



THE GENERAL CLAUSES ACT, 1897

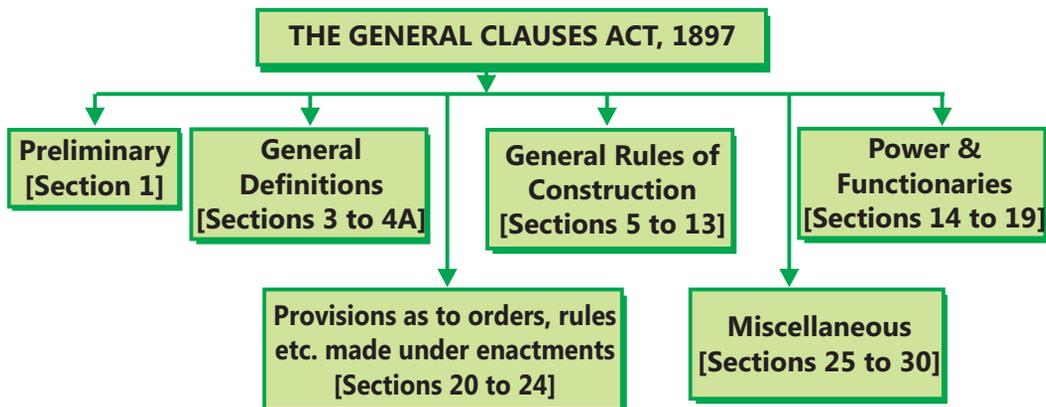


LEARNING OUTCOMES

At the end of this Chapter, you will be able to:

- Explain the purpose of General Clauses Act.
- Acquire some basic understanding of Legislation.
- Know the general definitions under the Act.
- Identify general rules of construction.
- Know powers and functionaries.
- Explain powers as to orders, rules etc. made under enactments.
- Know other miscellaneous provisions.

CHAPTER OVERVIEW



1. INTRODUCTION

Why we study General Clauses Act?

The General Clauses Act, 1897 contains 'definitions' of some words and also some general principles of interpretation. This is an Act intends to provide general definitions which shall be applicable to all Central Acts and Regulations where there is no definition in those Acts or regulations that emerge with the provisions of the Central Acts or regulations, unless there is anything repugnant in the subject or context.

The General Clauses Act is very effective in the absence of clear definition in the specific enactments and where there is a conflict between the pre-constitutional laws and post-constitutional laws. The Act gives a clear suggestion for the conflicting provisions and differentiates the legislation according to the commencement and enforcement to avoid uncertainty.

The General Clauses Act has been enacted to shorten language used in parliamentary legislation and to avoid the repetition of the same words in the same course of the same piece of legislation. Act is meant to avoid the superfluity of language in a statute wherever it is possible to do so.

Example : Wherever the law provides that court will have the power to appoint, suspend or remove a receiver, the legislature simply enacted that wherever convenient the court may appoint receiver and it was implied within that language that it may also remove or suspend him. (*Rayarappan V. Madhavi Amma, A.I.R. 1950 F.C. 140*)

The General Clauses Act, 1897 was enacted on 11th March, 1897 to consolidate and extend the General Clauses Act, 1868 and 1887.

2. OBJECT, PURPOSE AND IMPORTANCE OF THE GENERAL CLAUSES ACT

The objects of the Act are several, namely:

- (1) to shorten the language of Central Acts;
- (2) to provide, as far as possible, for uniformity of expression in Central Acts, by giving definitions of a series of terms in common use;

The purpose of the General Clauses Act is to place in one single statute different provisions as regards interpretation of words and legal principles which would otherwise have to be specified separately in many different Acts and Regulations. So whatever General Clauses Act says whether as regards to the meaning of words or as regards legal principles, has to be read in every statute to which it applies.

Example : The Supreme Court applied the provisions of section 24 of the General Clauses Act to the Mines Act, 1923 (*Chief Inspector of Mines V. Karam Chand Thapar.*)

The General Clauses Act, thus, makes provisions as to the construction of General Acts and other laws of all-India application. Its importance, therefore, in point of the number of enactments to which it applies, is obvious.

Much more, however, can be said about the importance of an interpretation Act, which has been called the "Law of all Laws". In so far as certainty in the application of the law is a desideratum (necessary) itself, an interpretation Act seeks to introduce that certainty, in the limited sphere in which it operates.

Thus, we can see that the purpose of this Act itself enshrines the importance of the Act.

3. APPLICATION OF THE GENERAL CLAUSES ACT

The Act not defines any "territorial extent" clause. Its application is primarily with reference to all Central legislation and also to rules and regulations made under a Central Act. It is in a sense a part of every Central Acts or Regulations. If a Central Act is extended to any territory, the General Clauses Act would also deemed to be applicable in that territory and would apply in the construction of that Central Act.

The provisions of the General Clauses Act are mere rules of interpretation and it apply automatically in each and every case. It all depends on the facts and circumstances of each case.

In many countries, Legislatures similar to the General Clauses Act are called Interpretation Acts. But, as the provisions of the General Clauses Act (whether relating to definitions and meanings of words and terms or dealing with construction and interpretation) are, so far as may be necessary, common to every Central Act, the title "General Clauses Act" is not less appropriate than the title "Interpretation Act". The Supreme Court had observed in the case of Chief Inspector of Mines vs. K. C. Thapar "Whatever the General Clauses Act says, whether as regards the meanings of words or as regards legal principles, has to be read into every Act to which it applies."

The Scope and effect of each section depends upon the text of the particular section.

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

So there is a difference in the applicability of each section as regards the statutes to which it applies.

The language of each section of the General Clauses Act has to be referred to ascertain to which class of instruments or enactment it applies. In certain cases, even if no section of the general clauses Act applies to particular case, the court apply the general principles of the General clauses Act.

It may also be noted that though Act does not, in terms apply to State laws, it is evident that the State General Clauses Acts should conform to the General Clauses Act of 1897, for, otherwise, divergent rules of construction and interpretation would apply, and as a result, great confusion might ensue.

Before delving into the saddle of the provisions under General Clauses Act, let's have some basic understanding of law.



4. SOME BASIC UNDERSTANDINGS OF LEGISLATION

“Preamble” : Every Act has a preamble which expresses the scope, object and purpose of the Act. It is the main source for understanding the intention of lawmaker behind the Act. Whenever there is ambiguity in understanding any provision of Act, Preamble is accepted as an aid to construction of the Act.

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, for example, where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction.

In short, the Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.

Example : (1) Preamble of the Negotiable Instruments Act, 1881 states - “An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.”

(2) Preamble of the Companies Act, 2013 states – “An Act to consolidate and amend the law relating to companies.”

In order to understand Preamble of the Act, it is required to know ‘Act’. Act is a bill passed by both the houses of Parliament and assented to by the President. Whereas ‘Bill’ is a draft of a legislative proposal put in the proper form which, when passed by both houses of Parliament and assented to by the President becomes an Act. On getting assent from President, an Act is notified on the Official Gazettes of India.

Example : Concept paper on the Companies Act, 2013 was placed on the website of MCA on 4-8-2004. Expert committee was constituted on 2-12-2004. Committee submitted its report on 31-5-2005. Companies Bill, 2008 introduced on 23-10-2008. New Companies Bill, 2009 introduced in Lok Sabha on 3-8-2009. Referred to standing committee on Finance. Standing committee submitted its report on 31st August, 2010. With recommended changes in the Companies Bill 2009, Companies Bill 2011 was introduced. Companies Bill, 2012 was introduced and Passed by Lok Sabha on 18-12-2012. Passed by Rajya Sabha on 8-8-2013. Act received assent of President on 29- 8- 2013 as Companies Act, 2013. Notified in gazette on 30- 8- 2013.

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

Words are defined in the respective Act. Sometimes, definitions are referred in another statutes. If words are not defined in the respective Acts, such words are to be taken from General Clauses Act.

Example (1) : The word ‘Company’ used in the Companies Act, is defined in section 2(20) of the respective Act.

Example (2) : Word ‘Security’ used in the Companies Act, not defined in the respective Act. It has been defined under section 2(h) of the Securities Contracts (Regulations) Act, 1956. This word is equivalent applicable on the Companies Act, 2013. Similarly, the word ‘Digital signature’ used in the Companies Act, shall be construed as per the section 2(1)(p) of the Information Technology Act, 2000.

Clause 95 of Section 2 of the Companies Act, 2013 clearly says that -

Words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or the Depositories Act, 1996 (22 of 1996) shall have the meanings respectively assigned to them in those Acts.

(3) The word ‘Affidavit’ used in section 7 during the incorporation of company, in the Companies Act, 2013, shall derive its meaning from the word ‘Affidavit’ as defined in the General Clauses Act, 1897.

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

Example (1) : Definition of ‘Company’ as given in section 2(20) of the Companies Act, 2013. It states, “Company” means a company incorporated under this Act or under any previous company law.

Example (2) : Section 2(34) of the Companies Act, 2013 defines the term director as “director” means a director appointed to the Board of a company.

Some definitions use the word “include”. Such definitions do not define the word but are inclusive in nature. Where the word is defined to ‘include’ such and such, the definition is ‘prima facie’ extensive. The word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

Example (1) : Word ‘debenture’ defined in section 2(30) of the Companies Act, 2013 states that “debenture” includes debenture stock, bonds or any other instrument of

a company evidencing a debt, whether constituting a charge on the assets of the company or not". This is a definition of inclusive nature.

Example (2) : "Body Corporate" or "Corporation" includes a company incorporated outside India. [Section 2(11) of the Companies Act, 2013]

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

We may also find a word being defined as 'means and includes' such and such: here again the definition would be exhaustive.

Example : Share defined under section 2(84) of the Companies Act, 2013, states that "Share" means a share in the share capital of a company and includes stock;

On the other hand, if the word is defined 'to apply to and include', the definition is understood as extensive.

"Shall" and "May" : The word '**shall**' is used to raise a presumption of something which is mandatory or imperative while the word 'may' is used to connote something which is not mandatory but is only directory or enabling. Hence, while interpreting any provision of law, the words "shall" and "may" have to be given utmost importance to understand what is mandatory and what is optional or directory under law.

Example (1) : Section 3 of the Companies Act, 2013 states that "A company may be formed for any lawful purpose by....."

Here the word used "may" shall be read as "shall". Usage of word 'may' here makes it mandatory' for a company for the compliance of section 3 for its formation.

Example (2) : Section 21 of the Companies Act, 2013, provides that documents/proceeding requiring authentication or the contracts made by or on behalf of the company, may be signed by any Key Managerial Personnel or an officer of the company duly authorised by the Board in this behalf.

Usage of the 'may' shall be read as 'may'.

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*).

Our approach in this text is to provide basic understanding of law while studying any legislation. These are few concepts which every student should keep in mind while studying law. You will read the following concepts in detail in the chapter of 'Interpretation of Statutes'.

5. PRELIMINARY [SECTION 1]

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

Preliminary is the introductory part of any law which generally contains Short Title, extent, commencement, application etc. The General Clauses Act contains only short title in the Preliminary part of the Act.

6. DEFINITIONS [SECTION 3]

Three sections of the General Clauses Act, i.e., sections 3 (Definitions), 4 (application of foregoing definitions to previous enactment) and 4A (Application of certain definitions to Indian laws), --contain general definitions.

Here in this chapter, we shall be discussing some of the relevant definitions or terms which are by and large seen in the Acts.

Section 3, which is the principal section containing definitions, applies to the General Clauses Act itself and to post-1897 Central Acts and Regulations unless those laws contain separate definitions of their own or there is something repugnant in the subject or context and hence definition given in section 3 cannot be applied.

In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context-

1. **“Act” [Section 3(2)] :** ‘Act’, used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions;
2. **“Affidavit” [Section 3(3)] :** ‘Affidavit’ shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing. There are two important points derived from the above definition:
 1. Affirmation and declaration,
 2. In case of persons allowed affirming or declaring instead of swearing.
 The above definition is inclusive in nature. It states that Affidavit shall include affirmation and declarations. This definition does not define affidavit. However, we can understand this term in general parlance. Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority.
3. **“Central Act” [Section 3(7)] :** ‘Central Act’ shall mean an Act of Parliament, and shall include-
 - (a) An Act of the Dominion Legislature or of the Indian Legislature passed before the commencement of the Constitution*, and
 - (b) An Act made before such commencement by the Governor General in Council or the Governor General, acting in a legislative capacity;
 *The date of the commencement of the Constitution is 26th January, 1950.

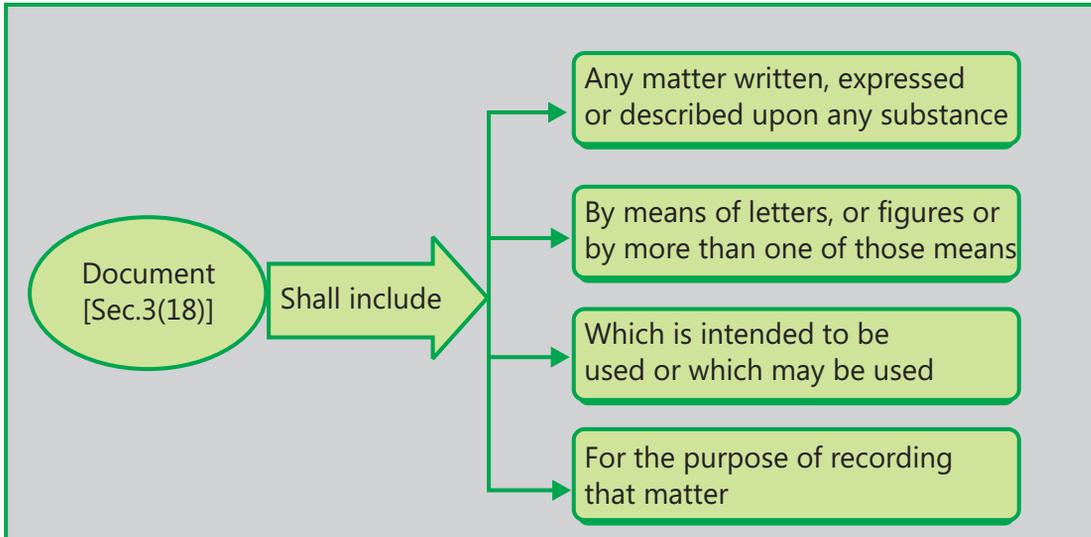
4. **“Central Government” [Section 3(8)]** : ‘Central Government’ shall-
- (a) In relation to anything done before the commencement of the Constitution, mean the Governor General in Council, as the case may be; and shall include,-
 - (i) In relation to functions entrusted under sub-section (1) of the section 124 of the Government of India Act, 1935, to the Government of a Province, the Principal Government acting within the scope of the authority given to it under that sub-section; and
 - (ii) In relation to the administration of a Chief Commissioner’s Province, the Chief Commissioner acting within the scope of the authority given to him under sub-section (3) of section 94 of the said Act; and
 - (b) In relation to anything done or to be done after the commencement of the constitution of the Constitution, mean the President; and shall include ;-
 - (i) In relation to function entrusted under clause (1) of the article of the Constitution, to the Government of a state, the State Government acting within the scope of the authority given to it under that clause;
 - (ii) In relation to the administration of a Part C State before the commencement of the Constitution (Seventh Amendment) Act, 1956*, the Chief Commissioner or the Lieutenant Governor or the Government of a neighbouring State or other authority acting within the scope of the authority given to him or it under article 239 or article 243 of the Constitution, as the case may be; and
 - (iii) In relation to the administration of a Union territory, the administrator thereof acting within the scope of the authority given to him under article 239 of the Constitution;

*The date of commencement of the Constitution (Seventh Amendment) Act, 1956 is 01st January, 1956.

5. **“Commencement” [Section 3(13)]** : ‘Commencement’ used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force;

A Law cannot be said to be in force unless it is brought into operation by legislative enactment, or by the exercise of authority by a delegate empowered to bring it into operation. The theory of a statute being “in operation in a constitutional sense” though it is not in fact in operation, has no validity. [*State of Orissa Vs. Chandrasekhar Singh Bhoi, Air 1970 SC 398*]

6. **“Document” [Section 3(18)]** : ‘Document’ shall include any matter written, expressed or described upon any substance by means of letters, figures or marks or by more than one of those means which is intended to be used or which may be used, for the purpose or recording that matter.



Thus, the term “Document” include any substance upon which any matter is written or expressed by means of letters or figures for recording that matter.

For example, book, file, painting, inscription and even computer files are all documents.

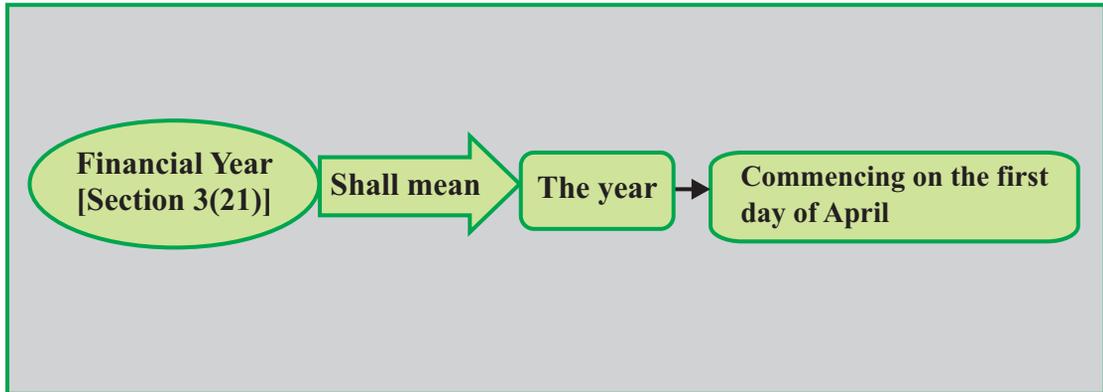
7. **“Enactment” [Section 2(19)]** : ‘Enactment’ shall include a Regulation (as hereinafter defined) and any Regulation of Bengal, Madras or Bombay Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid;

It has been held that an “enactment” would include any Act (or a provision contained therein) made by the Union Parliament or the State Legislature. Again, since “enactment” is defined to include also any provision of an Act, section 6 (Effect of repeal) would apply to a case where not only the entire Act is repealed, but also where any provision of an Act is repealed. [*State of Punjab Sukh Deo Sarup Gupta A.L.R. 1970 SC 1661, 1942, para 3, affirming A.I.R. 1965 Punj. 399 and Godhra Electricity Co. v. Somalal, A.I.R. 1967 Guj. 772, 776, para 6.*]

8. **“Financial Year” [Section 3(21)]**: Financial year shall mean the year commencing on the first day of April.

The term Year has been defined under Section 3(66) as a year reckoned according to the British calendar. Thus as per General Clauses Act, Year means calendar year which starts from January to December.

Difference between Financial Year and Calendar Year: Financial year starts from first day of April but Calendar Year starts from first day of January.



9. **“Good Faith” [Section 3(22)]** : A thing shall be deemed to be done in “good faith” where it is in fact done honestly, whether it is done negligently or not; The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case. The term “Good faith” has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term “good faith” and there the definition given in that particular enactment has to be followed. This definition may be applied only if there is nothing repugnant in subject or context, and if that is so, the definition is not applicable. In *Maung Aung Pu Vs. Maung Si Maung*, it was pointed out that the expression “good faith” is not defined in the Indian Contract Act, 1872 and the definition given here in the General Clauses Act, 1897 does not expressly apply the term on the Indian Contract Act. The definition of good faith as is generally understood in the civil law and which may taken as a practical guide in understanding the expression in the contract Act is that nothing is said to be done in good faith which is done without due care and attention as is expected with a man of ordinary prudence. An honest purchase made carelessly without making proper enquiries cannot be said to have been made in good faith so as to convey good title.
10. **“Government” [Section 3(23)]** : ‘Government’ or ‘the Government’ shall include both the Central Government and State Government. Hence, wherever, the word ‘Government’ is used, it will include Central Government and State Government both.
11. **“Government Securities” [Section 3(24)]** : ‘Government securities’ shall mean securities of the Central Government or of any State Government, but in any Act or Regulation made before the commencement of the Constitution shall not include securities of the Government of any Part B state;

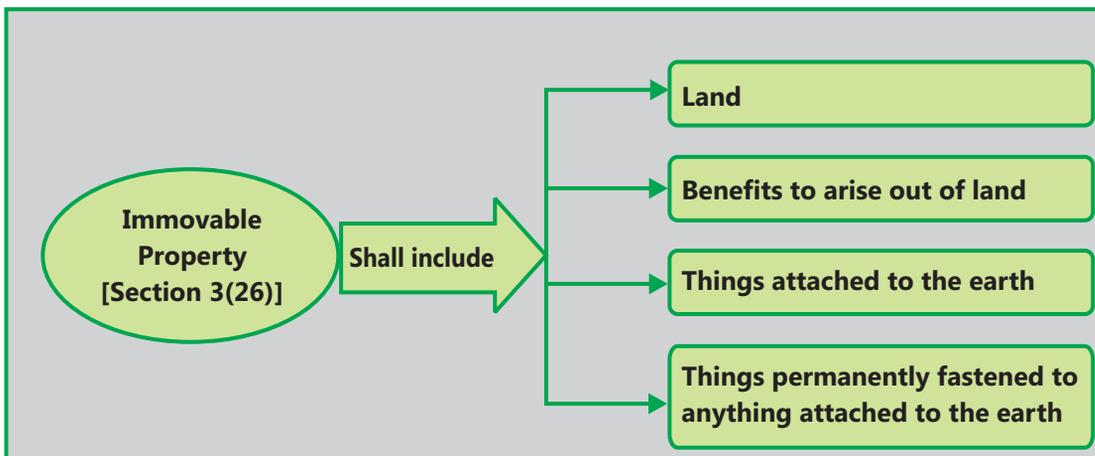
12. **“Immovable Property” [Section 3(26)]** : ‘Immovable Property’ shall include:

- i) Land,
- ii) Benefits to arise out of land, and
- iii) Things attached to the earth, or
- iv) permanently fastened to anything attached to the earth.

It is an inclusive definition. It contains four elements: land, benefits to arise out of land, things attached to the earth and things permanently fastened to anything attached to the earth. Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in the General Clauses Act will apply to the expression given in that enactment.

Example 1 : Trees are immovable property because trees are benefits arise out of the land and attached to the earth. However, timber is not immovable property as the same are not permanently attached to the earth. In the same manner, buildings are immovable property.

Example 2: Right of way to access from one place to another, may come within the definition of Immovable property whereas to right to drain of water is not immovable property. Any machinery fixed to the soil, standing crops can be held as immovable property according to the General Clauses Act, 1897.



13. **“Imprisonment” [Section 3(27)]** : ‘Imprisonment’ shall mean imprisonment of either description as defined in the Indian Penal Code (45 of 1860);

14. **“Indian law” [Section 3(29)]** : ‘Indian law’ shall mean any Act, Ordinance, Regulation, rule, order, bye law or other instrument which before the commencement of the Constitution, had the force of law in any Province of India or part thereof or thereafter has the force of law in any Part A or Part C State or part thereof, but does not include any Act of Parliament of the United Kingdom or any Order in Council, rule or other instrument made under such Act;

15. **“Month” [Section 3(35)]** : ‘Month’ shall mean a month reckoned according to the British calendar;
16. **“Movable Property” [Section 3(36)]** : ‘Movable Property’ shall mean property of every description, except immovable property.
Thus, any property which is not immovable property is movable property.
17. **“Oath” [Section 3(37)]** : ‘Oath’ shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.
18. **“Offence” [Section 3(38)]** : ‘Offence’ shall mean any act or omission made punishable by any law for the time being in force.
Any act or omission which is if done, is punishable under any law for the time being in force, is called as offence.
19. **“Official Gazette” [Section 3(39)]** : ‘Official Gazette’ or ‘Gazette’ shall mean:
 - (i) The Gazette of India, or
 - (ii) The Official Gazette of a state.
20. **“Person” [Section 3(42)]** : “Person” shall include:
 - (i) any company, or
 - (ii) association, or
 - (iii) body of individuals, whether incorporated or not
21. **“Registered” [Section 3(49)]** : ‘Registered’ used with reference to a document, shall mean registered in India under the law for the time being force for the registration of documents.
22. **“Rule” [Section 3(51)]** : ‘Rule’ shall mean a rule made in exercise of a power conferred by any enactment, and shall include a Regulation made as a rule under any enactment;
23. **“Schedule” [Section 3(52)]** : ‘Schedule’ shall mean a schedule to the Act or Regulation in which the word occurs;
24. **“Section” [Section 3(54)]** : ‘Section’ shall mean a section of the Act or Regulation in which the word occurs;
25. **“Sub-section” [Section 3(61)]** : ‘Sub-section’ shall mean a sub-section of the section in which the word occurs;
26. **“Swear” [Section 3(62)]** : “Swear”, with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing.
Note : The terms “Affidavit”, “Oath” and “Swear” have the same definitions in the Act.
27. **“Writing” [Section 3(65)]** : Expressions referring to ‘writing’ shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible forms; and

28. **“Year” [Section 3(66)]** : ‘year’ shall mean a year reckoned according to the British calendar.

¹Application to foregoing definitions to previous enactments [Section 4]- There are certain definitions in section 3 of the General Clauses Act, 1897 which would also apply to the Acts and Regulations made prior to 1987 i.e., on the previous enactments of 1868 and 1887. This provision is divided into two parts-

(1) **Application of terms/expressions to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the 14th January, 1887-**

Here the given relevant definitions in section 3 of the following words and expressions, that is to say, ‘affidavit’, ‘immovable property’, ‘imprisonment’, ‘month’, ‘movable property’, ‘oath’, ‘person’, ‘section’, ‘and ‘year’ apply also, unless there is anything repugnant in the subject or context, to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the 14th January, 1887.

(2) **Application of terms/expressions to all Central Acts and Regulations made on or after the fourteenth day of January, 1887-** The relevant given definitions in the section 3 of the following words and expressions, that is to say, ‘commencement’, ‘financial year’, ‘offence’, ‘registered’, ‘schedule’, ‘sub-section’ and ‘writing’ apply also, unless there is anything repugnant in the subject or context, to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.

²Application of certain definitions to Indian Laws [Section 4A]-

(1) The definitions in section 3 of the expressions ‘Central Act’, ‘Central Government’, ‘Gazette’, ‘Government’, ‘Government Securities’, ‘Indian Law’, and ‘Official Gazette’, ‘shall apply, unless there is anything repugnant in the subject or context, to all Indian laws.

(2) In any Indian law, references, by whatever form of words, to revenues of the Central Government or of any State Government shall, on and from the first day of April, 1950, be construed as references to the Consolidated Fund of India or the Consolidated Fund of the State, as the case may be.



7. GENERAL RULES OF CONSTRUCTION: [SECTION 5 to SECTION 13]

“Coming into operation of enactment” [Section 5] : Where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the Governor General in case of a Central Acts made before the commencement of the Indian Constitution and/or, of the President in case of an Act of Parliament.

1 Reference of relevant definitions of section 3 is given in section 4.

2 Reference of relevant definitions of section 3 is given in section 4A.

Example : The Companies Act, 2013 received assent of President of India on 29th August, 2013 and was notified in Official Gazette on 30th August, 2013 with the enforcement of section 1 of the Act. Accordingly, the Companies Act, 2013 came into enforcement on the date of its publication in the Official Gazette.

Where, if any specific date of enforcement is prescribed in the Official Gazette, Act shall into enforcement from such date.

Example : SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1 January, 2016. Here, this regulation shall come into enforcement on 1st January, 2016 rather than the date of its notification in the gazette.

In the case of *State of Uttar Pradesh v. Mahesh Narain*, AIR 2013 SC 1778, Supreme Court held that Effective date of Rules would be when the Rules are published vide Gazette notification and not from date when the Rules were under preparation.

“Effect of Repeal” [Section 6] : Where any Central legislation or any regulation made after the commencement of this Act repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:

- Revive anything not enforced or prevailed during the period at which repeal is effected or;
- Affect the prior management of any legislation that is repealed or anything performed or undergone or;
- Affect any claim, privilege, responsibility or debt obtained, ensued or sustained under any legislation so repealed or;
- Affect any punishment, forfeiture or penalty sustained with regard to any offence committed as opposed to any legislation or
- Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

In *State of Uttar Pradesh v. Hirendra Pal Singh*, (2011), 5 SCC 305, SC held that whenever an Act is repealed, it must be considered as if it had never existed. Object of repeal is to obliterate the Act from statutory books, except for certain purposes as provided under Section 6 of the Act.

In *Kolhapur Canesugar Works Ltd. V, Union of India*, AIR 2000, SC 811, Supreme Court held that Section 6 only applies to repeals and not to omissions and applies when the repeal is of a Central Act or Regulation and not of a Rule.

In *Navrangpura Gam Dharmada Milkat Trust v. Rmtuji Ramaji*, AIR 1994 Guj 75: ‘Repeal’ of provision is in distinction from ‘deletion’ of provision. ‘Repeal’ ordinarily brings about complete obliteration of the provision as if it never existed, thereby affecting all incoherent rights and all causes of action related to the ‘repealed’ provision while

'deletion' ordinarily takes effect from the date of legislature affecting the said deletion, never to effect total effecting or wiping out of the provision as if it never existed. For the purpose of this section, the above distinction between the two is essential.

“Repeal of Act making textual amendment in Act or Regulation” [Section 6A]-

Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, then unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

“Revival of repealed enactments” [Section 7]- (1) In any Central Act or Regulation made after the commencement of this Act, it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressed to state that purpose.

(2) This section applies also to all Central Acts made after the third day of January, 1968 and to all Regulations made on or after the fourteenth day of January, 1887.

“Construction of references to repealed enactments” [Section 8]- (1) Where this Act or Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

(2) Where before the fifteenth day of August, 1947, any Act of Parliament of the United Kingdom repealed and re-enacted, with or without modification, any provision of a former enactment, then reference in any Central Act or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

In *Gauri Shankar Gaur v. State of U.P.*, AIR 1994 SC 169, it was held that every Act has its own distinction. If a later Act merely makes a reference to a former Act or existing law, it is only by reference and all amendments, repeals new law subsequently made will have effect unless its operation is saved by the relevant provision of the section of the Act.

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

“Commencement and termination of time” [Section 9] : In any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days

or any other period of time to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

Example : If a company declares dividend for its shareholder in its Annual General Meeting held on 30/09/2016. Under the provisions of the Companies Act, 2013, company is required to pay declared dividend within 30 days from the date of declaration i.e. from 01/10/2016 to 30/10/2016. In this series of 30 days, 30/09/2016 will be excluded and last 30th day i.e. 30/10/2016 will be included.

“Computation of time” [Section 10] : Where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

In *K. Soosalrathnam v. Div. Engineer, N.H.C. Tirunelveli*, it was held by Madras High Court that since the last date of the prescribed period was subsequent to the date of notification, declared to be a holiday on the basis of the principles laid down in this section the last date of prescribed period for obtaining the tender schedules was extended to the next working day.

“Measurement of Distances” [Section 11] : In the measurement of any distance, for the purposes of any Central Act or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

“Duty to be taken pro rata in enactments” [Section 12] : Where, by any enactment now in force or hereafter to be in force, any duty of customs or excise or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any gender or less quantity.

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

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



8. POWER AND FUNCTIONARIES [SECTION 14 TO SECTION 19]

“Power conferred to be exercisable from time to time” [Section 14] : (1) Where, by any Central Act or Regulation made after the commencement of this Act, any power is

conferred, then unless a different intention appears that power may be exercised from time to time as occasion requires.

(2) This section applies to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.

“Power to appoint to include power to appoint ex-officio” [Section 15] : Where by any legislation or regulation, a power to appoint any person to fill any office or execute any function is conferred, then unless it is otherwise expressly provided, any such appointment, may be made either by name or by virtue of office.

Ex-officio is a Latin word which means by virtue of one’s position or office. Provision under this section states that where there is a power to appoint, the appointment may be made by appointing ex-officio as well.

“Power to appoint to include power to suspend or dismiss” [Section 16] : The authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

“Substitution of functionaries” [Section 17] : (1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

(2) This section applies also to all Central Acts made after the third day of January, 1868 and to all Regulations made on or after the fourteenth day of January, 1887.

“Successors” [Section 18] : (1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.

(2) This section shall also applies to all Central Acts made after the third day of January, 1868 and to all Regulations made on or after the fourteenth day of January, 1887.

“Official Chiefs and subordinates” [Section 19] : A law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.



9. PROVISION AS TO ORDERS, RULES ETC. MADE UNDER ENACTMENTS [SECTION 20 TO SECTION 24]

“Construction of orders, etc., issued under enactments” [Section 20] : Where by any legislation or regulation, a power to issue any notification, order, scheme, rule, form, or by-law is conferred, then expression used in the notification, order, scheme,

rule, form or bye-law, shall, unless there is anything repugnant in the subject or context, have the same respective meaning as in the Act or regulation conferring power.

In *Subhash Ram Kumar v. State of Maharashtra*, AIR 2003 SC 269, it was held that 'Notification' in common English acceptance mean and imply a formal announcement of a legally relevant fact and "notification publish in Official Gazette" means notification published by the authority of law. It is a formal declaration and should be in accordance with the declared policies or statute. Notification cannot be substituted by administrative instructions.

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

In *Rasid Javed v. State of Uttar Pradesh*, AIR 2010 SC 2275, Supreme Court held that under Section 21 of the Act, an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in the like manner.

In *Shreesidhballi Steels Ltd. V. State of Uttar Pradesh*, AIR 2011 SC 1175, Supreme Court held that power under section 21 of the Act is not so limited as to be exercised only once power can be exercised from time to time having regard to exigency of time.

"Making of rules or bye-laws and issuing of orders between passing and commencement of enactment" [Section 22] : Where, by any Central Act or Regulation which is not to come into force immediately, on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation or with respect to the establishment of any Court or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.

"Provisions applicable to making of rules or bye-laws after previous publications" [Section 23] : Where, by any Central Act or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:-

- (1) The authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;

- (2) The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes;
- (3) There shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;
- (4) The authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;
- (5) The publication in the Official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-laws has been duly made.

“Continuation of orders etc, issued under enactments repealed and re-enacted”

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

In *State of Punjab v. Harnek Singh, AIR 2002 SC 1074*, It was held that investigation conducted by Inspectors of Police, under the authorization of notification issued under Prevention of Corruption Act, of 1947 will be proper and will not be quashed under new notification taking the above power, till the aforesaid notification is specifically superseded or withdrawn or modified under the new notification.



10. MISCELLANEOUS [SECTION 25 TO SECTION 30]

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

“Provision as to offence punishable under two or more enactments” [Section 26] :

Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be punished twice for the same offence.

“Meaning of Service by post” [Section 27] : Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

- (i) properly addressing
- (ii) pre-paying, and
- (iii) posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

In *United Commercial Bank v. Bhim Sain Makhija*, AIR 1994 Del 181 : A notice when required under the statutory rules to be sent by ‘registered post acknowledgement due’ is instead sent by ‘registered post’ only, the protection of presumption regarding serving of notice under ‘registered post’ under this section of the Act neither tenable not based upon sound exposition of law.

In *Jagdish Singhv. Natthu Singh*, AIR 1992 SC 1604, it was held that where a notice is sent to the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served.

In *Smt. Vandana Gulati v. Gurmeet Singh alias Mangal Singh*, AIR 2013 All 69, it was held that where notice sent by registered post to person concerned at proper address is deemed to be served upon him in due course unless contrary is proved. Endorsement ‘not claimed/not met’ is sufficient to prove deemed service of notice.

“Citation of enactments” [Section 3(28)] : (1) In any Central Act or Regulation, and in any rule, bye law, instrument or document, made under, or with reference to any such Act or Regulation, any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and years thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.

(2) In this Act and in any Central Act or Regulation made after the commencement of this Act, a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

“Saving for previous enactments, rules and bye laws” [Section 29] : The provisions of this Act respecting the construction of Acts, Regulations, rules or bye-laws made

after commencement of this Act shall not affect the construction of any Act, Regulation, rule or bye-law is continued or amended by an Act, Regulation, rule or bye-law made after the commencement of this Act.

“Application of Act to Ordinances” [Section 30] : In this Act the expression Central Act, wherever it occurs, except in Section 5 and the word ‘Act’ in clauses (9), (13), (25), (40), (43), (53) and (54) of section 3 and in section 25 shall be deemed to include Ordinance made and promulgated by the Governor General under section 23 of the Indian Councils Act, 1861 or section 72 of the Government of India Act, 1915, or section 42 of the Government of India Act, 1935 and an Ordinance promulgated by the President under article 123 of the Constitution.



SUMMARY

- General Clauses Act, 1897 intends to provide general definitions which shall be applicable to all Central Acts and Regulations where there is no definition in those Acts.
- Every Act has a preamble which expresses the scope, object and purpose of the Act. It is the main source for understanding the intention of lawmaker behind the Act.
- Financial year shall mean the year commencing on the first day of April.
- Where legislation has not specifically mentioned to come into force on a prescribed date, it shall be implemented on the day that it receives the assent of the President.
- Whenever an Act is repealed, it must be considered as if it had never existed.
- Where by any legislation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.
- In any legislation, words importing the masculine gender shall be taken to include females, and words in singular shall include the plural and vice versa.
- Power to appoint includes power to appoint ex-officio.
- Power to appoint includes power to suspend or dismiss.
- A law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior.
- Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying, and posting by registered post.

 **TEST YOUR KNOWLEDGE****Multiple Choice Questions**

- The General Clauses Act, 1897 intends to:
 - Provide general definitions.
 - Applicable to all Central Acts and Regulations.
 - Applicable where there is no definition, unless there is anything repugnant in the subject or context.
 - All of the above.
- The General Clauses Act is one of the oldest Acts, came into force on:
 - 01st April, 1897
 - 11th March, 1897
 - 11th March, 1887
 - 01st April, 1868
- The preamble is most important in any legislation, it:
 - Provides definitions in the Act.
 - Expresses scope, object and purpose of the Act.
 - Provides summary of the entire Act.
 - None of the above.
- As per a Rule of an Educational Institution, every student may come on weekends for extra classes but every student shall appear on a weekly test conducted in the institute, which means:
 - Attending weekend classes is optional but appearing in weekly test is compulsory
 - Attending weekend classes is compulsory but appearing in weekly test is optional
 - Attending weekend classes and appearing in weekly test, both are compulsory for students
 - Attending weekend classes and appearing in weekly test both are optional for students.
- Which of the following is not an Immovable Property:
 - Land
 - Building
 - Timber
 - Machinery permanently attached to the land

Answer to MCQs

1. (d)	2. (b)	3. (b)	4. (a)	5. (c)
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Question and Answer

Question 1

What is "Financial Year" under the General Clauses Act, 1897?

Answer

According to Section 3(21) of the General Clauses Act, 1897, 'Financial Year' shall mean the year commencing on the first day of April.

The term year has been defined under Section 3(66) as a year reckoned according to the British calendar. Thus as per General Clauses Act, Year means calendar year which starts from January to December.

Hence, in view of the both above definitions, it can be concluded that Financial Year is a year which starts from first day of April to the end of March

Question 2

What is "Immovable Property" under the General Clauses Act, 1897?

Answer

According to **Section 3(26) of the General Clauses Act, 1897**, 'Immovable Property' shall include:

- (i) Land,
- (ii) Benefits to arise out of land, and
- (iii) Things attached to the earth, or permanently fastened to anything attached to the earth.

For example, trees are immovable property because trees are benefits arise out of the land and attached to the earth. However, timber is not immovable property as the same are not permanently attached to the earth. In the same manner, buildings are immovable property.

Question 3

As per the provisions of the Companies Act, 2013, a whole time Key Managerial Personnel (KMP) shall not hold office in more than one company except its subsidiary company at the same time. Referring to the Section 13 of the General Clauses Act, 1897, examine whether a whole time KMP can be appointed in more than one subsidiary companies?

Answer

Section 203(3) of the Companies Act, 2013 provides that whole time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. With respect to the issue that whether a whole time KMP of holding company be appointed in more than one subsidiary companies or can be appointed in only one subsidiary company.

It can be noted that Section 13 of General Clauses Act, 1897 provides that the word 'singular' shall include the 'plural', unless there is anything repugnant to the subject or the context. Thus, a whole time key managerial personnel may hold office in more than one subsidiary company as per the present law.

Question 4

A notice when required under the Statutory rules to be sent by "registered post acknowledgment due" is instead sent by "registered post" only. Whether the protection of presumption regarding serving of notice by "registered post" under the General Clauses Act is tenable? Referring to the provisions of the General Clauses Act, 1897, examine the validity of such notice in this case.

Answer

As per the provisions of Section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

- (i) properly addressing,
- (ii) pre-paying, and
- (iii) posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Therefore, in view of the above provision, since, the statutory rules itself provides about the service of notice that a notice when required under said statutory rules to be sent by 'registered post acknowledgement due', then, if notice was sent by 'registered post' only it will not be the compliance of said rules. However, if such provision was not provided by such statutory rules, then service of notice if by registered post only shall be deemed to be effected.

Furthermore, in similar case of *In United Commercial Bank v. Bhim Sain Makhija, AIR 1994 Del 181* : A notice when required under the statutory rules to be sent by 'registered post acknowledgement due' is instead sent by 'registered post' only, the protection of presumption regarding serving of notice under 'registered post' under this section of the Act neither tenable not based upon sound exposition of law.

