a meaningful interpretation, in such case the latter interpretation should be followed. (*Pratap Singh v State of Jharkhand*(2005)3 SCC 551).



# Rule of Harmonious Construction

Where there are in an enactment two or more provisions which cannot be reconciled with each other, they should be so interpreted, wherever possible, as to give effect to all of them.

This is what is known as the Rule of Harmonious Construction.

An effort should be made to interpret a statute in such a way as harmonizes with the object of the statute.



# Rule of Harmonious Construction

where it is not possible to give effect to both the provisions harmoniously, collision may be avoided by holding that one section which is in conflict with another merely provides for an exception or a specific rule different from the general rule contained in the other.

A specific rule will override a general rule.

This principle is usually expressed by the maxim,

**“generalia specialibus non derogant”.**



# Rule of Harmonious Construction

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 the Heydon's Rule

Where the language used in a statute is capable of more than one interpretation, the most firmly established rule for construction is the principle laid down in the *Heydon's case (1584) 3 Co. Rep 7a 76 ER 637*.

This rule is also known as 'purposive construction' or mischief rule.

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



# Rule of Beneficial Construction or the Heydon's Rule

The rule, enables consideration of four matters in construing an Act:

- i. what was the law before the making of the Act;
- ii. what was the mischief or defect for which the law did not provide;
- iii. what is the remedy that the Act has provided; and
- iv. what is the reason for the remedy.



# Rule of Exceptional Construction

The rule of exceptional construction stands for the elimination of statutes and words in a statute which defeat the real objective of the statute or make no sense.



# Aspects of rule of Exceptional Construction

## II. 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.



# Aspects of rule of Exceptional Construction

## III. **May**, **must** and **shall**

'May' indicates an option, hence a provision containing 'May' is directory.

'Shall' indicates that there is no option, hence provisions containing 'Shall' are termed Mandatory.

When a provision is mandatory, it must be strictly observed. When it is 'directory' it would be sufficient that it is substantially complied with.

But, in some cases 'May' can have the meaning of 'Shall' and vice versa



# Rule of Eiusdem Generis

- The term '**eiusdem generis**' means '**of the same kind or species**'.
- The rule of **eiusdem 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.
- If the particular words used exhaust the whole genus (category), then the general words are to be construed as covering a larger genus.
- The general principle of '**eiusdem generis**' applies only where the specific words are all the same nature.



# Rule of Eiusdem Generis

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

There is no indication of a different legislative intent



# Effect of Usage

Usage or practice developed under the statute is indicative of the meaning recognized to its words by contemporary opinion.

A uniform 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.





# Effect of Usage

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

- a) '*Optima Legum interpretres est consuetude*' meaning the custom is the best interpreter of the law.
- b) '*Contempraneo expositio est optima et fortissinia in lege*' meaning the best way to interpret a document is to read it as it would have been understood when made.

Therefore, the best interpretation/construction of a statute or any other document is that which has been made by the contemporary authority.



# Associated Words to be Understood in Common Sense Manner

When two words or expressions are coupled together one of which generally excludes the other, obviously the more general term is used in a meaning excluding the specific one.

The concept of '***Noscitur A Sociis***' ('it is known by its associates'), that is to say 'the meaning of a word is to be judged by the company it keeps'.

When two or more words which are capable of analogous (similar or parallel) meaning are coupled together, they are to be understood in their cognate sense (i.e. akin in origin, nature or quality).



# Associated Words to be Understood in Common Sense Manner

## **Fresh orange juice is not a fruit juice!**

While dealing with a Purchase Tax Act, which used the expression “manufactured beverages including fruit-juices and bottled waters and syrups,” it was held that the description ‘fruit juices’ as occurring therein should be construed in the context of the preceding words and that orange-juice unsweetened and freshly pressed was not within the description. [Commissioners. Vs. Savoy Hotel, (1966) 2 All. E.R. 299]



# Associated Words to be Understood in Common Sense Manner

It must be borne in mind that *noctur a sociis*, is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider.



# Internal Aids of Interpretation / Construction

## 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.

## 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.



# Internal Aids of Interpretation / Construction

## c) Heading and Title of a Chapter:

- There is a conflict of opinion about the weightage to be given to heading and title of a Chapter.
- While one section of opinion considers that a heading is to be regarded as giving the key to the interpretation of the clauses ranged under it and might be treated as 'preambles to the provisions following it'.
- The other section of opinion is emphatic that resort to the heading can only be taken when the enacting words are ambiguous.



# Internal Aids of Interpretation / Construction

## d) Marginal Notes:

- 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”, and the same view has been taken in many other cases.
- Many cases show that reference to marginal notes may be permissible in exceptional cases for construing a section in a statute.



# Internal Aids of Interpretation / Construction

## e) **Definitional Sections/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





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



# Construction of definitions may understood under the following headings

- We may also find a word being defined as **‘means and includes’** such and such: here again the definition would be exhaustive.
- On the other hand, if the word is defined **‘to apply to and include’**, the definition is understood as extensive.
- A definition section may also be worded as **‘is deemed to include’** which again is an inclusive or extensive definition as such a words are used to bring in by a legal fiction something within the word defined which according to its ordinary meaning is not included within it.



# Internal Aids of Interpretation / Construction

## f) 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.
- 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.**



# Internal Aids of Interpretation / Construction

## 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

## Exception

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

## Proviso

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

## Saving Clause

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



# Internal Aids of Interpretation / Construction

## **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.



# Object of an Explanation

[In *Sundaram Pillai v. Pattabiraman*, *Fazal Ali*, J.]

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



# Internal Aids of Interpretation / Construction

## 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.





# External Aids of Interpretation / Construction

## External Aids of Interpretation / Construction

Historical Setting

Consolidating Statutes & Previous Law

Usage

Earlier & Later Acts and Analogous Acts

Dictionary Definitions

Use of Foreign Decisions



# External Aids of Interpretation / Construction

## a) **Historical Setting:**

- The history of the external circumstances which led to the enactment in question is of much significance in construing any enactment.
- We have, for this purpose, to take help from all those external or historical facts which are necessary in the understanding and comprehension of the subject matter and the scope and object of the enactment.
- History in general and Parliamentary History in particular, ancient statutes, contemporary or other authentic works and writings all are relevant in interpreting and construing an Act.
- We have also to consider whether the statute in question was intended to alter the law or leave it where it stood before.



# External Aids of Interpretation / Construction

## **b) Consolidating Statutes & Previous Law:**

- The Preambles to many statutes contain expressions such as “An Act to consolidate” the previous law, etc.
- In such a case, the Courts may stick to the presumption that it is not intended to alter the law.
- They may solve doubtful points in the statute with the aid of such presumption in intention, rejecting the literal construction.



# External Aids of Interpretation / Construction

## c) Usage:

- Usage is also sometimes taken into consideration in construing an Act.
- The acts done under a statute provide quite often the key to the statute itself. It is well known that where the meaning of the language in a statute is doubtful, **usage** – how that language has been interpreted and acted upon over a long period – may determine its true meaning.
- It has been emphasized that when a legislative measure of doubtful meaning has, for several years, received an interpretation which has generally been acted upon by the public, the Courts should be very unwilling to change that interpretation, unless they see cogent reasons for doing so.



# External Aids of Interpretation / Construction

## d) Earlier & Later Acts and Analogous Acts:

- The general principle is that where there are different statutes in '*pari materia*' (i.e. in an analogous case), though made at different times, or even expired and not referring to each other, they shall be taken and construed together as one system and as explanatory of each other.
- If two Acts are to be read together then every part of each Act has to be construed as if contained in one composite Act. But if there is some clear discrepancy then such a discrepancy may render it necessary to hold the later Act (in point of time) had modified the earlier one.



# External Aids of Interpretation / Construction

## Earlier Act Explained by the Later Act:

- ❖ Where the earlier statute contained a negative provision but the later one merely omits that negative provision: this cannot by itself have the result of substantive affirmation.
- ❖ In such a situation, it would be necessary to see how the law would have stood without the original provision and the terms in which the repealed sections are re-enacted.
- ❖ The general rules and forms framed under an Act which enacted that they should have the same force as if they had been included in it any may also be referred to for the purposes of interpretation of the Act.



# External Aids of Interpretation / Construction

## Reference to Repealed Act:

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



# External Aids of Interpretation / Construction

## e) Dictionary Definitions:

- Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood.
- It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear.
- Further, judicial decisions laying down the meaning of words in construing statutes in '*pari materia*' will have greater weight than the meaning furnished by dictionaries.
- However, for technical terms reference may be made to technical dictionaries.





# External Aids of Interpretation / Construction

## f) Use of Foreign Decisions:

- Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts.
- However, prime importance is always to be given to the language of the Indian statute.
- Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.



# Rules of Interpretation/Construction of Deeds and Documents

- The **Golden Rule** is to ascertain the intention of the parties to the instrument after considering all the words in the document/deed concerned in their ordinary, natural sense.
- The same word cannot have two different meanings in the same document, unless the context compels the adoption of such a rule.
- The circumstances in which the particular words had been used have also to be taken into account.
- It may happen that the same word understood in one sense will give effect to all the clauses in the deed while taken in another sense might render one or more of the clauses ineffective. In such a case the word should be understood in the former and not the latter sense.



# Rules of Interpretation/Construction of Deeds and Documents

In case of conflict between two or more clauses/ parts of the same document

**An effort must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect to**

**An attempt should always be made to read the two parts of the document harmoniously**

However, it is not possible to give effect to all of them, then it is the **earlier clause/part that will over-ride the latter one.**



**THANK YOU**