

The Companies Act, 2013.

* Advantages of Company :-

- ① There is a wide access to Capital based & skilled based.
- ② Liability of members is limited.
- ③ It's very easy to transfer ownership in Company form of organisation.
- ④ Death, Insolvency, Insanity of the members will not ^{affect} existence of a Company. (Perpetual Succession)

* Company :- "Company means a Company incorporated under this Act or under any previous Company Law."

Sec 2 (20)

Sec 2 (67) previous Co. Law = ① The Co. Act, 1866 ② 1882 ③ 1913
④ 1942 ⑤ 1956

Purpose of this Act :-

- ① Improve corporate governance
- ② Simplify regulations
- ③ Strengthen the interest of minority minority / investors / Shareholders.
- ④ Role of whistle blower
- ⑤ Provisions for class Action Suit.

Previous Co. Law :- ① 1856 ② 1882 ③ 1913 ④ 1942
⑤ 1956.

Section 1 :- Applicability, Short title,
Commencement & extent.

* Applicability of Act

- ① Companies incorporated under this act or any previous Company law.
- ② Insurance Company.
- ③ Banking Company.
- ④ Company engaged in generation or supply of electricity.
- ⑤ Company governed by special Act [SBI - SBI Act]
- ⑥ Body corporates incorporated under the special act and specified by the Central government.

* Features of Company :- **CLAPS**

(1) Separate Legal Entity :-

- ① Co. is separate from its members.
- ② Co. has its own identity.

- ① When company is registered it becomes / cloth with legal personality which whose existence is separate and distinct from that of members.
- ② A company can own property, have Bank A/c, raise loan, incur liability and also enter into a contract.

Points from Artificial legal person

* Case laws :-

① Saloman Vs Saloman Co. Ltd. (Secured Debenture)

- - Although the capital & assets are contributed by shareholders, company becomes owner of its capital & assets.
- No reliance with case law
- Shareholders are not joint or co owners of company property.

② Macaura Vs Northern Assurance Co. (member taken insurance of property of co.)

- A member do not have insurable interest in Asset / Property of Company.

③ Lee Vs Lee Air Farming Co. Ltd.

[2] Perpetual Succession :-

- * Features of Perpetual Succession :-
- Company is assumed to go on even when members dies or change (retires)
 - Company goes on till it is wound up on grounds specified by act.
 - Company is created by law and only law can bring end to it.

3] **Limited Liability** :- Members liability depends upon type of Company which he is member of.

(a) **Limited Liability Company** :- liability is limited only upto the nominal face value of shares held by him.

(b) **Guaranteed Company** :- Members are liable only upto the extent of amount guaranteed by them and too only when Company goes into liquidation.

(c) **Unlimited Liability Company** :- Liability of members is unlimited.

4] **Artificial Legal Person** :- (1) Company is created by law and it is cloth with all legal * Co. has its own legal identity. Personality.

(2) Company being **separate legal entity** can **own property, have bank A/c, raise loans & enter into a contract.**

(3) Company is an artificial person & it acts through **Human Agency** i.e. **directors.**

(4) **Directors** are not agent of members but they are agents of company who can act on behalf of company through **Common Seat.**

5] Common Seal :-

① It is an official signature of company affixed by officers and Employee of company.

② As per Company Amendment Act 2015, Common Seal has been made optional.

③ It provides that to authenticate document following ways must be followed.

- Signature of two directors of Company
- Signature of one director and Signature of Company Secretary appointed by Company as C.S.

Veil = ~~Hoax~~ = cloak = sham = Hoax

Corporate Veil Theory / Independent Corporate Personality.

- 1) Corporate Veil refers to legal concept whereby company is identified separately from its members.
- 2) Members are not liable for the liability of company & they have limited liability.
- 3) If company incurs any debts or do not follow any law than corporate veil concept implies that members should not be liable for these errors, they enjoy corporate insulation. (members & co. are separate)

Case Law :- Saloman Vs Saloman Co. Ltd.

* Lifting of Corporate Veil :-

- When Law ignores the concept of Corporate Veil that

- ① Company is veil as it is Artificial Person.
- ② If Board of Director execute fraud then who actual is liable? Company or BOD.
- ③ Lifting of Corporate veil will be done to identify the culprit.
- ④ BOD will be liable for the same.
- ⑤ It's called the lifting of Corporate Veil.

* In following cases Corporate Veil be lifted:-

1] To Determine character of Company i.e. it's friend or enemy :-

→ ① In law Contract with alien enemy is void-ab-initio.

② Creation of company in enemy country for profit's is invalid.

③ If public interest is in jeopardy ^{risk} than Corporate Veil shall be lifted.

④ If company's affairs are controlled by people of enemy country than company will be called as Enemy Company & contracts with them will be void-ab-initio.

Base Law :- Daimler Co. Ltd Vs Continental Tyre & Rubber Co.
[German & British Profit] Co.
Sharing enemy country

2] To Protect Tax/Revenue :- ① If any company is formed just to avoid duties and taxes i.e. evasion of tax than it is void in law & Corporate Veil shall be lifted.

Base Law :- Dinshaw Manekji Petit.
(Tax evasion)

[3] To Avoid Legal Obligation :-

- ① When company is formed to reduce the amount to be paid to workers as bonus than such company incorporation is void.
- ② Creating Subsidiary Companies to acquire more employees without burden of Bonus, Gratuity, PF is void.
- ③ In the above case the corporate veil shall be lifted & all employees will be counted together.

Case Law :- Workmen of Associated Rubber Industry Ltd.
Vs Associated Rubber Industry Ltd.
(No Bonus to workers)

[4] Formation of Subsidiary Company to act as an agent

- ① Subsidiary Company may sometimes regarded as agent of another company & therefore deemed to have lost individuality in favour of principal.
- ② Principal shall be liable for acts of the company.

Case Law :- Merchandise Transport Limited
Vs British Transport Commission

[5] Company formed for fraud / defeat law :-

- ① Creation of company for fraud / defeat law is void.
- ② When company is created to solicitate the customers of prohibited company is void.
- ③ Corporate veil shall be lifted to identify the culprit.

Case Law :- Guildford Motor Co. Vs Horne.

Case Laws Related to Separate Legal Entity

| | | |
|------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|
| <p>Saloman Vs Salomon Co. Ltd.</p> | <ol style="list-style-type: none">① The Company is separate from its members.② The Company has its own identity.③ The members of Co. can be creditors or have any position in Company.④ Any member can enter into a Contract with Co.⑤ The Members of Company can recover the debt as secured / Unsecured creditors. | <ol style="list-style-type: none">① Shoe Business② Creditor of Co. |
|------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|

| | | |
|----------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| <p>Lee Vs Lee Air Farming Ltd.</p> | <ol style="list-style-type: none">① The Company is separate from its members and employees.② The members can be employee in the Company.③ The member in case of employee can recover the claim the compensation in case of injury to employee.④ In case of death, his/his legal representative can claim the compensation. | <ol style="list-style-type: none">① Employee death compensation to widow |
|----------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|

| | | |
|---------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Macaura Vs Northern Assurance Company.</p> | <ol style="list-style-type: none">① The property of Company is separate from the property of its members.② The members shall not have any insurable interest into the property of Company.③ Any such contracts where members have insurable interest into property of Co. is void-ab-initio & shall not be enforceable.④ Members shall get the premium refunded with interest. | <ol style="list-style-type: none">① Timber Insurance by member② Insurable interest in Company Property③ Void Insurance |
|---------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|

Lifting of Corporate Veil

| | | |
|--------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|
| <p>1) Daimler Co. Ltd Vs Continental Tyres & Rubber Ltd</p> | <p>① The contract with alien enemy is void-ab-initio.</p> <p>② Creation of Company in enemy country for profit is void.</p> <p>③ If Company affairs are managed by the people of enemy country than Company will be called as enemy Co. & all such contract with them will be void-ab-initio.</p> | <p>① Enemy Country</p> <p>② Profit in enemy country</p> <p>③ Germans British Profit Sharing Co.</p> |
| <p>① Dinshaw Monekji Petit,</p> | <p>① Formation of Company in order to protect the tax & revenue is tax evasion is void-ab-initio.</p> <p>② Corporate Veil shall be lifted to find the culprit & get payment for tax.</p> <p>③ Mr. Dinshaw is liable to pay tax + interest + Penalty.</p> | <p>① Tax Evasion</p> <p>② Protection of Tax & Revenue.</p> |
| <p>1. Workmens of Associated Rubber Co. Vs Associated Co. Ltd.</p> | <p>① Formation of Co. to avoid welfare legislation of workers is void.</p> <p>② Creating Subsidiary to acquire more employees without any burden of Bonus, PF, Gratuity is void in law.</p> <p>③ Corporate Veil shall be lifted up & all employees must be counted together.</p> | <p>① Bonus, PF Gratuity of workers.</p> <p>② To avoid legal obligation.</p> |

Merchandise
Transport Co.
Vs British
Commission Ltd.

- ① Creation of Company for obtaining Public license is Void.
- ② License rejected to Holding Company shall also be rejected to Subsidiary Co.
- ③ Corporate Veil shall be lifted to identify the culprit.

- ① Forming Subsidiary for public license.
- ② Agent.

Guildford
Motor Co.
Vs
Horne

- ① Formation of Co. for solicitation of customers of prohibited company is void.
- ② Ex. employee of old company cannot solicitate the customers of it by creating new company.
- ③ Corporate Veil shall be lifted up in such cases.

- ① Solicitation of customers
- ② Prohibited Co.

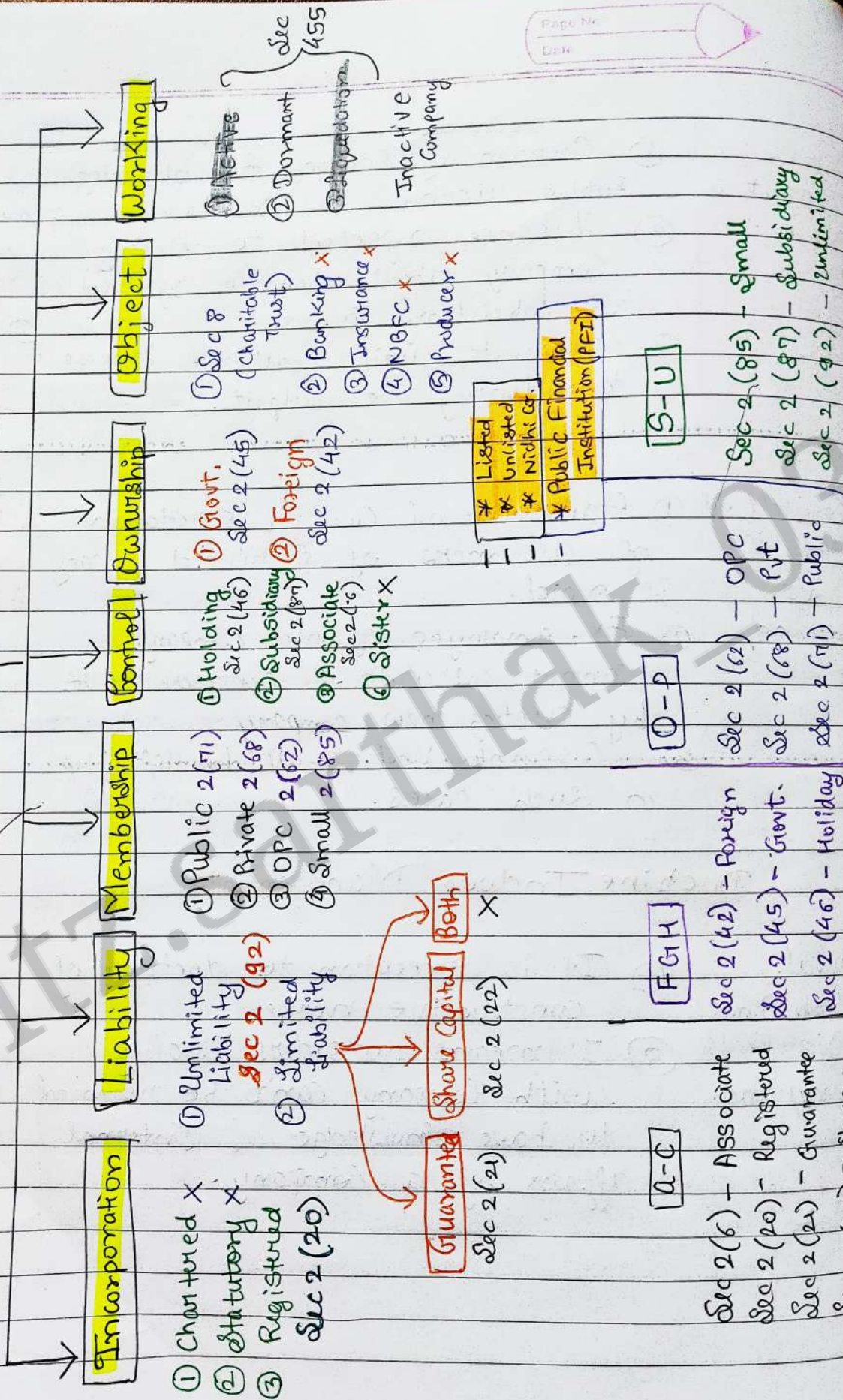
Doctrine Indoor Management

Royal
British Bank
Vs
Turquand

- ① It is exception to doctrine of constructive notice.
- ② It means outsiders dealing with Company can't be presumed to have knowledge of Internal affairs of a Company.

Hint ⇒ I La Meri C@W = [7]

Types/Kinds of Companies



On the Basis of Incorporation

1] Chartered Company :-

It means a company who has been given a special rights by government or dictator having main business of Trade Exploration and Colonisation.

eg:- East India Co.

2] Statutory Company :-

Statutory Co. is a company which is created by special law passed at both the houses of parliament.

eg:- LIC, SBI

3] Registered Company :- Sec 2 (20).

“Registered Company means a company incorporated under this Act, or any other previous company law”

Previous Co. Law includes :-

- ① TCA, 1866
- ② ..., 1882
- ③ ..., 1913
- ④ ..., 1942
- ⑤ ..., 1956.

* On the Basis of Liability :-

(1) Company Limited by its Shares :-

- (a) The liability of a member is limited only upto to the unpaid amount on shares held by him.
- (b) It means the liability of a member is only upto the extent of face value & when called up it must be paid by shareholders.
- (c) The shareholders personal assets are not liable to meet the requirement of liability in case of liquidation.

(2) Company Limited by Guarantee

- (a) The company in which the liability of a member is limited only upto the extent of amount guaranteed by him/her and that too in case of liquidation or winding up of a company.
- (b) The shareholders have to pay the amount only in case of winding up of a company that to upto guaranteed amount.

(3) Unlimited Liability :-

- (a) It means a company whose liability of members is unlimited.
- (b) It means if a liability of members is more than Assets at time of winding up of a company then such liability is paid by members out of his personal assets.
- (c) If members personal assets are not sufficient he will be declared as Insolvent & liability will be paid in promotion.

* Co. limited by its shares Sec 2(22)

(1) Liability of a member is only upto the Unpaid amount on shares held by him/her

(2) The members of these Companies are called as Shareholders.

(3) Amount shall be payable by members whenever it is called up by Company.

Guarantee Company Sec 2(21)

(1) Liability of a member is limited only upto the amount of extent of amount guaranteed by him.

(2) The members of these Companies are called as Guarantors.

(3) Amount shall be payable only in case of winding up of a Company.

Common/Similarity

(1) Limited liability.

On Basis of Membership.

(1) Public Company :-

Public Company is a Company which is not a private Company having minimum paid up share capital as may be prescribed.

- * The Public Co. have minimum 7 members & no limit on maximum numbers.
- * It has minimum 3 directors & Max. 15 directors.
- * Freely transfer of Shares
- * Employee can be members in Public Co.
- * Invitation to public is allowed.

(2) Private Company :- Pvt. Co. is a Company having minimum paid up share capital as may be prescribed by Article of Association (AOA)

Co. by its AOA

(a) Restricts transfer of Shares.

(b) Limits - Max. no. of members 200 & min. 2 (except one)
(Hum 2 Hamare 200)

- * Provided that :- Two or more members holding one or (Joint Holding) more shares jointly will be counted as one.
- * Provided further that :- Present or Past employees who are shareholders will not be counted / considered.
- * Invitation to public is not allowed.

[3] One Person Company :-

A Company incorporated by only one natural person is called as One Person Company.

- ① OPC is a type of **Private Company**.
- ② OPC is written as **Pvt Ltd Company (OPC)**

Member / Nominee

- **A natural Person**
- **Citizen of India**
- **Above or equal 18 years of age**
- **Resident or not**
- **Stayed more than 120 days in India Preceding immediate Financial year.**

- ① **Name**
- ② **Nominee/Member**
- ③ **Business Restrictions.**

- ① **Can become Member Nominee**
- ② **Shall be eligible to Incorporate OPC**

③ **One person can incorporate only one OPC.**

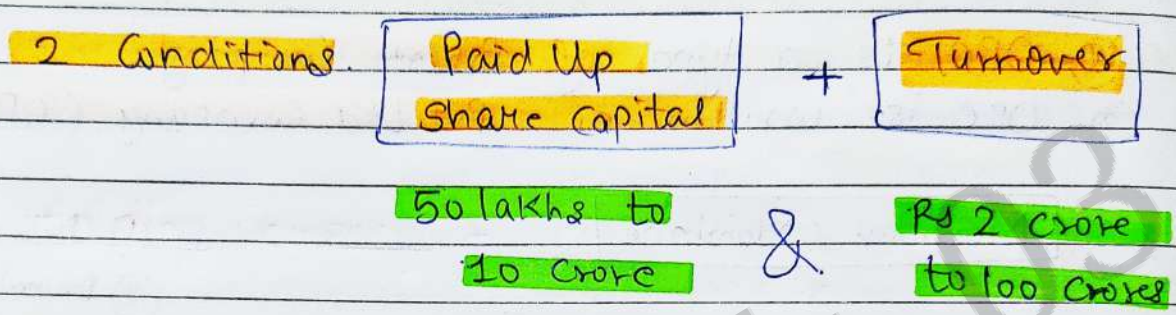
④ **One person can be member / Nominee in only one OPC at the same time.**

⑤ **Such Company cannot be converted into Sec 8 Company i.e Charitable Company.**

⑥ **(NBFC) They cannot carry out non-banking financial activities.**

(4) Small Company :- It is a private company other than a public company

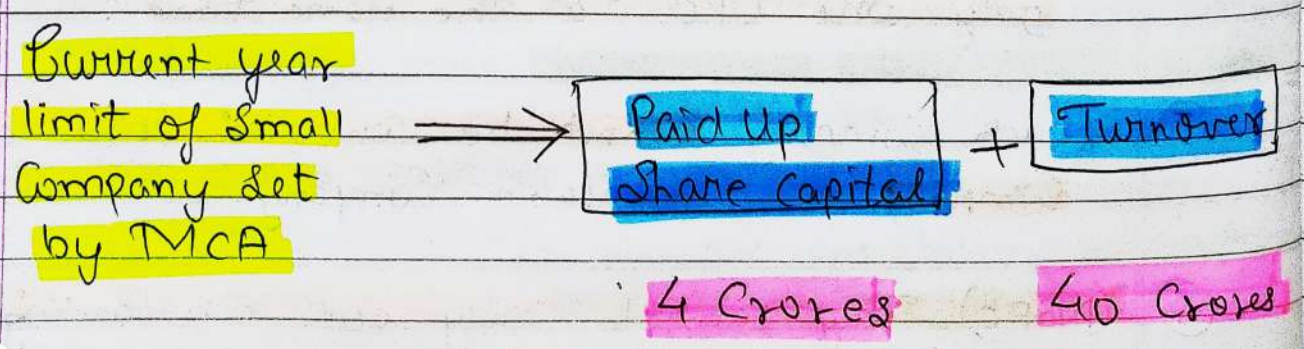
For Small Co. following both conditions must be satisfied



Condⁿ 1] In order to incorporate small company the min. paid-up-share capital ^{limit} must be between 50 lakhs to 10 crores as may be prescribed by Ministry of Corporate Affairs (MCA).

Condⁿ 2] In order to have small company the turnover limit must be between 2 crores to 100 crores as may be prescribed by Ministry of Corporate Affairs (MCA)

Both conditions are compulsory to follow :-



i.e. In order to incorporate small Co.

- ① The Paid up share Capital must be less than 4 crores.
- ② The Turnover must be less than 40 crores.

In order to check Small Company!

- (1) It must be Private Company.
- (2) Paid up share Capital \leq 4 crores
- (3) Turnover \leq 40 crores
- (4) Not a Holding / Subsidiary Company.
- (5) Not a Statutory Company.
- (6) Not a Sec 8. Company.

* Exception :-

It must not be following Company :-

- (1) Sec 8 Company
- (2) Statutory Company
- (3) Holding / Subsidiary Company.

On the Basis of Control

Page No

Date

(1) **Sister Concern** :- @ When Holding Companies are having two Subsidiaries both the Subsidiaries are called Sister Concern to each other.

(b) It is not necessary that both the Sister Concern carry out same type of business activities.

(2) **Holding Company** :- A holding company means a company hold. that controls one or more Companies just by holding majority of its shares of that Company or by controlling the maximum/ composition of Board of Directors of that Company.

(3) **Subsidiary Company** :- Subsidiary Company is a company which is controlled by holding Company in following two ways :-

(a) By Holding Majority of its shares
(majority Voting Power)

(b) Controlling the maximum Board of Directors
(BOD)

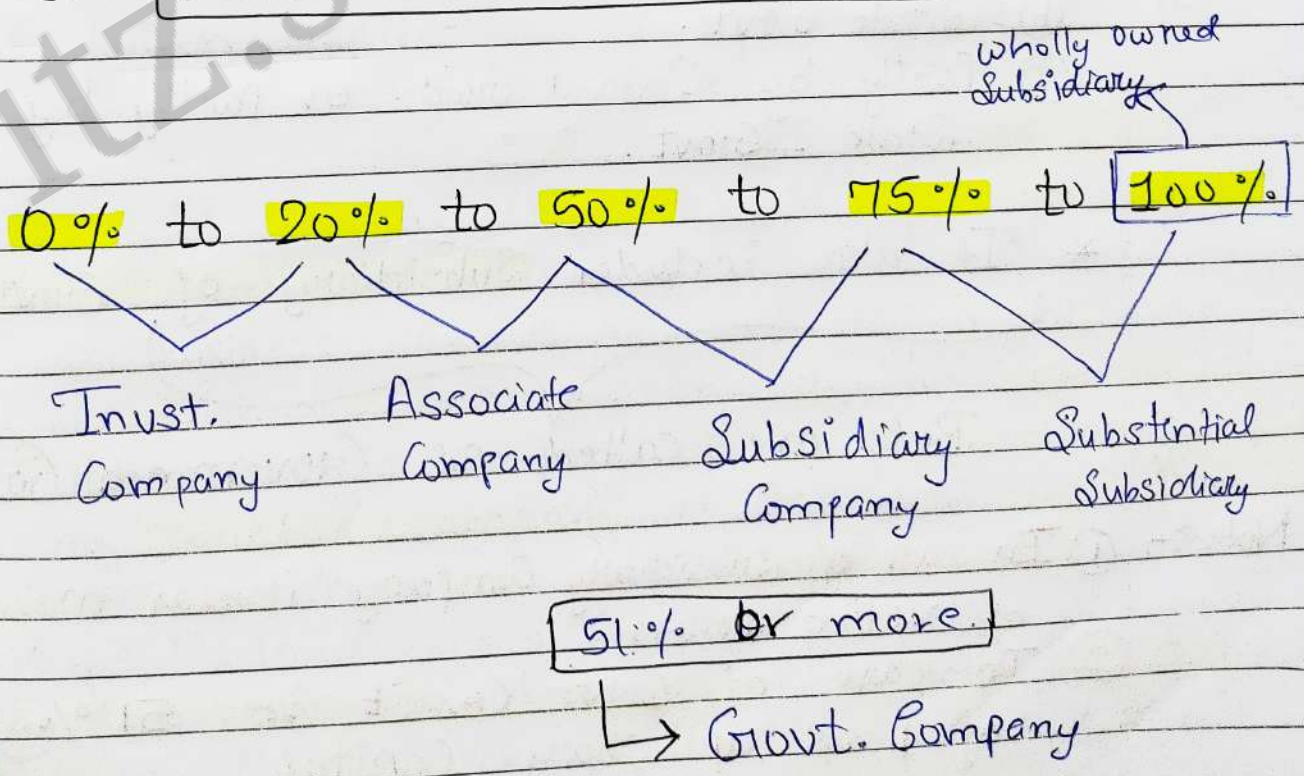
Holds 50% or more shares

(4) **Associate Company** :- Associate Company is a company in which other company have a significant influence / and holds 20% to 50% of the shares of associate company.

Associate Co. can be formed in 2 ways :-
(a) Significant Influence
(b) Joint Ventures.

- (a) Other company must have 20% to 50% of Voting power.
- (b) Associate Company is formed when two companies carries a joint venture.

* Or **Associate & Subsidiary & Govt. Co.**



* **Listed Company** :- Listed Company is a company which has its securities listed on any recognized stock exchange.

* **Unlisted Company** :- Unlisted Co. is a company which is not whose securities are not listed on any of the stock exchange.

* On the basis of Ownership :-

(1) **Government Company** :- A company in which more than 51% of paid up share capital is held by :-

- (a) Central Govt.
- (b) State Govt.
- (c) Partly by Central Govt. or partly by State Govt.

* It also includes **Subsidiary of Govt. Company**

Both are called as Government Companies.

Note :-

- ① In case of subsidiary company it was majority of voting power.
- ② In case of Govt. Co. it is 51% of paid up share capital.

Majority Stake = Indians People

(2) Foreign Company :-

than it is
Indian Company

- ① Foreign Company is a Company which is incorporated Outside India but having place of Business in India.
- ② Foreign Company Conducts / carries out the business from such a place either electronically / physically.

eg:- Amazon

- * **Dormant Company** :-
- ① When company is not conducting any business but survival is essential for future than application can be made for Dormancy.
 - ② When application is approved by ROC then this company is called as Dormant Company.

eg:- if company is involved in any research & development of any future product for which business cannot be conducted right now such a company can apply for dormancy.

- ③ When such a company applies for dormancy as an Inactive Company it is exempted from maximum provisions of Companies Act which helps it to process smoothly.
- ④ The maximum dormancy is allowed for 5 years. After that company shall either conduct the business or get dissolved.

- * **Nidhi Company** :- ① Nidhi Company means a company which has been incorporated with the object of developing the habit of savings among its members.
- ② It also receives deposits & lends money to its members.

* **Public Financial Institution** :-

- (A) It is established under central or state Act other than Company Law.
- (B) At least 51% of paid up share capital is held by Central Govt. or State Govt or partly by Central Govt & partly by State Govt.

Eg :- LIC, UTI

Sec-8. Company. (Incorporation)

* Sec 8 company are companies which are incorporated for Charitable Purpose / charity.

[A] Incorporation of Sec 8 Company with an objective :-

To

- (a) Promote arts, science, commerce, sports, education, health, social welfare, environment protection etc.
- (b) The income of such a company shall be used only for the benefit of the society, environment and charitable object.
- (c) Such a company do not pay dividend to shareholders but it can pay interest on loans or debentures.

[B] Power of Central Govt. to issue License :-

- (a) Central Govt. allow the company to register without words 'Limited' or 'Pvt. Limited'.
- (b) CG issue License to Sec 8 Company.
- (c) Central Government etc.
- (c) Registrar of Companies shall on application register it as a company.
- (d) Company shall enjoy some privilege as limited company.

[C] Revocation of License :- In following cases license is ^{revoke}

- ① If a company has contravened conditions for of sec 8 companies, then the central govt. can revoke the license.
- ② If affairs of company are fraudulently managed or violates the object of company.
- ③ Before revocation reasonable opportunity must be given of being heard.

* Effects of Revocation of license :-

- ① Company has to use words 'Ltd' or 'Pvt. Ltd'
- ② Company must be wind up.
- ③ Company shall be amalgamate with another company having similar object.

* Penalty for contravened

- ① Company is liable for penalty of 10 Lakhs to 1 crore.
- ② Officer is liable for penalty of 25000 Rs to 25 lakhs Rs & additional 3 years of jail.

* Promoter :-

- (a) Promoter is a person who come up with the idea of forming a company and form or incorporates company.
- (b) They carry out all the necessary steps for its registration.
- (c) Board of Directors, Banker, Solicitor, accountant etc will not be called as promoter.

* Incorporation of a Company :- Sec 7.

| | | | |
|------------|-------------------|-----------------------|-------------|
| Company :- | (7 में) Sec 7. | 7 से Min 7 members | 7 steps में |
|------------|-------------------|-----------------------|-------------|

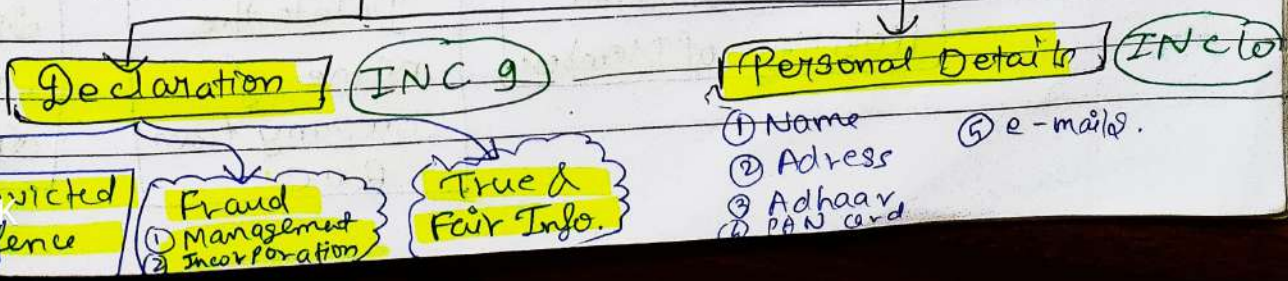
Step ① :- Legally $\left\{ \begin{array}{l} \rightarrow \text{Incorporation} \\ \rightarrow \text{Information} \\ \rightarrow \text{Object} \end{array} \right.$

Step ② :- Selection $\left\{ \begin{array}{l} \rightarrow \text{Public} \\ \rightarrow \text{Pvt.} \\ \rightarrow \text{OPC} \end{array} \right.$

Step ③ :- Submission of MOA / AOA

Step ④ :- Declaration by CA/CS/EMA } **INC 8**

Step ⑤ **Subscriber / BOD** I



ROC

Step 6

within 30 days

Issue.

COI

:- Issue Certificate of Incorporation

CIN

:- Issue Allotment of Corporate Identification Number

Step 7

False Information

(a) **Fraud / False Info.**
(447) / (448)

or

NCLT (National Company Law Tribunal)

* already incorporate by fraud / false Info.

Order

Take Over Management

Dissolve/wind-Up of Company

Any other special order specified

Declare Unlimited liability of Members

Delete the name of company from ROC

- (1) The company shall be legally incorporated with legal object & legal information.
- (2) The promoter shall select a company from Public, Private and OPC for incorporation.
- (3) The promoter shall file a MOA & AOA with ROC
- (4) Declaration of CA/CS/CMA must be filed with ROC stating that all legal requirements is complied as per Act.
- (5) The promoter shall also file affidavit & declaration of subscriber / BOD with ROC
- (5) The promoter shall also file declaration & personal details of subscribers / BOD with ROC.
- (6) Personal details includes Name, address, email, PAN, Adhar etc & declaration includes that not convicted with any legal offense, not carried out fraud and True & fair information.
- (7) Now, application must be made with INC 7 and within 30 days ROC shall incorporate company.
- (8) ROC shall issue Certificate of Incorporation & Corporate Identification Number.

No Fraud = Line last 5 years

Page No

Date

⑦ In case of Fraud / False Information The promoter, directors & subscriber will be liable under Sec 447 (for fraud) and Sec 448 (for false information).

⑧ If a company is already incorporated by false information or fraud then the NCLT (National Company Law Tribunal) passes an Order of Tribunal :- opportunity to being heard is given

- ✓ (a) Take over the Management.
- ✓ (b) Declare Unlimited liability of members.
- ✓ (c) Dissolve / Winding up of a company.
- ✓ (d) Delete the name of company from ROC.
- ✓ (e) Any other specified order.

* Effect of Registration :- Sec 9

- (1) From the date of incorporation of a company than company & its subscriber will be called as Body Corporates.
- (2) After incorporation the company shall purchase property wether movable & immovable, tangible & intangible, to contract and to sue by the Co. name.
- (3) The company is separate legal entity & has perpetual Succession.
- (4) The company assets are separate from members personal assets & members do not have any insurable interest in assets of company.

(5) A company may purchase shares of another company & thus become Controlling Company. However if Co. purchase all the shares (100%) than also there is existence of two different company i.e. separate legal entity.

(6) If a ~~share~~ all the shares of a company is held by Central Govt. and president of India & other officers of Central Govt than also the Company is not an agent of a Government & has separate legal entity.

(7) All money payable by any member to the Company under MOA or AOA shall be a debt due from the member to the Company.

(8) When AOA & MOA is registered with ROC than its provisions, conditions must be followed by the Company & members.

* Classification of Capital

(1) Capital :- Share capital is the money a company raises by issuing common or preferred stock.

(1) Authorised share capital :- Maximum amount of share capital a company can raise

(2) Issued Capital :- It is the amount of share capital offered by company for subscription.

3] Subscribe Capital :- It is the amount of shares applied for by people.

4] Called Up Capital :- It is the amount of capital called up by company for payment.

5] Paid Up capital :- It is amount of share capital paid by share holders on shares.

* Shares

(1) Preference Share Capital :- Preference Share Capital is a type of share where shareholders are given preferential rights before equity share.

(a) Right to get dividend at fixed rate or fixed amount.

(b) Right to get repayment first while winding up of company of capital

(2) Equity Share Capital :- Equity Shares are ordinary share without any preferential rights but represent ownership of

Company

① have voting rights.

② participate in decision making process.

* Features of Shares :-

आवड

- (1) Share is an interest in Company :- Share is not sum of money but is the interest measure by some of money
- (2) Shares are movable property :- Shares are movable property which can be easily transfer to any person
- (3) Shares are having distinct Number :- Every share in the company are having distinctive numbers to distinguished the shares by it's number.

* Memorandum of Association :- (1) It is the charter document

which defines the scope of powers of Company which has been established under this Act.

- (2)* It is a legal document prepared during a formation of a company & registration process.
- (3)* It also defines relationship between company & shareholders & specifies the objectives for which the Company has been established.

* Object of Registering MOA.

- ① It contains the object for which Company is formed & identifies defines its scopes beyond which actions cannot go.
- ② It helps shareholders, creditors & those who deals with Company to know what are its powers & activities they are engage in.
- ③ MOA is an Public Document.
- ④ Shareholders should know the purpose for which ~~in~~ their money shall be used.

* Content of Memo: As per Sec 4, MOA shall be drawn up in given table form. Under Schedule 1 of Act.

| | | |
|--------------|---|---------------------------------------------------------------------------|
| Table A form | ⇒ | MOA of Company Ltd by Shares |
| Table B form | ⇒ | MOA of ^{Co. Ltd by} Company Guarantee & not having Share Capital |
| Table C form | ⇒ | MOA of ^{Co. Ltd by} Company Guarantee & having share Capital |
| Table D form | ⇒ | MOA of ^{Co. Ltd by} Unlimited & not having Share Capital |
| Table E form | ⇒ | MOA of ^{Co. Ltd by} Unlimited & having Share Capital |

* Content of MOA :- Six Clauses :-

[1] Name Clause :-

In case of Public Ltd :- "Limited"

In case of Private Ltd :- "Pvt. Limited"

In case of Sec 8 Company :- No. Condition

—||— OPC (one Person Company) :- OPC must be written below it.

—||— Govt. Company :- "Ltd"

(2) Registered Office Clause :- It mentions the State in which registered office of company is situated.

(3) Object Clause :- It contains the object for which company is formed and defines its scope beyond which company's action cannot go.

(4) Liability Clause :-

(a) In Case of Company Ltd by shares :- liability of a member is only upto the extent unpaid value on share capital.

(b) In case of Guarantee Company :- liability of a member is only upto the extent of amount guaranteed by him & that too only in case of winding up of a company.

(5) Capital Clause :- This clause defines the authorized capital of the company which a company can raise through issue of shares. It also states the division of number of shares.

(6) Association Clause :- It contains the name of person who agrees to be associated with company during incorporation.

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* Article of Association *

- ① AOA contains rules & regulation which are framed to manage it's internal affair of Co.
- ② AOA is also known as Magna Carta
- ③ It regulates Domestic management of Company.

* Contents of AOA

- ① Contains Regulations :- It contains the regulations for the ~~manag~~ management of a company.
- ② Inclusion of ^{additional} Matter :- It contains the matter which are prescribed in rules.
- ③ Notice to ROC :- ~~Company shall give notice to ROC in such a manner as may be prescribed.~~
- ④ Forms of Articles :- Schedule - 1

| | | |
|--------------|---|--------------------------------------------------------------------------|
| Table F form | ⇒ | AOA of Company Ltd by Shares |
| Table G form | ⇒ | AOA of Co. Ltd by Guarantee & not having <u>share capital</u> |
| Table H form | ⇒ | AOA of Co. Ltd by Guarantee & <u>not having share capital</u> |
| Table I form | ⇒ | AOA of Co. Unlimited Company <u>having Share Capital</u> |
| Table J form | ⇒ | AOA of Unlimited Company <u>not having share Capital</u> |

- (d) Model Articles :- A company may adopt all regulations or ~~any one~~ of regulations contained in article.

(e) Company registered after commencement of this Act :-

⇒ After the commencement of this Act, if any Co. is registered then and it has not excluded or modify regulations contained in model then those regulations specified in model shall be applicable.

(f) Entrenchment provision :- AOA may contain provisions for entrenchment

(g) Inclusion of Entrenchment provision :- After entrenchment of

If entrenchment is to be done after incorporation of a company then in case of Private Company Unanimous Resolution (each & every member assent) shall be require or in case of Public Company Special Resolution will be passed.

(h) Notice of entrenchment to ROC :-

MOA

- ① It states objectives for which company is incorporated
- ② It defines relation outside of company.
- ③ MOA can be ultra under certain circumstances.
- ④ Act done beyond power is void & cannot be ratified.

AOA

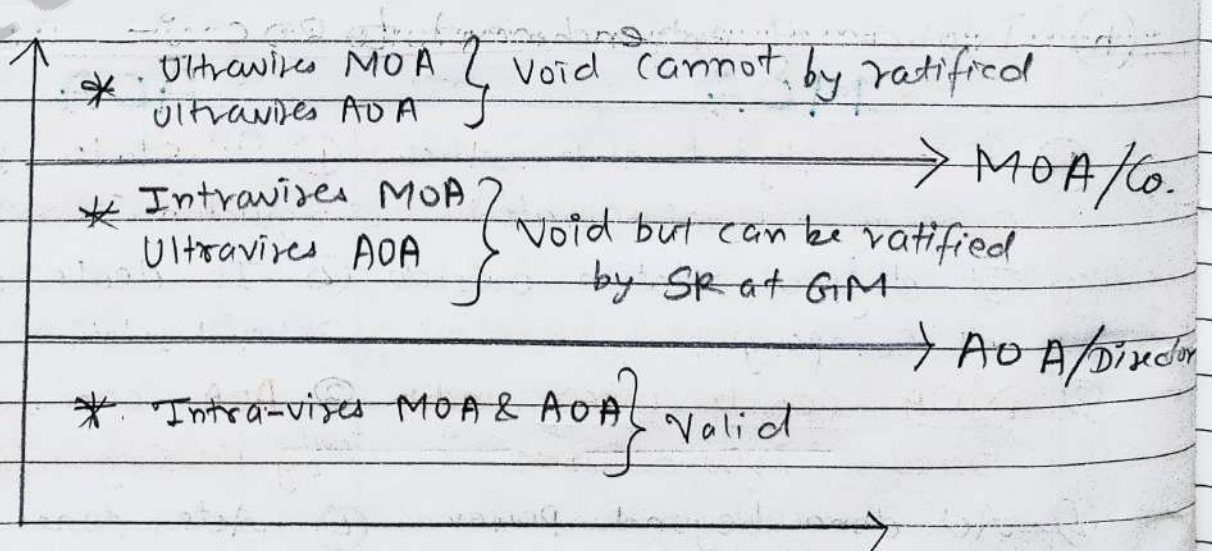
- ① It state rules & regulations for internal Management
- ② It deals with the internal relation of Co. & members.
- ③ AOA can be altered by passing Special Resolution
- ④ Act done beyond power is void but can be ratified by passing Special resolution.

Ultra-Vires = Beyond Powers

MOA = Company
AOA = Directors

* Doctrine of Ultra-Vires :-

- ① When the acts done by company is beyond its power or object then such acts or contract are void-ab-initio & hence it is not enforceable. (Beyond MOA) \Rightarrow Ultravires Company.
- ② Acts done by Ultravires Company shall not be ratified even by unanimous Resolution passed at General Meeting.
- ③ If acts are ultravires Articles it can be ratified by altering AOA by Special Resolution at General Meeting.
- ④ If acts are ultravires Articles but intravires MOA (Company) then it can be ratified by passing special Resolution at General Meeting.



* Doctrine of Constructive Notice :-

- ① MOA & AOA are public documents & any person can inspect them by electronic means kept with ROC.
- ② Every person dealing with company is presumed to have knowledge of documents & it is known as Constructive notice.
- ③ Whether person reads or not he is presumed to have knowledge of documents & also he is assumed to have understand it in true sense.
- ④ Thus any person who enters into a contract which is beyond powers of company than he cannot sue the company for performance of contract as such contracts are void ab initio reference doctrine of Ultra Vires.

* Doctrine of Indoor-Management :-

- ① It is an exception to Doctrine of constructive notice.
- ② It means outsiders dealing with company can't be presumed to have knowledge of internal affairs of a company.

eg :- Case Law :- Royal British Bank Vs Turquand (liquidator)
(loan to Co.)

* Exception to Doctrine of Indoor Management

(1) Actual or Constructive Knowledge of Irregularity :-

→ When a person has actual or constructive knowledge of Irregularity than the doctrine of Indoor management do not protect the person.

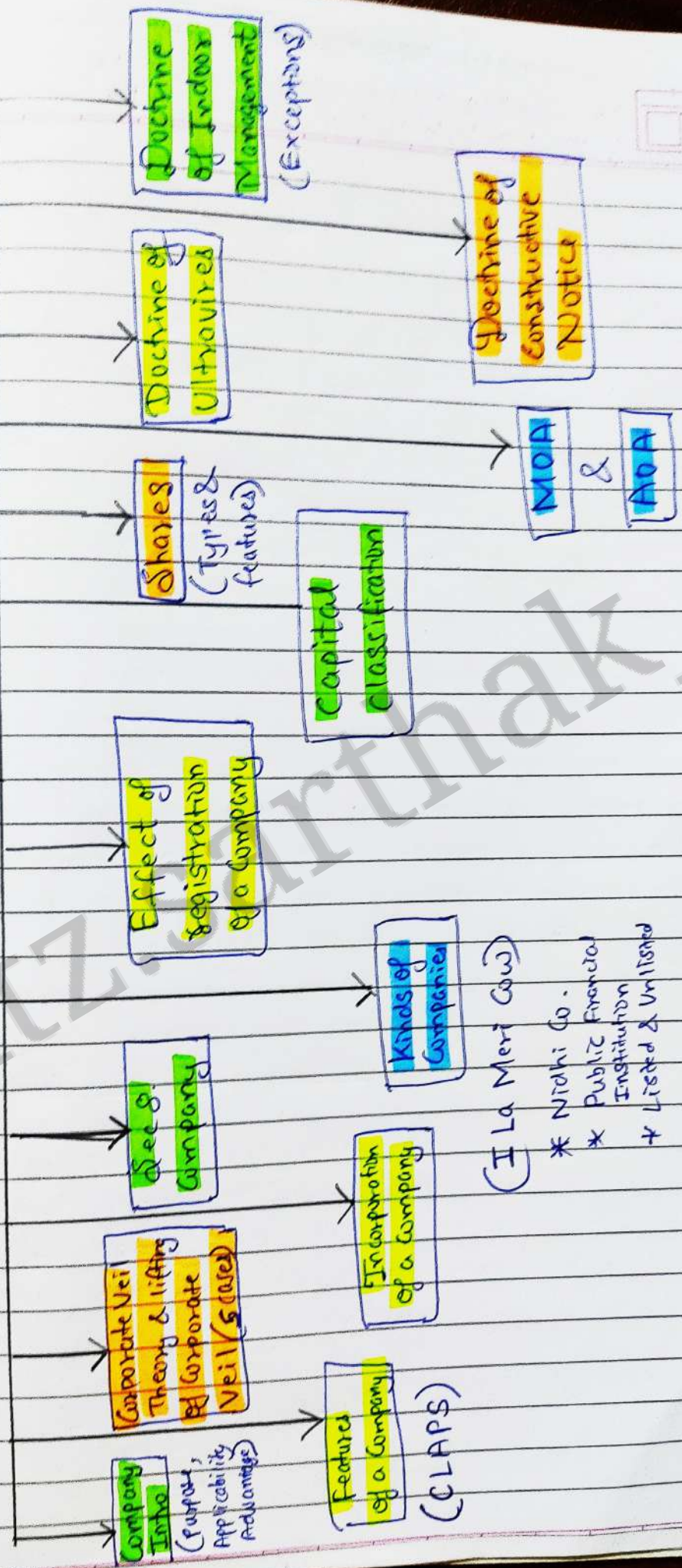
(2) Suspicion of Irregularity :-

→ When a person finds some suspicious in contract with company but he didn't inquiry about it and enter into a contract negligently than law (doctrine of Indoor Management) do not protect.

(3) Forgery :-

→ In case of forgery the doctrine of indoor management cannot protect the person & the contract is always void ab initio.

The Companies Act, 2013



- (I La Meri Cow)
- * Nichi Co.
 - * Public Financial Institution
 - + Listed & Unlisted