

## Interpreting Taxing Statutes s 10 – Sections and Schedules

**Acts are divided into numbered sections and Schedules, if any, such that the sections appear before the Schedule.<sup>1</sup>**

### SYNOPSIS

Section

Section heading

Schedule

Parts of a section

Statutory declaration

Case

Condition

Exception

Proviso

Qualifying phrases

### Section

A section is described as being a section ‘of’ an Act. Section is referred to as clause while the Act is in the shape of a Bill and is yet to be passed. The word ‘section’ is usually given a lower case ‘s’. Every section has its own heading. In modern Acts, sections bear Arabic numerals unbracketed. Unless the section is subdivided, the usual practice is to draft it as one sentence.

**Subsections:** A section may be divided into subsections. Each bear an Arabic numeral in brackets (sub-s (1), (2), etc). The subsections are related to the theme of the section, but each is drafted independently. Like the undivided section, the subsection usually consists of a single sentence. A subsection fully independent of the section or other subsection is often referred to

---

<sup>1</sup> Bennion 2020 s 2.6 and s 2.7

~~~~~

as clause eg under definition section several terms are defined which are independent from each other and so may be referred to as clause.

**Paragraphing:** A section or subsection containing a single sentence may be paragraphed to assist with readability. Paragraphs are given bracketed small letters (paragraph (a), (b), etc). These may be divided into smaller divisions bearing Roman numerals in brackets (sub-paragraph (i), (ii), etc). Judges take notice of the paragraphing as a guide to what are intended to be the units of sense.

**Opening and closing words:** Where a subsection has opening words before paragraphs the words before the paragraphs are referred to as the ‘opening words’ or ‘**chapeau**’. Similarly, words after the paragraphs are referred to as ‘closing words’, the words after paragraph x’ or ‘**full-out words**’.

### **Section headings or sidenotes or marginal notes**

The function of the heading is to give a short indication of the content of the section. It is a brief description, not a summary, and will not necessarily cover everything dealt with in the section. Lord Thring said that the section headings, when read together in the arrangements of sections at the beginning of the Act, should have such a consecutive meaning as will give a tolerably accurate idea of the contents of the Act. Earlier the content of each section was indicated by a note in the margin rather than by a heading placed above the section. These were referred to as sidenotes or marginal notes. Headings have not always been amended to reflect changes to the text so older headings should be treated with particular caution. At one stage the headings were viewed as a purely editorial matter so drafters were reluctant to amend them (perhaps reflecting practice in

relation to Bills where clause headings cannot be formally amended). Nowadays the practice is to amend headings where appropriate.

## Schedule

The term 'schedule' is defined in the General Clauses Act 1897, to mean a schedule to the Act or Regulation in which the word occurs. The schedule is a convenient device for including matters of detail, the segregation of which not only relieves congestion in the main body of the Act but also frees it from any possible complaint of untidiness.<sup>2</sup>

**Appear after the sections:** If an Act contains Schedules they come at the end of an Act after the sections. A Schedule is described as being to a Schedule 'to' and Act. The word Schedule is always given a capital S. The Schedules are numbered with Arabic numerals, unless there is only one in which case it is referred to simply as 'the Schedule to the Act'.

**Convenience of drafter:** The division of material between sections and Schedules is usually a matter of judgment for the drafter. There are no hard and fast rules and it is a question of how best to present the material. No significance is attached to whether material appears in a section or Schedule. A Schedule in an Act is mere question of drafting, a mere question of words. The Schedules is as much a part of the statute, and is as much an enactment, as any other part.<sup>3</sup>

**Paragraphing:** A Schedule may be paragraphed or sub-paragraphed with Arabic numerals bearing a close resemblance to paragraphing of sections. As with sections there are no

---

<sup>2</sup> Rajgopaul 1980

<sup>3</sup> A-G v Lamplough (1878) 3 Ex D 214 at 229

~~~~~  
absolute rules when it comes to the internal structure of a Schedule. Additional headings may be added and other drafting devices such as formulae, method statements, and tables may be used.

**Documents as Schedules:** Schedules are usually reserved for lengthy, detailed or technical matters that it is convenient to hive off and place at the end so as not to break up the flow of the sections. But this does not mean that they are unimportant. But another use of the Schedule is to set out some document, such as a treaty or convention, which is referred to in the sections.

**Inducing word:** A Schedule is introduced by wording in one of the sections. These words are sometimes referred to technically as ‘inducing’ word. For example, IT Sec 44 specifies that the profits and gains of any business of insurance shall be computed in accordance with the rules contained in the First Schedule. If by mischance the words introducing a Schedule were omitted, the Schedule would still form part of the Act if that was evident intention. The inducing words play a useful role in signposting the existing of the Schedule and in Act divided into Part and Chapters the location of the Schedule. A Schedule may be introduced by more than one sections, for example, the Second Schedule to the Income Tax Act 1961 has been introduced by Section 222 and also referred to in Section 276. The section introducing a Schedule is usually specified in the margin at the beginning of the Schedule (sometimes known as a ‘shoulder note’). Occasionally an error is made in doing this but that does not affect the validity of the Schedule.

**Location of Schedules:** A Schedule takes its location from the section introducing it. So, it is regarded as being in the same Part or Chapter as the section introducing it. If a Schedule is

~~~~~

introduced by two or more section in different Part or Chapter then it is presumably treated in each Part so far as relevant to the purposes of each section introducing it.

### Parts of section

An Act may be considered as a series of declarations of the Legislature enforcing certain rules of conduct, or conferring certain rights upon or withholding them from certain persons or classes of persons. The separate declaration of the Legislature contained in an Act is called a section or enactment<sup>4</sup>. A section, in its most complicated form, is made up of the following parts: (i) Statutory declaration; (ii) Case; (iii) Condition; (iii) Exception; (e) Proviso.

### Statutory declaration

A section or enactment in its simplest form is a declaration of the legislature, directing or empowering the doing or abstention from doing of a particular act or thing. Such an enactment consists of legal subject and legal predicate.

**Legal subject:** The legal subject denotes either the person directed or empowered to do or prohibited from doing, or when the passive form is used the thing to be done or left undone.<sup>5</sup>

**Legal predicate:** The legal predicate expresses what the person is to do or leave undone, or when the passive form is used what is

---

<sup>4</sup> Thring 2015 p 43. GC Sec 3(19) states that an enactment shall include a Regulation and shall also include any provision contained in any Act or in any such Regulation as aforesaid. But the definition given by GC Sec 3(19) is wide enough to include an Act along with the provisions of the Act. But for our purpose an enactment will mean a provision of the Act ie a section. In other words, each section is a substantive enactment.

<sup>5</sup> Thring 2015 p 73

~~~~~  
enacted with respect to the thing to be done or to be left undone.<sup>6</sup>

**Auxiliary:** If the law is imperative, the proper auxiliary verb of the predicate is "shall" or "shall not" if permissive, "may". The inclination of the Courts to construe "may" as sometimes imperative in an Act of Parliament requires that in doubtful cases the draftsman should add words such as "The Court may in its discretion" or " may if it thinks it expedient" and so forth.<sup>7</sup>

### Case

Little difficulty would arise in framing Acts of Parliament if the law were, as a general rule, meant to apply universally. It is, however, usually limited to special cases, and the first duty of a draftsman is to state clearly the **nature of the case to which the law applies**. Where the case is simple it should be introduced at the beginning of the section with the words " where " or " when," "in the event of" or "if," with the indicative.<sup>8</sup>

### Condition

The law frequently confers a benefit or imposes an obligation on certain conditions; a condition is aptly introduced by " If, &c.," or (where it follows a negative sentence) by " unless " or " until." Where the conditions are numerous it is best to state them in separate subordinate sentences.<sup>9</sup>

### Exception

The word "except" may generally be used in introducing exceptions ie **to restrain** the legal rule to particular cases. But

---

<sup>6</sup> Thring 2015 p 73

<sup>7</sup> Thring 2015 p 74

<sup>8</sup> Thring 2015 p 79

<sup>9</sup> Thring 2015 p 84

~~~~~

care must be taken to avoid its use where it is likely to lead to ambiguity. Where exceptions are numerous, they should be placed in separate members of the section or even in a separate section. Where the enumeration of the exceptions is short, compared with the enumeration of the particulars not excepted, it is often convenient to state the exceptions first.<sup>10</sup>

### Proviso

A proviso is used **to remove** special cases from the general legal rule **and provide** for them **specially**. Proviso should never be used to define the case or the condition or the legal subject; their proper function is to make a special exemption from a general statutory declaration, and they should be exclusively confined to that function. The rules with respect to the grouping of conditions and exceptions apply to proviso also where they are numerous.<sup>11</sup>

### Qualifying phrases

The legal rule of a section may be qualified by use of certain phrases such as – ‘**notwithstanding anything contained**’ is used to make that rule an overriding one; ‘**subject to**’ is used when the rule of the subjected-section is to yield (give way) to the rule of another master-section in case of conflict between these two; ‘**without prejudice to**’ is used to make the legal rule of that section independent of the rule in the other named sections. Certain words and phrases in the section have got legal significance such as – ‘**be deemed**’ is used to create legal fiction by assuming existence of a fact which does not really exist; ‘**deems fit**’ is used to confer discretion; ‘**have regard to**’ means taking into consideration the matters referred to.

---

<sup>10</sup> Thring 2015 p 86

<sup>11</sup> Thring 2015 p 89

