

J.K. SHAH[®]

**TEST
SERIES**



SUGGESTED SOLUTION

CA FOUNDATION

SUBJECT- BUSINESS LAWS

Test Code – JMU 2410

BRANCH - () (Date :)

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ANSWER : 1

Yes, a non-profit organization be registered as a company under the Companies Act, 2013 by following the provisions of section 8 of the Companies Act, 2013. Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to

- promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc. Such company intends to apply its profit in
 - promoting its objects and
 - prohibiting the payment of any dividend to its members. The Central Government has the power to issue license for registering a section 8 company.
- i. Section 8 allows the Central Government to register such person or association of persons as a company with limited liability without the addition of words 'Limited' or 'Private limited' to its name, by issuing licence on such conditions as it deems fit.
 - ii. The registrar shall on application register such person or association of persons as a company under this section
 - iii. On registration the company shall enjoy same privileges and obligations as of a limited company.

(6 Marks)

ANSWER :2

“Private company” means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,- (a) restricts the right to transfer its shares; (b) except in case of One Person Company, limits the number of its members to two hundred: (c) prohibits any invitation to the public to subscribe for any securities of the company; Explanation to the limit of members of 200: (d) where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member: (e) persons who are in the employment of the company; and (f) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; Contention on part of BOD is incorrect,-since total no of members are 144 only

1. Directors = 134
2. Employees = Nil
3. Ex-Employees = Nil

4. Couples = 5

5. Others = 5

Total = 144

(6 Marks)

ANSWER :3

The Doctrine of Indoor Management is the exception to the doctrine of constructive notice. The doctrine of constructive notice does not mean that outsiders are deemed to have notice of the internal affairs of the company. For instance, if an act is authorized by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed. They are entitled to assume that the acts of the directors or other officers of the company are validly performed, if they are within the scope of their apparent authority. So long as an act is valid under the articles, if done in a particular manner, an outsider dealing with the company is entitled to assume that it has been done in the manner required. In the given question, Mr. X had to make the payment to the company. he made the payment to Mr. Z as Mr. Z informed him that the cashier and accountant were not present and he was in charge. Mr. Z also gave a receipt of the same to Mr. X. It will be rightful on part of Mr. X to assume that Mr. Z was also authorised to receive money on behalf of the company. Hence, Mr. X will be free from liability for payment of goods purchased from M/s ABC Limited, as he has paid amount due to an employee of the company. Thus Mr. X has no liability to the company as the debt was already cleared.

(6 Marks)

ANSWER: 4

The House of Lords in Salomon Vs. Salomon & Co. Ltd. laid down that a company is a person distinct and separate from its members, and therefore, has an independent separate legal existence from its members who have constituted the company. But under certain circumstances the separate entity of the company may be ignored by the courts. When that happens, the courts ignore the corporate entity of the company and look behind the corporate façade and hold the persons in control of the management of its affairs liable for the acts of the company. Where a company is incorporated and formed by certain persons only for the purpose of evading taxes, the courts have discretion to disregard the corporate entity and tax the income in the hands of the appropriate assessee. The problem asked in the question is based upon the aforesaid facts. The three companies were formed by the assessee purely and simply as a means of avoiding tax and the

companies were nothing more than the façade of the assessee himself. Therefore, the whole idea of Mr. Krishna was simply to split his income into three parts with a view to evade tax. No other business was done by the company. The legal personality of the three private companies may be disregarded because the companies were formed only to avoid tax liability. It carried no other business, but was created simply as a legal entity to ostensibly receive the dividend and interest and to hand them over to the assessee as pretended loans.

(4 Marks)

ANSWER: 5

In line with the Companies Act, 2013, following are the classification of the Companies on the basis of control:

(a) Holding and subsidiary companies: 'Holding and subsidiary' companies are relative terms.

A company is a holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies. [Section 2(46)]

For the purposes of this clause, the expression "company" includes any body corporate.

Whereas section 2(87) defines "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

For the purposes of this section —

(I) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(II) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

(III) the expression “company” includes anybody corporate;

(IV) “layer” in relation to a holding company means its subsidiary or subsidiaries.

(b) Associate company [Section 2(6)]: In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation. — For the purpose of this clause —

(i) the expression “significant influence” means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement;

(ii) the expression “joint venture” means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement. The term “Total Share Capital”, means the aggregate of the -

(1) Paid-up equity share capital; and

(2) Convertible preference share capital.

(6 Marks)

ANSWER :6

Meaning of capital: The term capital has variety of meanings. But in relation to a company limited by shares, the term ‘capital’ means ‘share capital’. Share capital means capital of the company expressed in terms of rupees divided into shares of fixed amount.

Classification of capital: In the domain of Company Law, the term capital can be classified as follows:

(a) Nominal or authorised or registered capital: This expression means such capital as is authorised by memorandum of a company to be the maximum amount of share capital of the company.

(b) Issued capital: It means such capital as the company issues from time to time for subscription.

(c) Subscribed capital: As such part of the capital which is for the time being subscribed by the members of a company.

(d) Called up capital: As such part of the capital which has been called for payment. It is the total amount called up on the shares issued.

(e) Paid-up capital: It is the total amount paid or credited as paid up on shares issued. It is equal to called up capital less calls in arrears.

(6 Marks)

ANSWER : 7

The Company is not liable to A. Since, the partnership agreement for trading in mangoes is an Ultra Vires Contract, and an Ultra Vires Contract is Void ab Initio, and is not binding on the company or the other party; since the power to enter into partnership is not an ancillary or incidental power; since such power can be legally exercised by the company only if the object clause of memorandum expressly authorises the company to enter into partnership.

(5 MARKS)

ANSWER: 8

A) Yes, it is mandatory for Saloni to withdraw her nomination in the said OPC as she is leaving India permanently as only a natural person who is an Indian citizen and resident in India shall be a nominee in OPC.

B) Yes, Saloni can continue her nomination in the said OPC, if she maintained the status of Resident of India after her marriage by staying in India for a period of not less than 182 days during the immediately preceding financial year.

(5 MARKS)

ANSWER: 9

As per the facts given, Ravi Private Limited borrowed ` 5 crore from Mudra Finance Ltd. This debt is ultra vires to the company, which signifies that Ravi Private Limited has borrowed the amount beyond the expressed limit prescribed in its memorandum. This act of the company can be said to be null and void. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore, not binding on the company. So is being the act void in nature, there being no existence of the contract between the Ravi Private Ltd. and Mudra Finance Ltd. Therefore, the company Ravi Private Ltd. is liable to pay this debt amount upto the limit prescribed in the memorandum. Remedy available to the Mudra Finance Ltd.: The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandum is a "public document", it is open to public inspection. Therefore, a company which deals with the other, is deemed to know about the powers of the company. So, Mudra Finance Ltd. can claim for the amount within the expressed limit prescribed in its memorandum.

(6 MARKS)