

6. The Companies Act, 2013

Date ___/___/___



- * Background → • The companies Act, 1956 :-
- (a) 658 sections → Sub-division of legal documents
 - (b) covered in 13 parts
 - (c) 15 schedules

• The companies Act, 2013 :- [Amendments]

- (a) 470 sections (b) covered in 29 chapters (c) 7 schedules [Schedule III amended]
[Balance sheet]
- Sub-division used to arrange information in Act

* Applicability of the Companies Act, 2013 :-

- ① Company incorporated under this act or any previous act (1956)
- ② Insurance companies → (Insurance Act, 1938) or (IRDA Act, 1999)
- ③ Banking companies → (Banking Regulation Act, 1949) ↓
Insurance Regulatory Development Authority
- ④ Companies engaged in generation & supply of electricity → (Electricity Act, 2003)

* The Companies Act, 2013

- Notification in the official gazette ⇒ 30 AUGUST, 2013
- Extension ⇒ whole of India

* Purpose of The Companies Act, 2013 :-

- to set up institutional structure in the form of various authorities, bodies and panel as well as including recognition of various professionals and other experts.
- Regulation of professional bodies → legal entity in form of company

Date ___ / ___ / ___

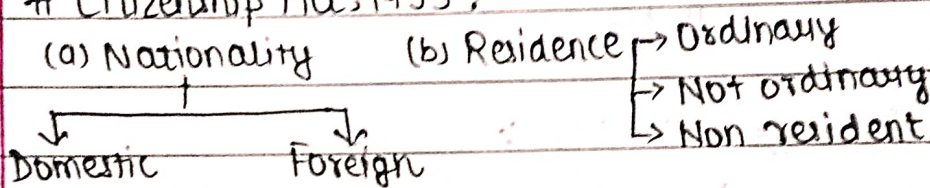
* Meaning of Company [Sec. 2(20)]

→ Company is an artificial person which is created by the law, having perpetual succession, common seal, with separate legal entity.

(A) Artificial Person

(i) It is a legal person (ii) But it is not a citizen

Citizenship Act, 1955 :-



* Characteristics of Company :-

(A) Corporate Personality → Separate legal entity → from members
→ from founders

(B) Perpetual Succession → Members existence & removal does not affect company

• members may come / go → But company run forever

- ↳ Retire
- ↳ Death
- ↳ Insolvent

(C) Limited Liability → Company limited by → Share
↳ Guarantee

(D) Common Seal → authorised stamp or signature of company

→ But, Amendment of 2015 → NO COMPULSION OF COMMON SEAL



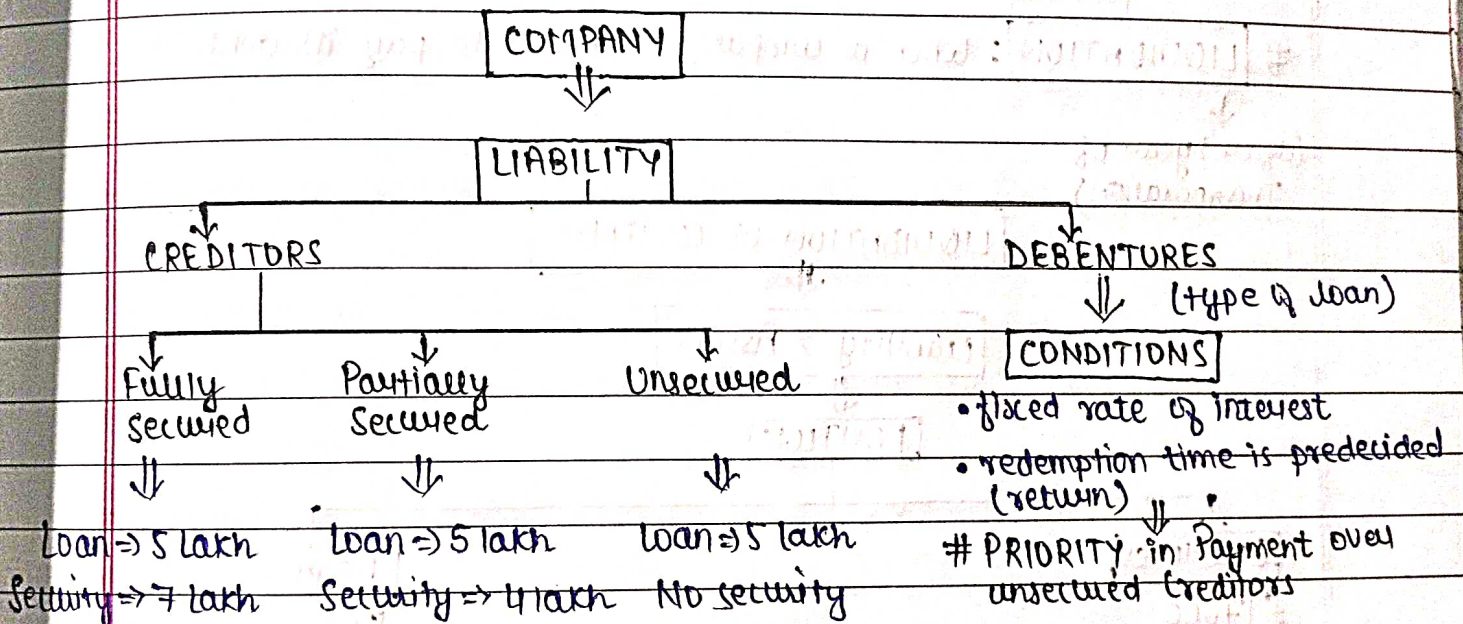
* Corporate Veil Theory

- It refers to 'Separate legal entity'
- company enjoy the separate existence
- company is always distinct from the person who own & manage it.

COMPANY ≠ MEMBERS, MANAGERS, FOUNDERS, OWNER

* Effect of Corporate Veil :-

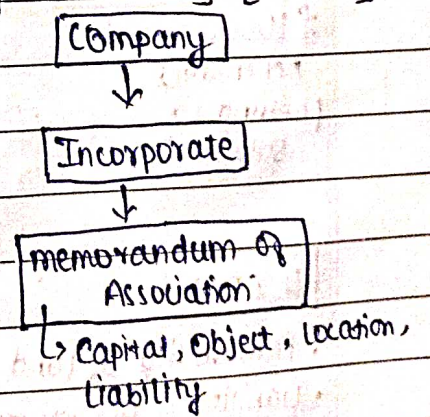
- Only company is liable for the act done in the name of company
- Act/default done by the name of the company ⇒ LIABLE → COMPANY



Soloman v/s Soloman and Co. Ltd. [Leading Case Law] [1897]

- Business → Leather Boot
- Founder → Mr. Aron Soloman
- Incorporate Name → Soloman Co. Ltd.
- Sell → Business → to company → £38000
- Total Share Capital → £40000 (£1 each)

→ Family ⇒ Himself, wife, Daughter & 4 sons



Solomon & Co. Ltd.



Memorandum



7 Subscribers

Solomon	Wife	Daughter	4 Sons
£ 20000 Shares	£ 1 share	£ 1 share	£ 1 share each
£ 15000 Debentures			

↑ Wind up

LIQUIDATION: When a company is unable to pay its debt

↓
(after 1 year of Incorporation)

LIQUIDATION OF COMPANY



Liability > Assets

POSITION

Liabilities

£ 17000

Assets

£ 6000

↓
£ 10000
Debentures
(belong to Solomon)

↓
£ 7000
Unsecured Creditors

Payment

- Availability of fund → £ 6000
- Liability to pay → £ 17000

Predecided Payment → **DEBENTURES**

↓
Solomon
(£ 10000)

CASE

- Availability of Fund = £ 6000
- Liability = Debentures + Unsecured Creditors

↓
Solomon
(£ 10000)

↓
Creditor
(£ 7000)



• Case → Victim → Creditors

↳ £6000 funds available → £7000 liability (Settle)

COURT → Pre-decided → Debentures

↳ Creditor says ⇒ Debenture holders → Founder of company

Verdict of Court

↓
• On the incorporation of company → becomes → SEPARATE, LEGAL ENTITY

[Independent legal Person]

• On liquidation ⇒ Fund availability ⇒ £6000

PAYMENT MODE

• preference in payment ⇒ Debenture holders

• Debenture holder → SOLOMON

• Lifting the Corporate Veil



Looking behind as a legal person

① Where the device of incorporation is adopted for some illegal or improper purpose

Case Law Reference → **GILFORD MOTOR CO. VIS HORNE**

② For determining Residence and character

- ↳ Domestic
- ↳ Foreign

Case Law Reference → **DAIMLER CO. LTD VIS CONTINENTAL TYRE & RUBBER CO.**

③ Formation of company to divide income & avoid tax

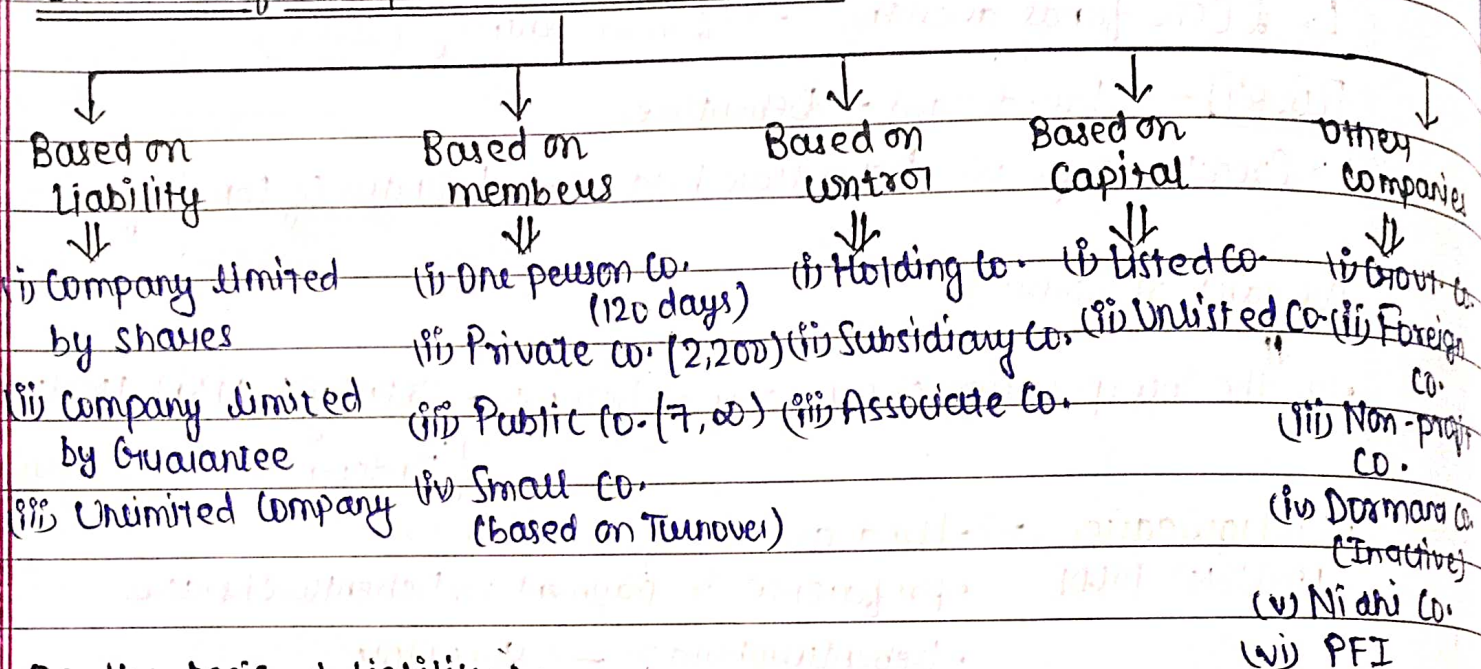
Case Law Reference → **DINSHAW MANECKJEE PETIT**

④ Where companies form other company as their subsidiary to act as their Agent

Case Law Reference → **MERCHANDISE TRANSPORT LIMITED VIS BRITISH TRANSPORT COMMISSION** → [1982]



* Classes of Companies under the Act



* On the basis of Liability :-

1. > Company limited by Share [Sec. 2(22)]

→ A company limited by share is a registered company having the liability of its members → Limited to the amount, if any UNPAID on the share respectively held by them.

Note:- If the shareholder pay the full amount on the share held by them, he has nothing to pay.

2. > Company limited by Guarantee [Sec. 2(21)]

• Guarantee amount → at time of liquidation (wind up)

• Guarantee → mentioned → Memorandum of Association

→ Company limited by Guarantee is a company having the liability of its members → Limited to such an amount as the member respectively undertake.

→ Liability of the members to pay guarantee amount arise only when the company → Wind up / Liquidation



3. > Unlimited Company [Sec. 2(92)]

- extent of liability to entire personal property
- Liability of the member \rightarrow Seizes \rightarrow when he seizes to be a member
- Maximum Liability \Rightarrow Entire personal property
- NOT LIABLE to Creditors
- UNLIMITED to the Company
- Member may seek contribution from other members

* On the basis of Members :-

1. > Private Company [Sec. 2(68)]

- Restrict to transfer its shares (Prospect & share issue X)
- Minimum no. of member \Rightarrow 2 [except OPC]
- Maximum no. of member \Rightarrow 200
- minimum paid up capital ^{not} required
- Followings are not included in members :-
 - Person who are employed at company
 - Formerly employment \rightarrow employment cease \rightarrow membership cease
 - Couples \rightarrow Two or more person hold one or more shares \rightarrow JOINTLY \rightarrow Treated as SINGLE MEMBER

2. > Public Company [Sec. 2(71)]

- not a private company
- Minimum no. of member \Rightarrow 7
- Maximum no. of member \Rightarrow NO LIMIT
- no minimum paid up capital required
- right to transfer shares
- \rightarrow There ~~is~~ should be atleast 7 person to form Public Company
- Public company use word \rightarrow Limited

8) One Person Company [Sec. 2(62)]

- Company which has only 1 person as a member
- OPC is a private company
- minimum paid up capital → NOT REQUIRED
- Memorandum of OPC → Indicate → the name of the other person [who become member in case of death of main member]
- only a natural person and a RESIDENT from OPC
[RESIDENT → Immediate preceding year → 120 days in India]
- Separate legal entity • Limited liability
- Nominee can withdraw consent

4) Small Company [Sec. 2(85)]

- paid up share capital → DOES NOT EXCEED → 50 Lakh rupees
↳ Higher amount may be prescribed → 10 crore (not more than)
- TURNOVER → Immediate preceding year → not exceed 2 CRORE
↳ Higher amount prescribed 100 crore (not more than)

Small Company is a private company

- ↳ PAID UP CAPITAL - not more than 50 lakh
- ↳ TURNOVER - not more than 2 crore

* On the basis of control :-1) Holding Company (50% or more)

- Company in which the Holding company —
 - (i) control the composition of Board of Director
 - (ii) control the voting powers (Share Capital) of the company

2) Subsidiary Company

- company which Board of Directors and Voting power are controlled by other company.



Note:- Company $\left\{ \begin{array}{l} \rightarrow \text{who controls} \rightarrow \text{Holding company} \\ \rightarrow \text{who is in control} \rightarrow \text{Subsidiary company} \end{array} \right.$

3> Associate Company [Sec. 2(6)]

- company in which the other company has a significant influence \Rightarrow 20%
- 20% control $\left\{ \begin{array}{l} \rightarrow \text{Share capital} \\ \rightarrow \text{Business decision agreement} \end{array} \right.$

* ~~On the basis of control:-~~

* On the basis of Capital:-

1> Listed Company [Sec. 2(52)]

- company which has any of its securities LISTED on any recognised stock exchange.

2> Unlisted Company - A company other than listed company

* Other Companies:-

1> Government Company [Sec. 2(45)]

- company in which not less than 51% of the paid up share capital is held by (i) Central govt. (ii) State Government (iii) Both

2> Foreign Company [Sec. 2(42)]

- company or body corporate \rightarrow incorporated \rightarrow outside India
- conduct any business activity in India

3> Non-Profit Company [Section 8 company]

- formation purpose \rightarrow social objective (charitable purpose)
- Profit \rightarrow use to promote the social objective
- Approval \rightarrow by the Central Government
- License \rightarrow given by \rightarrow Central Government

- In case of misconduct / fraud → License revoked by → Central Govt.
- Opportunity → of being heard
- # Effect of Revocation of License → Use word Ltd. or Pvt. Ltd.

4. > Dormant Company [Sec. 455]

- Inactive company is a company in which → has not been carrying any business or any operation
- not made any significant financial transactions :-
 - (i) Sale (ii) Purchase
- financial transaction does not include :-
 - (i) payment of company fee to the registrar
 - (ii) allotment of the share to fulfill the requirement of the act
 - (iii) payment of maintenance amount (office)

5. > Nidhi Company [Section 406(1)]

- also known as 'MUTUAL BENEFIT SOCIETY COMPANY'
- A company which the central government may → by the notification in the Official Gazette → declare a company → as NIDHI COMPANY
- Purpose → develop habit of members.
 - THRIFT
 - SAVING

6. > Public Financial Institutions [Sec. 2(72)]

- PFI is established / created / constituted under any State or Central Act.
 - (i) Life Insurance Corporation ⇒ LIC Act, 1956
 - (ii) Infrastructure Limited Finance Company Limited
 - (iii) companies under Unit Trust of India Act, 2002
- 51% of paid up share capital held by Central govt., State govt. or both.



* Conditional Document / Memorandum of Association

- Charter Document • No company can be incorporated without it
- Public document (Sec. 399) • Any one can inspect document by paying

↓ nominal fee

REASON:-

(A) Prospective shareholder → Return
→ Risk

(B) Outsiders or Creditors → Know paying capacity

* Memorandum of Association (Sec. 2(56))

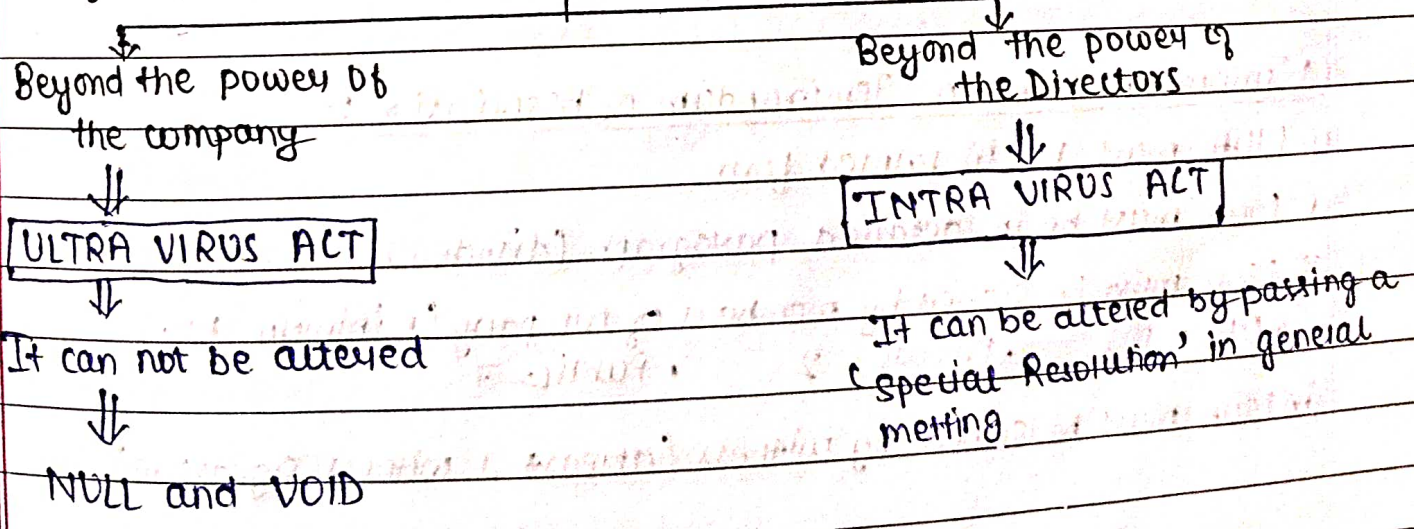
FUNDAMENTAL DOCUMENT

→ MDA is a fundamental condition upon which a/c is allowed to INCORPORATE a company.

CONDITION

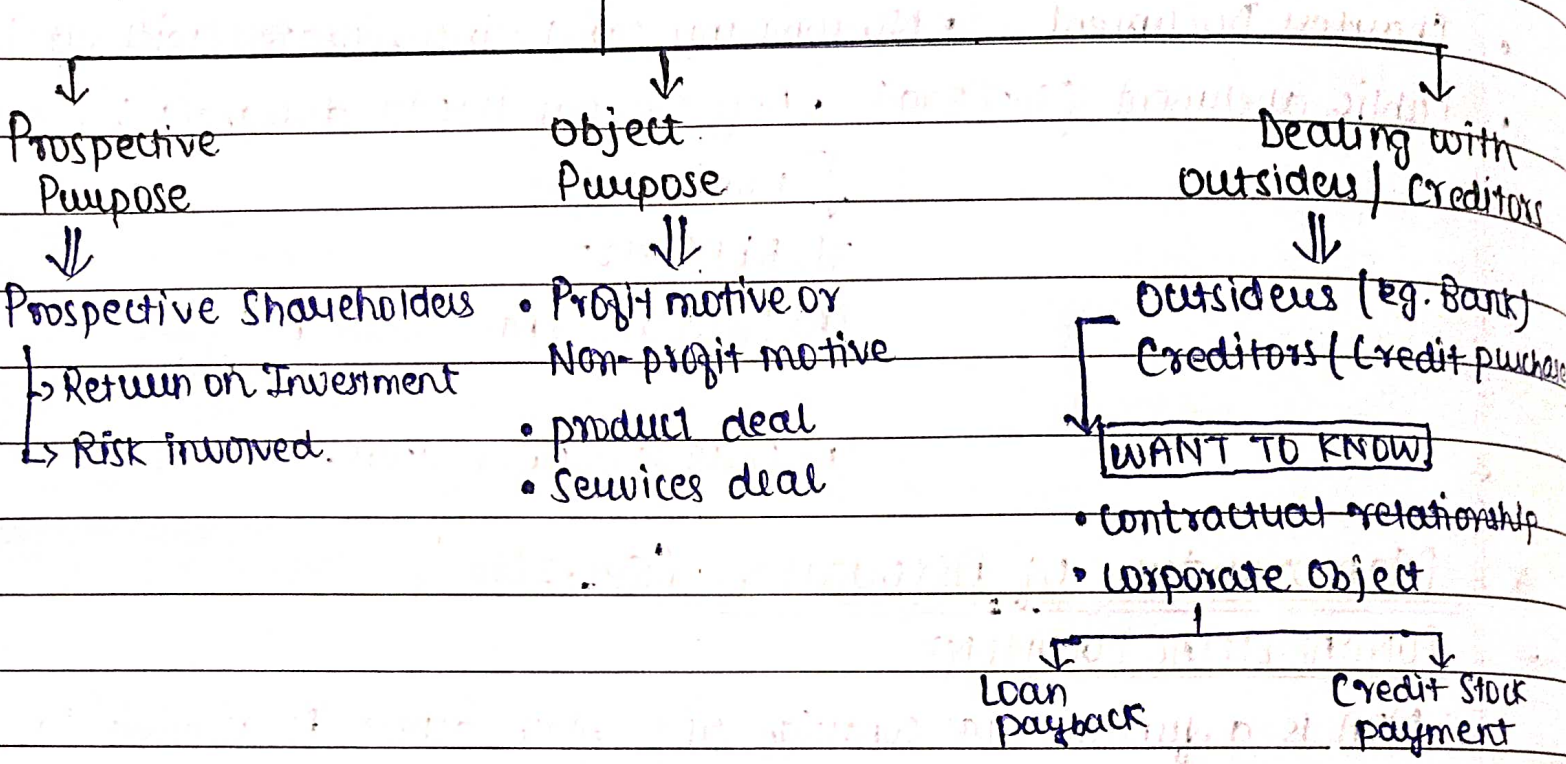
- It defines the power of the company
- It not only shows the object of company but also determine the utmost possible scope of its operation [ACTIVITY] beyond which its action cannot go.

→ If beyond the scope of company, operation happens :-





Purpose of Memorandum of Association :-



Forms of Memorandum of Association :-

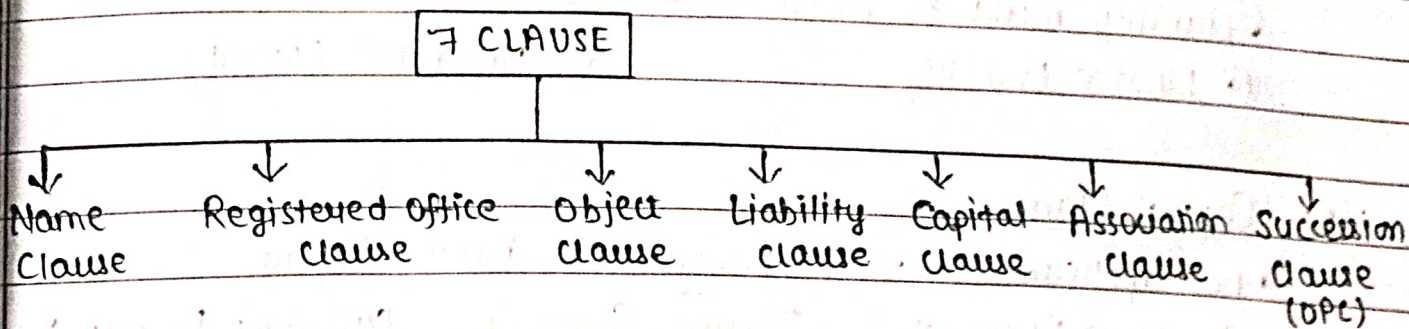
- (i) Table A ⇒ company limited by shares
- (ii) Table B ⇒ company limited by guarantee → not having Share Capital
- (iii) Table C ⇒ company limited by guarantee → having Share Capital
- (iv) Table D ⇒ unlimited company → not having Share Capital
- (v) Table E ⇒ unlimited company → having Share Capital

Important points in Memorandum of Association :-

- (i) MOA must be in printed form
- (ii) MOA must be in detailed paragraph (divided)
- (iii) MOA must be signed by members of company (minimum no.)
 - OPC = 1
 - Private = 2
 - Public = 7
- (iv) MOA must be signed by witness (atleast 1 witness signature)



Content of Memorandum of Association :-



1. > Name Clause

- Name clause must state the name → by which a company is known
- Company → end → Limited → Government Company
- Company → end → Pvt. Limited → Private Company
- Company → end → Public Limited → Public Company
- Section 8 company ⇒ end ⇒ Foundation
Trust
Association
Federation
Electoral Trust
Forum etc.,

NAME CLAUSE is not applicable on Sec. 8 Companies, but by CBDT → Central Board of Direct Taxes

2. > Registered Office Clause

- The name of the state in which company is situated & incorporated.

3. > Object Clause

- disclose the object of the company during incorporation in MOA.

↓
PROFIT
MOTIVE

↓
NON-PROFIT
MOTIVE
(only section 8 companies)

- If beyond the object ⇒ DOCTRINE OF ULTRA VIRUS

4.7 Liability Clause

- Liability must be disclosed in MOA.

(i) Limited Liability

(ii) Unlimited Liability

5.7 Capital Clause

- not applicable on → Company → not having Capital

- Capital → Authorised, Issued, Subscribed, Called up, Paid up, Reserve

↓
Registered

↓
Nominal

6.7 Association Clause

- disclose Investors & Shareholders

- Shareholder disclose their desire to form a company

7.7 Succession Clause

- only applicable on One Person Company

- Nominee of the OPC → 120 days

- Succession clause State that who shall be the member of OPC.

- In case of main member of OPC → New member → disclose in clause

* Doctrines

- Instructions • set of rules followed in law

3 Types of Doctrines

(a) ULTRA VIRUS - beyond the power of

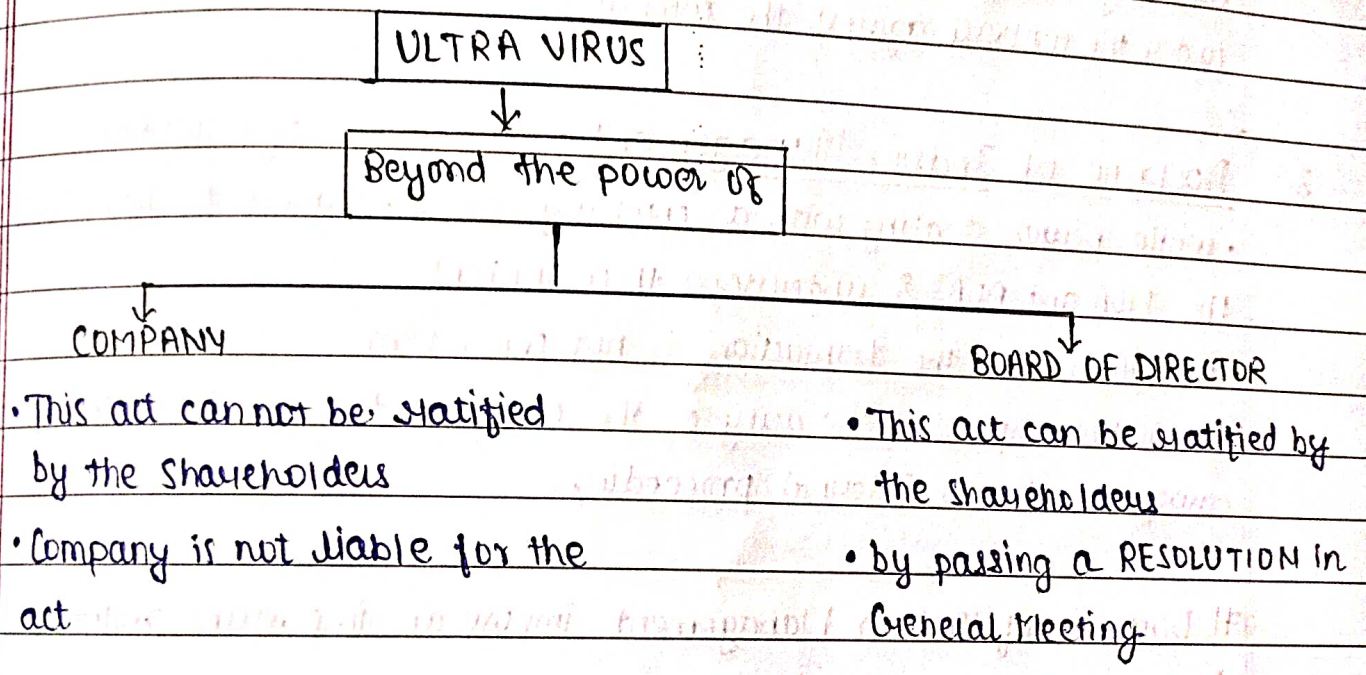
(b) CONSTRUCTIVE NOTICE - In favour of company

(c) INDOOR MANAGEMENT - In favour of outsiders



12) Doctrine of Ultra Virus

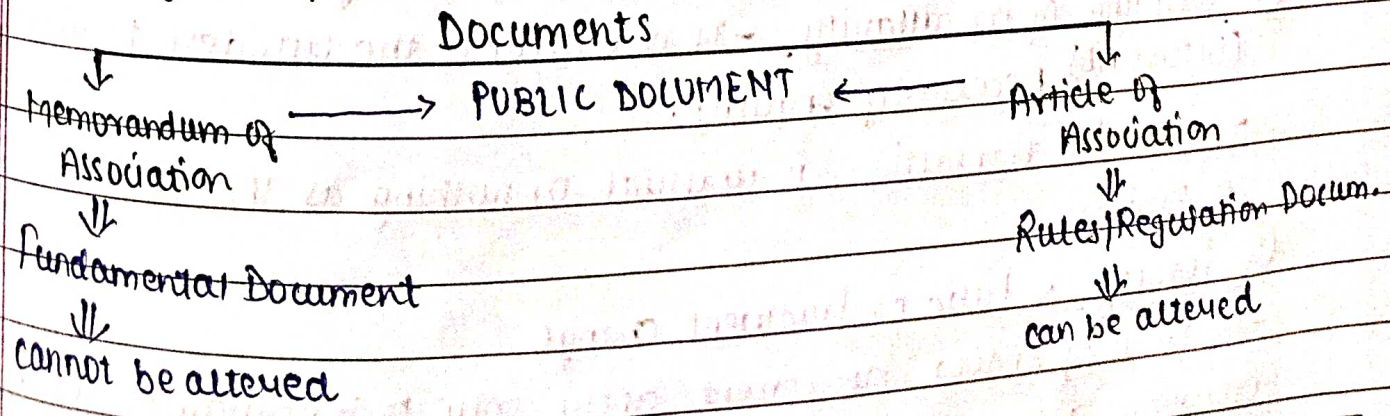
- Doctrine of Ultra virus means beyond the power of Powers (In MOA) is Ultra Virus and therefore is NULL and VOID.
- Any activity which is Outside the specified Object (In MOA) and No rights and Liabilities on the part of the company → The activity is NULL and VOID.
- Any activity which is ultravirus for the company does not bind the company



Case law Reference → Ashbury Railway Carriage and Iron Company Ltd. v Riche (1875)

27) Doctrine of Constructive Notice → In favour of company

- Company incorporated with the help of 2 documents



- When MDA and AOA are registered → becomes a Public document and are open to inspection
- Documents can be inspected by paying a nominal fee
- Whether a person read the documents (MDA & AOA) or not He is presumed to have a knowledge of the content of documents.
- True perspective → Person ~~person~~^{presumed} to be read & understand
- If a person enters into a contract → which is beyond the power of the company as defined in the MDA → He cannot acquire any rights → under the contract against the company.

3.7 Doctrine of Indoor Management → In favour of outsider

- while person dealing with a company are presumed to have read the MDA and AOA & understood their content
- Ascertain that the transaction is not consistent
- It is not a part of the duty of the outsider to see how the company carry out its own internal proceedings

Doctrine of Indoor Management impose an important restriction on Doctrine of Constructive Notice.

* Exception → Doctrine of Indoor Management → In favour of outsider
 ↳ **FAIL** → in favour of company

① Actual or Constructive Knowledge of Irregularity

→ Rule does not protect when the person dealing with the company → has notice of actual or constructive irregularity

② Suspicion of irregularity - It is a duty of the outsider to make the (UNUSUAL) necessary enquiry.

- where the transaction is unusual or nothing as the ordinary course of Business.

③ Forgery - False or fraudulent change

- Doctrine of Indoor Management apply only to irregularity which might otherwise affect a transaction



- but It cannot apply to FROGGERY → Null

Common Seal → Stamp

employee → use stamp → for fraud use

↓

as an outsider → Our duty to check → Genuine or fake

