

**TopYug Educations****CA – INTER – CORPORATE & OTHER LAWS****SA for TEST 8 – General Clauses Act & Interpretation of Statutes, Deeds & Docs****Answer All the questions. Each question carries 5 marks each. Duration – 60 Mins**

1. 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:

- a. properly addressing,
- b. pre-paying, and
- c. 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.

2. Many a time a proviso is added to a Section of the enactment. Explain the function of such a proviso in the interpretation of the section/ provision.

**Answer:**

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.

As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment ordinarily a proviso is not interpreted as it stating a general rule.

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 provision to which it has been enacted as a proviso and not to the other. (*Ram Narain Sons Ltd. Vs. Assistant Commissioner of Sales Tax. A.I.R, 1995 SC 765*)

3. Mr. Vyas is the owner of House No. 20 in Geeta Colony, Delhi. He has rented two rooms in this house to Mr. Iyer. The Income Tax Authority has served a show cause notice to Mr. Vyas. The said notice was received by Mr. Iyer and returned the notice with an endorsement of refusal. Decide with reference to provisions of "General Clauses Act, 1897", whether the notice was

rightfully served on Mr. Vyas.

**Answer:**

**According to 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:

- a. Properly addressing
- b. Pre-paying, and
- c. 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.

The facts of the question are similar to a decided case law, wherein 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.

**Thus**, in the given question it can be deemed that the notice was rightfully served on Mr.Vyas.

4. Vishnu owned a land with fifty tamarind trees. He sold his land and the timber (obtained after cutting the fifty trees) to Yash. Vishnu wants to know whether the sale of timber tantamounts to sale of immovable property. Advise him with reference to provisions of "General Clauses Act, 1897".

**Answer:**

**As per 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
- (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.

**In the instant case**, Vishnu sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land.

**Question involved is** whether sale of timber amounts to sale of immovable property.

**Applying the above definition**, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.

5. Mr. Ram, an advocate has fraudulently deceived his client Mr. Shyam, who was taking his expert advise on taxation matters. Now, Mr. Ram is liable to a fine for acting fraudulently both under the Advocates Act, 1961 as well as the Income Tax Act, 1961. State the provision as to whether his

offence is punishable under the both the Acts, as per the General Clauses Act, 1897.

**Answer:**

**As per Section 26 of The General Clauses Act 1897 - "Provision as to offence punishable under two or more enactments":** 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.

**In the given case,** Mr. Ram, an advocate has fraudulently deceived his client Mr. Shyam, who was taking his expert advice on taxation matters. Now, Mr. Ram is liable to a fine for acting fraudulently both under the Advocates Act, 1961 as well as the Income Tax Act, 1961.

**Question involved is** whether his offence is punishable under the both the Acts, as per the General Clauses Act, 1897.

**Applying the above provision in the given case we can conclude that** Mr. Ram shall be liable to be punished under the Advocates Act, 1961 or the Income Tax Act, 1961, but shall not be punished twice for the same offence.

6. The 'Statute should be read as a Whole'. Explain the statement.

**Answer:**

**'Read the Statute as a Whole':**

It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only. The deed/ statute must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with other provisions – if that interpretation does no violence to the meaning of which they are naturally susceptible. And the same approach would apply with equal force with regard to Acts and Rules passed by the legislature.

One of the safest guides to the construction of sweeping general words is to examine other words of like import in the same enactment or instrument to see what limitations must be imposed on them. If we find that a number of such expressions have to be subjected to limitations and qualifications and that such limitations and qualifications are of the same nature, that circumstance forms a strong argument for subjecting the expression in dispute to a similar limitation and qualification.