

CA FOUNDATION



MARATHON

JUNE 2024

**Top 100 Questions/Writing
Practise**

→ Part 1
Q 1 to Q 10-

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Question no 1

(H)

more than half of VR hold.

(S)

The paid-up capital of Darshan Photographs Private Limited is 1 Crores in the form of 50,000 Equity Shares of 100 each and 50,000 Preference Shares (not carrying any voting rights) of 100 each. Shadow Evening Private Limited is holding 25,000 Equity Shares in Darshan Photographs Private Limited. State with reason,

- i. Whether Darshan Photographs Private Limited is subsidiary of Shadow Evening Private Limited? **NO**
- ii. Whether your answer would be different in case Shadow Evening Private Limited is holding 25,000 Equity Shares and 5,000 Preference Shares in Darshan Photographs Private Limited? (MTP Apr. 24) (7 Marks) **NO**

Law → (i) As per sec-2(46) of companies Act, 2013, a holding Co. is a company which has one or more subsidiary.

(ii) As per sec-2(87) of Co Act, 2013, a subsidiary Co. is a company in which holding company holds-

(A) more than half of shares having voting rights - either by himself, along with its subsidiaries or through its subsidiaries, or.

(b) He can decide composition of BOD of that Co.

(iii) deciding composition of BOD means he can appoint or remove all or majority of directors.

(N) Here company includes Body corporate.

Conclusion → In present situation,

(i) Dawhan photograph Pvt Ltd is not subsidiary of shadow evening Pvt Ltd because it holds only 50% equity shares in Dawhan Pvt Ltd whereas to become its holding it requires to hold more than 50% voting rights.

(ii) our answer will be same because preference shares do not carry any voting rights.

Question no 2

Define OPC (One Person Company) and state the rules regarding its membership. Can it be converted into a non-profit company under Section 8 or a private company? (MTP May 24) (7 Marks)

Q2 One Person Company (OPC)

As per provisions of sec 2(62) of Companies Act, 2013.

(i) definition → One person company is a company having one member.

(ii) membership - To be member or nominee of OPC; such person should be:

(a) Indian citizen

(b) Natural person.

(c) Indian resident or otherwise.

(iii) conversion → OPC can convert into any other type of company except sec-8 company.

(iv) other provisions → (a) Minor cannot become member in OPC.

(b) One person cannot become member or nominee in more than 1 OPC.

(c) Appointment of nominee is compulsory in OPC.

(d) There is no limit on P/OC or T/O in case of OPC.

(e) OPC cannot carry banking or non-banking financial activity.

Question no 3

Explain the '*Doctrine of ultra vires*' under the Companies Act, 2013.

What are the consequences of 'ultra vires' acts of the company? **(MTP Apr. 24) (7 Marks)**

Answer

Doctrine of ultra vires:

1. The meaning of the term ultra vires is simply “beyond (their) powers”.
2. The legal phrase “ultra vires” is applicable only to acts done in excess of the legal powers of the doers.
3. An act or transaction shall be ultra vires if
 - (a) it is not permitted or authorised by the Companies Act, 2013;
 - (b) it falls outside the object clause of memorandum; and
 - (c) its attainment is not incidental to the attainment of main objects.

Effect

- I. An act which is ultra vires the company is void and is of no legal effect.
- II. Even ratification of an ultra vires contract by the whole body of shareholders does not make an ultra vires contract valid or enforceable.
- III. Any member may obtain an injunction order from the Court, i.e. an order of the Court restraining the company from proceeding with the ultra vires contract.
- IV. If funds of the company are misapplied or wasted by entering into ultra vires transactions, the directors shall be personally liable to the company for breach of trust.

Question no 4

subsidary

Tycoon Private Limited is the holding company of Glassware Private Limited. As per the last profit and loss account for the year ending 31st March, 2023 of Glassware Private Limited, its turnover was Rs 1.80 crore and paid up share capital was Rs 80 lakh.

NO

The Board of Directors wants to avail the status of a small company. The Company Secretary of the company advised the directors that Glassware Private Limited cannot be categorized as a small company. *correct*

In the light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are required to examine whether the contention of Company Secretary is correct, explaining the relevant provisions of the Act. (MTP Apr. 24) (4 Marks)

correct

Law → As per provisions of sec. 2(85) of companies Act, 2013.

(i) A small Co. is a company whose.

(a) Turnover as per latest FS do not exceed 4 cr, and.

(b) whose P.U.C do not exceed 4 cr.

(ii) Small company cannot be holding or subsidiary Co. of a company.

Conclusion → In present case, contention of company secretary is correct. Glanware Pvt Ltd is not a small company because it is subsidiary of Tychoon Pvt Ltd and small Co. can neither be holding nor be subsidiary of any Co.

Question no 5

MNP Private Ltd. is a company registered under the Companies Act, 2013 with Paid Up Share Capital of ` 5 crores and turnover of ` 35 crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:

(i) Whether the MNP Private Ltd. can avail the status of small company?

(ii) What will be your answer if the turnover of the company is ` 45 crores?(MTP May 24) (7 Marks)

Answer

Law - According to Section 2(85) of the Companies Act, 2013, Small Company means a company, other than a public company,—

- 1) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than **four crore rupees**; and
- 2) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall **not be more than forty crore rupees**.
- 3) Nothing in this clause shall apply to—
 - A. a holding company or a subsidiary company;
 - B. a company registered under section 8; or
 - C. a company or body corporate governed by any special Act.

Conclusion - In the present case,

i) MNP Private Ltd., a company registered under the Companies Act, 2013 with a paid up share capital of ` 5 crores and having turnover of ` 35 crore. Since only one criteria of share capital of ` 4 crores is met, but the second criteria of turnover of ` 40 crores is not met and the provisions require both the criteria to be met in order to avail the status of a small company, MNP Ltd. cannot avail the status of small company.

ii. If the turnover of the company is ` 45 crore, then both the criteria will be fulfilled and MNP Ltd. ~~can~~ avail the status of small company.

cannot

not
^

Question no 6

In the Flower Fans Private Limited, there are only 5 members. All of them go in a boat on a pleasure trip into an open sea. The boat capsizes and all of them died being drowned. Explain with reference to the provisions of Companies Act, 2013:

(A) Is Flower Fans Private Limited no longer in existence?

NO

(B) Further is it correct to say that a company being an artificial person cannot own property and cannot sue or be sued? (MTP Apr. 24) (3 Marks)

own

- (Hint) As per provisions of Co Act
Law →
- (i) separate legal entity
 - (ii) can own property
 - (iii) perpetual succession → member
 - (iv) can be sued or sue in its own name

Conclusion In present situations:

- (i) Incorrect - Flower pan H Pit Ltd continues to exist because it is a company, it has perpetual succession. If all members die, their shares will be transferred to their nominee or their legal representative.
- (ii) Incorrect - Since company is a separate legal person, it can hold property in its own name and can sue or being sued in its own name

Question no 7

Nolimit 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 Nolimit 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? (MTP May 24) (4 Marks)

Answer

Law –

- I. Section 2(92) of Companies Act, 2013, provides that an unlimited company means a company not having any limit on the liability of its members. 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.
- II. A Company is a separate legal entity which can sue or be sued in its own name

Conclusion - On the basis of above, it can be said that Mr. Samuel cannot directly claim his dues against the company from Mr. Innocent, the shareholder of the company even the company is an unlimited company. Mr. Innocent is liable upto his share capital. His unlimited liability will arise when official liquidator calls the members for their contribution towards the liabilities and debts of the company at the time of winding up of company.

Question no 8

A Company registered under Section 8 of the Companies Act, 2013, has been consistently making profits for the past 5 years after a major change in the management structure. Few members contented that they are entitled to receive dividends. Can the company distribute dividend? If yes, what is the maximum percentage of dividend that can be distributed as per provisions of the Companies Act, 2013? Also, to discuss this along with other regular matters, the company held a general meeting by giving only 14 days' notice. Is this valid?(MTP May 24) (3 Marks)

CA Inter → practice.

Answer

Law

A company registered under Section 8 of the Companies Act, 2013 is prohibited from the payment of any dividends to its members.

Conclusion

(i)

Hence in the given case, the contention of the members to distribute dividend from the profits earned is wrong. Sec 8 Co cannot cannot distribute dividend

(ii)

Also, Section 8 company is allowed to call a general meeting by giving 14 days instead of 21 days.

Question no 9

The paid-up capital of Darshan Photographs Private Limited is 1 Crores in the form of 50,000 Equity Shares of 100 each and 50,000 Preference Shares (not carrying any voting rights) of 100 each. Shadow Evening Private Limited is holding 25,000 Equity Shares in Darshan Photographs Private Limited. State with reason,

- i. Whether Darshan Photographs Private Limited is subsidiary of Shadow Evening Private Limited?
- ii. Whether your answer would be different in case Shadow Evening Private Limited is holding 25,000 Equity Shares and 5,000 Preference Shares in Darshan Photographs Private Limited?(MTP Apr. 24) (7 Marks)

Gilford motors Ltd vs Home

Question no 10

Mr. Dhruv was appointed as an employee of Sunmoon Timber Private Limited on the condition that if he were 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 filed a suit against Seven Stars Timbers Private Limited for violation of contract. Seven Stars Timbers Private Limited argued that the contract was entered into 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?

(RTP) May
June 21-

Law - As per provisions of companies Act, 2013, if a company is formed to defraud creditors or unlawful purpose, court may ~~disregard~~ lift its corporate veil and disregard it as separate legal entity

Ref case - Gilford Motor Ltd vs Horne.

Conclusion - Yes - separate legal entity of dhruv and seven star ltd will be disregarded as dhruv formed this company only to solicit customers of sunmoon timber pvt ltd which is similar to case of gilford motor ltd vs horne when corporate veil was lifted

Answer

Law – As per Companies act , 2013 Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat or circumvent law, to defraud creditors or to avoid legal obligations, courts can pierce the corporate veil. In other words, if the company is mere sham or cloak, the separate legal entity can be disregarded.

Ref – Case - Gilford Motor Co. Vs. Horne

Conclusion - On considering the decision taken in Gilford Motor Co. Vs. Horne and facts of the problem given, it is very much clear that 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 the separate legal entity between Mr. Dhruv and Seven Stars Timbers Private Limited should be disregarded.



THANK YOU