

## The Companies Act, 2013 Assignment

Q. No.	Questions and Answers	Marks
<b>1</b>	<p>Explain clearly the doctrine of 'Indoor Management' as applicable in cases of companies registered under the Companies Act, 2013. Explain the circumstances in which an outsider dealing with the company cannot claim any relief on the ground of 'Indoor Management'.</p> <p style="text-align: right;"><b>(Jan. 2021, ICAI SM, May 2018, RTP Nov. 2020, RTP Nov. 2019)</b></p>	<b>6</b>
<b>Ans.</b>	<p><b>Doctrine of Indoor Management:</b></p> <ol style="list-style-type: none"> <li>1) According to the "doctrine of indoor management", persons dealing with the company need <u>not inquire whether internal proceedings relating to the contract are followed correctly</u> once they are satisfied that the transaction is in accordance with the memorandum and articles of association.</li> <li>2) This doctrine is an <u>exception of the doctrine of "constructive notice"</u> and is also popularly known as the <u>Turquand Rule</u> as related to the case of <u>Royal British Bank vs Turquand</u>.</li> <li>3) Thus, the doctrine of indoor management aims to <u>protect outsiders against the company</u>.</li> </ol> <p>The doctrine of Indoor management has limitations of its own. It is not applicable to the following cases:</p> <ol style="list-style-type: none"> <li>a) <b>Actual or constructive knowledge of irregularity:</b> The rule does not <u>protect any person when the person dealing with the company has a notice</u>, whether actual or constructive, of the irregularity.</li> <li>b) <b>Suspicion of Irregularity:</b> The doctrine of indoor management will not protect those persons <u>who behave negligently</u>. For example, where the transaction is unusual or not in the ordinary course of business, it is the duty of the <u>outsider to make the necessary enquiry</u>.</li> <li>c) <b>Forgery:</b> The doctrine of indoor management applies only to <u>irregularities which might affect a transaction</u>, but it <u>cannot apply to forgery</u>, which must be regarded as a nullity.</li> </ol>	<b>6</b>
<b>2</b>	<p>SK Infrastructure limited has a paid-up share capital divided into 6,00,000 equity shares of ₹100 each. 2,00,000 equity shares of the company are held by the Central government, and 1,20,000 equity shares are held by the Government of Maharashtra. Explain with reference to relevant provisions of the Companies Act, 2013 whether SK Infrastructure Limited can be treated as a Government Company.</p> <p style="text-align: right;"><b>(Jan. 2021, RTP May 2021)</b></p>	<b>3</b>
<b>Ans.</b>	<p>As per the provisions of the Companies Act, 2013, any company in which <u>not less than 51% of the paid-up share capital</u> is held by:</p> <ul style="list-style-type: none"> <li>• <u>Central Government</u>, or</li> <li>• <u>State Government</u>, or</li> <li>• <u>partly</u> by the Central Government and partly by one or more State Governments.</li> </ul> <p>This provision also includes a company which is a subsidiary company of a government company.</p> <p><b>Facts of the case:</b></p> <p>SK Infrastructure limited has a paid-up share capital divided into 600000 equity shares of ₹100 each. 2,00,000 equity shares of the company are held by the Central government, and 1,20,000 equity shares are held by the Government of Maharashtra.</p> <p><b>Conclusion:</b></p>	<b>3</b>

	In the present case, 2,00,000 equity shares of the company are held by the Central Government, and 1,20,000 equity shares are held by the Government of Maharashtra out of the 6,00,000 equity shares, which is 53.33%. So, it is more than 51% of paid-up share capital. Hence, SK Infrastructure Limited will be treated as a Government Company.	
3	<p>Naveen Incorporated a “One Person Company”, making his sister Navita as the nominee. Navita is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company. Taking into consideration the provisions of the Companies Act, 2013, answer the question given below.</p> <p>a) If Navita is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?</p> <p>b) If Navita maintained the status of Resident of India after her marriage, then can she continue her nomination in the said One Person Company?</p> <p style="text-align: center;"><b>(ICAI SM, RTP May 2020, July 2021, Nov 2021 RTP, June 2022)</b></p>	4
Ans.	<p>As per the provision of the Companies Act, 2013, only a natural person who <u>is an Indian citizen, whether resident in India or otherwise</u>, shall be eligible to incorporate a One Person Company or shall be a nominee in a One Person Company. For the purpose of this Rule, a resident in India means a person who has stayed in India for not less than 120 days during the immediately preceding financial year.</p> <p><b>Facts of the case:</b></p> <p>Naveen Incorporated a “One Person Company”, making his sister Navita as the nominee. Navita is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company.</p> <p><b>Conclusion:</b></p> <p>a) No, it is not mandatory for Navita to withdraw her nomination in the said OPC as she is already <u>an Indian citizen. It is not mandatory for her to be a resident in India.</u></p> <p>b) Navita can continue her nomination in the said OPC after her marriage as it is not mandatory for Navita to be a resident in India.</p>	4
4	<p>Sound Syndicate Ltd., a public company, its Articles of Association empower the managing agents to borrow both short and long term loans on behalf of the company, Mr Liddle, the director of the company, approached Easy Finance Ltd., a non-banking finance company for a loan of ₹25,00,000 in the name of the company.</p> <p>The Lender agreed and provided the above-said loan. Later on, Sound Syndicate Ltd. Refused to repay the money borrowed on the pretext that no resolution authorizing such loan has been actually passed by the company, and the lender should have enquired about the same prior to providing such loan; hence the company not liable to pay such loan.</p> <p>Analyse the above situation in terms of the provision of Doctrine of Indoor Management under the Companies act, 2013 and examine whether the contention of Sound Syndicate Ltd. is correct or not?</p> <p style="text-align: right;"><b>(May 2019, ICAI SM, June 2022)</b></p>	5
Ans.	<p>1) As per the Doctrine of Indoor Management, persons dealing with the company need <u>not inquire whether internal proceedings relating to the contract are followed correctly</u> once they are satisfied that the transaction is in accordance with the memorandum and articles of association.</p> <p>2) What <u>happens internally to a company is not a matter of public knowledge</u>. An outsider can only presume the intentions of a company but do not know the information he/she is not privy to.</p>	5

	<p>3) The company <u>could escape creditors</u> by denying the authorizing of officials to act on its behalf <u>if this doctrine would not have existed</u>.</p> <p>4) This doctrine is an <u>exception of the doctrine of “constructive notice”</u> and is also popularly known as the <u>Turquand Rule</u> as related to the case of <u>Royal British Bank vs Turquand</u>.</p> <p><b>Facts of the case:</b> Sound Syndicate Ltd., a public company, its articles of Association empower the managing agents to borrow both short and long term loans on behalf of the company. Mr Liddle, the director of the company, approached Easy Finance Ltd., a non-banking finance company, for a loan of ₹25,00,000 in the name of the company. The lender agreed and Provided the above-said loan. Later on, Sound Syndicate Ltd. Refused to repay the money borrowed on the pretext that no resolution authorizing such loan has been actually passed by the company, and the lender should have enquired about the same prior to providing such loan; hence the company not liable to pay such loan.</p> <p><b>Conclusion:</b> Easy Finance Ltd., being an outsider to the company, need not enquire whether the necessary resolution was passed properly. Even if Sound Syndicate Ltd. claims that no resolution authorizing the loan was passed, the company is bound to pay the loan to Easy Finance Ltd.</p>	
5	<p>Briefly explain the doctrine of “ultra-vires” under the Companies Act, 2013. What are the consequences of ultra-vires acts of the company?</p> <p style="text-align: right;"><b>(ICAI SM, RTP May 2020, June 2022)</b></p>	6
Ans.	<p>1) <b>Doctrine of ultra-vires:</b> The meaning of the term “ultra-vires” is “<u>beyond power</u>”. The legal phrase “ultra-vires” is applicable only to acts done in excess of the legal powers of the company.</p> <p>2) It is a fundamental rule of the company law that the <u>objects of a company as stated in its Memorandum of Association</u> can be departed from only to the extent permitted by the Act. <b>[Case Law related to Doctrine of Ultra Vires – Ashbury Railway Company Ltd. Vs. Riche].</b></p> <p>3) In consequence, any act done or a contract made by the company, which is <u>beyond the powers</u> not only of the directors but also of the company, is <u>void and inoperative in law and is not binding on the company</u>.</p> <p>4) On this account, a company can be restrained from using its funds for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorised to carry on.</p> <p>5) The impact of the doctrine of ultra vires is that a company can <u>neither be sued on an ultra vires transaction nor can it sue on it</u>. Since the Memorandum of Association is a <u>public document</u>, it is open to public inspection. Therefore, when a person deals with a company, such a person is <u>deemed to know about the powers of the company</u>. If a person enters into a transaction which is ultra vires to the company, such a person cannot enforce it against the company.</p> <p>6) An act, which is ultra vires, <u>cannot be even ratified by the shareholders</u> of the company.</p>	6
6	<p>What do you mean by “Companies with a charitable purpose” under the Companies Act, 2013? Mention the conditions of the issue and revocation of the licence of such a company by the government.</p> <p style="text-align: right;"><b>(May 2019, Nov. 2020)</b></p>	6

<b>Ans.</b>	<p>As per the provision of the Companies Act, 2013, Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed <u>to promote the charitable objects</u> of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.</p> <p>Such a company intends to apply its profit in:</p> <ul style="list-style-type: none"> <li>✓ <u>promoting its objects and</u></li> <li>✓ <u>prohibiting the payment</u> of any dividend to its members.</li> </ul> <p>Examples of a Section 8 company: FICCI, ASSOCHAM, National Sports Club of India, CII, etc.</p> <p><b>Power of Central Government to issue the license:</b></p> <ol style="list-style-type: none"> <li>1) Central Government allows a Section 8 company to register as a company with limited liability without the addition of words 'Limited' or 'Private Limited' to its name by <u>issuing a license</u> on such conditions as it deems fit.</li> <li>2) The registrar shall, on an application, <u>register such person or association of persons</u> as a company under this section.</li> <li>3) On registration, the company shall enjoy the same privileges and obligations as a limited company.</li> </ol> <p><b>Revocation of license:</b></p> <ol style="list-style-type: none"> <li>1) The Central Government, may by an order, <u>revoke the licence of the company</u> if the company <u>contravenes any of the requirements or the conditions</u> of this sections, subject to which a license is issued.</li> <li>2) On revocation, the Registrar shall put '<u>Limited</u>' or '<u>Private Limited</u>' against the company's name in the register. But before such revocation, the Central Government must give a <u>written notice</u> of its intention to revoke the license and an <u>opportunity of being heard</u> in the matter to such Section 8 company.</li> </ol>	<b>6</b>
<b>7</b>	<p>Examine the following whether they are correct or incorrect, along with reason:</p> <ol style="list-style-type: none"> <li>a) A company is an artificial person, cannot own property and cannot sue or be sued.</li> <li>b) A private limited company must have a minimum of two members, while a public limited company must have at least seven members. <b>(ICAI SM, RTP May 2020)</b></li> </ol>	<b>4</b>
<b>Ans.</b>	<ol style="list-style-type: none"> <li>a) <b>A company being an artificial person, cannot own property and cannot sue or be sued.</b>  <b>Incorrect:</b> A company is an artificial person as it is created by a process other than natural birth. It is legal or judicial as it is created by law. It is a person since it is clothed with all the rights of an individual.  Further, the company being a separate legal entity, <u>can own property, have a banking account, raise loans. Incur liabilities and enter into contracts.</u> Even members can contract with the company, acquire right against it or incur liability to it. It can <u>sue and be sued in its own name.</u> It can do everything which any natural person can do except to be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a <u>legal person in its own sense.</u></li> <li>b) <b>A private limited company must have a minimum of two members, while a public limited company must have at least seven members.</b>  <b>Correct:</b> As the provision of the Companies Act, 2013 deals with the basic requirement with respect to the constitution. In the case of a <u>public company, any 7 or more people can form for any lawful purpose</u> by subscribing their names to the memorandum and complying with the requirements of this Act in respect of registration. In exactly the same way, <u>two or more people can form a private company.</u></li> </ol>	<b>4</b>

8	<p>ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ₹15 crores and issued Non-Convertible Debentures worth ₹40 Crores during the Financial Year 2019-20. After that total Paid-up Equity Share Capital of the company is ₹100 Crores and Non-Convertible Debentures stands at ₹120 Crores.</p> <p>Define the meaning of Associate company and comment on whether ABC Limited and XYZ Limited would be called Associated company as per the provisions of the Companies Act, 2013? <b>(Nov. 2020, RTP May 2021)</b></p>	4
Ans.	<p>As per the provision of the Companies Act, 2013, An associated Company in relation to another company means a company in which <u>that other company has a significant influence</u>, but which is not a subsidiary company of the company having such influence and includes a joint venture company.</p> <p>The term “significant influence” means <u>control of at least 20% of total voting power</u> or control of or participation in business decisions under an agreement.</p> <p><b>Facts of the case:</b></p> <p>ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ₹15 crores and issued Non-Convertible Debentures worth ₹40 Crores during the Financial Year 2019-20. After that total Paid-up Equity Share Capital of the company is ₹100 Crores and Non-Convertible Debentures stands at ₹120 Crores.</p> <p><b>Conclusion:</b></p> <p>ABC Ltd. has allotted equity shares with a voting right to XYZ ltd. of ₹15 crores, which is less than requisite control of 20% of total voting power (i.e., ₹100 crores) to have a significant influence on XYZ ltd. Since the said requirement does not comply, therefore ABC Ltd. and XYZ ltd. are not associate companies. Holding/allotment of non-convertible debenture has no relevance for ascertaining significant influence.</p>	4
9	<p>Ram, an assessee, had a large income in the form of dividends and interest. In order to reduce his tax liability, he formed four private limited companies and transferred his investments to them in exchange for their shares. The income earned by companies was taken back by him as pretended loan. Can Ram be regarded as separate from the private limited companies he formed? <b>(Nov. 2019, ICAI SM)</b></p>	3
Ans.	<p>As per the provision of the Companies Act, 2013, where the incorporation of the company is adopted for some <u>illegal or improper purpose</u> to defeat or circumvent the law, to <u>defraud creditors</u> or to <u>avoid legal obligations</u>, etc., the <u>corporate identity shall be lifted</u> to see the <u>real transaction</u> behind it.</p> <p><b>Facts of the case:</b></p> <p>Ram, an assessee, had a large income in the form of dividends and interest. In order to reduce his tax liability, he formed four private limited companies and transferred his investments to them in exchange for their shares. The income earned by companies was taken back by him as pretended loan.</p> <p><b>Conclusion:</b></p> <p>Here, Ram formed four private limited companies in order to reduce his tax liability. The purpose of incorporating companies was to reduce the tax liability of Ram and to avoid legal obligations of paying income tax. The purpose is illegal. So, Ram cannot be regarded as separate from the private limited companies he formed.</p>	3
10	<p>A company registered under section 8 of the Companies Act, 2013 earned huge profit during the financial year ended on 31st March 2019 due to some favourable policies declared by the Government of India and implemented by the company. Considering the development, some members of the company wanted the company to distribute dividends to the members of the company. They approached you to advise them about</p>	4

	the maximum amount of dividend that can be declared by the company as per the provisions of the Companies Act, 2013. <b>(Nov. 2018, Nov 2022 RTP)</b>	
<b>Ans.</b>	<p>As per the provision of the Companies Act, 2013, Section 8 deals with the formation of companies that are formed to <u>promote the charitable objects</u> of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of the environment etc.</p> <p>Such a company intends to apply its profit in: -</p> <ul style="list-style-type: none"> <li>✓ <u>promoting its objects</u> and</li> <li>✓ <u>prohibiting the payment of any dividend</u> to its members.</li> </ul> <p><b><u>Facts of the case:</u></b></p> <p>A company registered under section 8 of the Companies Act, 2013 earned huge profit during the financial year ended on 31st March 2019 due to some favourable policies declared by the Government of India and implemented by the company. Considering the development, some members of the company wanted the company to distribute dividends to the members of the company.</p> <p><b><u>Conclusion:</u></b></p> <p>Hence, a company that is registered as a section 8 company is prohibited from the payment of any dividend to its members. In the present case, the company in question is a section 8 company, and hence it cannot declare the dividend. Thus, the contention of members is incorrect.</p>	<b>4</b>
<b>11</b>	<p>Mr X had purchased some goods from M/s ABC Limited on credit. A credit period of one month was allowed to Mr X. Before the due date, Mr X went to the company and wanted to repay the amount due to him. He found only Mr Z there, who was the factory supervisor of the company. Mr Z told Mr X that the accountant and the cashier were on leave, he is in charge of receiving money, and he may pay the amount to him. Mr Z issued a money receipt under his signature. After two months, M/s ABC Limited issued a notice to Mr X for non-payment of the dues within the stipulated period. Mr X informed the company that he had already cleared the dues, and he is no more responsible for the same. He also contended that Mr Z is an employee of the company to whom he had made the payment, and being an outsider, he trusted the words of Mr Z as duty distribution is a job of the internal management of the company. Analyze the situation and decide whether Mr X is free from his liability. <b>(Nov. 2018)</b></p>	<b>3</b>
<b>Ans.</b>	<p>As per the provision of the Companies Act, 2013, the doctrine of indoor management is an <u>exception to the doctrine of constructive notice</u>. The doctrine of constructive notice means that <u>outsiders are not deemed to have knowledge of the internal affairs of the company</u>. If an act is authorised by the articles or memorandum, an outsider is <u>entitled to assume</u> that all the detailed formalities for doing that act have been observed. <b>[Case Law related to Doctrine of Indoor Management: The Royal British Bank v. Turquand]</b></p> <p><b><u>Facts of the case:</u></b></p> <p>Mr X had purchased some goods from M/s ABC Limited on credit. A credit period of one month was allowed to Mr X. Before the due date, Mr X went to the company and wanted to repay the amount due to him. He found only Mr Z there, who was the factory supervisor of the company. Mr Z told Mr X that the accountant and the cashier were on leave, he is in charge of receiving money, and he may pay the amount to him. Mr Z issued a money receipt under his signature. After two months, M/s ABC Limited issued a notice to Mr X for non-payment of the dues within the stipulated period. Mr X informed the company that he had already cleared the dues, and he is no more responsible for the same. He also contended that Mr Z is an employee of the company</p>	<b>3</b>

	<p>to whom he had made the payment, and being an outsider, he trusted the words of Mr Z as duty distribution is a job of the internal management of the company.</p> <p><b>Conclusion:</b> In the given case, Mr X has made payment to Mr Z, and Mr Z gave the receipt of the same to Mr X. Thus, it will be rightful on the 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 <u>free from liability</u> for the payment of goods purchased from M/s ABC Limited, as he has paid the amount due to an employee of the company.</p>	
<b>12</b>	<p>Mike Limited company incorporated in India having a Liaison office in Singapore. Explain in the detailed meaning of Foreign Company and analysis. on whether Mike Limited would be called a Foreign Company as it established a Liaison office in Singapore as per the provisions of the Companies Act, 2013? <b>(Nov. 2020)</b></p>	<b>3</b>
<b>Ans.</b>	<p>As per the provision of the Companies Act, 2013, the foreign company means any company or body corporate <u>incorporated outside India</u> which:</p> <ul style="list-style-type: none"> <li>✓ Has a place of business in India <u>whether by itself or through an agent, physically or through electronic mode</u>; and</li> <li>✓ Conducts any business activity in India in <u>any other manner</u>.</li> </ul> <p><b>Facts of the case:</b> Mike Limited company incorporated in India having a liaison office in Singapore. Mike Limited would be called a Foreign Company as it established a Liaison office in Singapore.</p> <p><b>Conclusion:</b> Mike Limited is a company incorporated in India; hence, it cannot be called a foreign company. Even though its liaison office was officially in Singapore, <u>it would not be called a foreign company</u>.</p>	<b>3</b>
<b>13</b>	<p>“The Memorandum of Association is the charter of the company”. Discuss. Also, explain in brief the contents of the Memorandum of Association. <b>(Nov 2019)</b></p>	<b>6</b>
<b>Ans.</b>	<p>As per the provision of the Companies Act, 2013, the Memorandum of Association is the <u>Charter of a company</u>. It defines its <u>constitution and the scope of the powers of the company</u> with which it has been established under the Act. It is the very foundation on which the whole edifice of the company is built.</p> <p>Content of Memorandum of Association:</p> <ol style="list-style-type: none"> <li>1) <b>Name Clause:</b> The name of the company with the last word '<u>Limited</u>' in the case of a <u>public limited company</u> and or the last words '<u>Private Limited</u>' in the case of a <u>private limited company</u>.</li> <li>2) <b>Registered Office Clause:</b> The state in which the <u>registered office</u> of the company is to be situated.</li> <li>3) <b>Object Clause:</b> The objects for which the company is <u>proposed to be incorporated</u> and <u>any matter considered necessary</u> in furtherance thereof.</li> <li>4) <b>Liability Clause:</b> The <u>liability of members</u> of the company, whether <u>limited or unlimited</u> and also state-       <ol style="list-style-type: none"> <li>i) In the case of a company <u>limited by shares</u>: The liability of members is limited to the <u>amount unpaid on the shares</u> held by them.</li> <li>ii) In case of a company <u>limited by guarantee</u>: The amount up to which each member undertakes to <u>contribute</u>:           <ul style="list-style-type: none"> <li>✓ to the <u>assets of the company</u> in the event of its being <u>wound up</u> while he is a member or within one year after he ceases to be a member, for <u>payment of the debts and liabilities</u> of the company or of such debts and</li> </ul> </li> </ol> </li> </ol>	<b>6</b>

	<p>liabilities as may have been contracted before he ceases to be a member, as the case may be;</p> <p>✓ to the <u>costs, charges</u> and <u>expenses</u> of winding up and for adjustment of the <u>rights of the contributories</u> among themselves.</p> <p>5) <b>Capital Clause:</b> The amount of <u>authorised capital</u> divided into shares of a fixed amount and the number of shares with the <u>subscribers to the memorandum</u> have agreed to take which shall <u>not be less than one share</u>. A company not having share capital need not have this clause.</p> <p>6) <b>Association Clause:</b> Every <u>subscriber to the memorandum</u> shall take <u>at least one share</u>, and shall <u>write against his name</u>, the <u>number of shares</u> taken by him.</p>	
<b>14</b>	Define OPC and state the rules regarding its membership. Can it be converted into a Section 8 or Private Company?  <b>(May 2018)</b>	<b>6</b>
<b>Ans.</b>	<p>As per the provision of the Companies Act, 2013, a One Person Company (OPC) is a company that has only one person as a member.</p> <p><b>Rules regarding its membership:</b></p> <p>1) <u>Rules related to nominee in an OPC:</u></p> <p>a) There is only a <u>single member</u> in an OPC.</p> <p>b) The memorandum of OPC shall indicate the <u>name of the nominee</u>, who shall, in the event of the <u>subscriber's death</u> or his <u>incapacity</u> to contract, become a <u>member</u> of the company.</p> <p>c) The nominee, whose name is given in the memorandum, shall give his <u>prior written consent</u> in the prescribed form, and the same shall be <u>filed with the Registrar</u> at the time of incorporation. The nominee has the <u>right to withdraw his consent</u>.</p> <p>d) The member of OPC may, at any time, <u>change the name</u> of the nominee by <u>giving a notice</u> to the company, and the company shall intimate the same to the <u>Registrar</u>. Any such change in the name of the nominee <u>shall not be deemed to be an alteration of the memorandum</u>.</p> <p>2) <u>Rules related to eligibility:</u></p> <p>a) Only a natural person, who is an <u>Indian citizen</u> whether <u>resident in India</u> or otherwise shall be <u>eligible to incorporate OPC</u> or shall be a <u>nominee</u> for the sole member of OPC. For the purpose of this Rule, resident in India means a person who has stayed in India for a period <u>not less than 120 days</u> during the <u>immediately preceding financial year</u>.</p> <p>b) No person shall be eligible to incorporate <u>more than one OPC</u> or become a nominee in <u>more than one such company</u>. Also, a <u>minor</u> shall not be a member or nominee of the OPC or cannot even hold a share with beneficial interest.</p> <p>3) <u>Conversion of OPC into any other type of company:</u></p> <p>a) An OPC <u>cannot be converted into a Section 8 company</u>. But, it can be converted into a private or public company in certain cases.</p>	<b>6</b>
<b>15</b>	Ravi Private Limited has borrowed ₹5 crores from Mudra Finance Ltd. This debt is ultra vires to the company. Examine whether the company is liable to pay this debt? State the remedy if any available to Mudra Finance Ltd.? <b>(May 2018, Dec 2021)</b>	<b>4</b>
<b>Ans.</b>	<p>As per the Doctrine of Ultra Vires, any contract made by the company which travels <u>beyond the powers</u> not only of the directors but also of the company is <u>wholly void and inoperative in law</u> and is therefore <u>not binding on the company</u>. <b>[Case Law related to Doctrine of Ultra Vires – Ashbury Railway Company Ltd. Vs. Riche]</b></p> <p><b>Facts of the case:</b></p>	<b>4</b>



	<p>Ravi Private Limited borrowed ₹5 crores 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.</p> <p><b>Conclusion:</b></p> <p>In the present case, since the contract between Ravi Private Limited and Mudra Finance Ltd. is void due to its being ultra vires, <u>Ravi Private Ltd. is not liable to pay such debt.</u></p> <p><b>Remedy available to the Mudra Finance Ltd.:</b> Mudra Finance Ltd. cannot enforce such contract against Ravi Private Limited and hence cannot recover the loan amount from the company. But, since the <u>repayment of such loan will become the personal liability of the directors of Ravi Private Limited</u>, Mudra Finance Ltd. can take action against the directors and may file a <u>suit for injunction.</u></p>	
<b>16</b>	<p>There are cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct from its shareholders or members. Elucidate.</p> <p style="text-align: right;"><b>(Nov. 2018, Nov 2022 RTP)</b></p>	<b>6</b>
<b>Ans.</b>	<p>As per the Doctrine of Corporate Veil, a company is identified <u>separately</u> from the <u>members</u> of the company.</p> <p>However, the <u>corporate veil can be lifted</u>, which means looking behind the company as a <u>legal person</u>, i.e., <u>disregarding the corporate entity</u> and paying regard to the <u>realities behind the legal facade</u>. Where the Courts ignore the company's identity and concern themselves directly with the members or managers, the corporate veil may be said to have been lifted.</p> <p><b>Lifting of Corporate Veil:</b></p> <p>The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members:</p> <ol style="list-style-type: none"> <li>1) <u>Trading with enemy</u>: If the public interest is likely to be in jeopardy, the Court may be willing to crack the corporate shell in order to determine the true character of the company, i.e., whether it is a friend or co-enemy. <b>[Daimler Co. Ltd. vs. Continental Tyre &amp; Rubber Co.]</b></li> <li>2) Where a corporate entity is used to <u>evade or circumvent tax</u>, the corporate veil may be lifted by the court in order to find out the true purpose of incorporating such a company. <b>[Dinshaw Maneckjee Petit]</b></li> <li>3) Where companies form <u>other companies as their subsidiaries</u> to act as their agent. Here, the court will lift the corporate veil of the subsidiaries in order to find out the true beneficiary. <b>[Merchandise Transport Limited vs. British Transport Commission]</b></li> <li>4) A company formed to <u>circumvent the welfare of employees</u>. <b>[Workmen of Associated Rubber Industry Ltd. vs. Associated Rubber Industry Ltd.]</b></li> <li>5) Where the device of incorporation is adopted for some <u>illegal or improper purpose</u>, e.g., to <u>defeat or circumvent the law</u>, to <u>defraud creditors</u> or to <u>avoid legal obligations</u>. <b>[Gilford Motor Co. vs Horne]</b></li> </ol>	<b>6</b>
<b>17</b>	<p>X Limited was registered as a public company. There are 220 members in the company, as noted below:</p> <ol style="list-style-type: none"> <li>i) Directors and their relatives – 190</li> <li>ii) Employees – 10</li> <li>iii) Ex-employees (shares were allotted when they were employees) – 5</li> <li>iv) 5 couples holding shares jointly in the name of husband and wife (5×2) – 10</li> <li>v) Others – 5</li> </ol>	<b>4</b>

	The Board of Directors of the company propose to convert it into a private company. Also, advise whether a reduction in the number of members is necessary. <b>(Jan. 2021)</b>	
<b>Ans.</b>	<p>As per the provision of the Companies Act, 2013, a private company can have a maximum of 200 members excluding:</p> <ol style="list-style-type: none"> <li>1) those who are in the <u>employment of the company</u> and</li> <li>2) those who <u>were members</u> of the company <u>while in the employment</u> and have <u>continued to be members</u> after their employment ceased.</li> </ol> <p>Also, two persons <u>holding one or more shares jointly</u> in a company shall be treated as a <u>single member</u>.</p> <p><b><u>Facts of the case:</u></b></p> <p>X Limited was registered as a public company. There are 220 members in the company, as noted below:</p> <ol style="list-style-type: none"> <li>i) Directors and their relatives – 190</li> <li>ii) Employees – 10</li> <li>iii) Ex-employees (shares were allotted when they were employees) – 5</li> <li>iv) 5 couples holding shares jointly in the name of husband and wife (5×2) – 10</li> <li>v) Others – 5</li> </ol> <p><b><u>Conclusion:</u></b></p> <p>Here, the Board of Directors of the company can convert it into a private company because there is a maximum of 200 members in the firm.</p> <ol style="list-style-type: none"> <li>a) Directors and their relatives – 190</li> <li>b) 5 couples holding shares jointly in the name of husband and wife (5×1) – 5</li> <li>c) Others – 5</li> </ol> <p>Total Members = 190 + 5 + 5 = 200 members</p>	<b>4</b>
<b>18</b>	<p>Popular Products Ltd. is a company incorporated in India, having a total Share Capital of ₹20 Crores. The Share capital comprises 12 Lakh equity shares of ₹100 each and 8 Lakhs Preference Shares of ₹100 each. Delight Products Ltd. and Happy Products Ltd. hold 2,50,000 and 3,50,000 shares, respectively, in Popular Products Ltd. Another company Cheerful Products Ltd., holds 2,50,000 shares in Popular Products Ltd. Jovial Ltd. is the holding company for all the above three companies, namely Delight Products Ltd; Happy Products Ltd.; Cheerful Products Ltd. Can Jovial Ltd. be termed as a subsidiary company of Popular Products Ltd. if it controls the composition of directors of Popular Products Ltd.? State the related provision in favour of your answer.</p> <p style="text-align: right;"><b>(May 2019, July 2021, Dec 2021)</b></p>	<b>6</b>
<b>Ans.</b>	<p>As per the provision of the Companies Act, 2013, a subsidiary company means a company in which a holding company:</p> <ol style="list-style-type: none"> <li>1) <u>Controls the composition of the Board of Directors</u>, or</li> <li>2) Exercises or <u>controls more than one-half of the total voting power</u> either on its own or together with one or more of its subsidiary companies.</li> </ol> <p><b><u>Facts of the case:</u></b></p> <p>Popular Products Ltd. is a company incorporated in India, having a total Share Capital of ₹20 Crores. The Share capital comprises 12 Lakh equity shares of ₹100 each and 8 Lakhs Preference Shares of ₹100 each. Delight Products Ltd. and Happy Products Ltd. hold 2,50,000 and 3,50,000 shares, respectively, in Popular Products Ltd. Another company Cheerful Products Ltd. holds 2,50,000 shares in Popular Products Ltd. Jovial Ltd. is the holding company for all the above three companies, namely Delight Products Ltd., Happy Products Ltd. and Cheerful Products Ltd.</p>	<b>6</b>

	<p><b>Conclusion:</b></p> <p>In the present case, the total share capital of Popular Products Ltd. is ₹20 crores, comprised of 12 Lakh equity shares and 8 Lakh preference shares. Delight Products Ltd., Happy Products Ltd. and Cheerful Products Ltd together hold 8,50,000 shares (2,50,000+3,50,000+2,50,000) in Popular Products Ltd. Jovial Ltd. is the holding company of all above three companies. So, Jovial Ltd., along with its subsidiaries, holds 8,50,000 shares in Popular Products Ltd., which amounts to less than one-half of its total share capital. Hence, Jovial Ltd., by virtue of shareholding, is not a holding company of Popular Products Ltd.</p> <p>Secondly, it is given that Jovial Ltd. controls the composition of directors of Popular Products Ltd. Hence, Jovial Ltd. is a holding company of Popular Products Ltd. and not a subsidiary company.</p>	
19	What is meant by a Guarantee Company? State the similarities and dissimilarities between a Guarantee Company and a Company Share Capital. <b>(ICAI SM, July 2021)</b>	4
Ans.	<p><b>Company Limited by Guarantee:</b> As per the provision of the Companies Act, 2013, a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum <u>to contribute to the assets of the company in the event of it's being wound up</u>. Thus, the liability of the member of a guarantee company is limited up to a stipulated sum mentioned in the memorandum. Members cannot be called upon to <u>contribute beyond that stipulated sum</u>.</p> <p><b>Similarities and dissimilarities between the Guarantee company and the company having a share capital:</b></p> <ol style="list-style-type: none"> <li>1) The common features between a 'guarantee company' and 'share company' are legal personality and limited liability. In the latter case, the <u>member's liability is limited</u> by the amount remaining unpaid on the share, which each member holds. Both of them have to <u>state in their memorandum that the members' liability is limited</u>.</li> <li>2) However, the point of distinction between these two types of companies is that in the former case, the members may be called upon to <u>discharge their liability only after the commencement of the winding-up</u> and only subject to certain conditions; but in the latter case, they may be called <u>upon to do so at any time</u>, either during the <u>company's lifetime or during its winding up</u>.</li> </ol>	4
20.	What do you mean by the term capital? Describe its classification in the domain of Company Law. <b>(Dec. 2021)</b>	6
Ans.	<p>In relation to a company limited by shares, the word capital means share capital, i.e., the capital or figure in terms of so many rupees divided into shares of a fixed amount. In other words, the <u>contributions of persons</u> to the common <u>stock of the company</u> forms the capital of the company. The proportion of the capital to which each member is entitled is his share.</p> <p>Types of capital as per the Companies Act, 2013:</p> <ol style="list-style-type: none"> <li>1) <u>Authorised capital</u> or <u>Nominal capital</u>: It means the capital that is uthorized by the memorandum of a company to be the maximum amount of share capital of the company. It is the sum stated in the memorandum as the capital of the company, being the maximum amount which it is uthorized to raise by issuing shares.</li> <li>2) <u>Issued capital</u>: It means the capital the company issues from time to time. It is that part of the uthorized capital which is offered by the company for subscription and includes the shares allotted for consideration.</li> </ol>	6

	<p>3) <u>Subscribed capital</u>: It means the capital, which is subscribed by the members of a company. It is the nominal amount of shares taken up by the public.</p> <p>4) <u>Called-up capital</u>: It means the capital that has been called for payment. It is the total amount called upon the shares issued.</p> <p>5) <u>Paid-up capital</u>: Paid-up capital is the total amount paid or credited as paid up on shares issued. It is equal to called up capital less calls in arrears.</p>	
<b>21</b>	<p>Mr. Dhruv was appointed as an employee in Sunmoon Timber Private Limited on the condition that if he was to leave his employment, he will not solicit customers of the company. After some time, he was fired from company. He set up his own business under proprietorship and undercut Sunmoon Timber Private Limited's prices. On the legal advice from his legal consultant and to refrain from the provisions of breach of contract, he formed a new company under the name Seven Stars Timbers Private Limited. In this company, his wife and a friend of Mr. Dhruv were the sole shareholders and directors. They took over Dhruv's business and continued it. Sunmoon Timber Private Limited files a suit against Seven Stars Timbers Private Limited for violation of contract. Seven Stars Timbers Private Limited argued that the contract was entered between Mr. Dhruv and Sunmoon Timber Private Limited and as company has separate legal entity, Seven Stars Timbers Private Limited has not violated the terms of agreement. Explain with reasons, whether separate legal entity between Mr. Dhruv and Seven Stars Timbers Private Limited will be disregarded?</p> <p style="text-align: right;"><b>(Nov 2021 RTP, May 2022 RTP)</b></p>	<b>4</b>
<b>Ans.</b>	<p>There was a famous case law of <u>Gilford Motor Co. vs. Horne</u>, which was based on the concept of <u>Lifting of Corporate Veil</u>. In the case of Gilford Motor Co. Vs. Horne, it was decided by the court that if the <u>company is formed simply as a mere device to evade legal obligations</u>, courts can <u>pierce the corporate veil</u>. In other words, if the company is mere sham or cloak, the separate legal entity can be disregarded.</p> <p><b>Facts of the case:</b></p> <p>Mr. Dhruv was appointed as an employee in Sunmoon Timber Private Limited on the condition that if he was to leave his employment, he will not solicit customers of the company. After some time, he was fired from company. He set up his own business under proprietorship and undercut Sunmoon Timber Private Limited's prices. On the legal advice from his legal consultant and to refrain from the provisions of breach of contract, he formed a new company under the name Seven Stars Timbers Private Limited. In this company, his wife and a friend of Mr. Dhruv were the sole shareholders and directors. They took over Dhruv's business and continued it. Sunmoon Timber Private Limited files a suit against Seven Stars Timbers Private Limited for violation of contract. Seven Stars Timbers Private Limited argued that the contract was entered between Mr. Dhruv and Sunmoon Timber Private Limited and as company has separate legal entity, Seven Stars Timbers Private Limited has not violated the terms of agreement.</p> <p><b>Conclusion:</b></p> <p>In the present case, Seven Stars Timbers Private Limited was formed just to evade legal obligations of the agreement between Mr. Dhruv and Sunmoon Timber Private Limited. Hence, Seven Stars Timbers Private Limited is just a sham or cloak and separate legal entity between Mr. Dhruv and Seven Stars Timbers Private Limited should be disregarded.</p>	<b>4</b>
<b>22</b>	<p>Narendra Motors Limited is a government company. Shah Auto Private Limited is a private company having share capital of ₹10 crores in the form of 10 Lakhs shares of ₹100 each. Narendra Motors Limited is holding 5,05,000 shares in Shah Auto Private</p>	<b>4</b>

	Limited. Shah Auto Private Limited claimed the status of Government Company. Advise as legal advisor, whether Shah Auto Private Limited is government company under the provisions of Companies Act, 2013? <b>(Nov 2021 RTP)</b>	
<b>Ans.</b>	<p>According to the provisions of Section 2(45) of Companies Act, 2013, Government Company means any company in which <u>not less than 51% of the paid-up share capital</u> is held by:</p> <ol style="list-style-type: none"> <li>the <u>Central Government</u>, or</li> <li>by any <u>State Government or Governments</u>, or</li> <li><u>partly by the Central Government and partly by one or more State Governments</u>, and the section includes a company which is a subsidiary company of such a Government company.</li> </ol> <p>According to Section 2(87), “subsidiary company” in relation to any other company (that is to say the holding company), means a company in which the holding 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.</p> <p><b>Facts of the case:</b></p> <p>Narendra Motors Limited is a government company. Shah Auto Private Limited is a private company having share capital of ₹10 crores in the form of 10 Lakhs shares of ₹100 each. Narendra Motors Limited is holding 5,05,000 shares in Shah Auto Private Limited. Shah Auto Private Limited claimed the status of Government Company.</p> <p><b>Conclusion:</b></p> <p>In the present case, Shah Auto Private Limited is a subsidiary company of Narendra Motors Limited because Narendra Motors Limited is holding more than one-half of the total voting power in Shah Auto Private Limited. Further as per Section 2(45), a subsidiary company of Government Company is also termed as Government Company. Hence, Shah Auto Private Limited being subsidiary of Narendra Motors Limited will also be considered as Government Company.</p>	<b>4</b>
<b>23</b>	<p>Jagannath Oils Limited is a public company and having 220 members. Of which 25 members were employee in the company during the period 1st April 2006 to 28th June 2016. They were allotted shares in Jagannath Oils Limited first time on 1st July 2007 which were sold by them on 1st August 2016. After some time, on 1st December 2016, each of those 25 members acquired shares in Jagannath Oils Limited which they are holding till date. Now company wants to convert itself into a private company. State with reasons:</p> <ol style="list-style-type: none"> <li>Whether Jagannath Oils Limited is required to reduce the number of members.</li> <li>Would your answer be different if above 25 members were the employee in Jagannath Oils Limited for the period from 1st April 2006 to 28th June 2017?</li> </ol> <p><b>(May 2022 RTP)</b></p>	<b>6</b>
<b>Ans.</b>	<p>According to Section 2(68) of Companies Act, 2013, “Private company” means a company having a minimum paid-up share capital as may be prescribed, and which by its articles:</p> <ol style="list-style-type: none"> <li><u>restricts the right to transfer its shares;</u></li> <li>except in case of One Person Company, limits the number of its members to <u>two hundred</u>: Provided that where two or more persons hold one or more shares in a company <u>jointly</u>, they shall, for the purposes of this clause, be <u>treated as a single member</u>.</li> </ol> <p>Provided further that:</p> <ol style="list-style-type: none"> <li>persons who are in the <u>employment</u> of the company; and</li> <li>persons who, having been <u>formerly in the employment</u> of the company, were</li> </ol>	<b>6</b>

	<p>members of the company while in that employment and <u>have continued to be members after the employment ceased</u>, shall <u>not be included in the number of members</u>; and</p> <p>iii) <u>prohibits</u> any invitation to the public to subscribe for any securities of the company.</p> <p><b>Facts of the case:</b> Jagannath Oils Limited is a public company and having 220 members. Of which 25 members were employee in the company during the period 1st April 2006 to 28th June 2016. They were allotted shares in Jagannath Oils Limited first time on 1st July 2007 which were sold by them on 1st August 2016. After some time, on 1st December 2016, each of those 25 members acquired shares in Jagannath Oils Limited which they are holding till date. Now company wants to convert itself into a private company.</p> <p><b>Conclusion:</b></p> <p>a) Following the provisions of Section 2(68), 25 members were employees of the company but not during present membership which was started from 1st December 2016 i.e. after the date on which these 25 members were ceased to the employee in Jagannath Oils Limited. Hence, they will be considered as members for the purpose of the limit of 200 members. The company is required to reduce the number of members before converting it into a private company.</p> <p>b) On the other hand, if those 25 members were ceased to be employee on 28th June 2017, they were employee at the time of getting present membership. Hence, they will not be counted as members for the purpose of the limit of 200 members and the total number of members for the purpose of this sub-section will be 195. Therefore, Jagannath Oils Limited is not required to reduce the number of members before converting it into a private company.</p>	
24	<p>A, B and C has decided to set up a new club with name of ABC club having objects to promote welfare of Christian society. They planned to do charitable work or social activity for promoting the art work of economically weaker section of Christian society. The company obtained the status of section 8 company and started operating from 1<sup>st</sup> April, 2017 onwards. However, on 30th September 2019, it was observed that ABC club was violating the objects of its objective clause due to which it was granted the status of section 8 Company under the Companies Act 2013.</p> <p>Discuss what powers can be exercised by the central government against ABC club, in such a case?</p> <p style="text-align: right;"><b>(May 2022 RTP)</b></p>	6
<b>Ans.</b>	<p>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, education, sports etc. Such company intends to apply its profit in promoting its objects. Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them.</p> <p><b>Facts of the case:</b> A, B and C has decided to set up a new club with name of ABC club having objects to promote welfare of Christian society. They planned to do charitable work or social activity for promoting the art work of economically weaker section of Christian society. The company obtained the status of section 8 company and started operating from 1<sup>st</sup> April, 2017 onwards. However, on 30th September 2019, it was observed that ABC club was violating the objects of its objective clause due to which it was granted the status of section 8 Company under the Companies Act 2013.</p>	6

	<p><b>Conclusion:</b>          Since ABC Club was a Section 8 company and had started violating the objects of its objective clause, the following powers can be exercised by the Central Government:</p> <p>i) The Central Government, may by an order, <u>revoke the licence of the company</u> if the company <u>contravenes any of the requirements or the conditions</u> of this sections, subject to which a license is issued. But before such revocation, the Central Government must give a <u>written notice</u> of its intention to revoke the license and an <u>opportunity of being heard</u> in the matter to such Section 8 company.</p> <p>ii) Where a licence is revoked, the Central Government may, if it is satisfied that it is <u>essential in the public interest</u>, direct that the company be <u>wound up</u> under this Act or <u>amalgamated with another Section 8 company</u>. However, no such order shall be made unless the company is given a <u>reasonable opportunity of being heard</u>.</p> <p>iii) Where a licence is revoked and the Central Government is satisfied that the company registered under this section should be amalgamated with another Section 8 company <u>having similar objects</u>, then the Central Government may provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.</p>	
25	<p>No Limit Private Company is incorporated as unlimited company having share capital of ₹10,00,000. One of its creditors, Mr. Samuel filed a suit against a shareholder Mr. Innocent for recovery of his debt against No Limit Private Company. Mr. Innocent has given his plea in the court that he is not liable as he is just a shareholder. Explain, whether Mr. Samuel will be successful in recovering his dues from Mr. Innocent?</p> <p style="text-align: right;"><b>(Nov 2022 RTP)</b></p>	4
Ans.	<p>As per the provisions of the Companies Act, 2013, an unlimited company means a company <u>not having any limit on the liability of its members</u>. The liability of each member extends to the whole amount of the company's debts and liabilities, but he will be entitled to claim contribution from other members. As long as the company is a going concern, the liability on the shares is the only liability which can be enforced by the company. But, <u>at the time of winding up of the company</u>, the official liquidator may call the members for their contribution towards the liabilities and debts of the company, <u>which can be unlimited</u>.</p> <p><b>Facts of the case:</b>          No Limit Private Company is incorporated as unlimited company having share capital of ₹10,00,000. One of its creditors, Mr. Samuel filed a suit against a shareholder Mr. Innocent for recovery of his debt against No Limit Private Company. Mr. Innocent has given his plea in the court that he is not liable as he is just a shareholder.</p> <p><b>Conclusion:</b>          On the basis of above, it can be said that Mr. Samuel cannot directly claim his dues from Mr. Innocent, even if the company is an unlimited company. Mr. Innocent is liable up to his share in the share capital. His unlimited liability will arise at the time of winding up of company.</p>	4