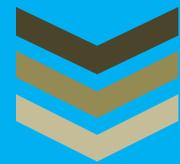


Referencer for Quick Revision



Intermediate Course Paper-2: Corporate and Other Laws

A compendium of subject-wise capsules published in the
monthly journal "The Chartered Accountant Student"



**Board of Studies
(Academic)
ICAI**

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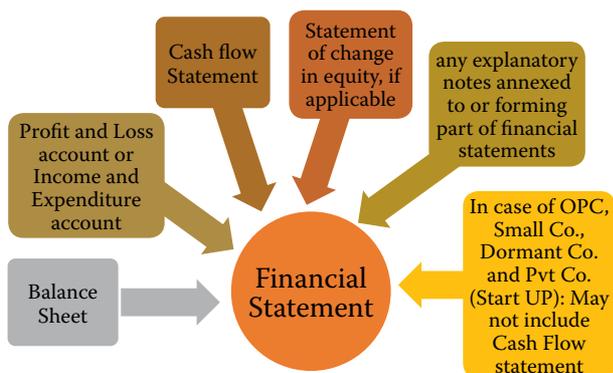
Page No.	Edition of Students' Journal	Topics
		<i>Company Law</i>
<i>1-5</i>	<i>September 2022</i>	<i>Accounts of Companies</i>
<i>6-8</i>	<i>September 2022</i>	<i>Audit and Auditors</i>
		<i>Other Laws</i>
<i>9-11</i>	<i>February 2022</i>	<i>The Indian Contract Act, 1872 - Contract of Indemnity and Guarantee</i>
<i>12-14</i>	<i>February 2022</i>	<i>The Indian Contract Act, 1872 - Bailment and Pledge</i>
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<i>22-29</i>	<i>April 2023</i>	<i>Interpretation of Statutes</i>

At Intermediate level, the Company Law portion of the subject 'Corporate and Other Laws' largely involves knowledge and comprehension, analysis and application of provisions of the Companies Act, 2013 to solve situation based and application-oriented issues. In the capsule, an attempt has been made to capture the significant provisions from sections 128 to 148 of the Companies Act, 2013. You are advised to read and understand the September 2021 edition of the Study Material and relevant RTP for a thorough understanding of the relevant provisions of the Companies Act, 2013. This capsule is intended to assist you in the process of revision of concepts discussed in the Study Material.

CHAPTER 9 - ACCOUNTS OF COMPANIES

I. FINANCIAL STATEMENT (FS)

(1) Financial statement is defined under section 2 (40), to include

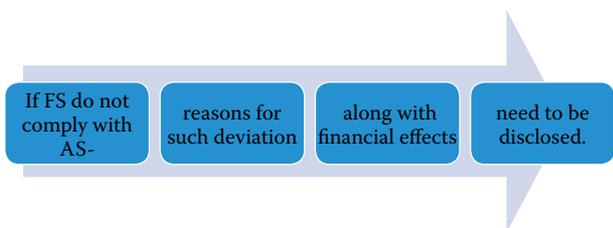


(2) Financial statement shall

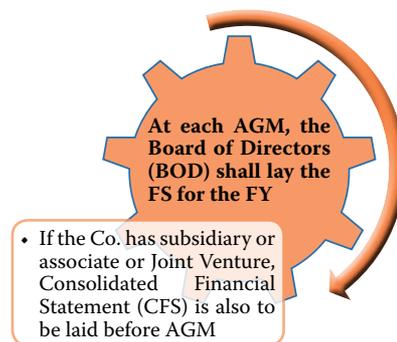
Give True & Fair view of state of affairs of the Co.

Comply with AS

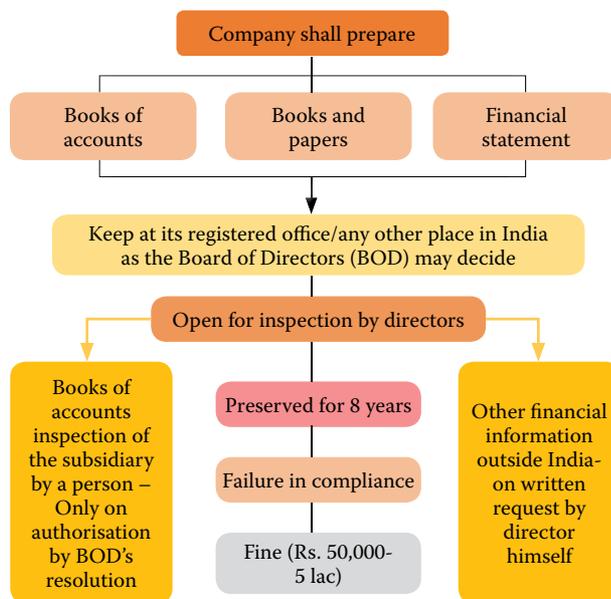
Be in form as provided for different classes of Co.s in Schedule III



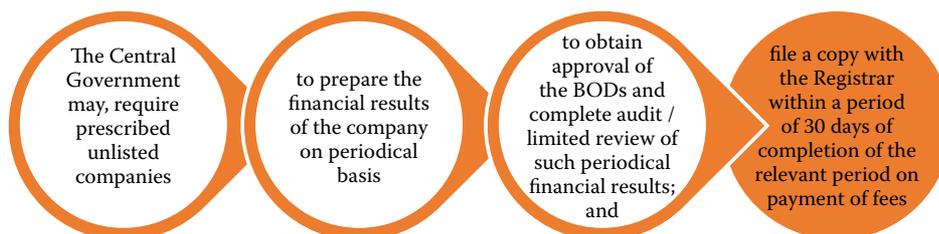
(3) Laying of Financial statement



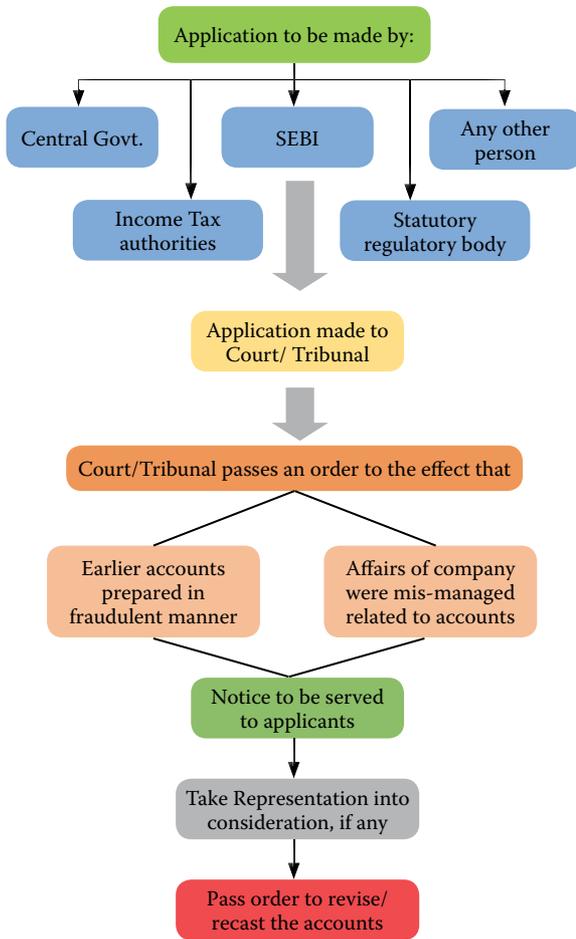
(4) Maintenance of Books of Accounts



II. PERIODICAL FINANCIAL RESULTS

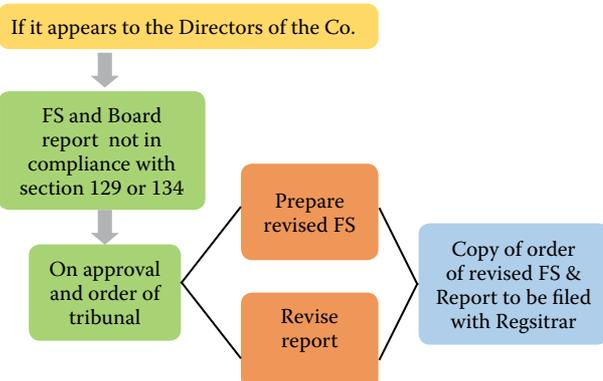


III. RE-OPENING OF ACCOUNTS

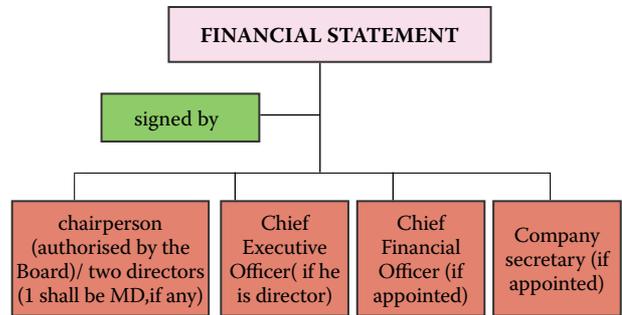


Time limit for reopening: No order in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year, shall be made. Except on direction of the Central Government BOAs may be kept for a period longer than eight years and accordingly may be ordered of re-opening for such period.

IV. VOLUNTARY REVISION OF FINANCIAL STATEMENTS OR BOARD'S REPORT

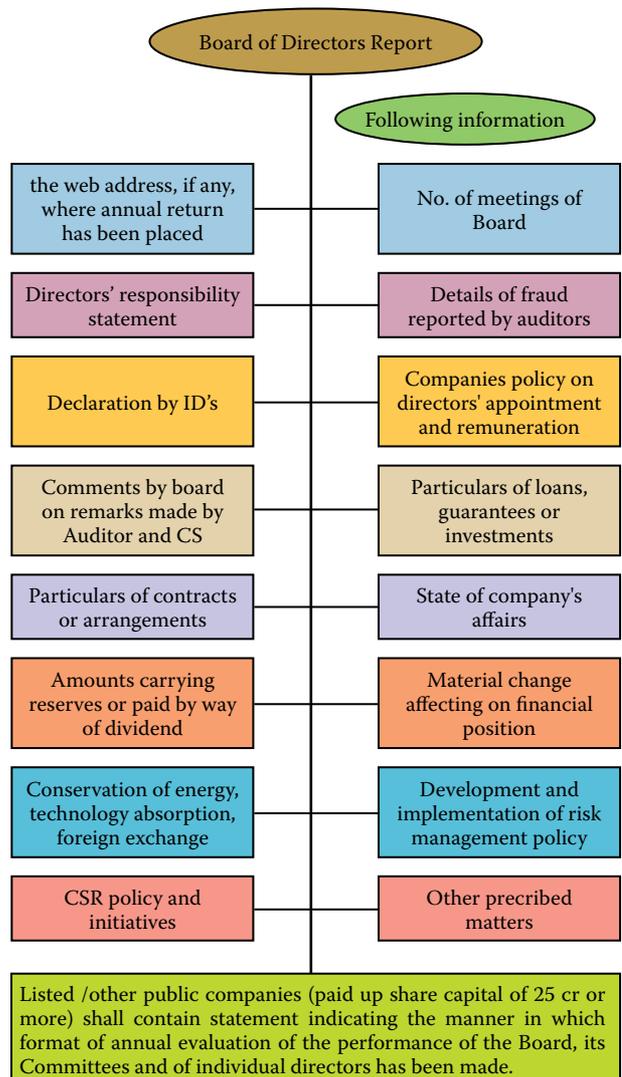


V. AUTHENTICATION OF FINANCIAL STATEMENTS



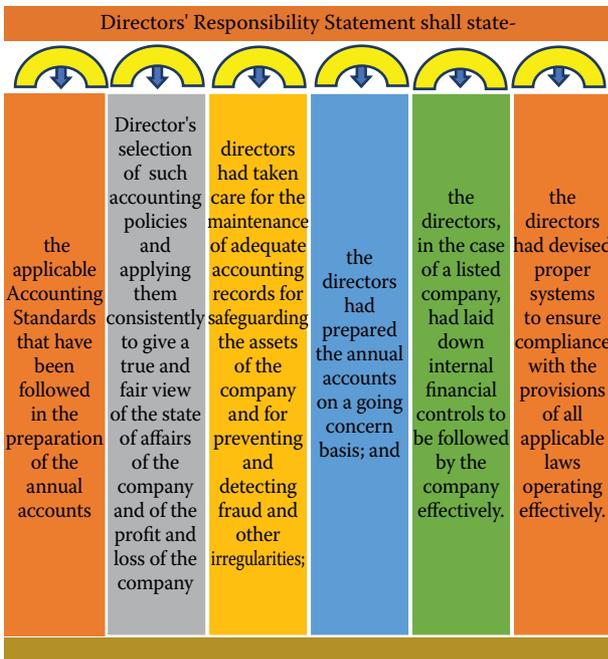
Significant points: Signed copy of every FS, shall be including consolidated financial statement, if any. It shall be issued, circulated or published along with a copy of any notes annexed to or forming part of such financial statement; the auditor's report; and the Board's report.

VI. CONTENTS OF BOARD REPORT



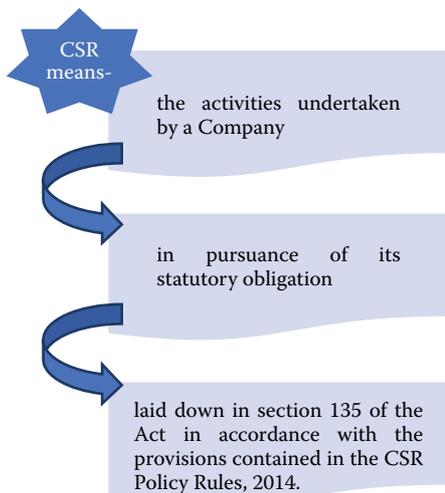
CORPORATE AND OTHER LAWS

Significant points: The Board's Report shall be prepared based on the stand alone financial statements of the company and shall report on the highlights of performance of subsidiaries, associates and joint venture companies and their contribution to the overall performance of the company during the period under report. The Board's report and any annexures under this section, shall be signed by its chairperson, if he is authorised by the Board. Where chairperson is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.



VII. CORPORATE SOCIAL RESPONSIBILITY (CSR)

(1) Meaning and activities which are specifically excluded:



CSR shall not include the following activities:-

(i) activities undertaken in pursuance of normal course of business of the company:

Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions that-

- (a) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act;
- (b) details of such activity shall be disclosed separately in the Annual report on CSR;

(ii) any activity undertaken by the company outside India except for training of Indian sports personnel

(iii) Contribution of any amount directly or indirectly to any political party;

(iv) activities benefitting employees of the company the Code on Wages, 2019

(v) activities supported by the companies on sponsorship basis;

(vi) activities carried out for fulfilment of any other statutory obligations under any law in India;

(2) Companies required to constitute CSR committee

Every company shall constitute a Corporate Social Responsibility Committee of the Board, having-

- net worth of Rs. 500 crore or more, or
- turnover of Rs. 1000 crore or more or
- a net profit of Rs. 5 crore or more
- during the immediately preceding financial year

↓
Comprising of -
↓

three or more directors, out of which at least one director shall be an independent director:

- Provided that where a company is not required to appoint an independent director under section 149 (4),- it shall have in its Corporate Social Responsibility Committee two or more directors.

(3) Duties of CSR Committee

formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII;

recommend the amount of expenditure to be incurred on the referred activities and

monitor the Corporate Social Responsibility Policy of the company from time to time.

(4) Amount of contribution towards CSR

The Board shall ensure that the company spends, in every financial year,

- at least 2% of the average net profits of the co. during the three immediately P.F.Ys

Where the company has not completed the period of 3 F.Ys, since its incorporation,

- at least 2% during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy

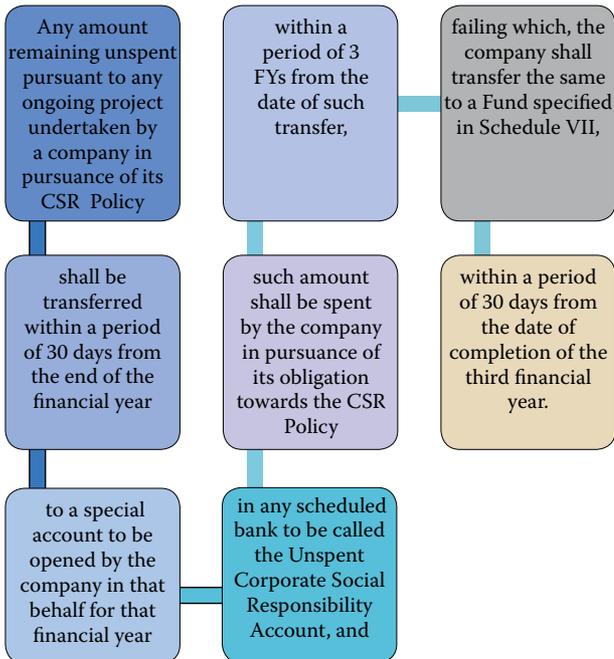
in its report shall specify the reasons for not spending the amount.

- and, where the unspent amount relates to any ongoing project, transfer such unspent amount to a Fund specified in Schedule VII,

Where the company spends an amount in excess of the requirements

- such company may set off such excess amount against the requirement to spend for such number of succeeding financial years and in such manner, as may be prescribed.

(5) Transfer of unspent CSR amount to special account

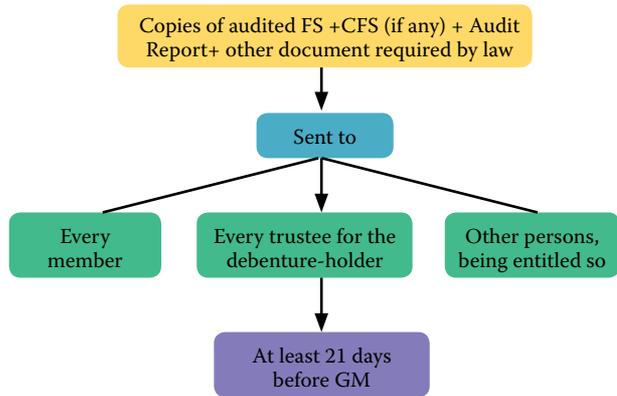


(6) When it is not necessary to constitute CSR Committee

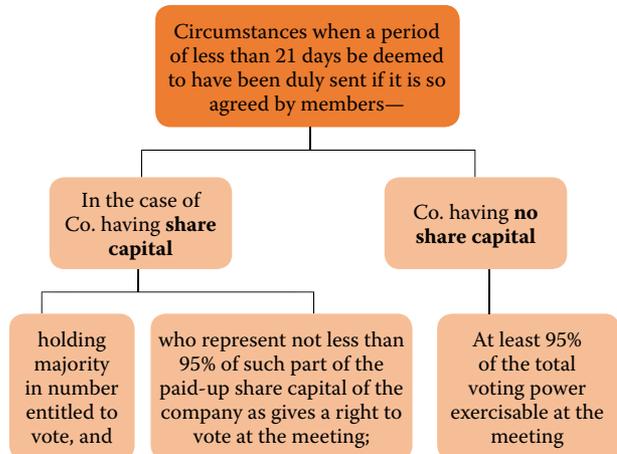


VIII. ENTITLEMENT OF MEMBERS TO RECEIVE FINANCIAL STATEMENT

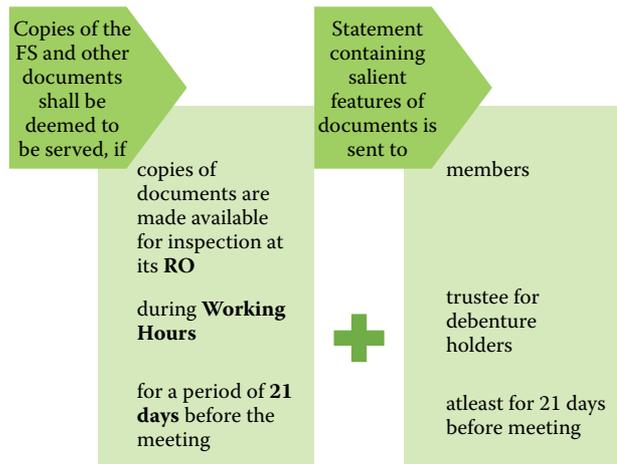
(1) Time period for serving of copies of audited financial statement



(2) Circumstances when a period can be less than prescribed period

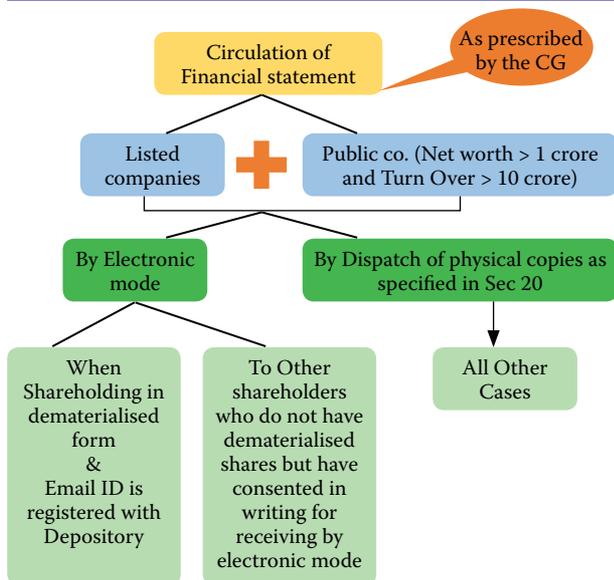


(3) In case of listed companies:



CORPORATE AND OTHER LAWS

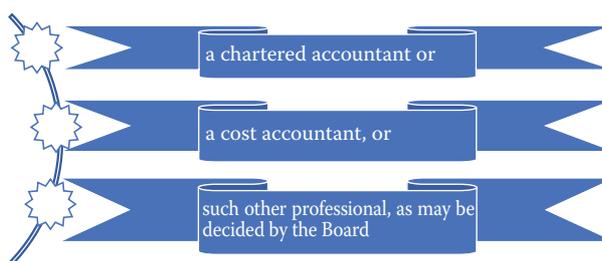
IX. MANNER OF CIRCULATION OF FINANCIAL STATEMENTS



• In the case of a subsidiary which has been incorporated outside India ("foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso (above point) shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.

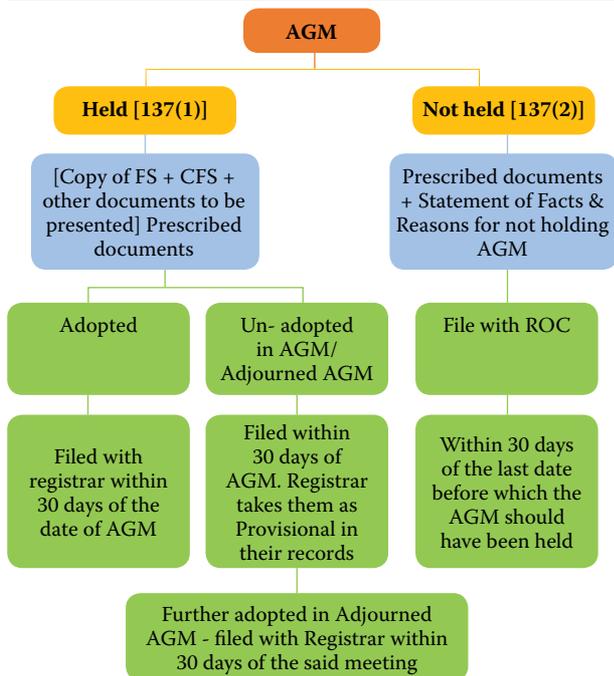
XI. INTERNAL AUDIT

(1) Who can be internal auditor?

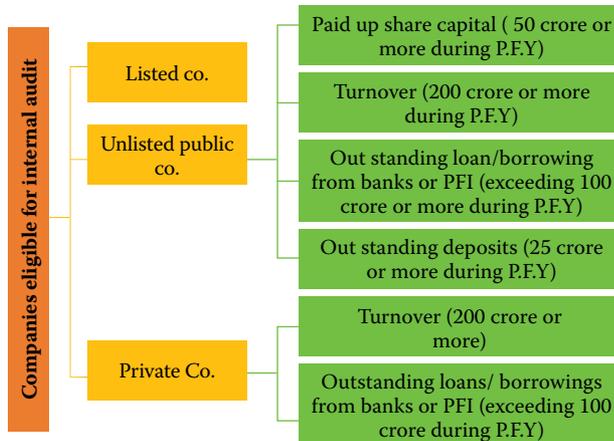


Significant point: Internal auditor may be either an individual or a partnership firm or a body corporate. Internal auditor may or may not be an employee of the company.

X. FINANCIAL STATEMENT TO BE FILED WITH REGISTRAR



(2) Companies required to conduct internal audit



- In case of a OPC, it shall file a copy of the financial statements duly adopted by its member, along with the required documents attached to such financial statements, within one **hundred eighty days from the closure of the financial year**.
- In case of companies having subsidiary/s: A company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary/s which have been incorporated outside India and which have not established their place of business in India.

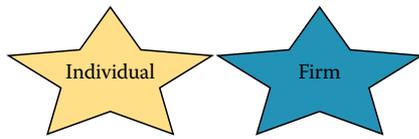
(3) Function of Internal Auditor

The Audit Committee of the company or the Board shall, in consultation with the Internal Auditor-

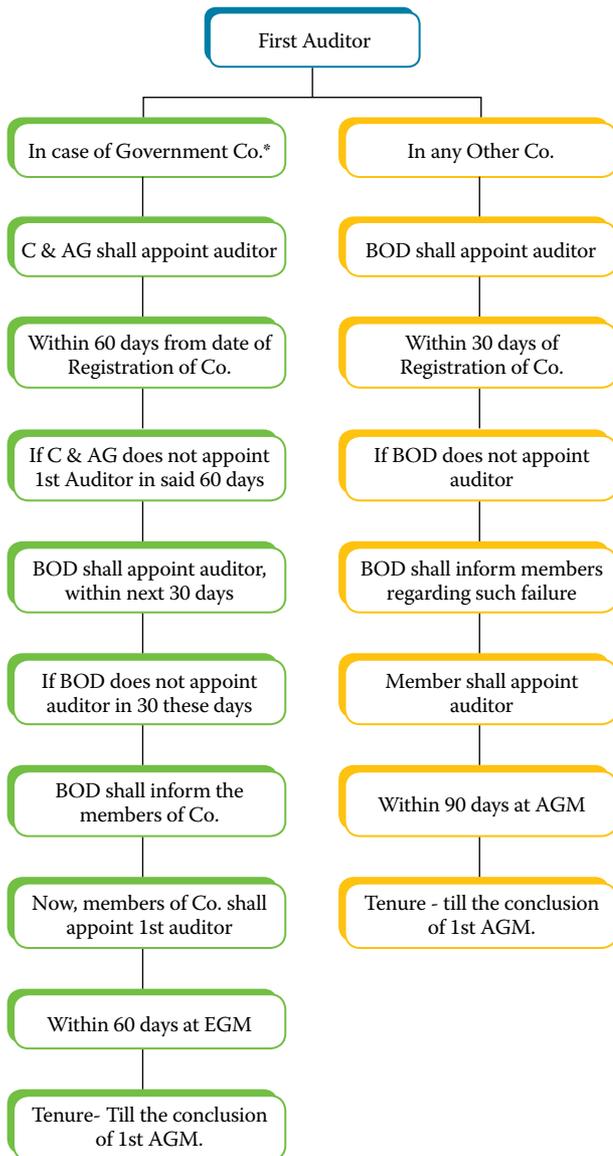
Formulate the scope, functioning, periodicity and methodology for conducting the internal audit.

CHAPTER 10 - AUDIT AND AUDITORS

I. WHO CAN BE APPOINTED AS AN AUDITOR?

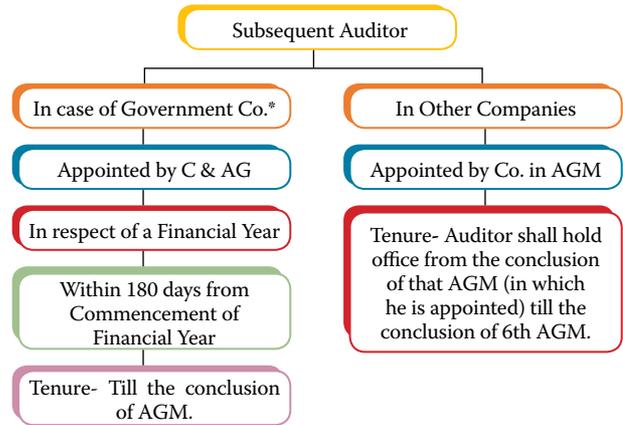


II. APPOINTMENT OF FIRST AUDITOR



*Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments.

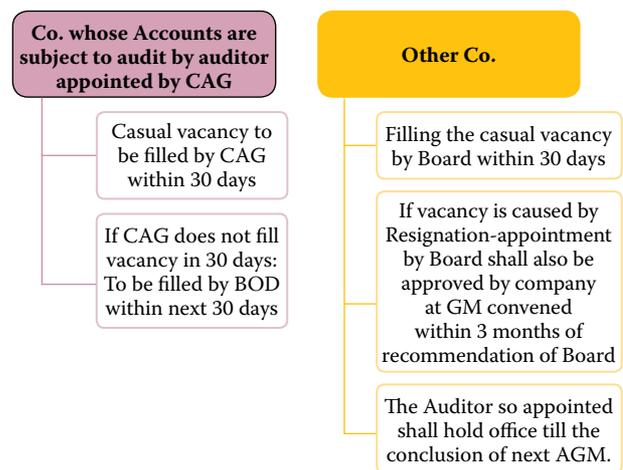
III. APPOINTMENT OF SUBSEQUENT AUDITOR



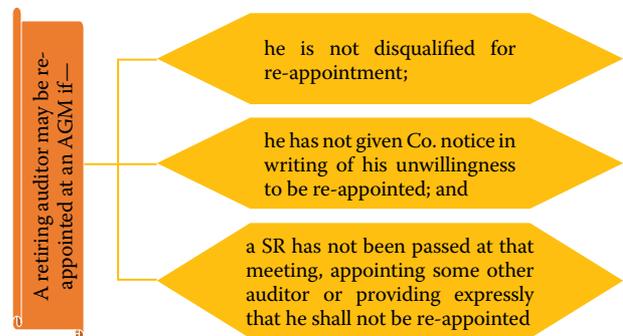
Here, 'appointment' includes re-appointment.

*Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments.

IV. CASUAL VACANCY OF AUDITOR



V. RE-APPOINTMENT OF RETIRING AUDITOR

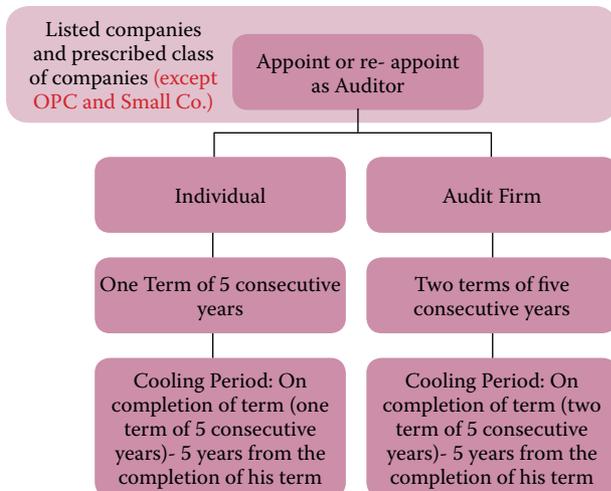


Where at any AGM, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company

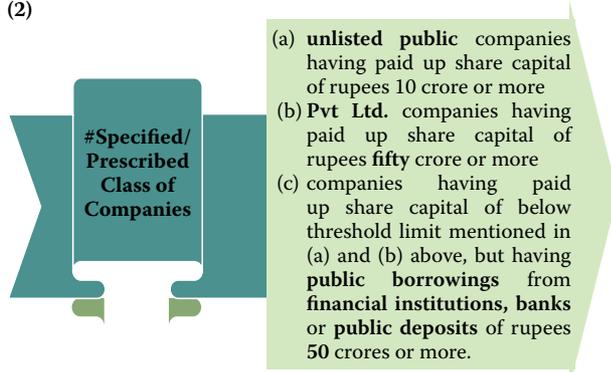
CORPORATE AND OTHER LAWS

VI. TERM OF AUDITOR

(1)



(2)



VII. DISQUALIFICATION OF AUDITORS [SECTION 141(3) ALONG WITH RULE 10]

- Body Corporate
 - Except LLP
- Officer or employee of Co.
- a person who is a partner, or who is in the employment, of an officer or employee of the company
- a person who, or his relative or partner—
 - is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. (Relative may hold security or interest in the company of face value not exceeding Rs. 1 lac)
 - is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of Rs. 5 lac; or
 - has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of Rs. 1 lac

a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company

- 'business relationship' shall be construed as any transaction entered into for a commercial purpose, except—
 - (A) commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 and the rules or the regulations made under those Acts;
 - (B) commercial transactions which are in the ordinary course of business of the company at arm's length price like sale of products or services to the auditor as customer by the companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses

a person whose relative is a director or is in the employment of the company as a director or key managerial personnel

a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 companies other than one person companies, small companies and private companies having paid-up share capital less than 100 crore rupees

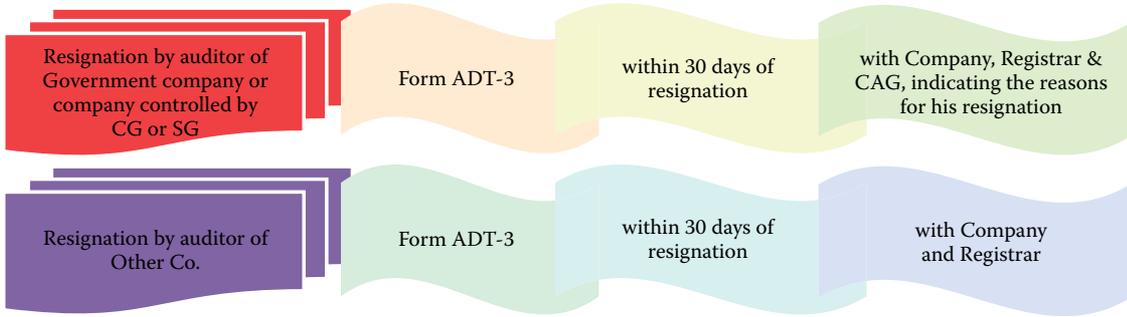
a person who has been convicted by a court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction

a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company

VIII. STEPS FOR REMOVAL OF AUDITOR

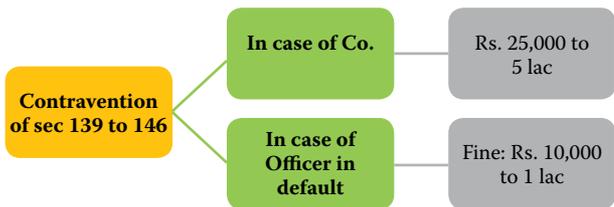
- A **Special Notice** is received for Removal of auditor
- A board meeting will be held
(To decide about removal and then authorising the filing of application to CG)
- Application to CG (To be made in ADT-2), within 30 days of Board meeting
- Approval of CG received
- After approval from CG, **Special Notice** to be sent for AGM
- Auditor shall be given a reasonable opportunity of being heard
- Auditor removal can be done only through **Special Resolution**
- Auditor will be removed

IX. RESIGNATION BY AUDITOR

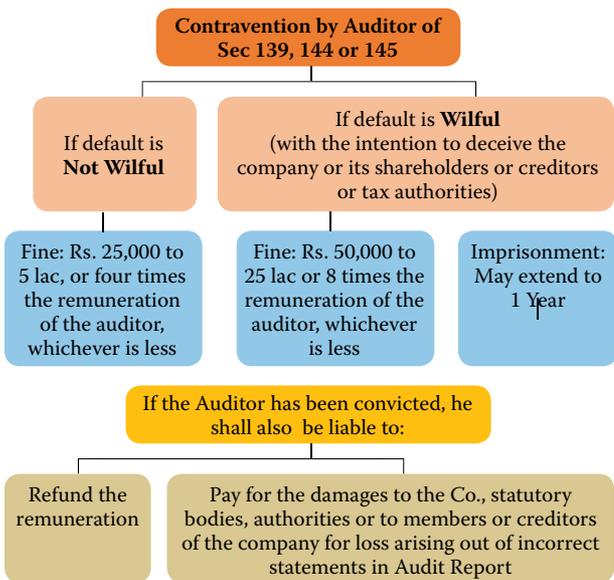


X. PUNISHMENT UNDER SECTION 147

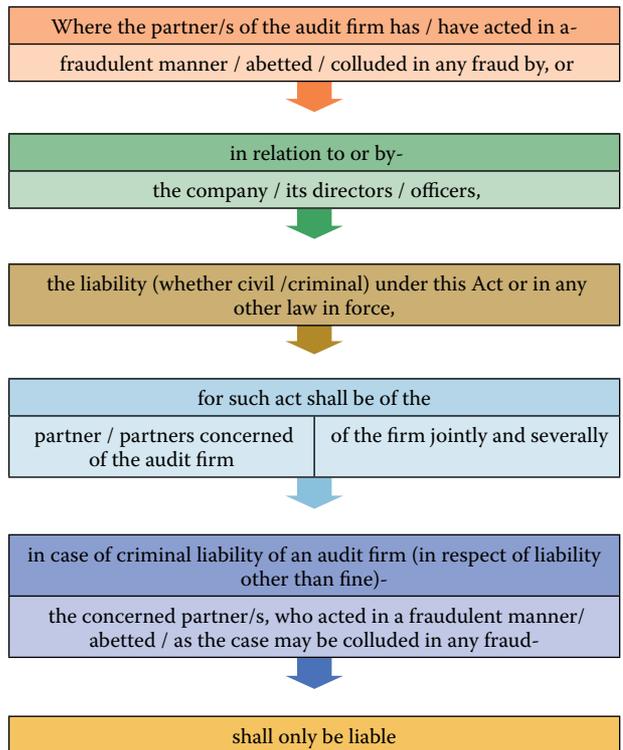
(1) In case of company and officer of company



(2) In case of auditor



(3) In case of audit of a co. conducted by an audit firm

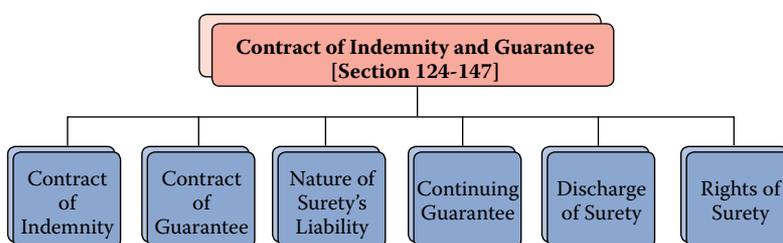


At Intermediate level, for the Other Laws portion of the subject “Corporate and Other Laws” involves that the students should understand the laws enshrined in this portion. They are required to apply the knowledge acquired to address application oriented issues.

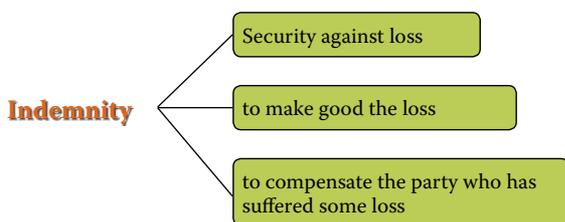
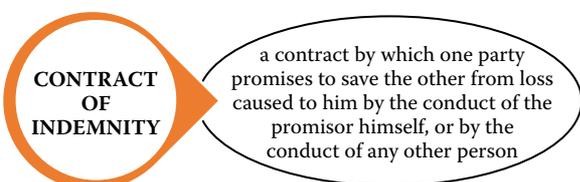
In this capsule for students, an attempt has been made to capture the significant provisions of the Indian Contract Act, 1872 (only specific contracts from section 123 onwards). You are advised to read the September 2021 edition of the Study Material for a thorough understanding of the relevant provisions of the Indian Contract Act, 1872 and solve the illustrations and exercise questions given therein to hone your application skills. This capsule on Intermediate Paper 2: Corporate and Other Laws is intended to assist you in the process of revision of concepts discussed in the specified portion of Study Material.

UNIT – 1: CONTRACT OF INDEMNITY AND GUARANTEE

Unit Overview

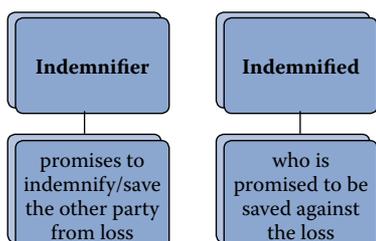


1. Meaning of Contract of Indemnity [Section 124]



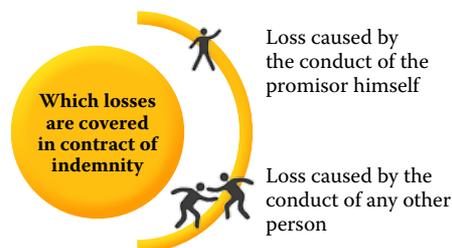
To indemnify means to compensate or make good the loss. Thus, under a contract of indemnity the “existence of loss” is essential. Unless the promisee has suffered a loss, he cannot hold the promisor liable on the contract of indemnity

2. Parties to Contract of Indemnity



Example: Vishal may contract to indemnify Vibha against the consequences of any proceedings which Karan may take against Vibha in respect of a sum of ₹ 5000/- advanced by Karan to Vibha. In consequence, when Vibha who is called upon to pay the sum of money to Karan fails to do so, Karan would be able to recover the amount from Vishal as provided in section 124 of the Indian Contract Act, 1872.

3. Scope of Contract of Indemnity



Loss occasioned by an accident not caused by any person, or an act of God/ natural event, is not covered.

4. Mode of Contract of Indemnity

A contract of indemnity is said to be express

- when a person expressly promises to compensate the other from loss.

A contract of indemnity is said to be implied

- when it is to be inferred from the conduct of the parties or from the circumstances of the case

5. Rights of Indemnity Holder when Sued [Section 125]

The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor/indemnifier—

all damages which he may be compelled to pay in any suit

all costs which he may have been compelled to pay in bringing/ defending the suit and

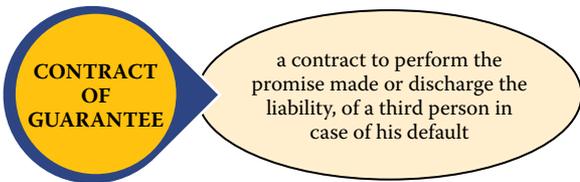
all sums which he may have paid under the terms of any compromise of suit.

Commencement of liability of an indemnifier- as soon as the liability of the indemnity holder becomes absolute and certain (as per various judicial pronouncements)

Example: Vishal may contract to indemnify Vibha against the consequences of any proceedings which Karan may take against Vibha in respect of a sum of ₹5000/- advanced by Karan to Vibha. In consequence, when Vibha who is called upon to pay the sum of money to Karan fails to do so, Karan would be able to recover the amount from Vishal as provided in section 124 of the Indian Contract Act, 1872.
Thus, as soon as Vibha is called upon to pay the sum of money to Karan (i.e the loss has become certain), the liability of Vishal arises.

6. Meaning of Contract of Guarantee [Section 126]

Contract of Guarantee



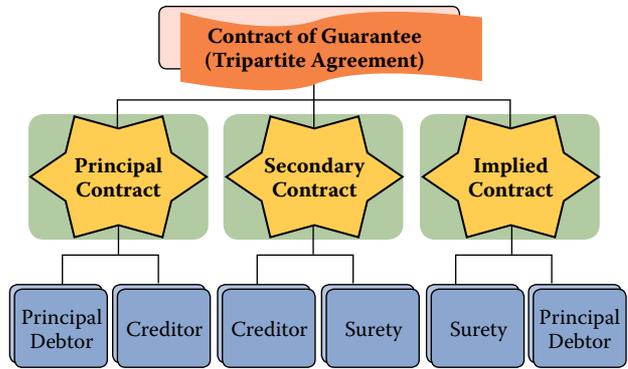
Parties to Contract of Guarantee

Three parties are involved in a contract of guarantee

Surety- person who gives the guarantee

Principal debtor- person in respect of whose default the guarantee is given

Creditor- person to whom the guarantee is given



7. Essential Features of a Guarantee

Principal Debt

- there should be someone liable as a principal debtor and the surety undertakes to be liable on his default. If there is no principal debt, there can be no valid guarantee

Consideration

- A guarantee without consideration is void, but there is no need for a direct consideration between the surety and the creditor
 - consideration received by the principal debtor is sufficient consideration to the surety for giving the guarantee
 - past consideration is no consideration for the contract of guarantee
 - even if the principal debtor is incompetent to contract, the guarantee is valid. But, if surety is incompetent to contract, the guarantee is void

Existence of a liability

- There must be an existing liability or a promise whose performance is guaranteed. The liability must be legally enforceable and not time barred

No misrepresentation or concealment [Section 142 and 143]

- Any guarantee which has been obtained by the means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid (section 142)
- Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances, is invalid (section 143)

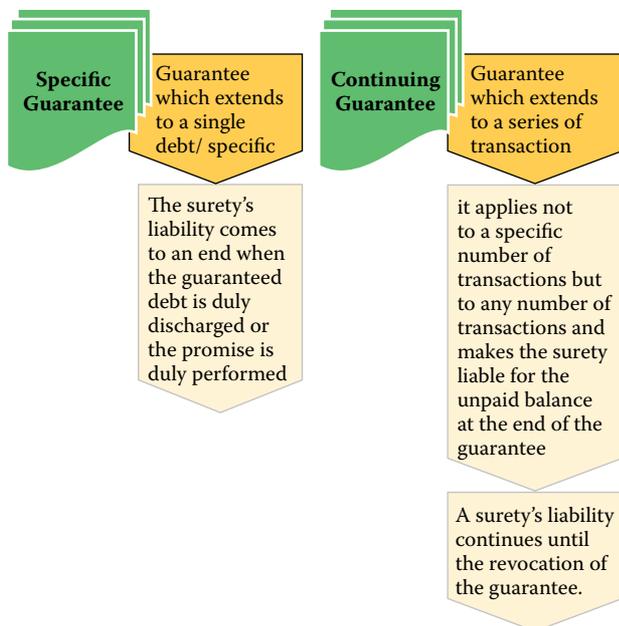
Writing not necessary [Section 126]

- a guarantee may be either oral or written

Joining of the other co-sureties [Section 144]

- Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join

8. Types of Guarantees

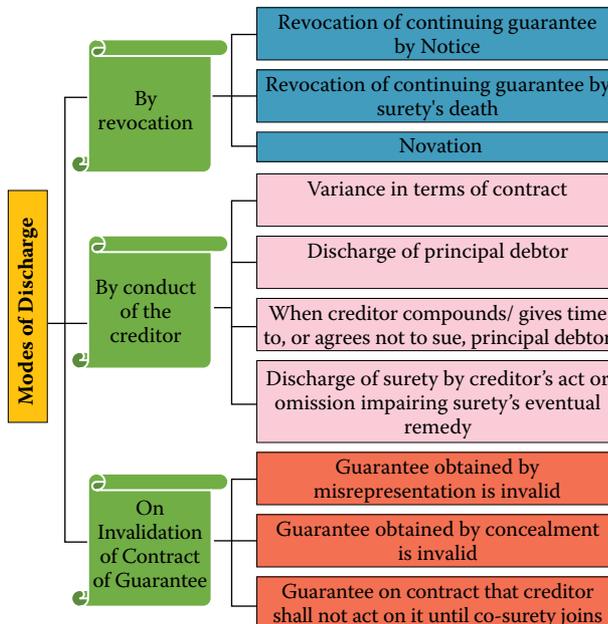


9. Distinction between a Contract of Indemnity and Contract of Guarantee

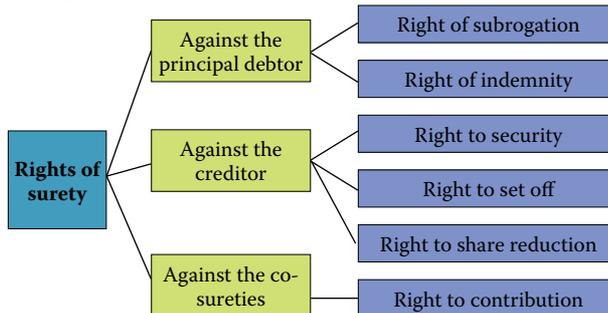
S. No	Point of distinction	Contract of Indemnity	Contract of Guarantee
1.	Number of parties to the contract	There are only two parties- indemnifier [promisor] and indemnified [promisee]	There are three parties- creditor, principal debtor and surety.
2.	Nature of liability	The liability of the indemnifier is primary and unconditional	The liability of the surety is secondary and conditional as the primary liability is that of the principal debtor.
3.	Time of liability	The liability of the indemnifier arises only on the happening of a contingency.	The liability arises only on the non-performance of an existing promise or non-payment of an existing debt.
4.	Time to Act	The indemnifier need not act at the request of indemnity holder.	The surety acts at the request of principal debtor.
5.	Right to sue third party	Indemnifier cannot sue a third party for loss in his own name as there is no privity of contract. Such a right would arise only if there is an assignment in his favour.	Surety can proceed against principal debtor in his own right because he gets all the right of a creditor after discharging the debts.
6.	Purpose	Reimbursement of loss	For the security of the creditor

S. No	Point of distinction	Contract of Indemnity	Contract of Guarantee
7.	Competency to contract	All parties must be competent to contract	In the case of a contract of guarantee, where a minor is a principal debtor, the contract is still valid.

10. Discharge of Surety



11. Rights of Surety

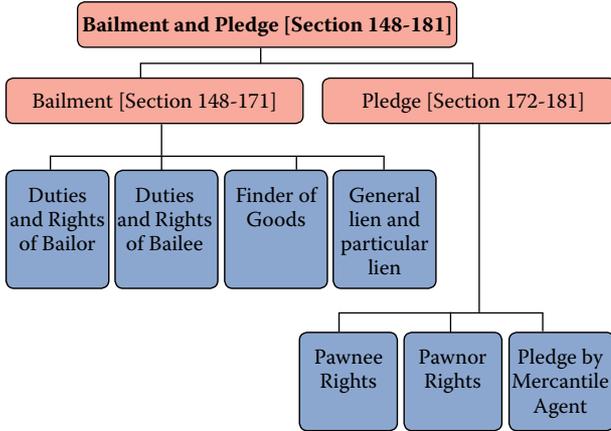


Example 1: Asha and Vidushi are very good friends. During the pandemic time, Vidushi started facing financial difficulties. Both Asha and Vidushi used to buy groceries from Alpha stores. Asha promises to pay Alpha stores for all groceries bought by Vidushi for a period of 12 months if Vidushi fails to pay. In the next three months, Vidushi buys ₹2000/- worth of groceries. After 3 months, Asha revokes the guarantee by giving a notice to Alpha stores. Vidushi further purchases ₹1000 of groceries. Vidushi fails to pay. Asha is not liable for ₹1000/- of purchase that was made after the notice but she is liable for ₹2000/- of purchase made before the notice.

2: Ayush, Bikram and Chandra, as sureties for Devinder, enter into three several bonds, each in a different penalty, namely, Ayush in the penalty of ₹1,00,000, Bikram in that of ₹2,00,000, Chandra in that of ₹4,00,000, conditioned for Devinder's duly accounting to Vishal. Devinder makes default to the extent of ₹3,00,000. Ayush, Bikram and Chandra are each liable to pay ₹1,00,000.

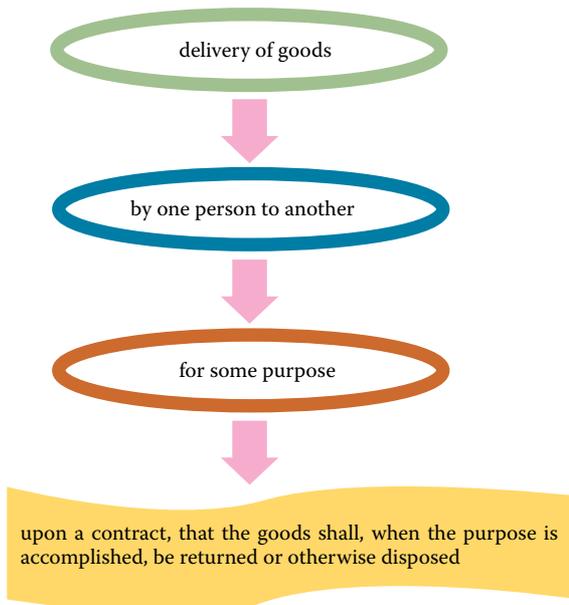
UNIT 2: BAILMENT AND PLEDGE

Unit Overview

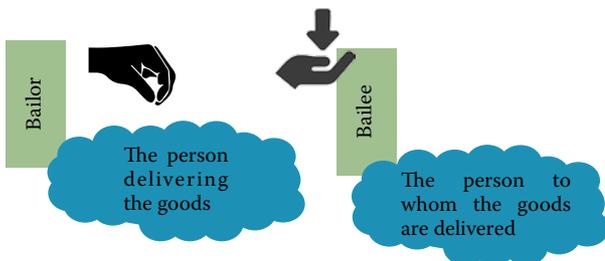


1. Meaning of Bailment [Section 148]

Bailment



Parties to Bailment



Example: Mr. Pankaj delivers his car to Mr. Yash's garage for repair. Here, Mr. Pankaj is the bailor and Mr. Yash is the bailee.

2. Essential Elements of Bailment

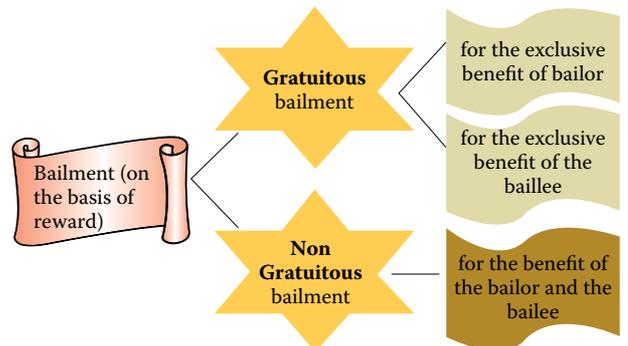
- Contract**
 - ♦ express or implied
 - ♦ no consideration is necessary to create a valid contract of bailment
- Delivery of goods**
 - ♦ delivery of goods from one person to another
 - ♦ may be Actual Delivery or Constructive Delivery
- Purpose**
 - ♦ goods are delivered for some purpose
 - ♦ purpose may be express or implied
- Possession**
 - ♦ possession of goods changes
 - ♦ change of possession does not lead to change of ownership
- Return of goods**
 - ♦ Bailee is obliged to return the goods

Deposit of money in a bank is **not bailment** since the money returned by the bank would not be identical currency notes.

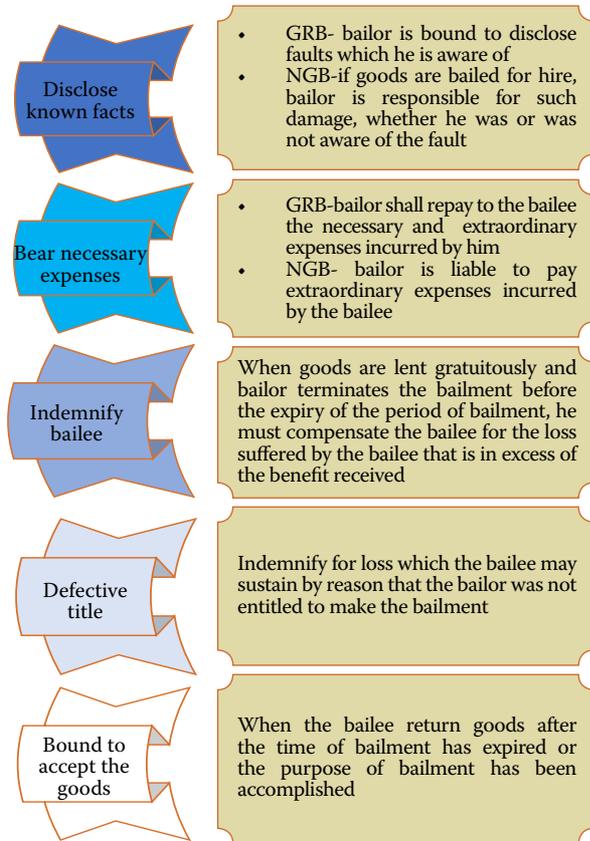
Depositing ornaments in a bank locker is **not bailment**, because ornaments are kept in a locker whose key are still with the owner and not with the bank.

3. Examples of types of Bailment

- Delivery of goods by one person to another to be held for the bailor's use
- Goods given to a friend for his own use without any charge
- Hiring of goods
- Delivering goods to a creditor to serve as security for a loan
- Delivering goods for repair with or without remuneration
- Delivering goods for carriage



4. Duties of Bailor

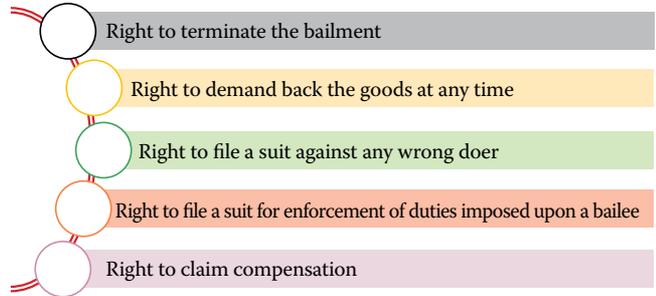


Here, GRB stands for Gratuitous bailment and NGB stands for Non gratuitous bailment

5. Duties of Bailee

<p>Take reasonable care of the goods [Section 151 & 152]</p> <ul style="list-style-type: none"> As a man of ordinary prudence would
<p>No unauthorized use of goods [Section 153 & 154]</p> <ul style="list-style-type: none"> If bailee use the goods bailed, which is not according with terms and conditions of the bailment, (i) he is liable to compensate the bailor for any loss of goods, (ii) the contract of bailment is voidable at the option of the bailor
<p>No mixing of bailor's goods with his own [Section 155, 156 & 157]</p> <ul style="list-style-type: none"> Mixing with consent - both parties shall have an interest in proportion to their respective shares in the mixture thus produced Mixing without consent- if goods can be separated, the property in the goods remain in the parties respectively; but the bailee is bound to bear the expense of separation and any damage arising from the mixture Mixing without consent- if goods cant be separated, bailor is entitled to be compensated by the bailee for loss of the goods
<p>To return any extra profit accruing from goods bailed [Section 163]</p> <ul style="list-style-type: none"> Bailee has to deliver to the bailor any increase or profit which may have accrued from the goods bailed
<p>No adverse title</p> <ul style="list-style-type: none"> Bailee must hold the goods on behalf of and for the bailor. He cannot deny the title of the bailor

6. Rights of Bailor



7. Rights of Bailee

Right to deliver the goods to any one of the joint bailors

If several joint owners bailed the goods, the bailee can deliver goods to any one of the joint owners

Right to indemnity

Bailee is entitled to be indemnified by the bailor for any loss arising to him by reasons that the bailor was not entitled to make the bailment

Right to indemnity

Bailee is entitled to receive compensation for loss caused to him due to the failure of the bailor to disclose any faults in the goods known to him. If the bailment is for hire, the bailor will be liable to compensate even though he was not aware of the existence of such faults

Right to claim necessary expenses

In case of gratuitous bailment, the bailor shall repay to the bailee the necessary expenses incurred by him and any extraordinary expenses incurred by him for the purpose of the bailment.

Right to apply to court to decide the title to the goods

If the goods bailed are claimed by the person other than the bailor, the bailee may apply to the court to stop its delivery and to decide the title to the goods

Right of particular lien for payment of services

In case bailee has rendered service involving the exercise of labour or skill, he has a right to retain such goods until he receives due remuneration for the services

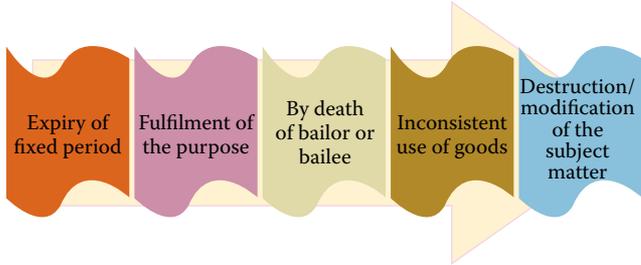
Right of general lien

Bankers, factors, wharfingers, attorneys of a High Court and policy brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account any goods bailed to them. No other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to the effect

Example 1: Mrs. Smita has inherited a huge diamond from her grandmother. She delivers the rough diamond to Panna Laal Jewellers to be cut and polished, which is accordingly done. The jewellers are entitled to retain the stone till it is paid for the services they have rendered.

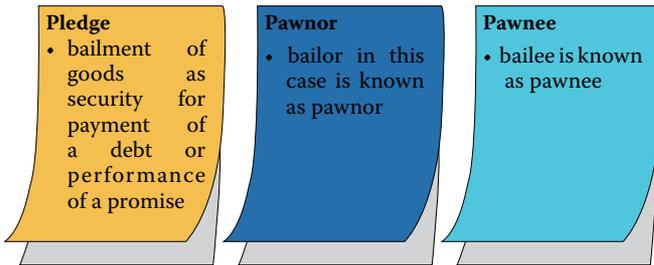
2: Smita borrows ₹ 50,000/- from the bank without security and subsequently again borrows another ₹ 10,000/- but with security of say certain jewellery. In this illustration, even where Smita has returned ₹10,000/- being the second loan, the banker can retain the jewellery given as security to the second loan towards the first loan which is yet to be repaid.

8. Termination of bailment



9. Meaning of Pledge

Pledge



Essentials of contract of Pledge



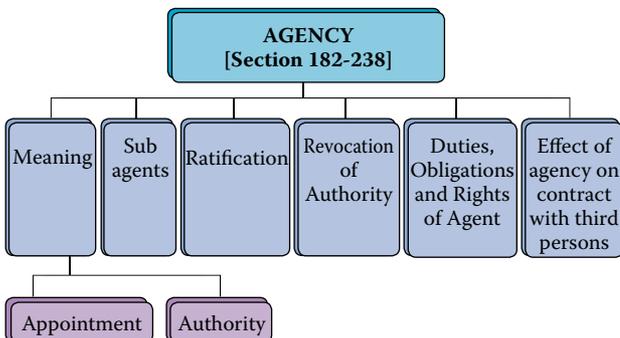
- There shall be a bailment for security against payment or performance of the promise
- The subject matter of pledge is goods
- Goods pledged for shall be in existence
- There shall be the delivery of goods from pledger to pledgee

10. Distinction between Bailment and Pledge

S.No	Basis of Distinction	Bailment	Pledge
1.	Meaning	Transfer of goods by one person to another for some specific purpose is known as bailment.	Transfer of goods from one person to another as security for repayment of debt is known as the pledge.
2.	Terms Applicable	The person delivering the goods under a contract of bailment is called as "Bailor". The person to whom the goods are delivered under a contract of bailment is called as "Bailee".	The person who delivers the good as security is called the "Pawnor". The person to whom the goods are delivered as security is called the "pawnee".
3.	Purpose	Bailment may be made for any purpose (as specified in the contract of bailment, eg: for safe custody, for repairs, for processing of goods).	Pledge is made for the purpose of delivering the goods as security for payment of a debt, or performance of a promise
4.	Consideration	The bailment may be made for consideration or without consideration.	Pledge is always made for a consideration.
5.	Right to sell the goods	The bailee has no right to sell the goods even if the charges of bailment are not paid to him. The bailee's rights are limited to suing the bailor for his dues or to exercise lien on the goods bailed.	The pawnee has right to sell the goods if the pawnor fails to redeem the goods.
6.	Right to use of goods	Bailee can use the goods only for a purpose specified in the contract of bailment and not otherwise.	Pledgee or Pawnee cannot use the goods pledged.

UNIT-3: AGENCY

Unit Overview



1. Meaning

Agency

Rule of Agency

He who acts through another does the act himself



Relevant Terms



Agency :
Not defined in the Act. Its used to describe the relationship between one person and another. The first mentioned person brings the second mentioned person into legal relation with others



Agent :
A person employed to do any act for another or to represent another in dealing with the third persons [Section 182]



Principal:
A person for whom such act is done or who is so represented [Section 182]

Test of Agency

There is a relationship of agency, if the answer is in affirmative (Yes)

Where he can establish privity of contract between the principal and third parties.

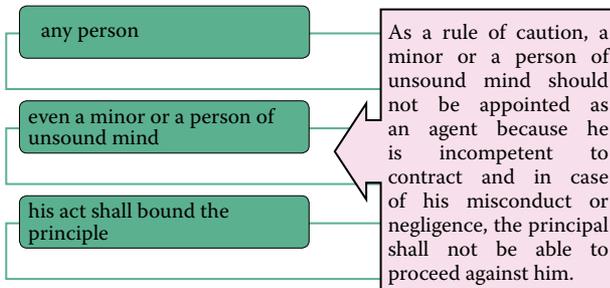
Where the person has the capacity to bind the principal and make him answerable to the third party

2. Who may employ an agent [Section 183]

Person qualified to appoint agent must be

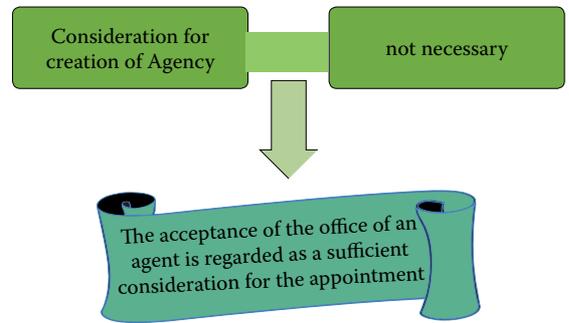
- major
- sound mind

3. Who may be an agent [Section 184]

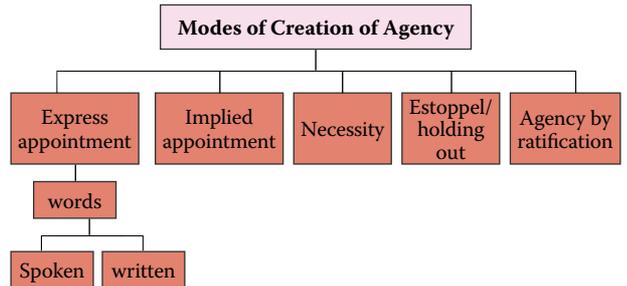


Example: Ajay appoints Bijay who is a minor, to sell his bike for not less than ₹60,000. However, Bijay sells it for ₹40,000. Ajay will be held bound by the transaction and further shall have no right against Bijay for claiming the compensation for having not obeyed the instructions, since Bijay is a minor and a contract with a minor is 'void-ab-initio'.

4. Requirement of Consideration [Section 185]



5. Creation of Agency

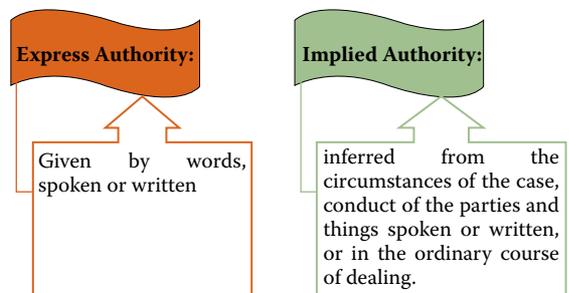


6. The authority may be express or implied [Section 186]

Authority of an agent may be-

- express or
- implied

Definitions of express and implied authority [Section 187]

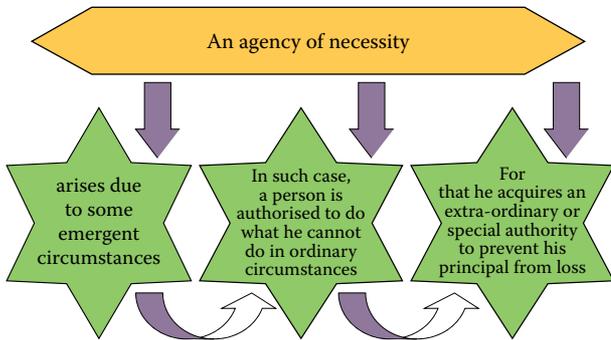


Example 1: A is residing in Delhi and he has a house in Kolkata. A authorizes B under a power of attorney, as caretaker of his house. Agency is created by express agreement.

2: If a person realizes rent and gives it to the landlord, he impliedly acts for the landlord as an agent.

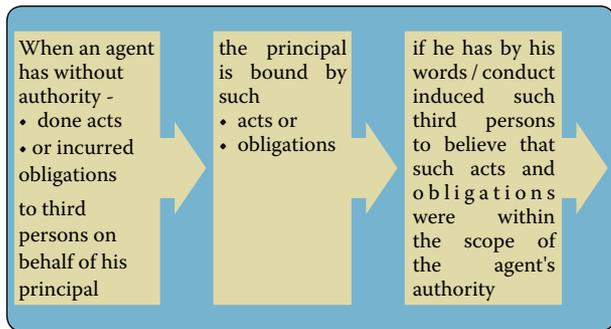
3: Mr. A owns a shop in Laxmi Nagar, East Delhi, living himself in Gurugram and so visiting the shop occasionally. The shop is managed by F, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. F has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

7. Necessity



Example: Rajkumar has a farm in which Sevagram is the security guard. During visit of Rajkumar to USA, huge fire was caught in the farm. Sevagram becomes an agent of necessity for Rajkumar so as to save the property from being destroyed by fire. Rajkumar (the principal) will be bear up all the expenses, which Sevagram (his agent of necessity) incurred to put out the fire and save the farm from destruction during Rajkumar's absence from the country.

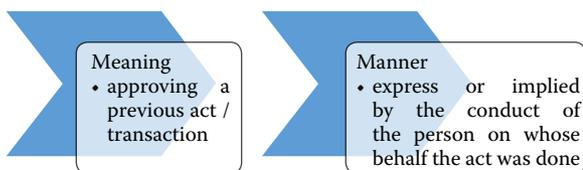
8. Agency by Estoppel [Section 237]



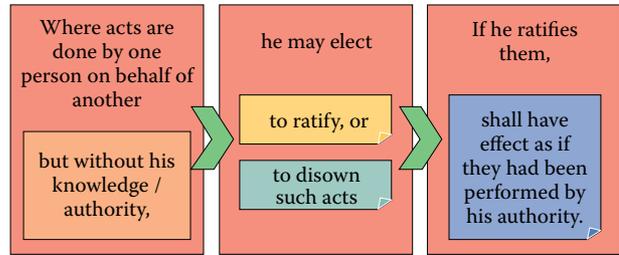
Example: Mr. P (the principal) for several months made Sukhdev, to buy goods on credit from a nearest provision store on his behalf and has paid for the goods bought by Sukhdev. Here P cannot later refuse to pay for the goods purchased from the provision store, who had supplied goods on credit to Sukhdev in the belief that he was P's agent and was buying the goods on behalf of P. In the given case, P is estopped from now asserting that Sukhdev is not his agent because on earlier occasions he permitted provision dealer to believe that Sukhdev was his agent and so he had acted in that belief.

9. Agency by Ratification [Section 196]

Meaning of ratification and manner

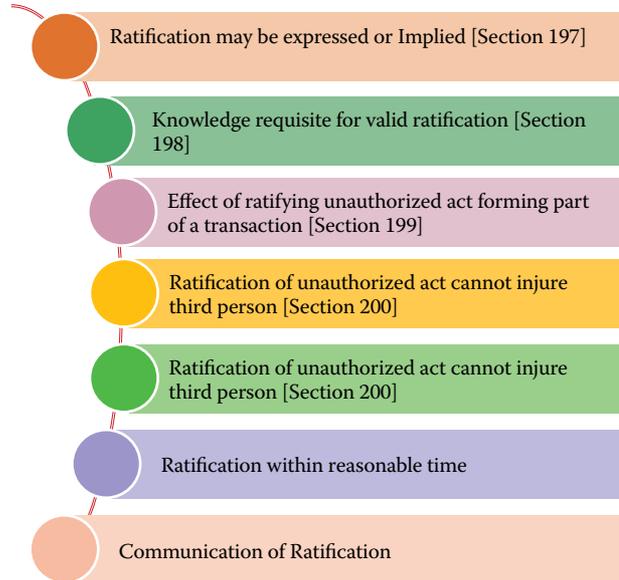


Agency by ratification



Example: X is Y's agent. He (X) on 10th January 2021 purchased goods from Z on credit without seeking Y's permission. After that, on 20th January 2021, Y tells X that he (Y) will accept responsibility to pay for the purchases although at the time of purchase X had no authority to buy on credit. Y's subsequent statement on 20th January 2021 amounts to a ratification of the agent's (X's) purchase of goods on 10th January 2021.

Essentials of Ratification

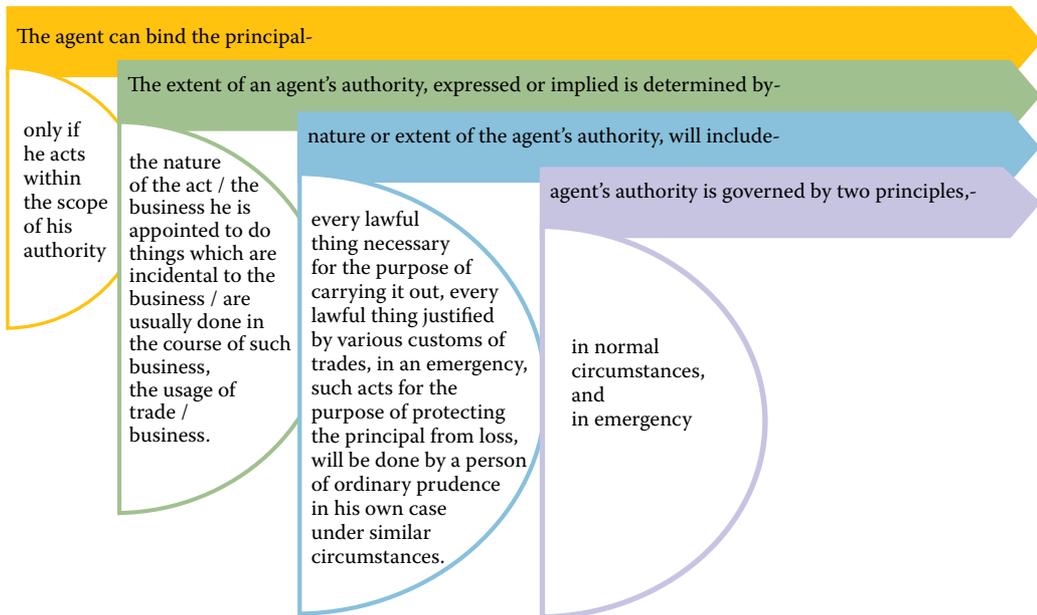


Example: 1. Abhi, without B's authority, lends B's money to Mr. C. Afterwards B accepts interests on the money from C. B's conduct implies a ratification of the loan.

2. Abhi has an authority from Mr. Puri to buy certain goods at the market rate. He buys at a higher rate but Mr. Puri accepts the such transaction. Afterwards, Mr. Puri comes to know that the goods purchased by Abhi for him belonged to Abhi himself. The ratification is not binding on Mr. Puri. If, however the alleged principal (Mr. Puri) is prepared to take the risk of what the purported agent, Abhi has done, he can choose to ratify without full knowledge of facts.

3. Abhi, not being authorized thereto by B, demands on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

10. Extent of agent's authority [Section 188-189]



* An agent who has authority for sale of goods, may repair it if necessary.

Example: 1. A is employed by B, residing in UK, to recover at Mumbai a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt and may give a valid discharge for the same.

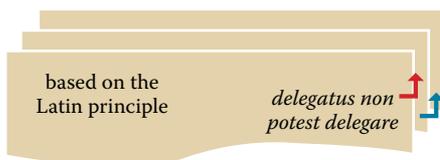
2. A consigns perishable goods to B at Srinagar, with directions to send them immediately to C, at Tamil Nadu. B may sell the good if they begin to perish before reaching its destination.

11. Provisions related to Sub- Agent [Section 190-193]

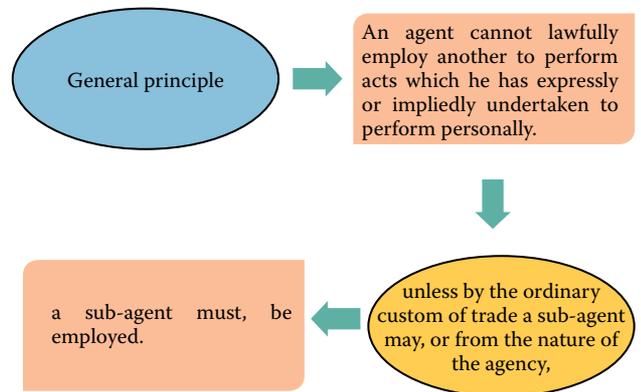
Sub-agent [Section 191]



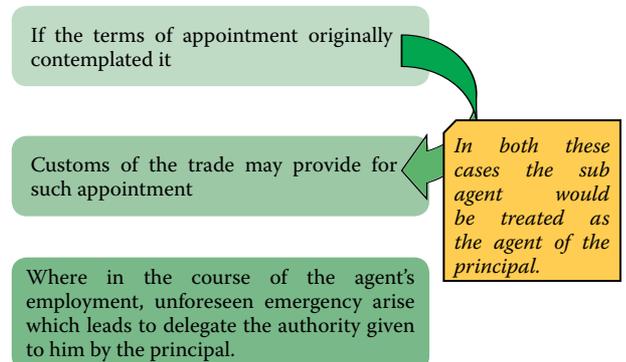
Appointment of Sub-agent



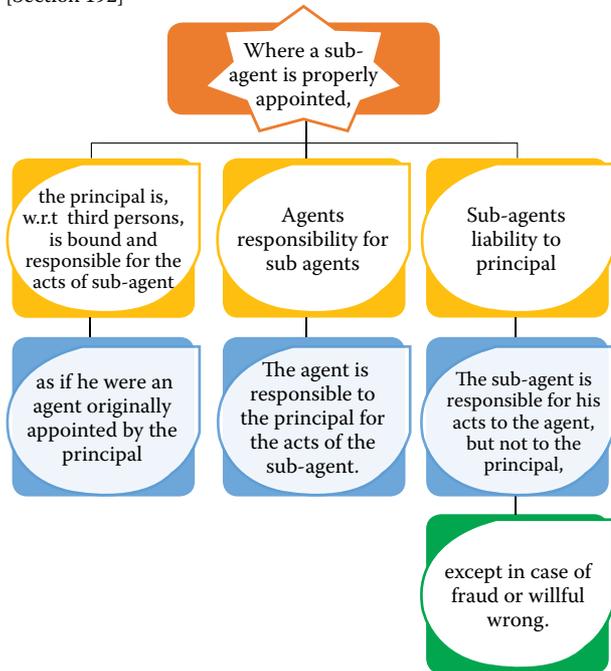
Appointment



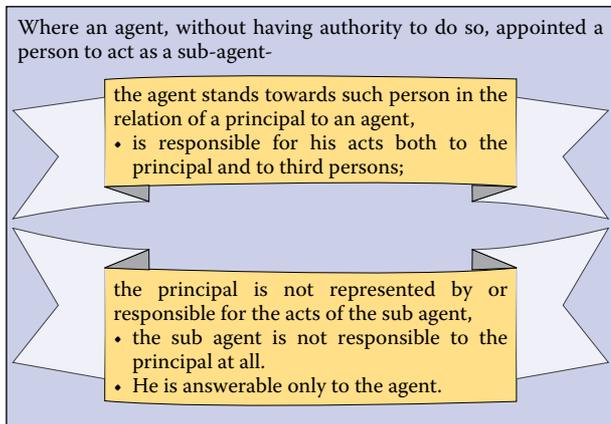
Exception where an agent can appoint sub-agent



Representation of principal by sub-agent properly appointed
[Section 192]



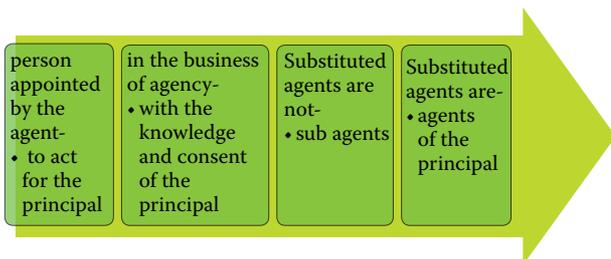
Agent's responsibility for sub-agent appointed without authority
[Section 193]



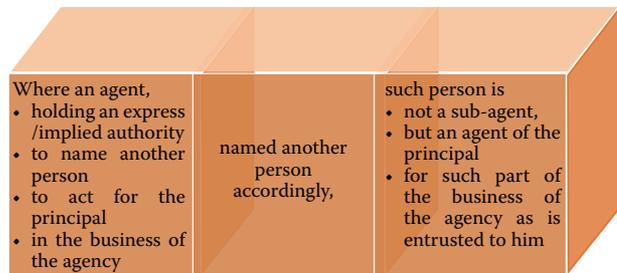
Example: Mr. A, a carrier, agreed to carry 60 bags of cotton waste from Morvi to Bhavnagar by a truck. Mr. A asked Mr. B, another carrier, to carry the goods. The goods were damaged in transit. Held, Mr. A was liable even though it was proved that Mr. B was the carrier.

12. Provision related to Substituted Agents [Section 194-195]

Substituted Agent

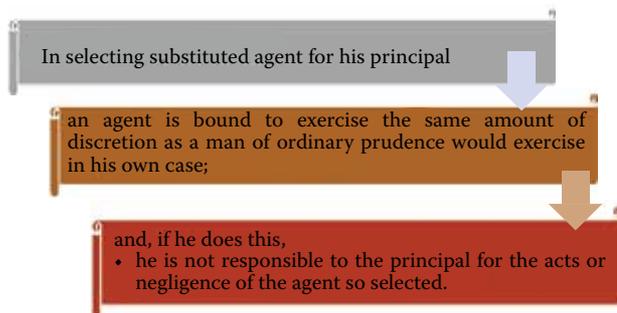


Relation between principal and person duly appointed by agent to act in business of agency



Example: Amir directs Badrinath, his lawyer, to sell his estate by auction, and to employ an auctioneer for the purpose. Badrinath names Chaman, an auctioneer, to conduct the sale. Chaman is not a sub-agent, but is A's agent for the conduct of the sale.

Agent's duty in naming such person



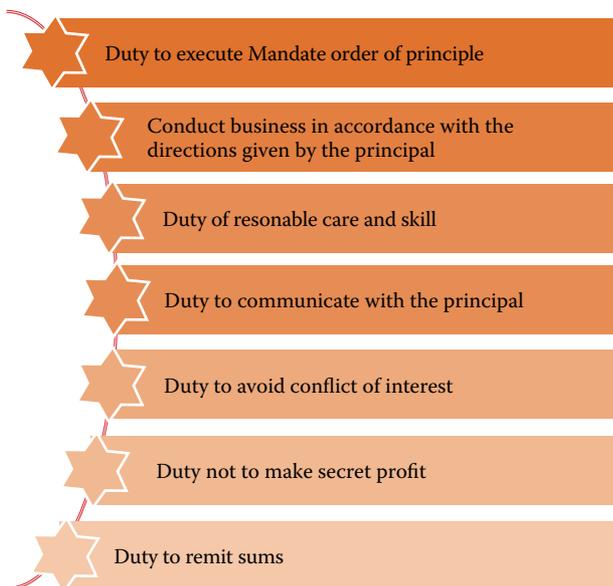
Example: Ansh instructs Bijay, a merchant, to buy a ship for him. Bijay hires a ship surveyor of good reputation to choose a ship for Ansh. The surveyor makes the choice casually and the ship turns out to be unseaworthy and is lost. Bijay is not, but the surveyor is, responsible to Ansh.

13. Difference between a sub-agent and a substituted agent

S. No	Point of distinction	Sub Agent	Substituted Agent
1.	On the basis of assigned work	does his work under the control and directions of agent.	works under the instructions of the principal.
2.	Delegation of duties	The agent not only appoints a sub-agent but also delegates to him a part of his own duties.	The agent does not delegate any part of his task to a substituted agent.
3.	Relation with the principal	No privity of contract between the principal and the sub-agent.	Privity of contract is established between a principal and a substituted agent.
4.	Liability towards agents	The sub-agent is responsible to the agent alone and is not generally responsible to the principal.	A substituted agent is responsible to the principal and not to the original agent who appointed him

S. No	Point of distinction	Sub Agent	Substituted Agent
5.	Liability towards principle	The agent is responsible to the principal for the acts of the sub-agent.	The agent is not responsible to the principal for the acts of the substituted agent.
6.	Right of action for receiving remuneration	The sub-agent has no right of action against the principal for remuneration due to him.	The substituted agent can sue the principal for remuneration due to him.
7.	Improper appointment	Sub-agents may be improperly appointed.	Substituted agents can never be improperly appointed.
8.	Liability of agent on their appointments	The agent remains liable for the acts of the sub-agent as long as the sub-agency continues.	The agent's duty ends once he has named the substituted agent.

14. Duties and Obligations of an Agent



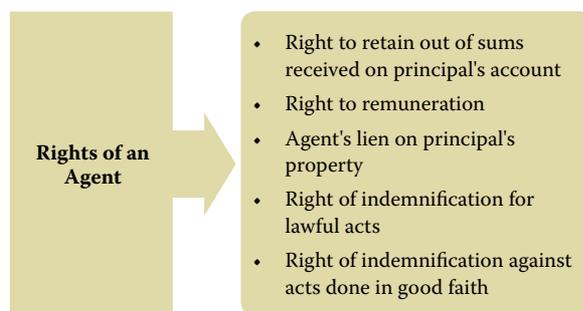
Example: 1. Ajeet, an agent is engaged for managing the business of B, in which it is a custom to invest money at hand for interest. If Ajeet omits to make such investment he must indemnify B for the losses i.e. for the interest B would have obtained for such investment.

2. Ajeet, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making proper and usual enquiries as to the solvency of B. B, at the time of such sale is insolvent. Ajeet must compensate his principal for the loss sustained by him.

3. Ajeet directs B to sell his estate. B buys the estate for himself in the name of C. Ajeet, on discovering that B has bought the estate for himself, may repudiate the sale if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

4. Ajeet directs B, his agent, to buy a certain house for him. B tells Ajeet it cannot be bought, and buys the house for himself. Ajeet may, on discovering that B has bought the house, compel him to sell it to Ajeet at the price he gave for it.

15. Rights of an Agent



Example: 1. Ashu employs B to recover ₹ 1,00,000 from C. Because of B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

2. Ashu residing in Delhi, appoints 'B' from Mumbai as an agent to sell his merchandise. As a result 'B' contracts to deliver the merchandise to various parties. But Ashu fails to send the merchandise to B and B faces litigations for non-performance. Here, Ashu is bound to protect B against the litigations and all costs, expenses arising of that.

3. Where P appoints Ashu as his agent and directs him to sell certain goods which in fact turned out to be not those belonging to P and if third parties sue Ashu for this act, Ashu is entitled for reimbursement and indemnification for such act done in good faith.

4. Ashu employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. Ashu is not liable to indemnify B for those damages.

5. Ashu employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskillfully put up, and B is in consequence hurt. Ashu must compensate B.

16. Principal's Liability to Third Parties [Section 226-229]

As there is no privity of contract and passing of consideration between the agent and third party

therefore,

General rule

liability remains that of the principal and not of agents

An agent also cannot personally enforce contracts entered into by him on behalf of the principal

Conditions when principal is liable for the acts of the agents

- Principal liable for the acts of agents which are within the scope of his authority.
- When an agent does more than he is authorised to do, so much only of what he does as is within his authority is binding as between him and his principal.
- Principal not bound when excess of agent's authority is not separable
- Any notice given / information obtained by the agent, provided it be given or obtained in the course of the business for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.
- Misrepresentations or frauds committed, by agents acting in the course of their business for their principals, have the same effect as if such misrepresentations or frauds had been made, or committed, by the principals.

Example: 1. Anu, being B's agent with authority to receive money on his behalf, receives from C, a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

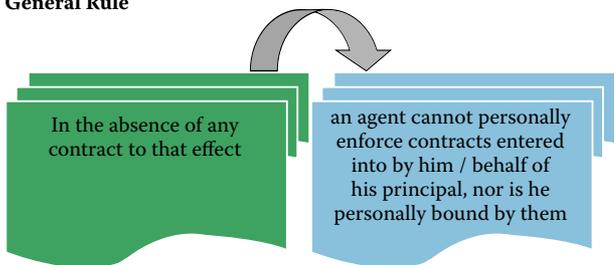
2. Anu, being owner of a ship and cargo, authorizes B to procure an insurance for ₹4,00,000 on the ship. B procures a policy for ₹4,00,000 on the ship, and another for the like sum on the cargo. Anu is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

3. Anu is employed by B to buy from C certain goods of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, Anu learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set off a debt owing to him from C against the price of the goods. Thus, the knowledge of the agent is treated as the knowledge of the principal.

4. Anu, being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorized by B to make. The contract is voidable, as between B and C, at the option of C.

17. Personal liability of agent to third parties [Section 230]

General Rule



Exceptions:

In the following cases, the agent is presumed to have agreed to be personally bound

- Where the contract is made by an agent for the sale or purchase of goods for a **merchant resident abroad/ foreign principal**
- Where the agent **does not disclose the name of his principal or undisclosed principal**
- Non-existent or incompetent principal**
- Pretended agent**
- When agent exceeds authority**

Availability of rights to third parties in a contract entered by agent [Section 231-234]

Rights to a contract made by undisclosed agent - the same right as he would have had as against the agent if the agent had been the principal.

Performance of contract with agent supposed to be principal - Where one man makes a contract with another, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract

Option to Third Person- sue the Agent or the Principal-

- **Right of person dealing with agent personally liable**- a person dealing with him may hold either him or his principal, or both of them, liable.
- **Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable**- the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

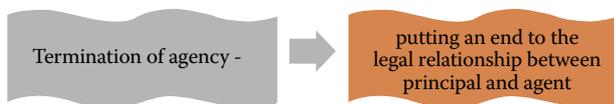
Examples

S bought a ticket of IPL match at Wankhede Stadium through AB for himself because on personal grounds Stadium management would not have issued the ticket to S. Stadium management may repudiate the contract and refuse S to enter the stadium.

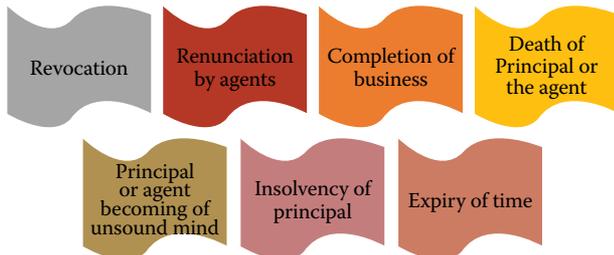
A, who owes 50,000 rupees to B, sells 1,00,000 rupees worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set off A's debt.

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

18. Termination of agency [Section 201]

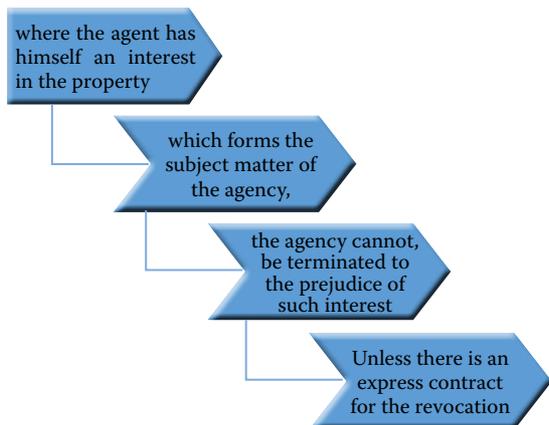


Modes of termination:



Example: 1. Amit authorizes Bhim to buy 1,000 bales of cotton on account of Amit, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.
2. A empowers B to let out A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

When the agency is irrevocable [Section 202]



Example: Arun gives authority to Bharti to sell Arun's land, and to pay himself, out of the proceeds, the debts due to him from Arun. Arun cannot revoke this authority, nor can it be terminated by his insanity or death.

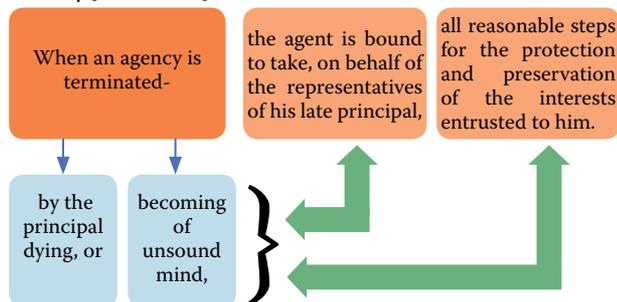
Effects of Termination [Section 208]

The termination of the authority so far as regards the agent, so far as regards third persons, of an agent does not- take effect before it becomes known to him, or before it becomes known to them.

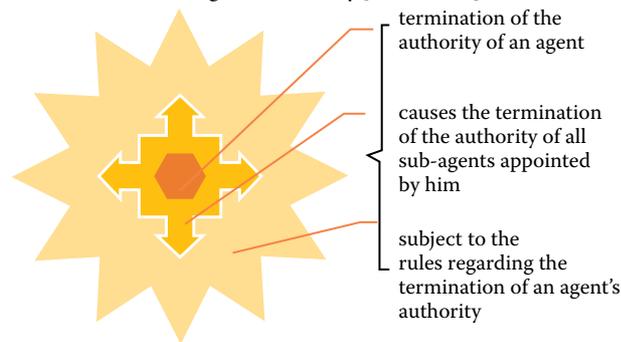
Example: 1. Asim directs Biharilal to sell goods for him. Asim agrees to give Biharilal 5% commission on the price fetched by the goods. Asim afterwards, by letter, revokes his authority. Biharilal, after the letter is sent, but before he receives it sells the goods for ₹1,00,000. The sale is binding on Asim, and Biharilal is entitled to ₹5,000 as his commission.

2. Asim directs Biharilal, his agent, to pay certain money to Chamanlal. Asim dies, and Mr. Dhanush takes out probate to his will. Biharilal, after Asim's death, but before hearing of it, pays the money to Chamanlal. The payment is good as against Dhanush, the executor.

Agent's duty on termination of agency by principal's death or insanity [Section 209]



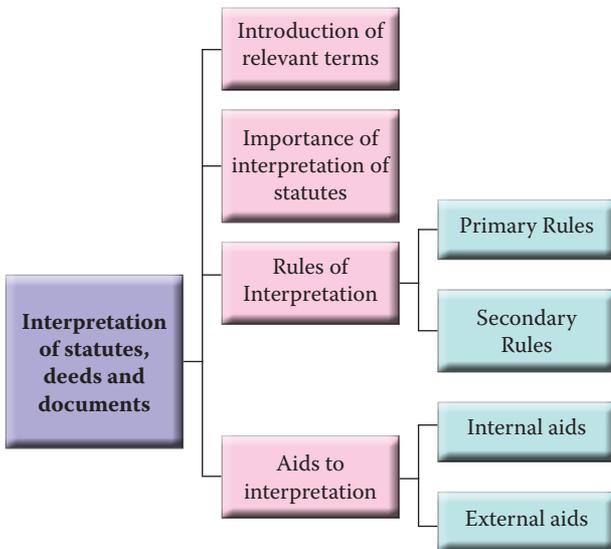
Termination of sub-agent's authority [Section 210]



In this capsule on Intermediate, Paper 2: Corporate and Other Laws, an attempt has been made to capture the significant Rules related to Interpretation/ Construction of Statutes. You are advised to read the September 2021 edition of the Study Material for detailed knowledge and understanding of the said topic. This capsule is intended to assist you in the process of revision of concepts discussed in the Study Material.

CHAPTER 4 - INTERPRETATION OF STATUTES

I. CHAPTER OVERVIEW



II. BASIC TERMS

1. Statute

Written law, as against unwritten law

- laws and regulations of various kinds irrespective of the source from which they emanate
- Enacted law i.e. the law either enacted by the Parliament or by the State Legislature

2. Document

A paper or other material thing giving information, proof or evidence of anything

- 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
 - 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 intended to be used, or which may be used, for the purpose of recording this matter
- The Indian Evidence Act, 1872**
- The General Clauses Act, 1897**

Elements of Documents

- Matter**
 - Its usage with the word “any” shows that the definition of document is comprehensive.
- Record**
 - It must be certain mutual or mechanical device employed on the substance.
 - It must be by writing, expression or description.
- Substance**
 - Mental or intellectual elements comes to find a permanent form.
- Means**
 - A permanent form is acquired and those can be letters, any figures, marks, symbols which can be used to communicate between two persons.

3. Instrument

Formal legal document which creates or confirms a right or records a fact

Instrument	<ul style="list-style-type: none"> • formal writing of any kind • having legal effect, either as creating a right or liability or as affording evidence of it
The Indian Stamp Act, 1899	<ul style="list-style-type: none"> • ‘instrument’ includes every document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded
Example	<ul style="list-style-type: none"> • an agreement, deed, charter or record, drawn up and executed in a technical form

4. Deed

an instrument in writing (or other legible representation or words on parchment or paper) purporting to effect some legal disposition



- In India- no distinction is made between instruments and deeds
- deeds are instruments though all instruments may not be deeds

CORPORATE AND OTHER LAWS

5. Interpretation

process by which the Courts seek to ascertain the meaning of the legislature through the medium of the words in which it is expressed

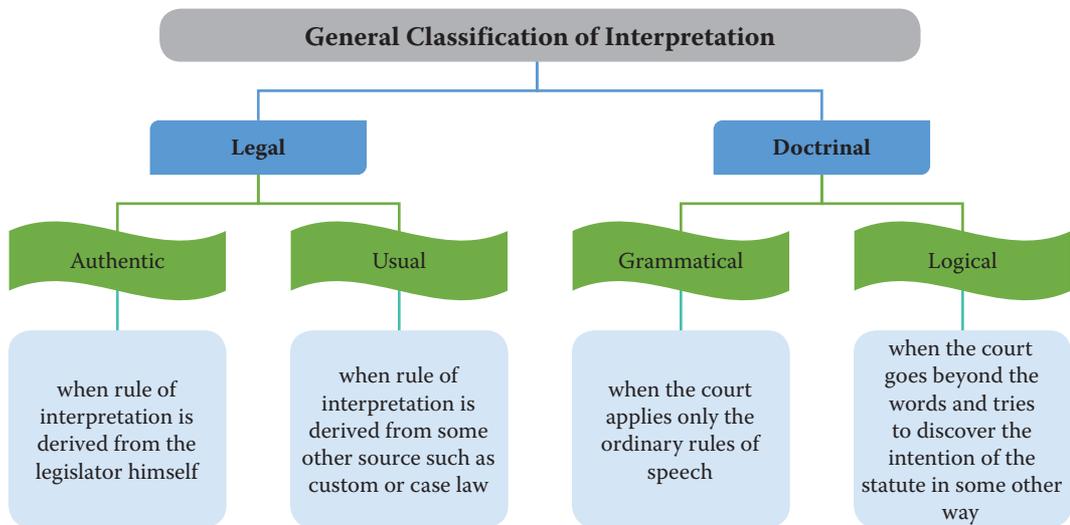
Need for interpretation

- process by which the real meaning of an Act (or a document) and the intention of the legislature in enacting it is ascertained
- to resolve any ambiguity in the statute.
- It is the art of finding out the true sense of words -sense in which their author intended to convey the subject matter.

Importance of interpretation

- Interpretation serves as the bridge of understanding between the process of statute making and the process of interpretation of statutes

Classification of Interpretation:



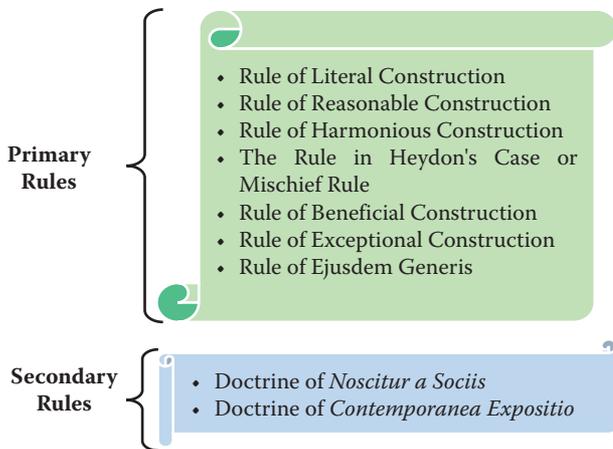
III. HOW TO INTERPRET LAW APPLYING THE RULES OF INTERPRETATIONS

When a question arises as to what interpretation to be placed on an enactment, what the court has to do is to ascertain 'the intent of them that make it' and that must be gathered from—

- Literal Rule- The words actually used in the statute, in their grammatical and ordinary sense
- Golden Rule- The modified words if the ordinary and grammatical use leads to obscurity or inconsistency
- Mischief Rule- The history of the legislation, purpose thereof, the mischief it intended to suppress
- Internal aids to Construction- The definitions, exceptions, explanations, fictions, deeming provisions, headings, marginal notes, preamble, provisos, punctuations, saving clause, non obstante clause, etc.
- External aids to Construction- Parliamentary debates, reports of the Committees and Commissions, etc.

These rules are only aids to ascertain what the Parliament meant by using the language of the statute.

IV. RULES OF INTERPRETATION/CONSTRUCTION



1. Rule of Literal Construction

a statute must be construed literally and grammatically giving the words their ordinary and natural meaning

interpret the words used in legislation according to their ordinary grammatical meaning in the absence of any ambiguity or doubt

where the words of a statute are in themselves clear and unambiguous, then these words should be construed in their natural and ordinary sense and it is not open to the court to adopt any other hypothetical construction

This Rule of literal interpretation can be read and understood under the following headings:

Natural and grammatical meaning

- Statutes are to be understood in their natural, ordinary, or popular sense
- Must be construed according to their plain, literal and grammatical meaning.
- If there is an inconsistency with any express intention or declared purpose of the statute, or it involves any absurdity, repugnancy, inconsistency, the grammatical sense must then be modified, extended or abridged only to avoid such an inconvenience, but no further.

Technical words are to be understood in technical sense

- technical words are understood in the technical sense only

2. Rule of Reasonable Construction

words of statute must be construed so as to lead to a sensible meaning or to avoid absurdity

If a statute is having two interpretations, where one is completely vague and absurd and other is perfectly making sense then that meaningful interpretation should be used

Interpretation, which furthers the object, can be preferred to that which is likely to defeat or impair the policy or object.

Golden Rule of Interpretation

- When the grammatical interpretation leads to absurdity then the courts shall interpret the statute so as to resolve the inconsistency and make the enactment a consistent whole.
- This departure from the grammatical construction is permissible only to the extent it avoids such absurdity and no further.

3. Rule of Harmonious Construction

expressions used in a statute should ordinarily be understood in a sense in which they best harmonize with the object of the statute or to avoid absurdity

This Rule is used when there is a conflict between two or more statutes or between two provisions of the same statute

The provisions of a statute should be construed to give them the most effect and to make justice to the situation at hand

The statute must be read as a whole and every provision in the statute must be construed with reference to the context and other clauses in the statute so as to make the statute a consistent enactment and not reduce it to a futility

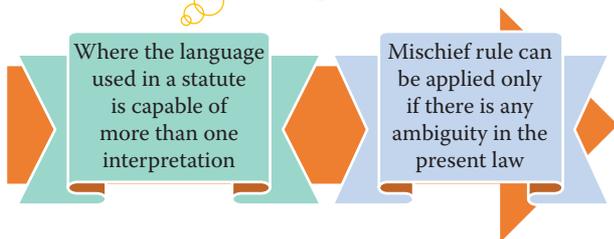
But where it is not possible to give effect to both the provisions harmoniously, conflict may be avoided by holding that one section which is in conflict with another merely provides for an exception or a specific rule different from the general rule contained in the other

In some cases, the statute may give a clear indication as to which provision is subservient and which overrides. This is done by the use of the terms "subject to", "notwithstanding" and "without prejudice"

CORPORATE AND OTHER LAWS

4. The Rule in Heydon's Case or Mischief Rule

To make such construction as shall suppress the mischief and advance the remedy according to the true intention of the legislation.

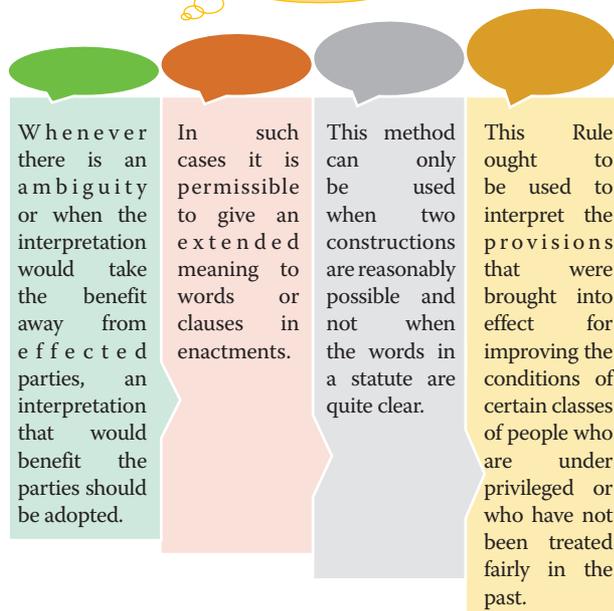


Points to be considered while interpreting statute through this Rule

1. What was the law before the making of the Act?
2. What was the defect, mischief, hardship caused by the earlier law?
3. How does the Act of Parliament seek to resolve or cure the mischief or deficiency?
4. What are the true reasons for the remedy?

5. Rule of Beneficial Construction

Give the widest meaning to the statute in order to protect the interest of the parties



6. 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.

The question as to whether a statute is mandatory depends upon the intent of the legislature and not upon the language in which the intent is clothed.

Majorly this Rule is used for the construction of words- 'and, or', 'may, must and shall'.

7. Rule of Ejusdem Generis

of the same kind or species

Specific words pertaining to a class or category or genus are followed by general words

the general words shall be construed as limited to the things of the same kind as those specified.

Rule of Ejusdem Generis Applies when-

- Statute contains an enumeration of specific words
- The subject of enumeration constitutes a class or category
- That class or category is not exhausted by the enumeration
- The general terms follow enumeration, and
- There is no indication of a different legislative intent

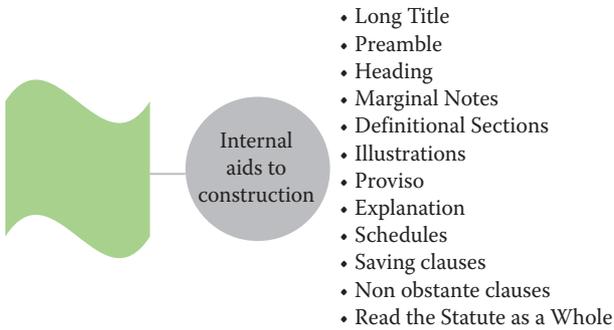
V. AIDS TO INTERPRETATION AND CONSTRUCTION

Where language of the statute is not clear

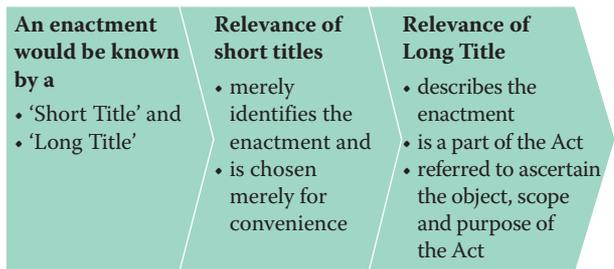
there is need to resort to aids of construction-

- such aids can be either-
- internal or
- external

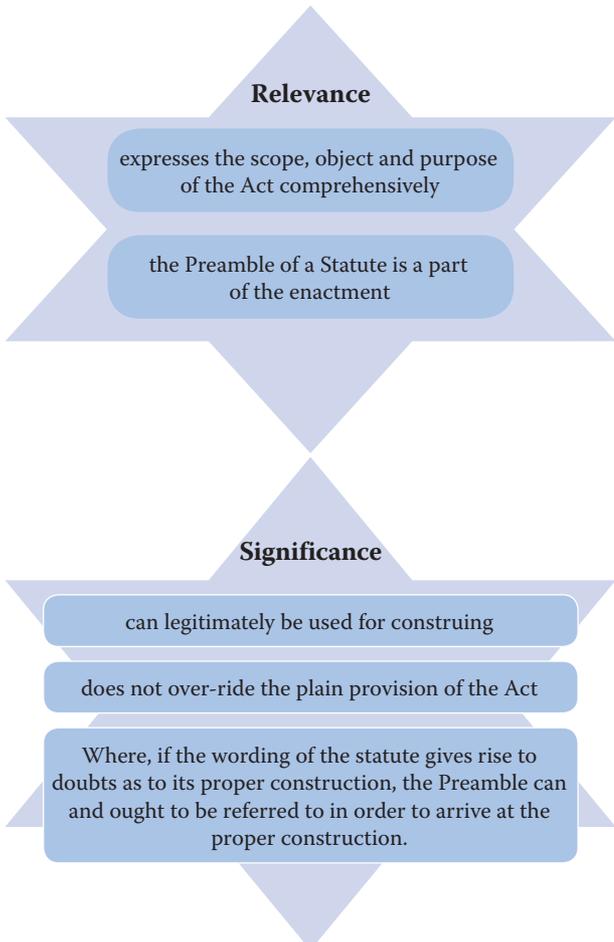
VI. INTERNAL AIDS TO INTERPRETATION/ CONSTRUCTION



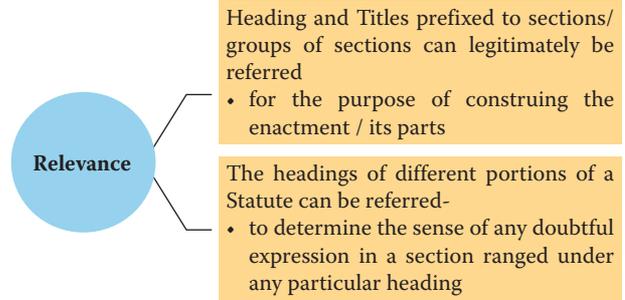
1. Long Title



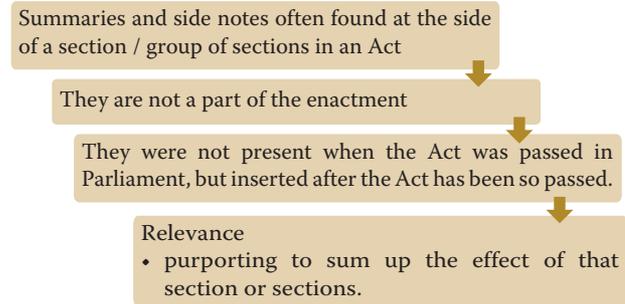
2. Preamble



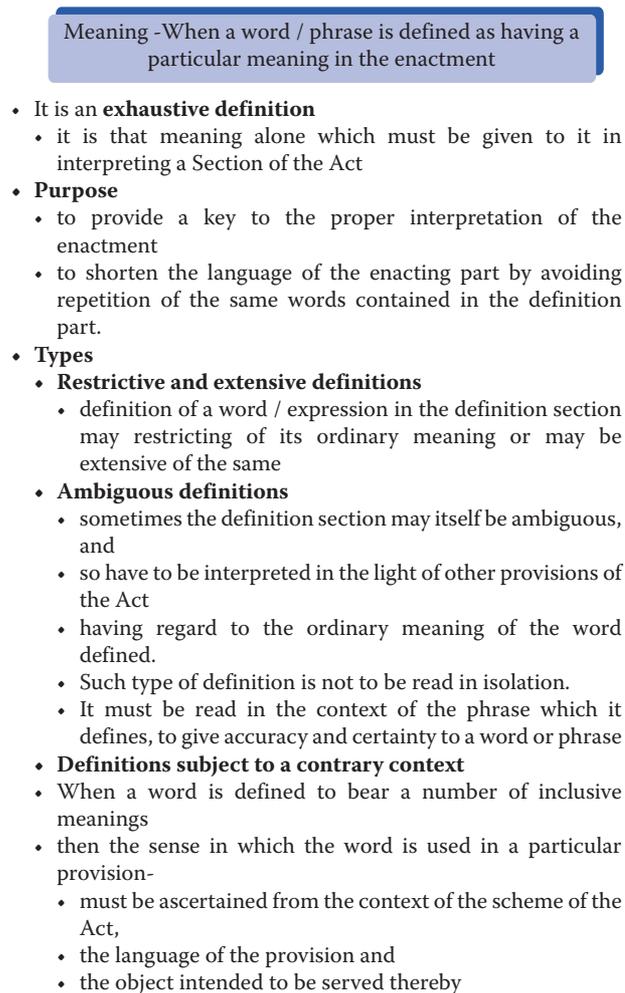
3. Heading and Title of a Chapter



4. Marginal notes



5. Definitional Sections/Interpretation Clauses



CORPORATE AND OTHER LAWS

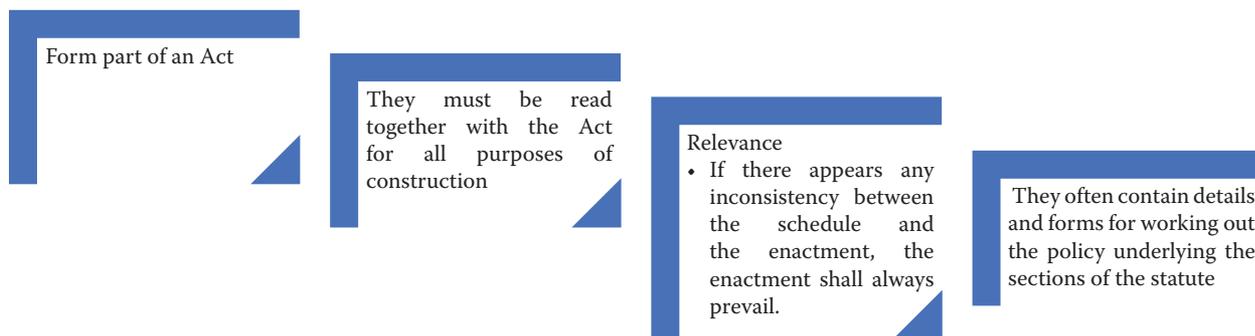
6. Illustrations

Follow the text of the Sections	Do not form a part of the Sections.	Not all sections have illustrations appended to them
It cannot have the effect of modifying the language of the section	Neither can curtail nor expand the ambit of the section.	Relevance <ul style="list-style-type: none"> • Illustrations do form a part of the statute • considered to be of relevance and value in construing the text of the sections.

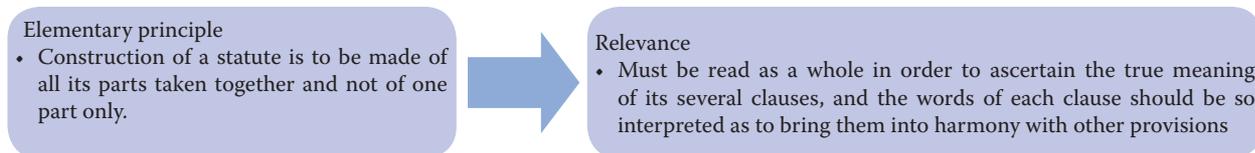
7. Proviso

Proviso is to except something out of the enactment or to qualify something stated in the enactment	Effect	As a general rule
<ul style="list-style-type: none"> • which would be within its purview if the proviso were not there. • Usually, a proviso is embedded in the main body of the section and becomes an integral part of it 	<ul style="list-style-type: none"> • to qualify the preceding enactment which is expressed in terms which are too general. 	<ul style="list-style-type: none"> • a proviso is added to an enactment to qualify or create an exception to what is in the enactment

10. Schedules



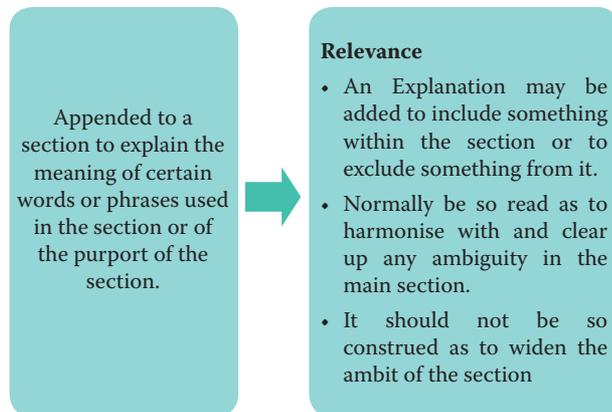
11. Read the Statute as a Whole



8. Difference with related terms

Distinction between Proviso, exception and saving Clause		
'Exception' is intended to restrain the enacting clause to particular cases	'Proviso' is used to remove special cases from general enactment and provide for them specially	'Saving clause' is used to preserve from destruction certain rights, remedies or privileges already existing

9. Explanation



VII. EXTERNAL AIDS TO INTERPRETATION/ CONSTRUCTION

External Aids					
Historical Setting	Consolidating Statutes & Previous Law	Usage	Earlier & Later Acts and Analogous Acts	Dictionary Definitions	Use of Foreign Decisions

1. Historical Setting

History of the external circumstances which led to the enactment

- is of much significance in construing any enactment

Purpose

- necessary in the understanding and comprehension of the subject matter and the scope and object of the enactment.
- History in general (Parliamentary History in particular), ancient statutes, contemporary or other authentic works and writings are helpful in interpreting and construing an Act

2. 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

3. Usage

Relevance

- Where the meaning of the language in a statute is doubtful, usage helps in how that language has been interpreted and acted upon over a long period
- May determine its true meaning.
- 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

4. Earlier & Later Acts and Analogous Acts

Reference to Analogous Act:

- Different statutes (that are in similar nature), may shall be construed together as one system and as explanatory of each other
- They can be used even though they may be made at different times, or may have repealed and may not referring to each other

5. Dictionary Definitions

- **First** refer to the Act in question to find out if any particular word or expression is defined in it.
- If word is **not defined in the Act** itself, **refer dictionaries** to find out the general sense in which that word is commonly understood
- In selecting one out of the several meanings of a word, always consider the context in which it is used in the Act
- For technical terms refer **technical dictionaries**
- **judicial decisions** laying down the meaning of words will have greater weight than the meaning furnished by dictionaries

6. 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 used for interpretation
- Prime importance is always to be given to the language of the Indian statute

VIII. MAJOR LATIN MAXIMS

Rule of Literal Construction

absoluta sententia expositore non indiget

- an absolute sentence or preposition needs not an expositor
- plain words require no explanation

Rule of Reasonable Construction and Rule of Exceptional Construction

ut res magis valeat quam pereat

- words of statute must be construed so as to lead to a sensible meaning

Rule of Reasonable Construction

Interpretatio fienda est ut res magis valeat quam pereat

- words of a statute must be construed reasonably so as to give effect to the enactment rather than reduce it to a futility

Rule of Harmonious Construction

generalia specialibus non derogant

- A specific rule will override a general rule.

Doctrine of Noscitur a Sociis

Noscitur a Sociis

- Meaning of doubtful word may be ascertained by reference to word associated with it

Doctrine of Contemporanea Expositio

Contemporanea Expositio est optima et fortissima in lege

- law should be understood in the sense in which it was understood at the time when it was passed

Doctrine of Contemporanea Expositio

optima legum interpres est consuetudo

- Custom is the best interpreter of law

Non-obstante clause

- notwithstanding anything contained

Earlier Act Explained by the Later Act

pari materia

- in a similar case