

The preliminaries

- * Features of a Company.
- * Analysis on separate legal existence.
- * Salomon v/s Salomon Co Ltd case.
- * Concept of Corporate veil.
- * Lifting of corporate veil.

1.

Features of a Company

(1)
Artificial
legal
person

(2)
Perpetual
Succession

Company is a person created by law. It comes into existence by a legal process

Company have all the rights to do acts like an individual.

members of a company may die/ change but company will remain.

A company may be brought to an end by a legal process called winding up.

however a company cannot be jailed/take a oath/ marry etc.

It can buy, sell, lend, borrow, enter into contracts, sue & can be sued in its own name

company is unaffected by death/ insolvency of members.

The shares of company may change hands infinitely, but it doesn't affect the existence of the company.

since company is an artificial person, it can work only through a human agency i.e. directors. Directors are agents to company not to every member.

(3) Limited Liability.

In case of a company, the debts of company will not totally be the debts of SHs.

In case of company limited by shares, the liability of members will be limited to the extent of amount unpaid on shares.

contd.....

(4) Common seal

(5) Seperate Legal existence.

company is not a natural person and therefore it require a human agency.

common seal shall be affixed on contracts by officers & employees.

The most striking difference between company & other forms of organisations is, the concept of seperate legal existence

common seal is the official signature of the company.

It can enter in its own contracts, lend money etc.

It is a person that is recognised in the eyes of law.

once registered, company is clothed with legal personality.

CASE LAW ON S L E

Salomon v/s Salomon Co Ltd.

Facts of the case

Judgement

* Salomon desire to convert his sole proprietor concern doing business of leather boots manf into a Co.

* He transferred all the assets and all liabilities in name of company and demanded a consi-deration of £38,782

* The entire consideration is paid as follows:

Salomon	wife	5 children
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* Cash - £8782	* 18h of £1 each	* 18h of £1 each to each child.
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* Debentures (secured) - £10,000

* Shares of £1 each - £19,994

* Co also obtained unsecured credit worth £7,000 and

Later co went into liquidation since there is a ban on leather and unsecured creditors claimed that pyt shall be first made to them and not

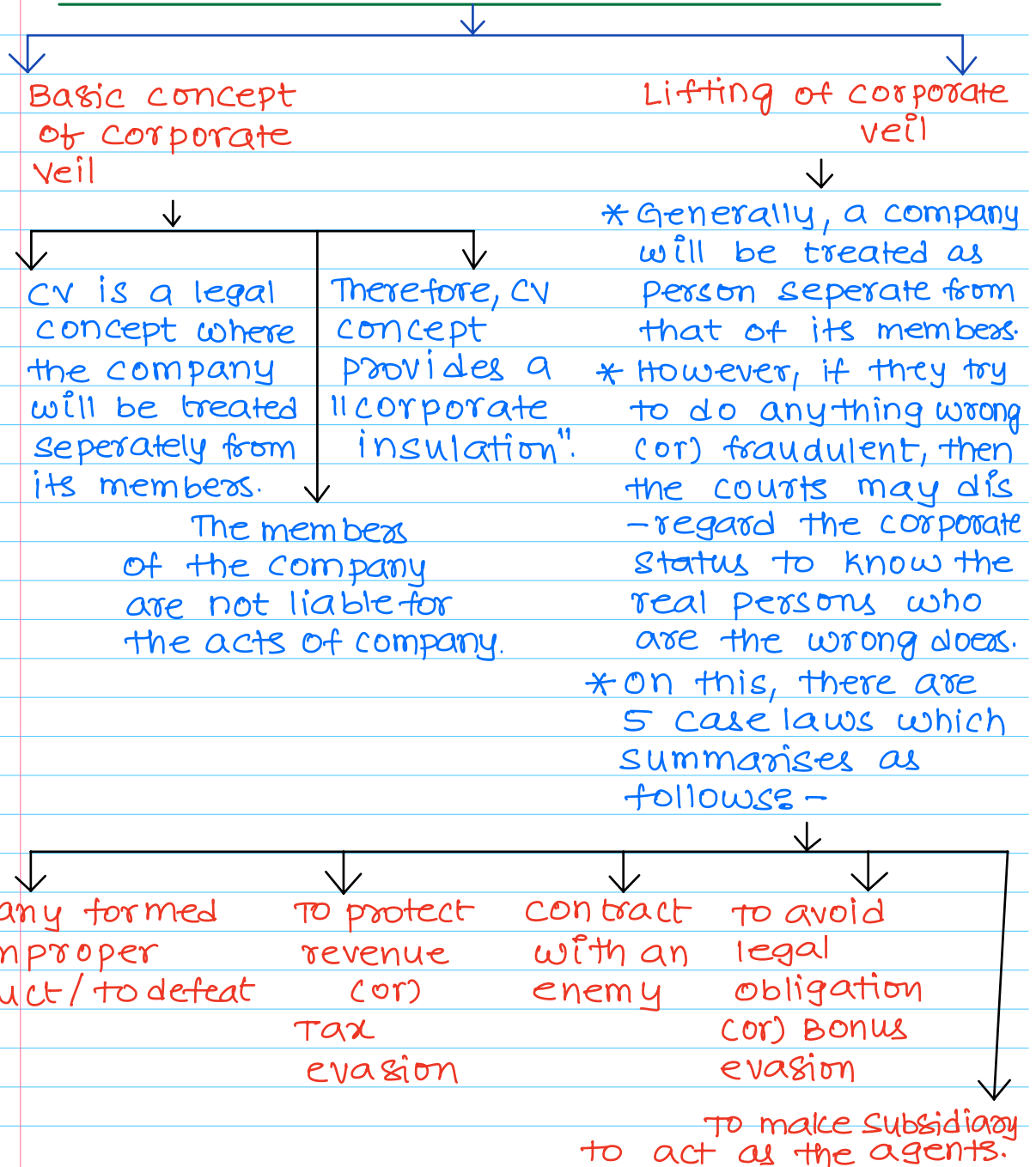
* Just by a mere reason that entire share capital is virtually held by one share holder, company and members cannot be treated as one and the same.

* company is at law is altogether a different person from that of the subscribers to the memorandum.

* Though the same business is carried on by same person and profits are shared by same person, both are not treated as one and the same.

to Salomon as, Salomon & company are one and the same.

CORPORATE VEIL AND LIFTING OF THE CORPORATE VEIL.



CASE LAWS

Gilford motor
CO
vs
Horne

merchandise Transport Ltd
vs
British transport Commission

Facts of the
case

* Horne entered into a non-
compete agreement
with Gilford motor
Co Ltd not to
compete him in the
same business
* He later started a
company claiming
that non compete
is with him and
not with the Co-
* He further argued
that company is
a person different
from its members
and Gilford motor
Co, has 'NCA'
with member of
the new company
and not with the
company.

conclusion

* where the
device of
incorporation
is used for
some improper
purpose, like
defeat any
law, the CV
shall be lifted.
* Therefore, Horne
and his company
are treated as
one and the
same.

Facts

* A company
wanted to
apply for a
license to
operate the
transport
vehicles.
* But it cannot
do so due to
a prohibition
against it.
* Therefore, the
prohibited co,
started a new
company as its
subsidiary and
applied for the
license.

conclusion

The license has been rejected also
to the subsidiary company as it
is a mere agent to the holding
company. Sometimes, if company is
formed as agents of another co, it
loses its individuality.

contd....

Re: Dinshaw Maneckjee Petit.

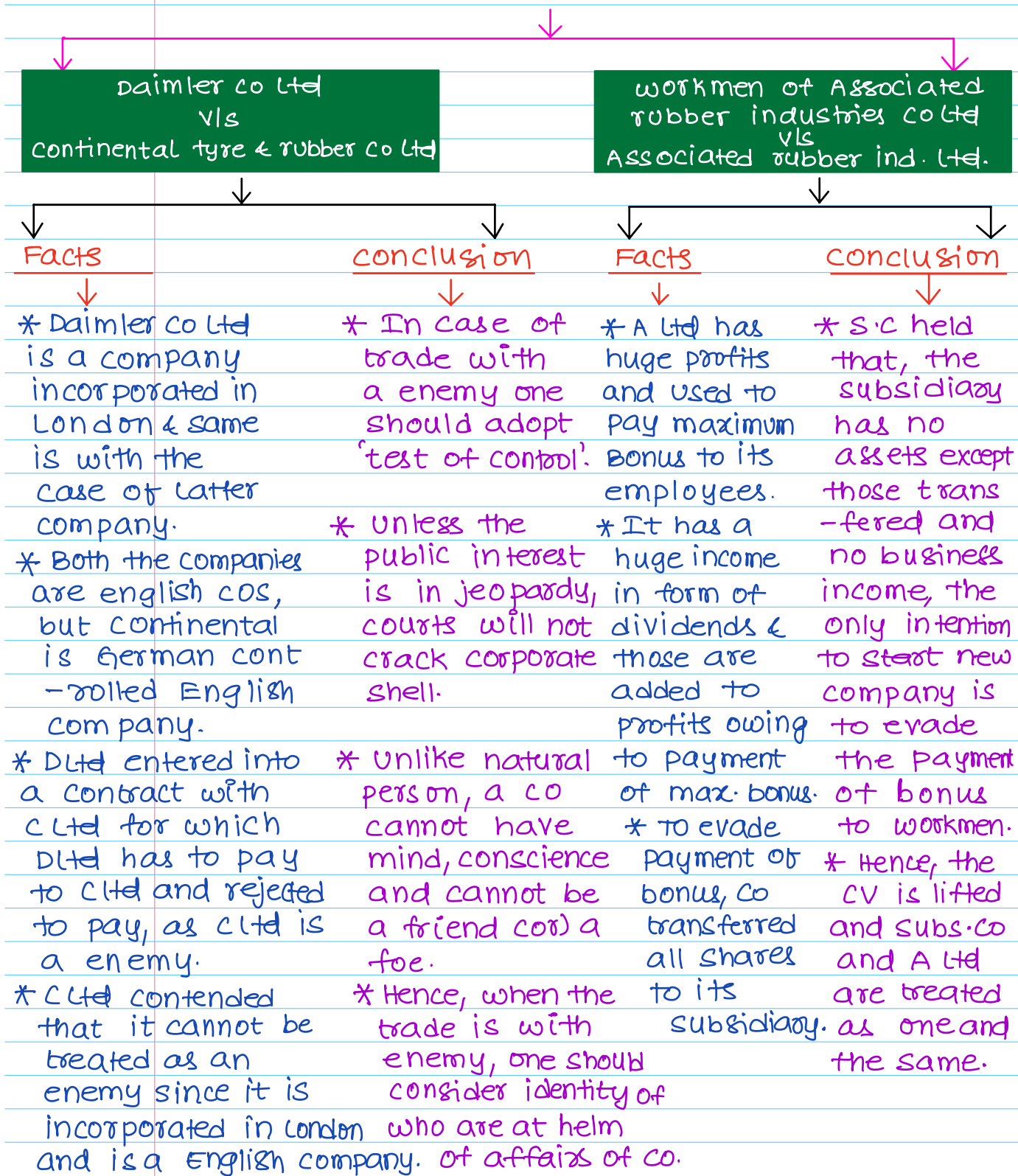
Facts of the case

- * Dinshaw is a wealthy man having huge properties in form of shares and debentures.
- * He then used to earn huge income from the shares & debentures in the form of dividend and interest.
- * The dividend and interest is subject to tax.
- * In order to evade the payment of income tax, he started 4 private cos, transferred all investments in its name to claim an exemption on income earned (as dividend & interest income is exempt in hands of co at that time).
- * The income earned by the company is again taken by Dinshaw as a pretended loan.

Conclusion

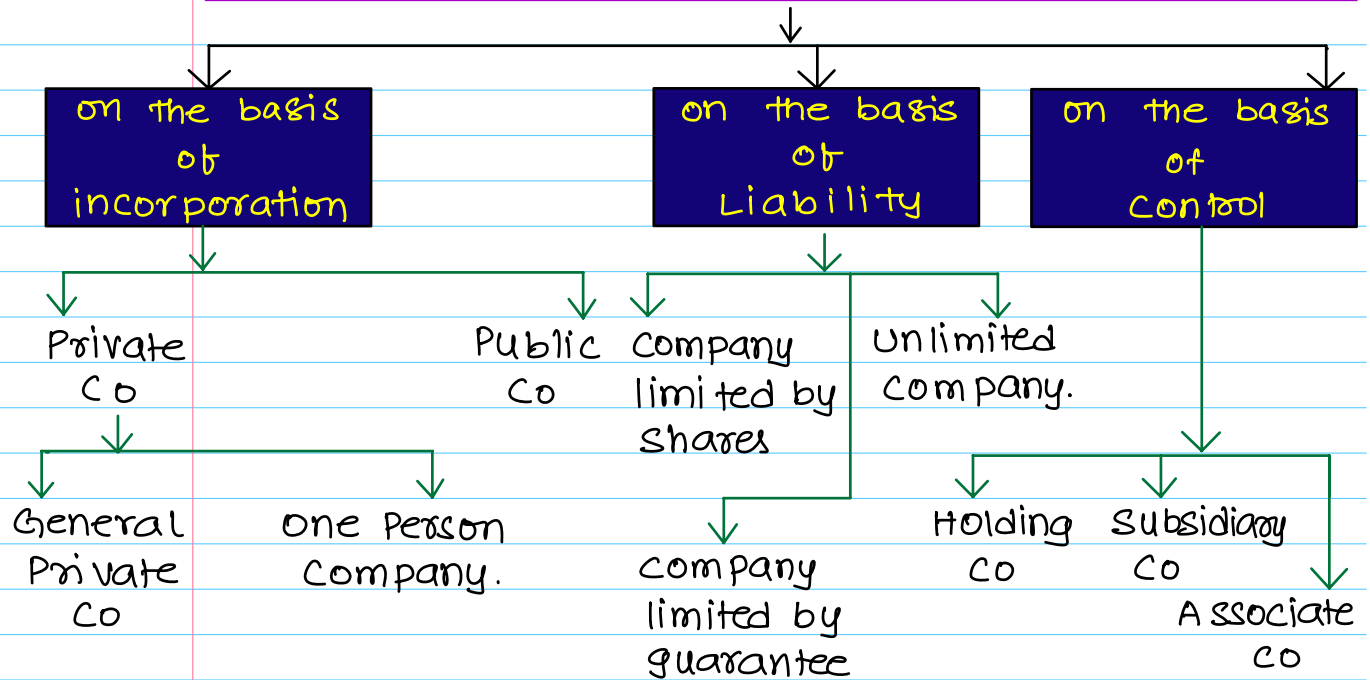
- * Court held that, the 4 private companies, that are formed are a mere sham (or) a cloak and the corporate veil has to be lifted to identify the real owner.
- * Hence, it is held that, Mr. Dinshaw and his 4 private companies are one and the same and since there is a tax evasion, the corporate veil shall be lifted and entire income of 4 cos, is taxable in the hands of Dinshaw.

contd.....

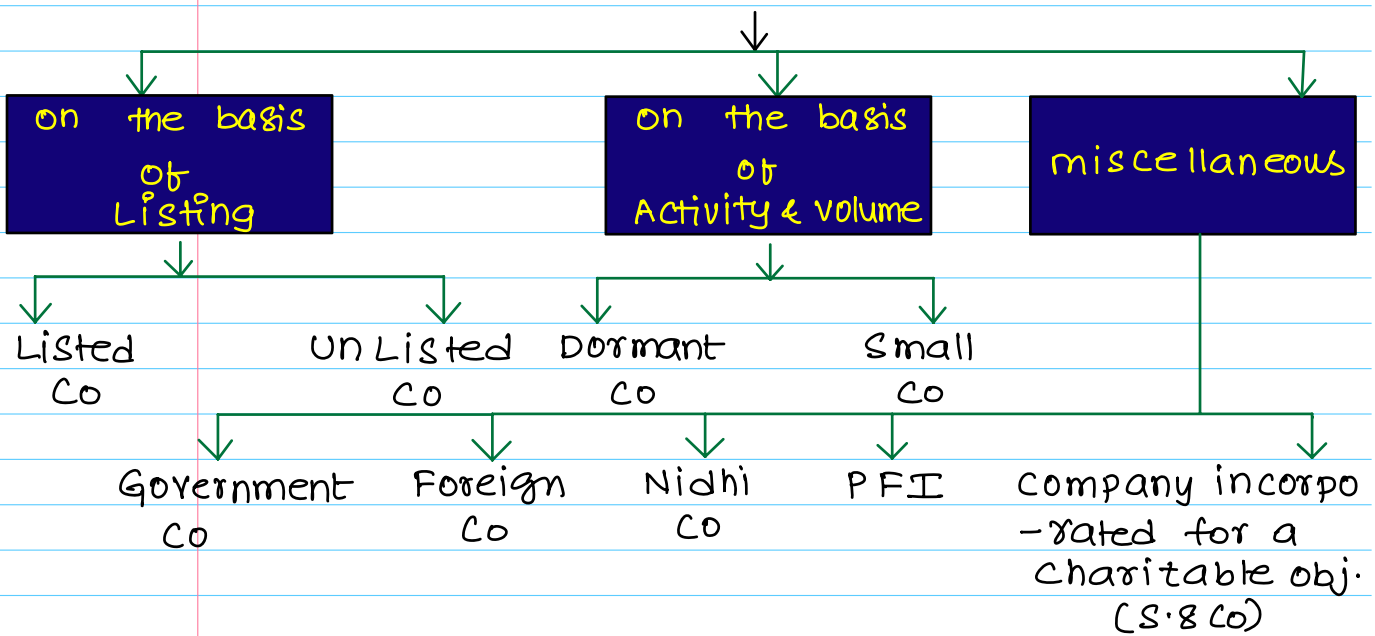


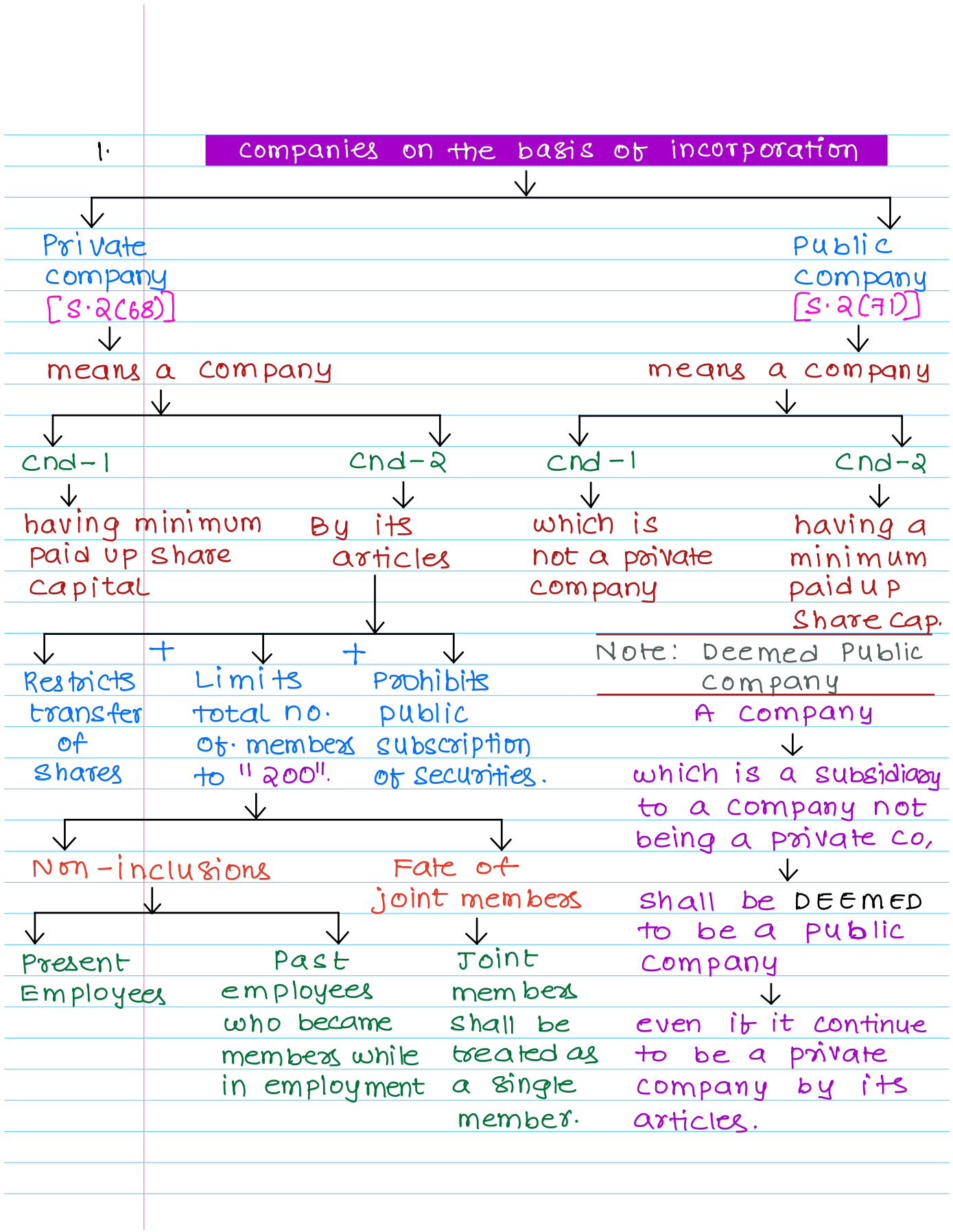
2. KINDS OF COs.

Kinds of Companies on the basis of various factors



contd....





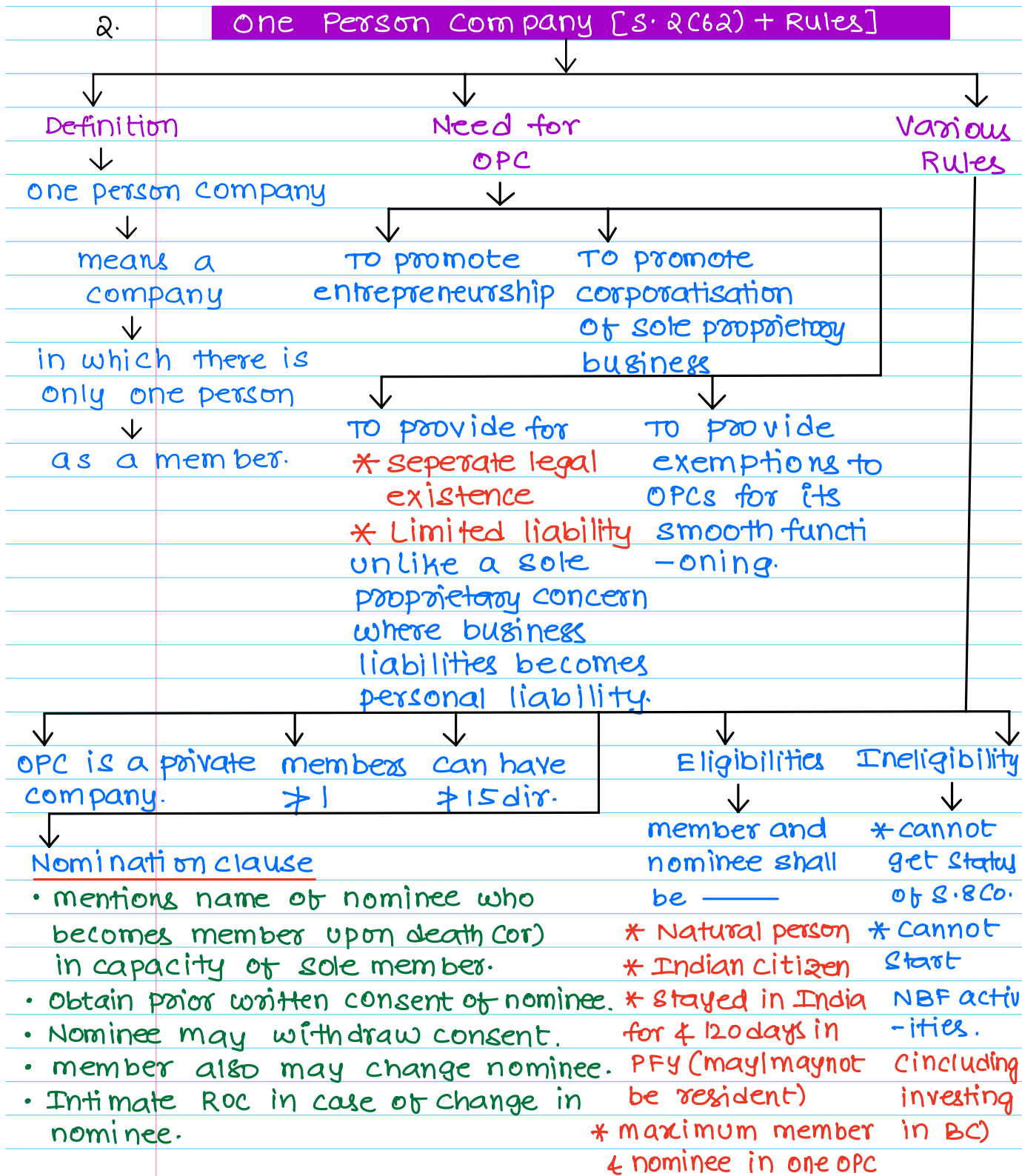
Non-inclusions

Present Employees

Past employees who became members while in employment

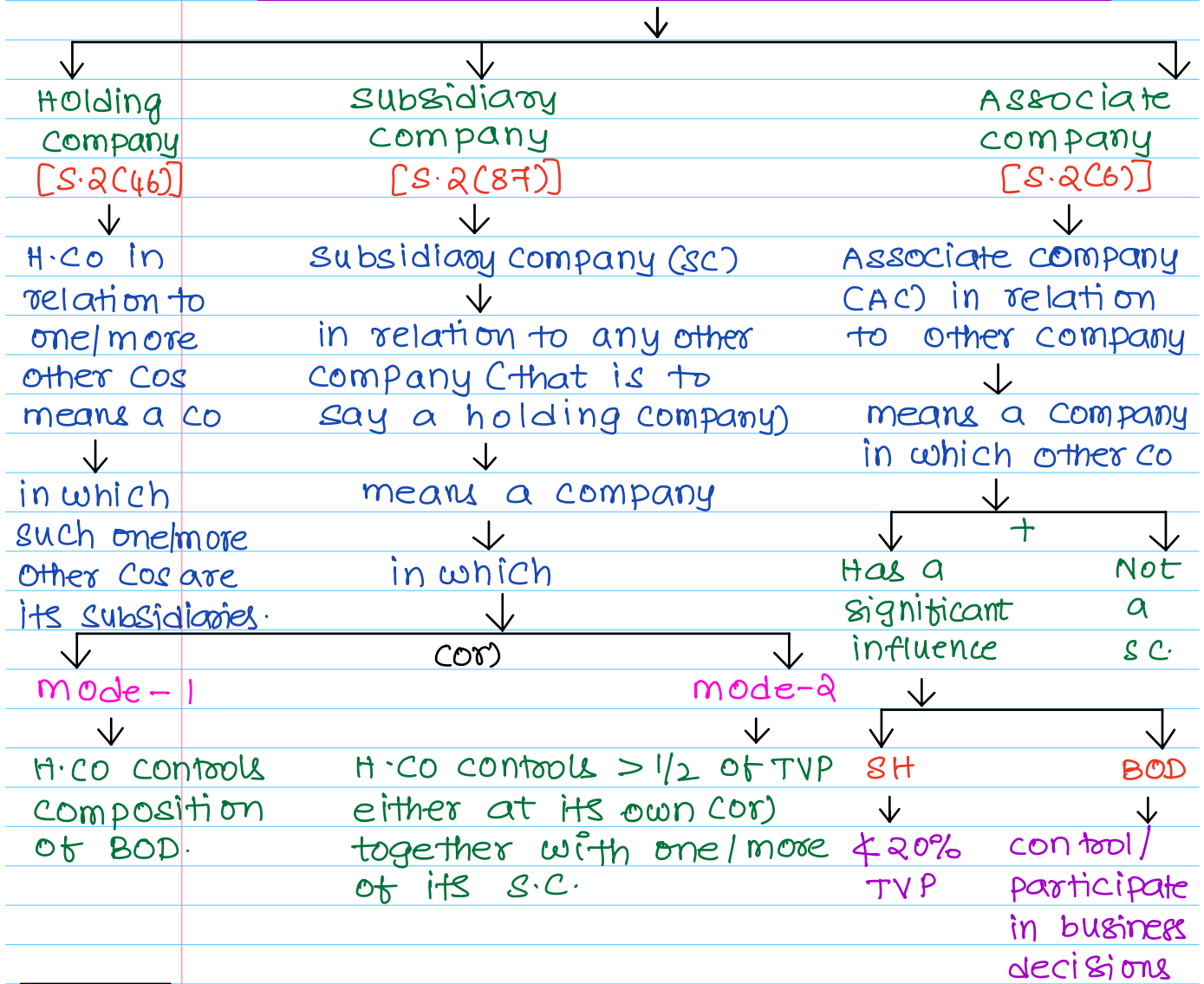
Fate of joint members

Joint members shall be treated as a single member.



3.

Companies on the basis of its control



Notes on H.Co

- * Company includes B.C
- * may have more than 1 Subs.Co.

Notes on subsidiary company.

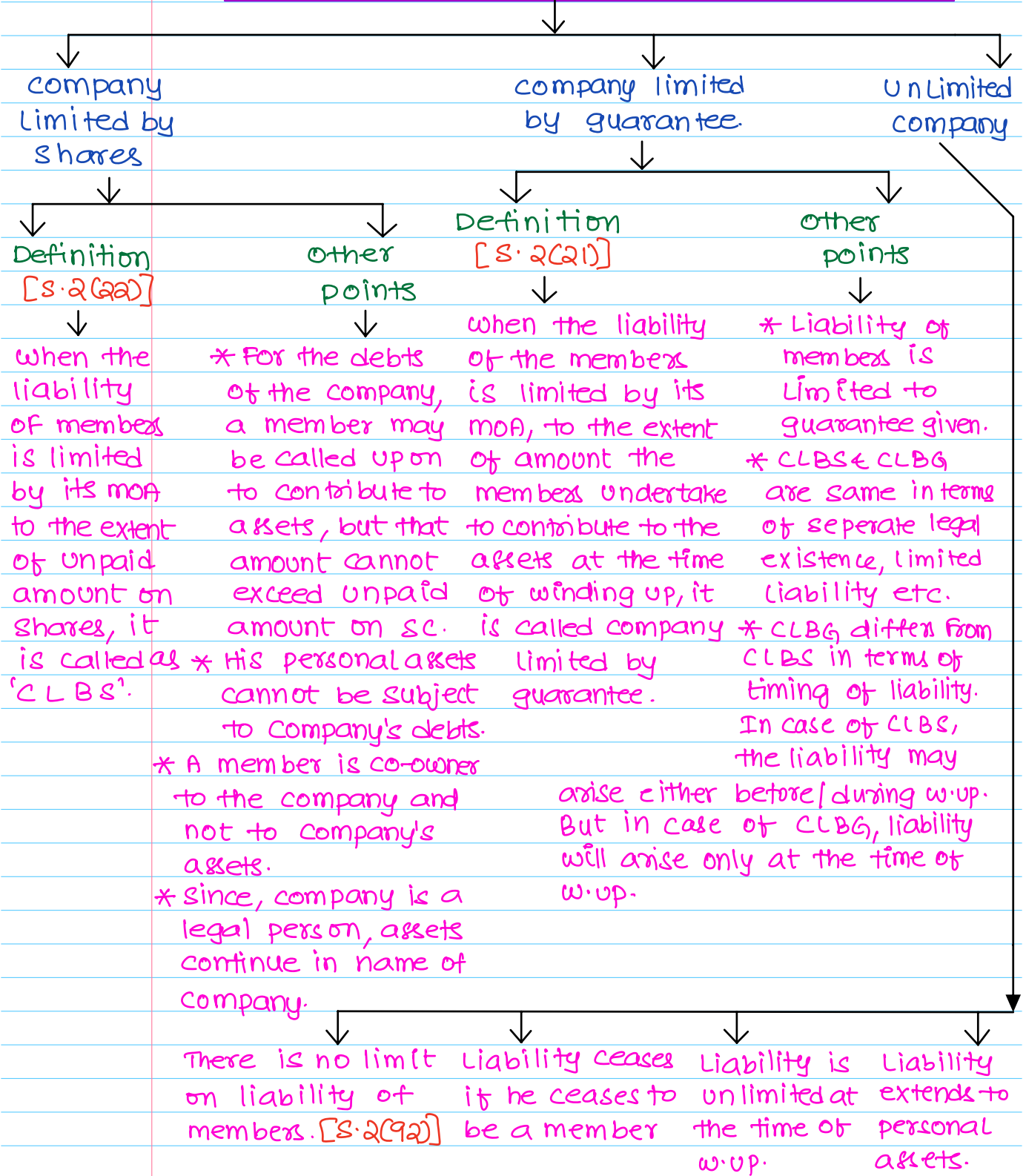
- * Company includes a B.C.
- * SH control may be of another subsidiary of H.Co = Deemed subsidiary.
- * Control of composition of BOD means having a right to appoint/remove majority / all of its BOD.

Notes on A.Co

- * Shares held in fiduciary capacity ≠ Asst.Co.
- * Joint venture = A.Co
- * JV = parties have right over NAV of arrangement.

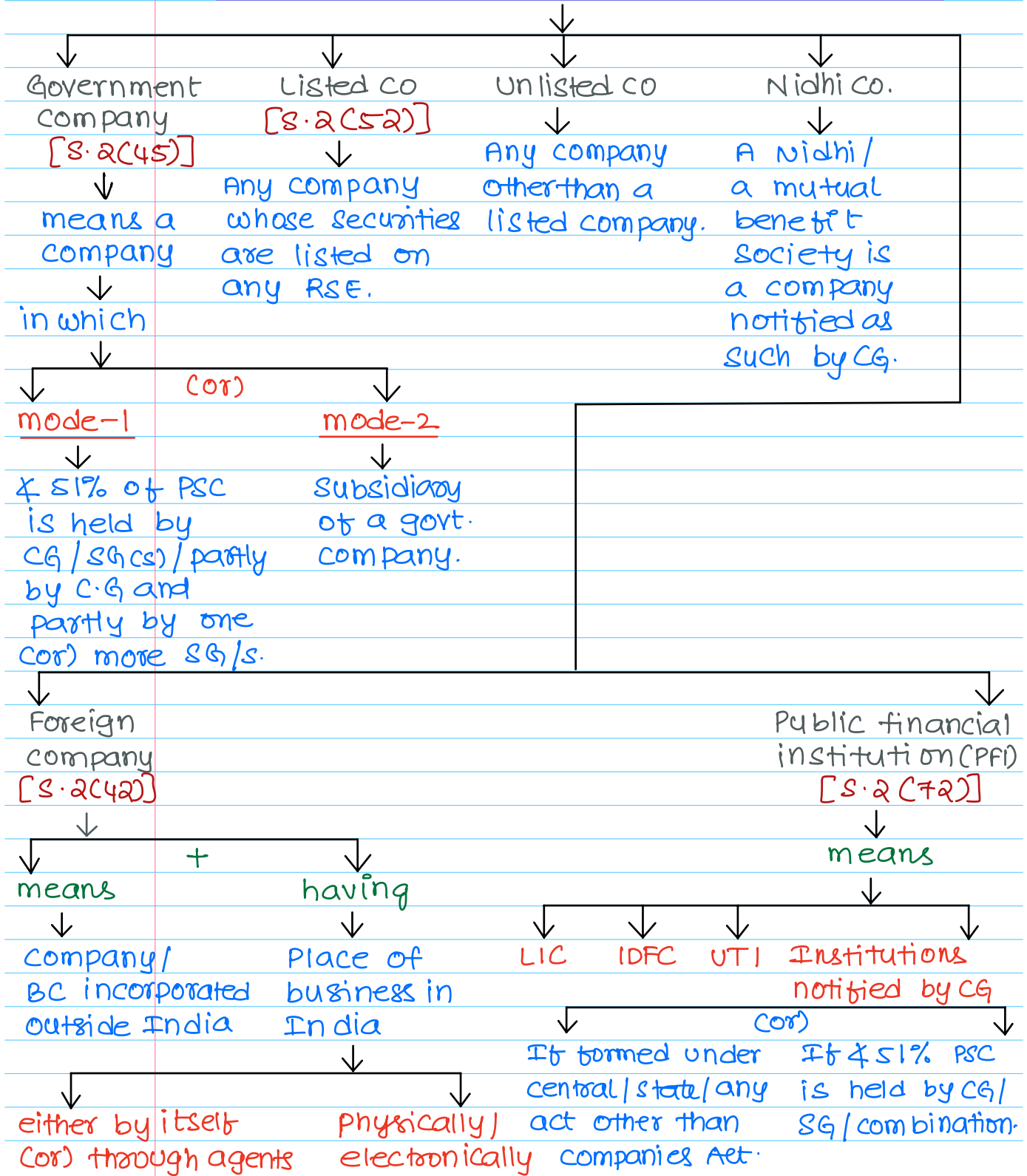
4.

Companies on the basis of liability



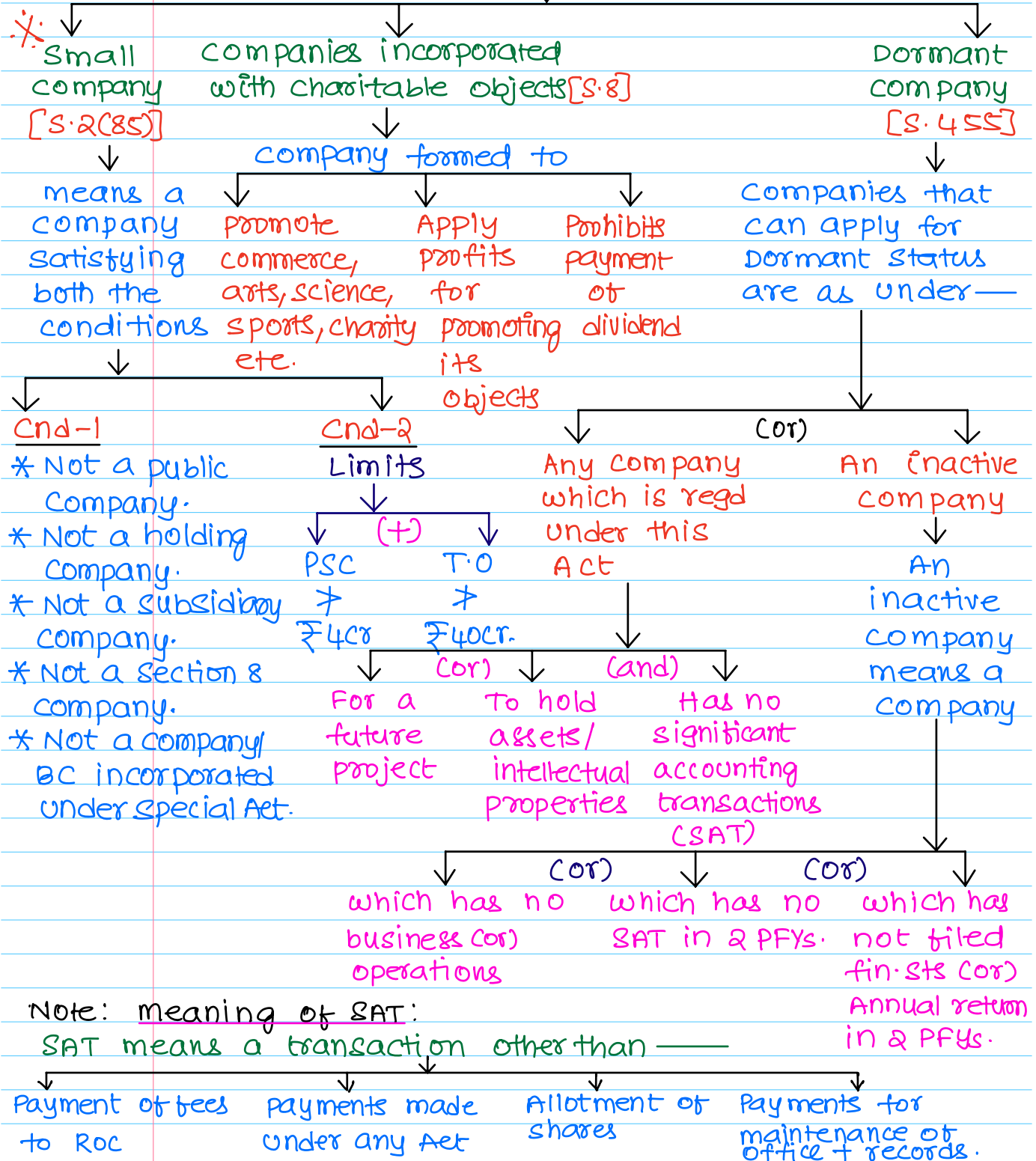
5.

miscellaneous (Part I)

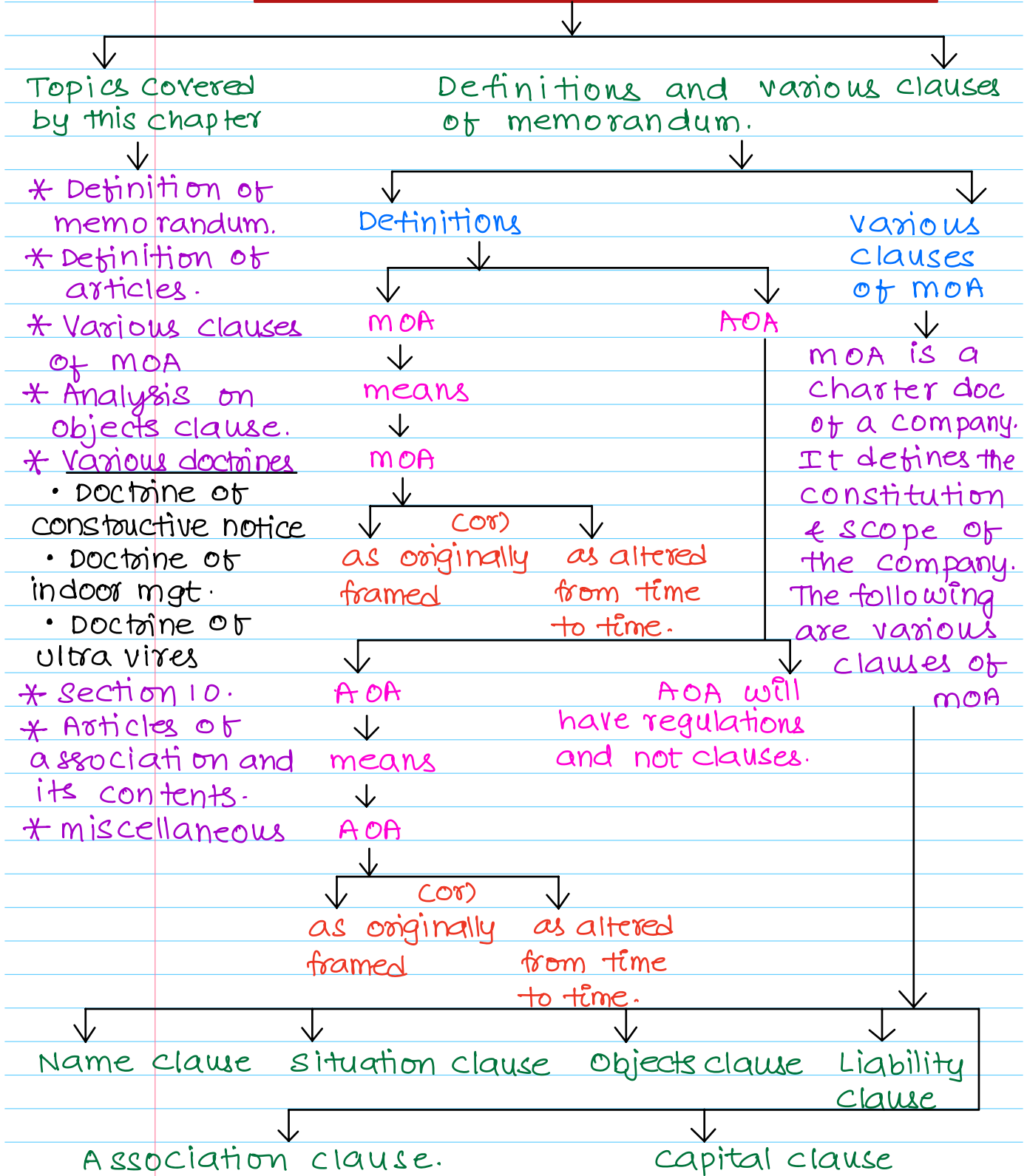


6.

miscellaneous (Part II)

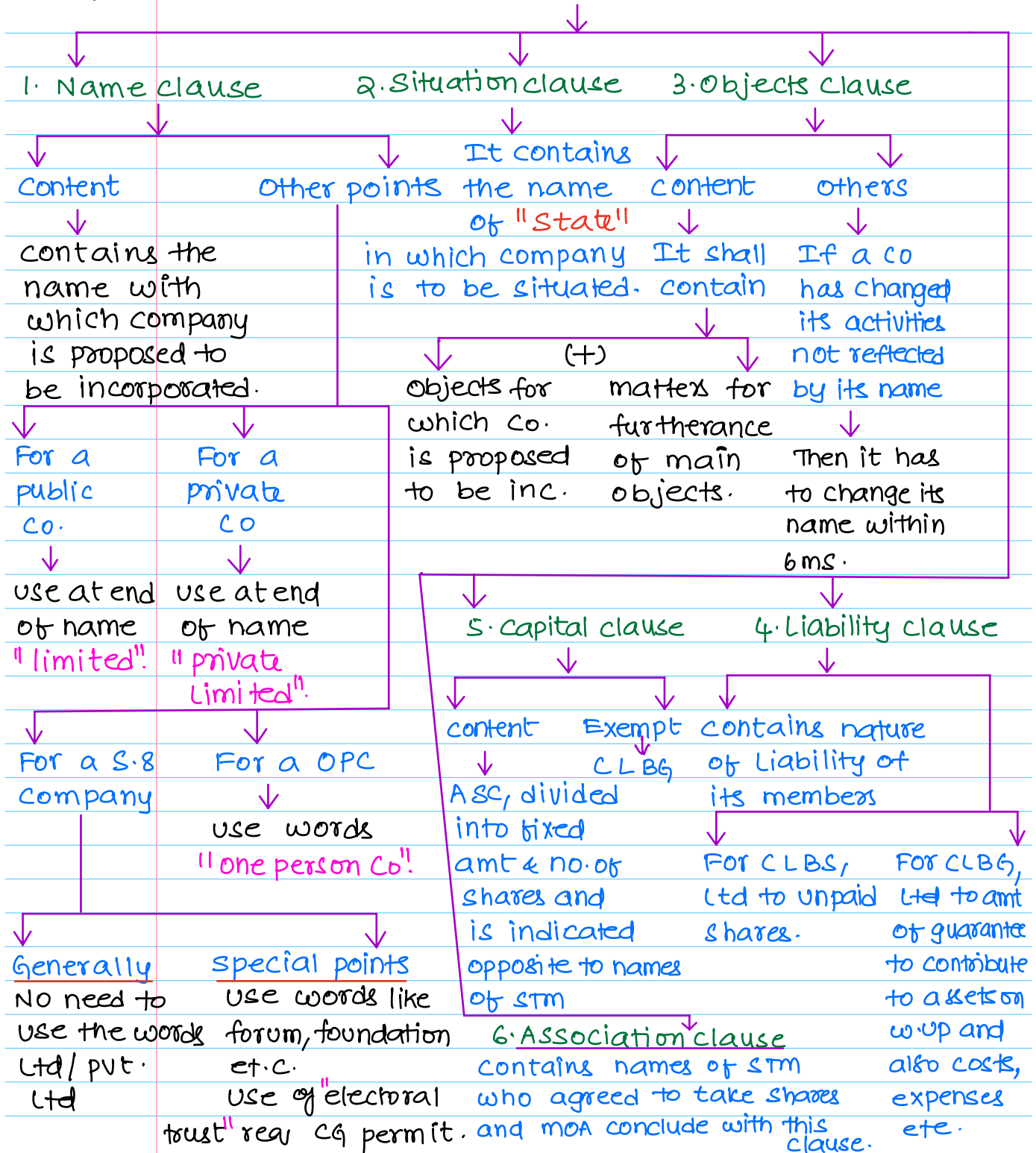


3. MEMORANDUM AND ARTICLES OF ASSOCIATION



2.

Analysis on various clauses of MOA.



3.

SPECIAL EMPHASIS ON OBJECTS CLAUSE

Objects clause of MOA.

Registration of MOA

Content

Objects clause of MOA contains the objects for which the company is proposed to be incorporated.

It shall also contain matters in furtherance of objects.

Objects clause of MOA specify the object for which company is formed.

MOA once registered with ROC will become public doc. therefore, every person dealing with the company is presumed to have knowledge on MOA.

It explain the scope of its operations beyond which a company cannot go.

It enables SH, creditors (or) any person dealing with company to know what are the powers of the company and what activities it can engage in.

Format of MOA

Table-A

MOA of CLBS

Table-B

MOA of CLBG & no SC

Table-C

MOA of CLBG & having SC

Table-D

MOA of ULC

Table-E

MOA of ULC with SC.

4.

Doctrines of constructive notice and Doctrine of Indoor management.

Doctrines of constructive notice (DCN)

Doctrines of Indoor management (DIM)

Basics

main Rule

Rule Content

Case Law

As per sec. 399, any person may inspect by electronic means any document kept with ROC.

Therefore, any person can also inspect MOA + AOA since they are also public documents.

As per DIM, outsider/PDWC need not enquire about internal affairs of Co.

Royal British Bank v/s Turquand

Any person can take a copy/extract of any document kept and registered with ROC.

As far as internal affairs are concerned, outsider may presume that Co has followed all formalities and thus DIM acts in favour of outsiders & against company.

* Since MOA & AOA are public documents, every person dealing with company is presumed to have knowledge of the contents of MOA & AOA and understand the contents in true perspective/right sense.

* This is a doctrine which protects company against outsiders and is a presumption in favour of company.

Facts of the case

* RBB Ltd sanctioned loan of ₹2,000 to C Ltd. C Ltd in AOA mentioned that loan of ₹2,000 require resolution of SH.
* But company didnt pass any resolution and Liquidator (T) rejected claim of RBB.

Conclusion

* RBB Ltd is expected to have knowledge of contents of MOA & AOA but not the resolutions.
* RBB Ltd can have presumed knowledge of resolutions since they are related to internal workings and therefore loan is enforceable.

5.

Exceptions to Doctrine of Indoor mgt

1. Knowledge of irregularity

2. Suspicion of irregularity

3. Forgery cases

concept

case law

concept

case law

This rule doesn't protect a PDWC who has actual/constructive knowledge of irregularity.

Howard v/s Patent Ivory manufacturing Co Ltd.

DIM will not protect those who act negligently. If a transaction is suspicious/unusual, the

Anand Bihari Lal v/s Dinshaw & Co

Ruben v/s Great Fingal consolidated Ltd

Facts

- Company issued bonds to directors
- As per AOA, Co has to obtain permission of SH.
- But company has borrowed without SH permit.

conclusion

- since issue is made to them
- Selves, directors cannot defend.
- The directors are expected to have knowledge that assent of GM is not obtained.

Facts

- An accountant who has no authority by MOA/AOA sold & transferred Co's property to an outsider.
- * DIM shall not protect when contract is suspicious and inviting an enquiry.
- * Suspicion should arise when an officer is acting outside the scope of his authority.

conclusion

- * These fore, accountant cannot be presumed to have authority to transfer Co's property and is void.

Forgery notes:

In case of a forgery, there is no consent at all and the contract is null & void. Court held that, DIM is never extended to cover the forgery cases which are illegal.

6. DOCTRINE OF ULTRA VIRES.

(A)

1. Basics

The term "Ultra" means "beyond" and the term "vires" means "powers" and hence the word "Ultra vires" means "Beyond the powers".

2. Power of MOA + AOA

As per S. 399, MOA & AOA are public documents

Hence, every person dealing with the Co, is presumed to have the knowledge of contents of MOA & AOA.

3. Types and legal effects of UV txns

There are 4 types of UV txns and they are as follows

Once MOA & AOA is registered, in no case company can depart from the objects stated in the MOA. A company is not allowed to do any thing not permitted by the MOA.

TYPE-1 UV CA

- * void-ab-initio
- * Illegal
- * Not ratifiable
- * BOD personally liable
- * Co not liable.

TYPE-2 UV the MOA

TYPE-3 UV the AOA IV the MOA.

- * voidable.
- * Irregular
- * Ratifiable.
- * Company liable.
- * BOD not personally liable.

TYPE-4 UV the BOD powers IV the AOA

(B)

CASE LAW ON ULTRA VIRES

Facts of the case

Ashbury Railway Carriage & Iron Co Ltd
v/s
RICHIE

- * The objects clause of the company provided for following:
 - a. To sell, lease, hire Railway carriages & wagons
 - b. to carry on business of mechanical engg and general contractors.

* ABRC Ltd is approached by Mr. Richie who then requested for financing a Railway line in Belgium.

* Initially ABRC has accepted the proposal but later it has refused since financing is one which is outside the scope of its objects.

* However, Mr. Richie has contended that the Co, has power to finance from its MOA, as it uses the word "General contractors" which includes financing contracts also.

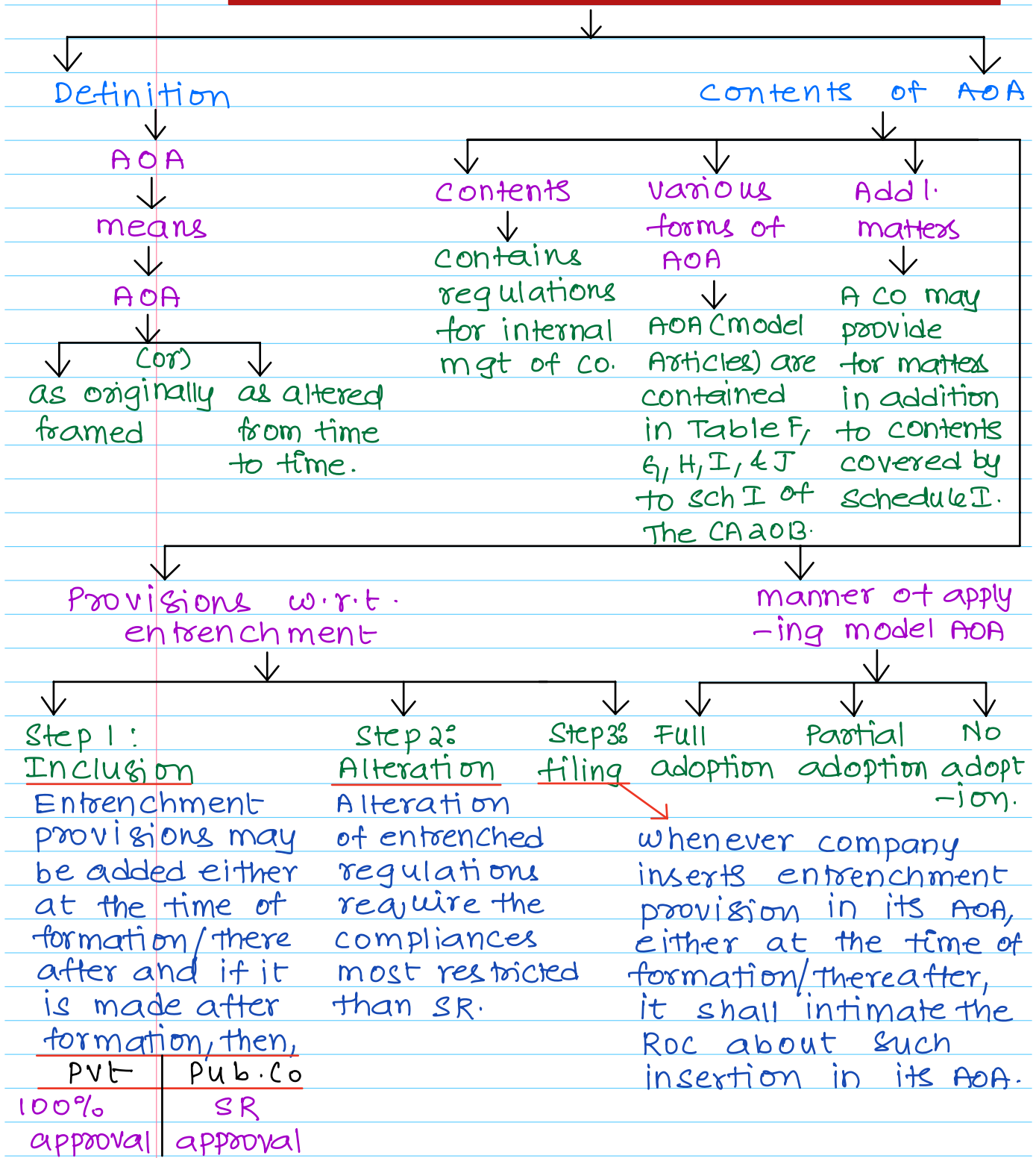
Judgement in the case

* The court held that, the term "general contractors" doesn't mean to include any contract, but only to include such contracts having some relation with mechanical engg.

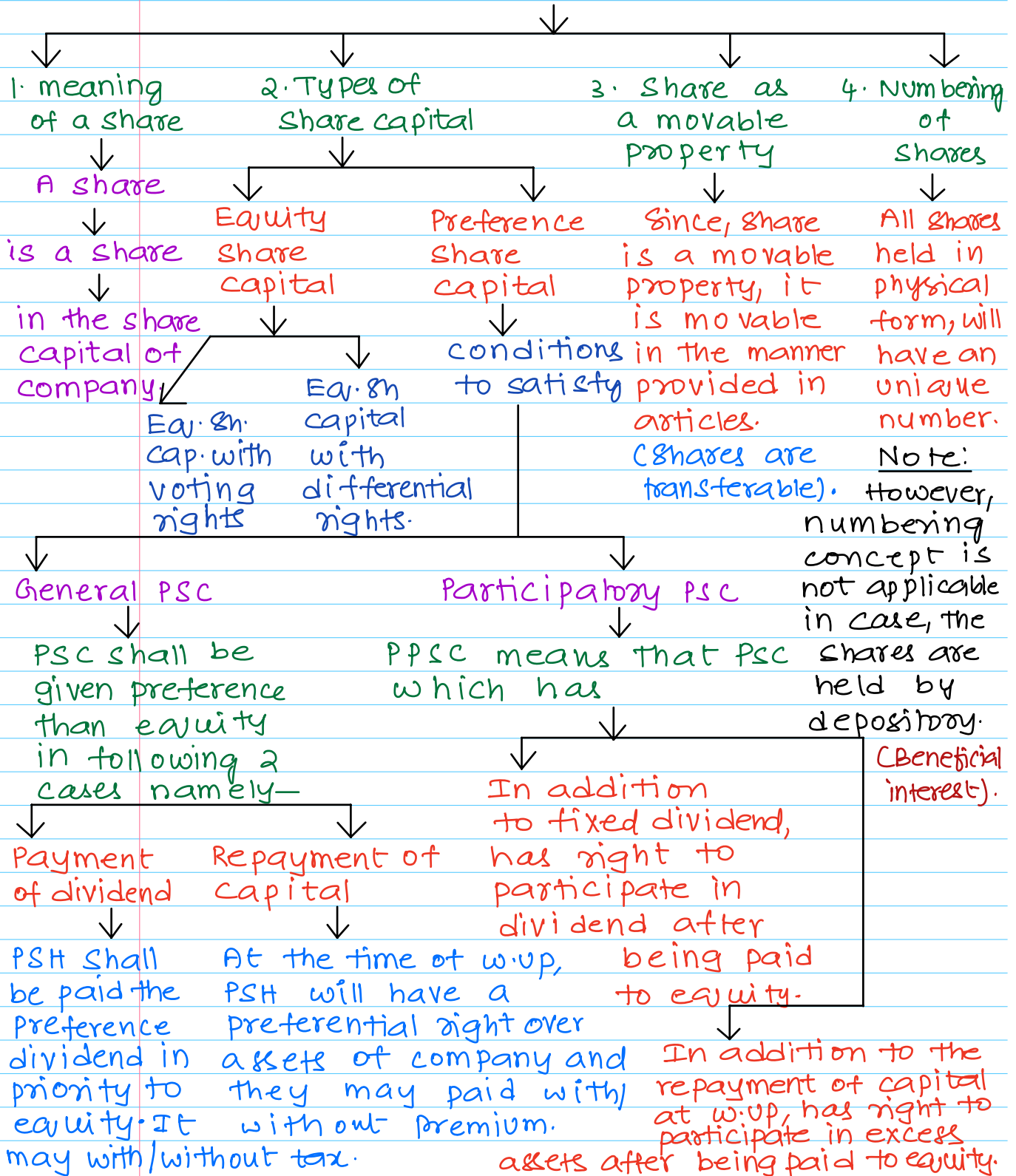
* Hence, in the given case, financing is outside the scope of ABRC Ltd, the txn is void and null. It has no legal validity.

* Hence, Richie cant sue anyone on a UV txn.

7. ARTICLES OF ASSOCIATION



4. SHARE CAPITAL



contd

5. classification of capital

