



Course Title:

**Interpretation of Statute &
General Clauses Act**

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Registration No.

LLB/119/3-18/M050

Program

LLB 3-Years

Submitted to

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Dated: 15th November, 2021

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ASSIGNMENT No.1; Define statute and term of interpretation of statute according to the Constitution of Pakistan 1973?

1.1 STATUTE:

1.1.1 Definition of Statute:

A Statute is a formal written enactment of a legislative authority that governs a country, state, city, or county. Typically, statutes command or prohibit something, or declare policy. The word is often used to distinguish law made by legislative bodies from the judicial decisions of the common law and the regulations issued by Government agencies.

- [Black, Henry Campbell (1990). Black's Law Dictionary, Sixth Edition]

A statute is a will of legislature conveyed in the form of text.

1.1.2 Classification of Statute with reference to basis of duration:

A Statute may generally be classified with reference to its duration, nature of operation, object and extent of application.

On the basis of duration, statutes are classified as either Perpetual or Temporary.

1.1.2.1 Perpetual Statute:

It is a Perpetual Statute when no time is fixed for its duration and such statute remains in force until its repeal, which may be express or implied. A Temporary statute is one where its duration is only for a specified time and it expires on the expiry of the specified time unless it is repealed earlier.

1.1.2.2 Perpetual Statute:

It is perpetual when no time is fixed for its duration and such a statute remains in force until its repeal which may be express or implied.

1.1.3 Classification of Statute with reference to nature of operation:

1.1.3.1 Prospective statutes

A statute which operates upon acts and transactions which have not occurred when the statute takes effect, that is which regulates the future is a Prospective statute.

1.1.3.2 Retrospective statutes:

Every statute takes away or impairs vested rights acquired under the existing laws or creates a new obligation into a new duty or attaches a new disability in respect of transactions or considerations already passed are deemed retrospective or retroactive statute.

1.1.3.3 Directory statutes

A directory statute is generally affirmative in its terms, recommends a certain act or omissions, but imposes no penalty on non-observance of its provisions.

1.1.3.4 Mandatory statutes

A Mandatory statute is one which compels performance of certain acts and directs that a certain thing must be done in a certain manner or form. A type of Mandatory Statute is the Imperative Statute. Imperative Statutes are often negative or prohibitory in its terms and makes certain acts or omissions absolutely necessary and subjects a contravention of its provision to a penalty.

1.2 INTERPRETATION OF STATUTE:

1.2.1 Definition:

Interpretation means the art of finding out the true sense of an enactment by giving the words of the enactment their natural and ordinary meaning. It is the process of ascertaining the true meaning of the words used in a statute. The Court is not expected to interpret arbitrarily and therefore there have been certain principles which have evolved out of the continuous exercise by the Courts. These principles are sometimes called 'rules of interpretation'.

1.2.2 Object of Interpretation of Statute:

The object of interpretation of statutes is to determine the intention of the legislature conveyed expressly or impliedly in the language used. As stated by SALMOND,

"by interpretation or construction is meant, the process by which the courts seek to ascertain the meaning of the legislature through the medium of authoritative forms in which it is expressed."

1.2.3 Common Rule of interpretation:

The most common rule of interpretation is that every part of the statute must be understood in a harmonious manner by reading and construing every part of it together.

The maxim "*A Verbis legis non est recedendum*" means that you must not vary the words of the statute while interpreting it.

1.2.4 Kinds of interpretation:

There are generally two kinds of interpretation, literal interpretation & logical interpretation.

1.3 INTERPRETATION OF STATUTE ACCORDING TO CONSTITUTION OF PAKISTAN 1973:

According to Constitution of Pakistan, nothing shall be enforced as a law until or unless it is in conformity with the injunctions of Islam, Quran and Sunnah. In deeper sense it can be understand that there is no supreme law above the Divine Guidance. So it is obligatory upon the courts in Pakistan to interpret any statute by juxtaposing it with the Islamic Injunctions.

The Preamble to our Constitution is a unique one to refer and its opening para is as follows:

“Whereas sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust;”

ASSIGNMENT NO,1 (b): How many Rules of Interpretation of Statues? Explain any two;

1.4 TYPES OF RULES OF INTERPRETATION OF STATUE:

There are four types of rules of interpretation of statute which are as follows;

- The Golden rule
- The Literal rule
- The Mischief rule
- The Purposive approach

1.4.1 The Literal Rule or Grammatical Rule

It is the first rule of interpretation also known as literal rule. According to this rule, the words used in this text are to be given or interpreted in their natural or ordinary meaning. After the interpretation, if the meaning is completely clear and unambiguous then the effect shall be given to a provision of a statute regardless of what may be the consequences.

The plain meaning rule gained popularity during the 18th and 19th centuries as the courts took an increasingly strict view of the words within statutes. Under the plain meaning rule, the words of the statute are given their natural or ordinary meaning. The plain meaning rule of statutory interpretation should be the first rule applied by judges.

One of the leading statements of the plain meaning rule was made by the Lord Chief Justice of common pleas, *Sir Nicholas Conyngham Tindal* in the *Sussex Peerage (1844)*:

"The only rule for the construction of Acts of Parliament is, that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver".

When writing statutes, the legislature intends to use ordinary English words in their ordinary senses but the strict application of the plain meaning rule can sometime result in "absurd" outcomes.

1.4.2 The Golden Rule:

The golden rule permits the courts to depart from the plain meaning rule if the meaning leads to consequences it considers to be absurd or ambiguous.

This was propounded in *Grey v Pearson (1857) 6 HLC 61,106* where *Lord Wensleydale* stated:

"In construing... statutes... the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid the absurdity and inconsistency, but no farther."

The degree of absurdity or ambiguity necessary to exercise the golden rule is determined on a case by case basis by the individual judge in question."

The court applies the golden rule in *Adler v George (1964)*. Under the Official Secrets Act 1920 it was an offence to obstruct a member of the armed forces 'in the vicinity' of a prohibited place. The defendant was actually in the prohibited place, rather than "in the

vicinity" of it, at the time of obstruction. The courts had to determine whether "in [the] vicinity of" included on/in the premises. The court applied the golden rule. The court said 'in the vicinity' did include on or in as well. It would be absurd for a person to be liable if they were near to a prohibited place and not if they were actually in it. The defendant's conviction was therefore upheld.

ASSIGNMENT No.2 (a): What are the General Principles of Interpretation of Statute?

2.1 General Principles of interpretation of Statute:

The term interpretation means “**To give meaning to**”. Governmental power has been divided into three wings namely the legislature, the executive and the judiciary. Interpretation of statutes to render justice is the primary function of the judiciary. Any law/statute passed by Legislature would be given meaning depending on its;

2.1.1 Grammatical interpretation:

By using the literal meaning of the statutory text.

2.1.2 Historical interpretation:

By using the legislative history, to reveal the intent of the legislator.

2.1.3 Systematic interpretation:

By considering the context of provisions, if only by acknowledging in which chapter a provision is listed.

2.1.4 Teleological interpretation:

By considering the purpose of the statute is considered, as it appears from legislative history, or other observations.

It is controversial whether there is a hierarchy between interpretation methods. Germans prefer a "grammatical" (literal) interpretation, because the statutory text has a democratic legitimation, and "sensible" interpretations are risky, in particular in view of German

history. "Sensible" means different things to different people. The modern common law perception that courts actually make law is very different. In a German perception, courts can only further develop law.

The freedom of interpretation varies by area of law. Criminal law and tax law must be interpreted very strictly, and never to the disadvantage of citizens, but liability law requires more elaborate interpretation, because here (usually) both parties are citizens. Here the statute may even be interpreted contra-legem in exceptional cases, if otherwise a patently unreasonable result would follow. Interpretation of a particular statute depends upon the degree of creativity applied by the judges or the court in the reading of it, employed to achieve some stated end. A statute can be interpreted by using the Golden Rule, the Mischief Rule or the Literal Rule.

ASSIGNMENT No.2 (B): Role of interpretation of statutes in legal history?

2.2 ROLE OF INTERPRETATION OF STATUTES IN LEGAL HISTORY:

Statutory interpretation first became significant in common law systems, of which historically England is the exemplar. In Roman and civil law, a statute (or code) guides the magistrate, but there is no judicial precedent. In England, Parliament historically failed to enact a comprehensive code of legislation, which is why it was left to the courts to develop

the common law; and having decided a case and given reasons for the decision, the decision would become binding on later courts.

Accordingly, a particular interpretation of a statute would also become binding, and it became necessary to introduce a consistent framework for statutory interpretation. In the construction (interpretation) of statutes, the principle aim of the court must be to carry out the "Intention of Parliament", and the English courts developed three main rules (plus some minor ones) to assist them in the task. These were: the mischief rule, the literal rule, and the golden rule.

Statutes may be presumed to incorporate certain components, as Parliament is "presumed" to have intended their inclusion. For example:

- Offences defined in criminal statutes are presumed to require mens rea (a guilty intention) by the accused.
- A statute is presumed to make no changes in the common law.
- A statute is presumed not to remove an individual's liberty, vested rights, or property. A statute is presumed not to apply to the President/Sovereign.
- A statute is presumed not to apply retrospectively.
- It is presumed that a statute will be interpreted *eiusdem generis* i.e. "words are to be construed in sympathy with their immediate context".
- Where legislation and case law are in conflict, there is a presumption that legislation takes precedence insofar as there is any inconsistency.

ASSIGNMENT No.3 (a): What is Harmonious Construction in statute? Explain in detail?

3.1 HARMONIOUS CONSTRUCTION:

3.1.1 Introduction

The various statutes, or laws if we were to speak broadly, that we follow, are formulated in the legislature, but the responsibility of interpretation of the laws sometimes falls upon the judiciary. The need for interpretation of statutes may arise because of lack of consensus in the Parliament on the issue, or simply because it would be better if the issue were decided on a case to case basis. During the interpretation and construction of different statutes, the judiciary has the ease of adhering to the various doctrines available under the law. One such doctrine is the doctrine of harmonious construction. It is envisaged in the Constitution of Pakistan and has been used in a number of case laws as well.

3.1.2 Definition of Construction:

According to Salmond,

“Construction is a process through which courts can determine the meaning of pieces of legislations through the medium of authoritative terms in which they are expressed.

3.1.3 Origin of Doctrine of Harmonious Construction

The doctrine of harmonious construction evolved through interpretations of the courts. The judiciary, from time to time, decided typical matters that involved a pitting between two distinct provisions.

3.1.4 Objective of Doctrine of Harmonious Construction

Every statute has a particular intention, a particular purpose that it seeks to fulfil. The Parliament is trusted with the responsibility to formulate laws, and it should not be curtailed simply because an isolated provision of a particular statute is questionable. The doctrine of harmonious construction implies that any discrepancy within the sections of a particular statute should be avoided if that statute is up for interpretation. Any interpretation that would result in injustice or hardship to anyone should be avoided, and the interpretation that comes the closest to delivery of justice should be chosen. The judges of the courts should look for the provision(s) that is more general in nature, and exclude any specific provision that would result in inconvenience.

3.1.5 The doctrine of harmonious construction rests in two maxims:

generalia specialibus non-derogant, which means that general things do not go against special things, and *generalia specialibus derogant*, which means that special things go against general things.

3.1.6 Important Aspects of Harmonious Construction:

The important aspects of this principle are -

- The courts must avoid a head on clash of seemingly contradicting provisions and they must construe the contradictory provisions so as to harmonize them.
- The provision of one section cannot be used to defeat the provision contained in another unless the court, despite all its effort, is unable to find a way to reconcile their differences.

- When it is impossible to completely reconcile the differences in contradictory provisions, the courts must interpret them in such a way so that effect is given to both the provisions as much as possible.
- Courts must also keep in mind that interpretation that reduces one provision to a useless number or a dead letter, is not harmonious construction.
- To harmonize is not to destroy any statutory provision or to render it loose.

ASSIGNMENT No.3 (B): How can an Ambiguity in a statute be removed? Discuss in detail?

3.2 Definition of Ambiguity:

When language is capable of being understood in more than one way by a reasonable person, ambiguity exists. It is not the use of peculiar words or of common words used in a peculiar sense. Words are ambiguous when their significance is unclear to persons with competent knowledge and skill to understand them.

3.2.1 Categories of ambiguity:

There are two categories of ambiguity: latent & patent.

3.2.1.1 Latent ambiguity:

Latent ambiguity exists when the language used is clear and intelligible so that it suggests one meaning but some extrinsic fact or evidence creates a need for interpretation or a choice among two or more possible meanings.

For example:

In a classic case, *Raffles v. Wichelhaus*, 159 Eng. Rep. 375 (Ex. 1864), a contract was made to sell 125 bales of cotton that were to arrive on a ship called Peerless that sailed from Bombay, India. Unknown to the parties to the contract, two ships of the same name were to arrive from the same port during different months of the same year. This extraneous fact necessitated the interpretation of an otherwise clear and definite term of the contract. In such cases, extrinsic or PAROL EVIDENCE may be admitted to explain what was meant or to identify the property referred to in the writing.

3.2.2 Patent ambiguity:

A patent ambiguity is one that appears on the face of a document or writing because uncertain or obscure language has been used.

3.3 Removal of ambiguity in statute:

Few topics in the theory of language are as closely related to legal interpretation as the linguistic indeterminacy associated with ambiguity and vagueness. Significant portions of the institutional legal system, especially courts at the appellate level and supreme courts, are for the most part concerned not with disentangling the facts of cases but with the indeterminacies of the law. In a colloquial sense, both vagueness and ambiguity are employed generically to indicate indeterminacy. This is the sense in which vagueness is understood in the ‘void for vagueness’ doctrine, according to which a statute is considered void if it is framed in terms so indeterminate that its meaning can only be guessed at.

Vagueness may relate to individuation or classification. There are at least four different vantage points from which to address the problems caused by vagueness: logic, ontology, epistemology, and semantics.

Assignment No.4 (a): Can Court fill the lacunas after interpreting a statute? Discuss?

Before dilating discussion upon filling the lacunas in a statute after its interpretation, I would like to define some important terms for better understanding.

4.1.1 Lacunas:

In law, a *non liquet* (commonly known as "lacuna in the law") is any situation where there is no applicable law. *Non liquet* translates into English from Latin as "it is not clear". According to Cicero, the term was applied during the Roman Republic to a verdict of "not proven" where the guilt or innocence of the accused was "not clear". Strictly, a finding of *non liquet* could result in a decision that the matter will always remain non-justiciable, whereas a lacuna denotes within that concept a lacking hence that the matter should in future be governed by law.

4.1.2 Role of Court in interpretation of Statute:

Statutory interpretation is the process by which courts interpret and apply legislation. Some amount of interpretation is often necessary when a case involves a statute. Sometimes the words of a statute have a plain and a straightforward meaning. But in many cases, there is some ambiguity or vagueness in the words of the statute that must be resolved by the judge. To find the meanings of statutes, judges use various tools and methods of statutory interpretation, including traditional canons of statutory interpretation, legislative history, and purpose. In common law jurisdictions, the judiciary may apply rules of statutory

interpretation both to legislation enacted by the legislature and to delegated legislation such as administrative agency regulations.

If the legislature has left a lacuna, it is not open to the Court to fill it on some presumed intention of the legislature. Lacuna left by legislature cannot be filled by judicial interpretation owing to:

“It is not for the Courts to remedy the defect in the Statute”

“But where the Courts find that the words appear to have been accidentally omitted, or if adopting a construction deprives certain existing words of all meaning, it is permissible to supply additional words but should not easily read words which have not been expressly enacted”.

The Court should construct the provisions harmoniously having regard to the context and the object of the statute in which a provision appears, to make it meaningful. An attempt must always be made so to reconcile the provisions, so as to advance the remedy intended by the statute.

If, however, there happens any lacuna in the statute then the job of the Court would be to remove the same so that the statute may become operative. But in doing so, the Court cannot go further and add certain things which have not been conceived by the parliament.

Assignment No.4 (b): Explain the followings

4.2 (i) Statutory instrument:

Statutory Instruments are the most common form of secondary legislation and are often the detailed regulations and orders needed to bring an Act of Parliament into force. They may also be used to make changes to the requirements of an Act but this will have to be within the powers set out in the original legislation.

Judges use a variety of tools to help them interpret statutes, most frequently relying on five types of interpretive tools: ordinary meaning, statutory context, canons of construction, legislative history, and evidence of the way a statute is implemented.

These tools often overlap. For example, a judge might use evidence of an agency's implementation of a statute to support her own understanding of a word's ordinary meaning and basic principles about understanding statutory context are sometimes described as canons of construction.

Some theories of statutory interpretation counsel that certain tools are generally disfavor

4.3 (ii) Unambiguous Languages in Statutes:

The Unambiguous language is final in nature as the laws which are clear in nature they cannot be changed but can be described and elaborated by the courts but on the other hand court does not have any power to change the law the only power is to point out the lope

holes and gaps of law and in case of unambiguous language court shall follow the law described.

It can also be defined as where words of a statute are absolutely clear and unambiguous, no interpretation other than literal rule shall apply or need.

It is a settled principle of interpretation that the Court should neither add nor delete words from a statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be resorted to the principles of interpretation, other than the literal rule, the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what is has said. Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency, especially when a literal reading thereof produces an intelligible result.

The rules of interpretation would come into play only if there is any doubt with regard to the express language used. Where the words are unequivocal, there is no scope for importing any rule of interpretation.

Assignment No.5 (a): What do you understand by Repeal of a statute? Describe in Detail?

5.1 REPEAL OF A STATUTE:

5.1.1 Introduction: -

A statute does not cease to operate by it becoming obsolete. A statute remains operative unless it is repealed or expired if it enacted for a specified period. In parliamentary procedure, the motion to rescind, repeal, or annul is used to cancel or countermand and action or order previously adopted by the Assembly.

5.1.2 Meaning: -

A repeal is a removal or reversal of a law. There are two basic types of repeal, a repeal with a re-enactment or replacement of the repealed law, or a repeal without any replacement.

5.1.3 Types of repeal: -

There are following two types of repeal: -

5.1.3.1 Partial Repeal: -

A partial repeal occurs when a specified part or provision of a previous Act is repealed but other provisions remain in force.

5.1.3.2 Full repeal: -

A full repeal occurs where the entire Act in question is repealed. For example, the recently enacted Companies Act, 2017 repeals the Companies Ordinance, 1948. The Wealth Tax Act, 1963 has been repealed.

5.1.4 General Rules: -

The general rule is that the repealing Acts are unless the contrary intention appears:

- Not to affect the previous operation of any enactment so repealed or anything duly done under any enactment so repealed or
- Not to affect any privilege, right obligation or liability acquired, accrued or incurred under any enactment to repealed, or
- Not to affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed, or
- Not to affect any investigation, legal proceeding or remedy in respect of any such right, privilege or obligation, liability penalty or forfeiture aforesaid. Repeal with or without Re-enactment: -

A typical situation where an Act is repealed and re- enacted is where the law in the area is being updated but the law being repealed needs to be replaced with one suitable for the modern era. Re-enactment can be with or without amendment, although repeal and re-enactment without amendment normally occurs only in the context of a consolidation bill (a bill to consolidate the law in a particular area).

For example, recently Companies Act, 2017 repealed and replaced the old companies Ordinance, 1984

A repeal without replacement is generally done when a law is no longer attractive, or it is shown that a law is having far more negative consequences than were originally envisioned.

Assignment No.5 (b): Describe the effects of Repeal?

5.2 EFFECT OF REPEAL: -

Whenever an act is repealed it must be considered, except as two transaction passed and closed, as if it had never existed, the effect there of is to arbitrate the act completely from the record of the Parliament as if it had never been past it, it never existed except for the purpose of those actions which were commenced, prosecuted and concluded while it was existing law.

When an Act is repealed, any delegated legislation made under the Act falls to ground with the statute unless it is expressly preserved. Where the subordinate legislation is continued in force, however the general rule is that its scope and construction are determined according to the repealed act under which it was made.

Where an Act is repealed and re-enacted it is then repealed by another, which manifests no intention that the original Act shall continue repealed, the common law rule was that the repeal of the second Act revived the first ab-initio. This view was altered in 1850 and now repeal a repealing enactment, it shall not be construed as reviving any enactment previously repealed unless words are added reviving that enactment.

5.2.1 Further effect of repeal:

According to the General Clauses act, 1897, when this act or regulation made after the commencement of this act repeals any enactments hitherto made or hereafter to be made, then unless a different intention appears, the repeal shall not:-

- Revive anything not in force or existing at the time at which the repeal takes effect;
- Affect the previous operation of any enactment so repealed or anything duly done or suffered there under;
- Affect any rights, privilege, obligation or liability acquired or incurred under any enactment so repealed;
- Effect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed;
- Affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation liability, penalty, forfeiture, or punishment as foresaid; and such investigation legal proceeding, or remedy may be instituted, continued or punishment may be imposed as if the repealing Act or regulation had not been passed.

5.2.2 Conclusion

It can be concluded that if any Ordinances stands repealed under the constitution, the consequences of repeal are provided under the article 264 of the Constitution. However, if a law is repealed by a subsequent Act, the consequences following from such repeal are to be determined with reference to the provisions of Section 6 of the General Clause Act.