

GROUP: 1 (RESTART)

Paper 2

Corporate and other Law



Corporate Law

60 marks



The Companies

Act 2013

Section 1 to 148

Other Law

40 marks

The Indian Contract

Act 1872 - Section

129 onwards

Interpretation

of Statutes

The Negotiable

Instrument Act

1881

The General

Clauses Act

1897

Case Law

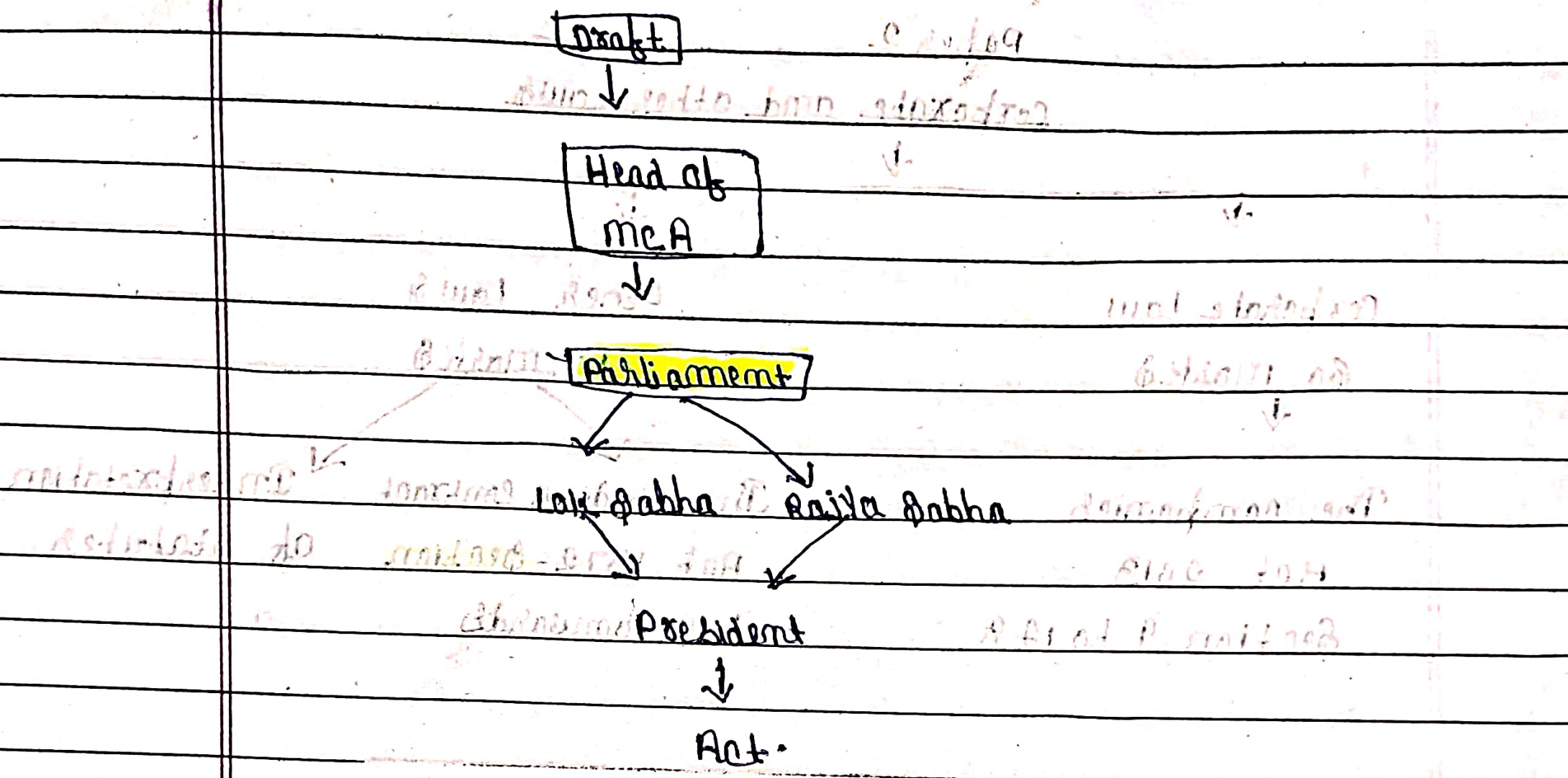
Law = Act + Rules + Case Law

Law ⇒ Act + Rules + Case Law + Regulation + By Law + Ordinance

What is Act?

An Act is something but it comprises of sub section + clause + sub clause

Basic concepts of Law



Law → Acts + Rules + Case laws + Regulation +
Ag laws + Ordinances

Act = Section
+
Sub-section
+
Clauses
+
Sub-clauses

Q How is an act made?

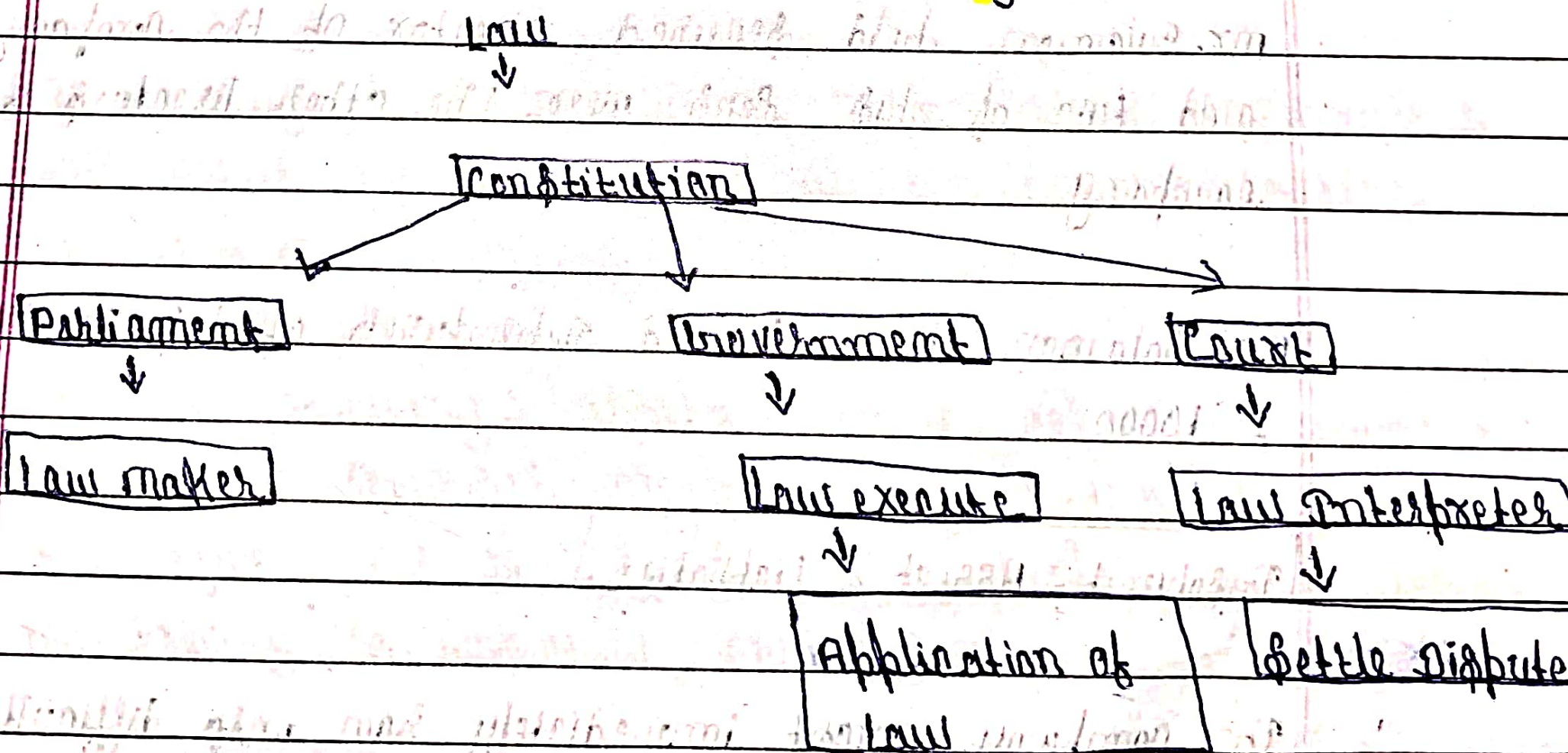
Rule are made and amended by the central government which have to be with the act.

* Ordinance: An ordinance is passed as present in India when there is an urgent requirement of making a law. It has the same effect as an act once the parliament is in session. It has to be passed within six weeks.

Regulation: Law passed by a regulating body established by an act.

By laws: Regulating body make law to manage their own affairs.

Procedure of law making



Salomon v. Salomon & Co. Ltd

Mr. Salomon was carrying on a boot manufacturing business as sole proprietor

Salomon & Co. Ltd

He sold his business in £38,872 to a company formed

Mr. Salomon was the managing director of the company and two of his sons were the other directors of the company.

Mr. Salomon held secured debentures of the company and two of his sons were the other directors of the company

Mr. Salomon held secured debentures of his Co. worth £10000

Insolvent = Asset < Liabilities.

The company almost immediately ran into difficulties and eventually became insolvent and the winding up commenced.

At the time of winding up

Total Assets = £ 6050

Total Liabilities

Secured Debentures = £ 10000

unsecured creditors = £ 8000

unsecured creditors claimed the whole of company's assets on ground that Salomon was carrying on business in the name of Salomon & Co. Ltd and the company was a mere agent of Salomon.

The court held that Salomon & Co. Ltd was a real company fulfilling all the legal requirements.

A company is a legal person distinct from its members and could not be regarded as the agent or trustee of Mr. Salomon.

Also the company's assets must be applied in payment of secured debentures as a secured creditor is entitled to payment out of assets on which his debt is secured in priority to unsecured creditors.

Case Law

Lee v Lee Air Farming Ltd

Lee, a qualified pilot, held nearly all the shares in the company, and by Pt& Associates was appointed

working director & chief pilot. Lee died while piloting company's aircraft, his widow claimed compensation under workmen's Compensation Act, company opposed the claim stating that Lee was not the worker, as same person could not be employer and employee.

Ans The court held that Lee was a separate person from the company he had formed.

Thus, there was a valid contract of service between Lee and the company.

As Lee was killed in the course of his employment, his widow was entitled to the compensation.

income upto 60% of the case of tea company on the ground that dividends received by shareholder represented the income the income of the company and thus should be exempted from tax.

Bacha F. Guzdar v Commissioner of Income Tax

Mrs Guzdar received dividend income in respect of shares held by her in a tea company.

Under the Income Tax Act, agricultural income is exempt from income tax, as income of the tea company is partly agricultural, only 40% of the company's income is treated as income from manufacturing and sale therefore liable tax.

Mrs. Guzdar contended that her dividend income should be treated as agriculture income.

Ans The Supreme Court held that the company was a separate person from its shareholders having its own business and its own income.

The income of the company was partly agricultural and thus exempted from tax.

But the same income when received by the shareholder is dividend income and could not be regarded as agricultural income and thus tax was payable on the dividend income.

Company
↓

Section 2(20) of Companies Act, 2013

"Company" means a company incorporated under this Act or under any previous company law.

★ 30th August 2013 is the date in which only Section 2 was notified.

★ 98 Section are notified on 12th September 2013

★ 143 Section 98th April 2014

★ 1 September 1972 (Indian Contract Act)

Title
Companies Act 2013

Extent

Whole of India

Commencement

Section 1 come into force

at once and the remaining

provision on different dates

through

Notifications.

Application

- (a) Companies
- (b) Insurance companies
- (c) Banking companies
- (d) Companies producing/supplying electricity.
- (e) Company regulated by special Act
- (f) Entities as notified by C.G. (FCI, NHAI)

Private

Private company define under 2(68)

Public company define 2(71)

Private company is define as L, R, P that is

- L- Limitation of membership
200 except for OPC
 - R- Restriction on the right to transfer its shares
 - P- prohibition on making an invitation to public.
- joint holders counted as 2
 Employees members not counted
 EX-employees members not counted

R: Restriction on the right to transfer its shares

P: prohibition on making an invitation to public.

EX A haldaram's restaurant in Raipur

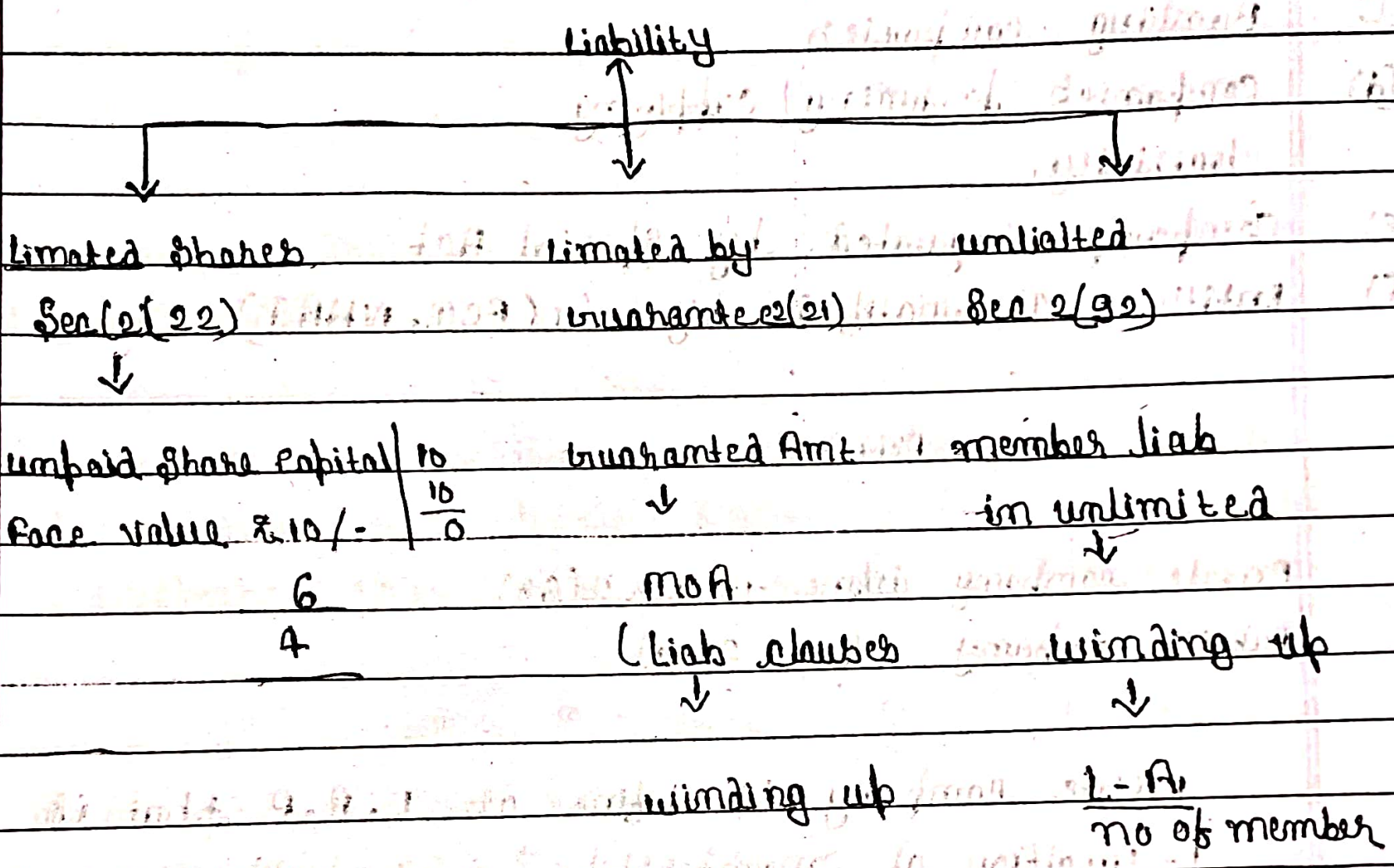
Type private

Headquarters: Nagpur, Maharashtra

Holding and Subsidiary

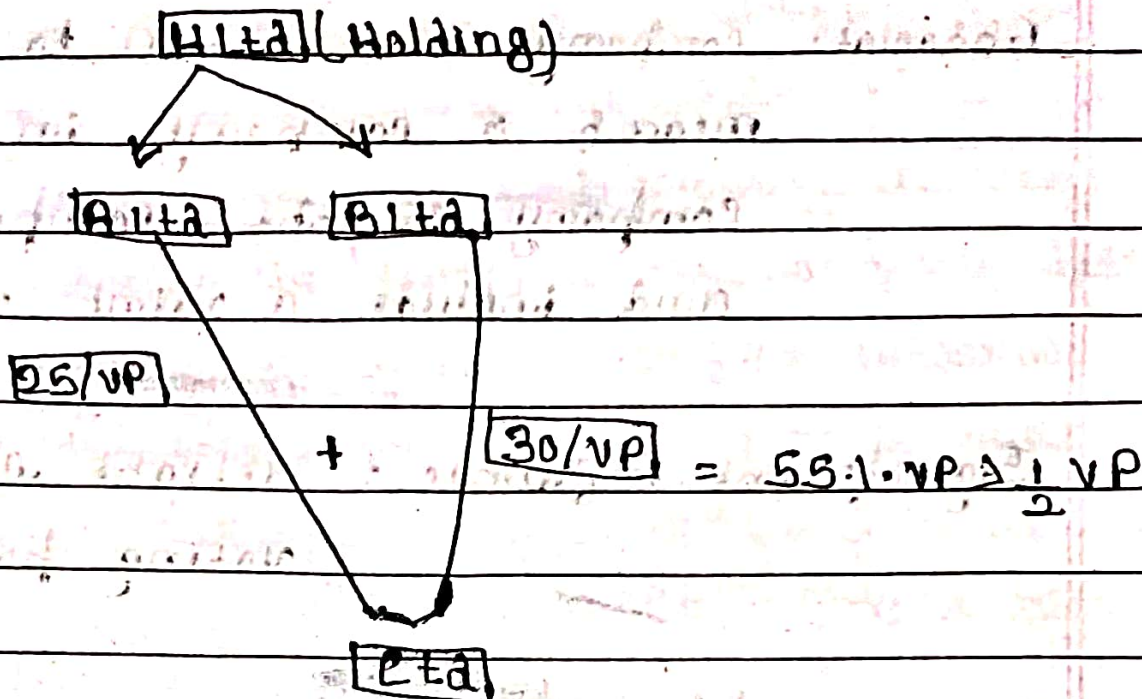
a Types of company

on the basis of ^{Liability.} membership



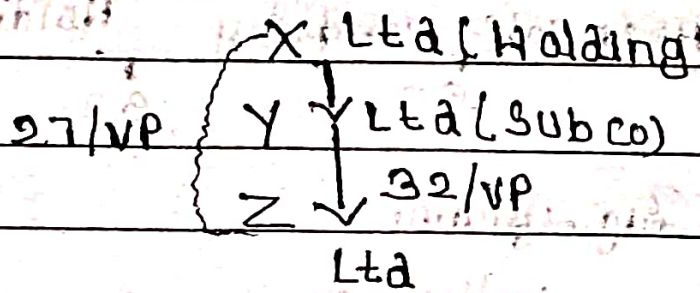
Case I

H Ltd is also the holding co. for C Ltd



Case II

X Ltd is also the holding co. for Z Ltd.



- * Sec (a) Sec 2(87) subsidiary company or Subsidiary (a) controls or the composition of the Board of directors or
- (b) 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.

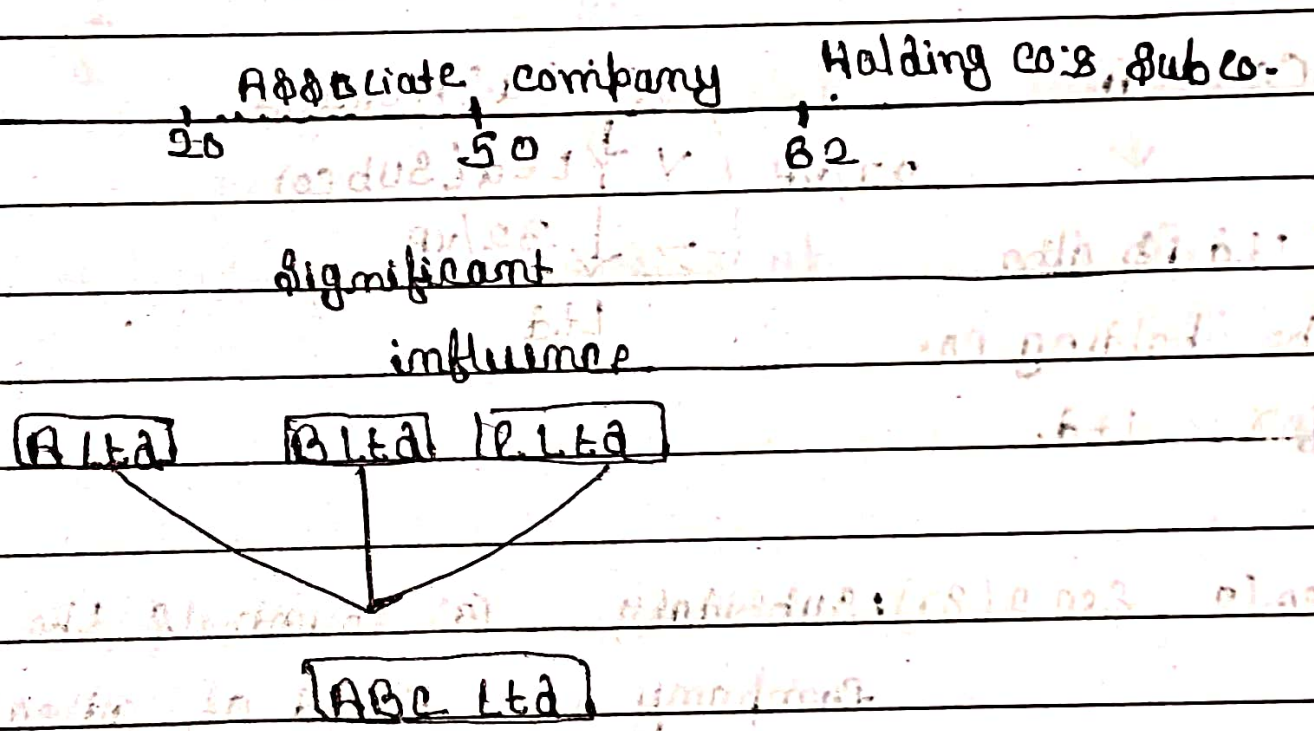
'layer' in relation to a holding company meaning its subsidiary or subsidiaries, a company cannot have two layers of subsidiary company.

Sec: 6

Associate company: In relation to another company means a company in which that either company or the company having such influence and include a joint venture company.

9. Significant influence: at least control 20% of the total voting power

ex



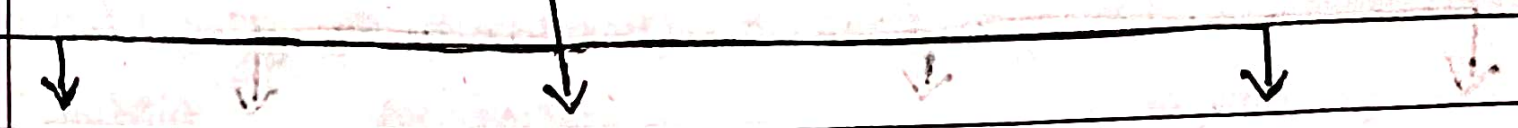
On the basis of control

<p>Holding Company Sec-2(46)</p>	<p>Subsidiary Company Sec-2(87)</p>	<p>Associate company Sec-2(6)</p>
<p>A company which has one or more subsidiary company</p>	<p>A company which the holding company controls * = competition of board * control more than one half of the total voting power</p>	<p>A company in which that other company has a significant influence but It not a subsidiary company and include a joint venture company.</p>

Why do you mean by Sec 8 company / since company

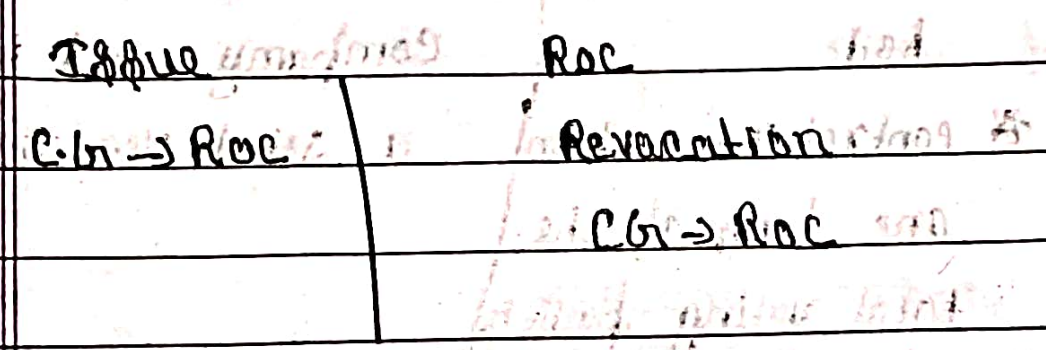
- All such company are incorporated, not for the profit.
- There are prohibited to distributing profit.
- If the company has been winding up when the surplus profit will not distributed into the company. Government
- If the since are given, in this place since will be obtain from you.
- If you learn profit of the company, this profit will use further of his objective.
- when other company has given notice generally it is 90 day but this company has been given notice are 14 days.

Non-profit organization

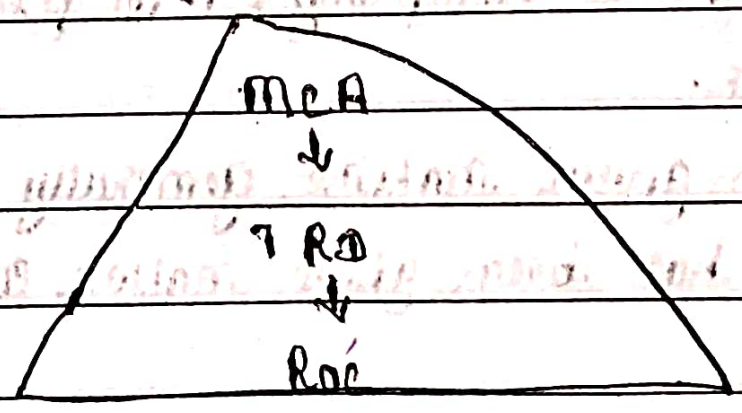
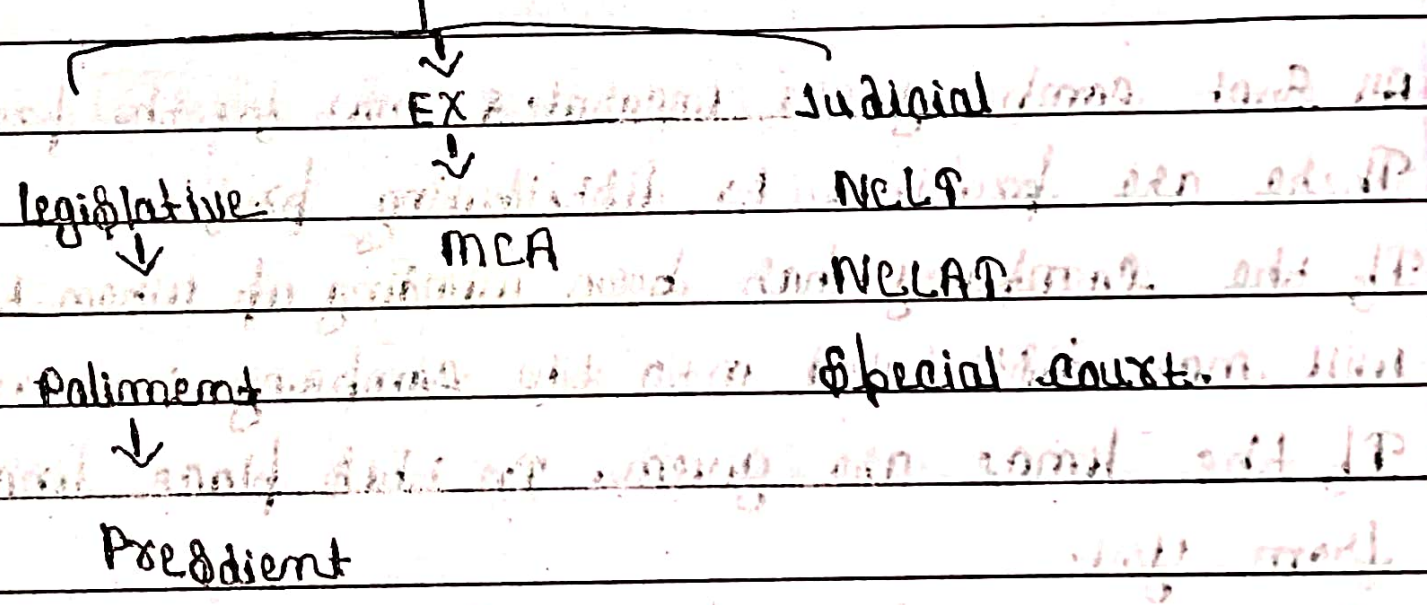


- Charitable
- Objective
- Income
- Usage
- Restriction on
- Dividend

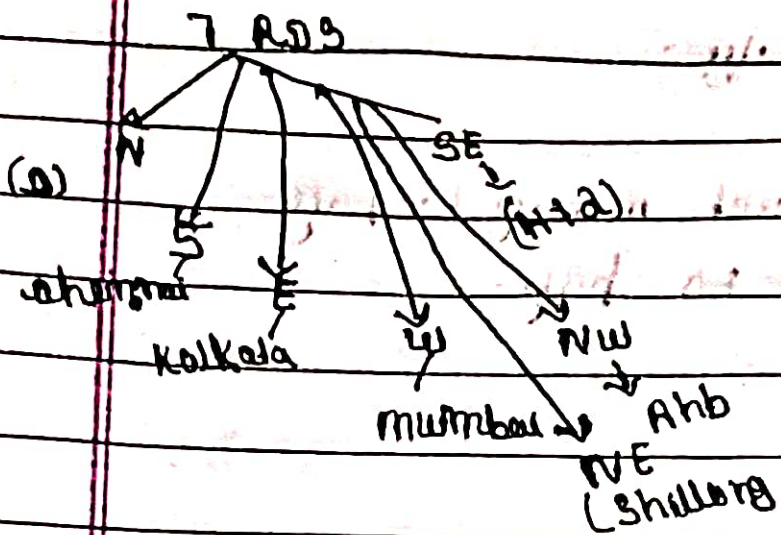
Education, Research, Social welfare, etc. and Net income from the business and donation. The company shall not pay dividend however it can pay Int on debenture.



Company Law



Sec(8)



Ex of Sec-8 company is being human foundation, Coy

Features of company

(MT - Top class)

T = Transferability of shares

O = Separate ownership & Management

P = Perpetual succession

C = Common seal

L = Limited Liability

A = Artificial person

S = Share capital

S = Separate legal Entity.

(n) object of formation of section 8 company

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 prohibition the payment of any dividend to its members.

What is the diff. fine and penalty.

- * Fine: court is order to how much money to pay
- * Penalty: fixed by government to pay.

- * Fine: ~~is~~ ~~is~~ ~~is~~ included
- * Penalty: Imposed by the ROC
- * Fine: Imposed by the court/Tribunal

- * Punishment: Imprisonment
- * Fine: penalty: fix Amount 1000/day
- * Fine: decided by court? min 25000 max 2500000

- * Penalty fine
- No jail
- less serious violation
- more serious

R.O: The Regional director supervise the working of the register of the company and officer-director working in there region

R.O.C: R.O.C has make his serious the company in there respective/ minor territory, are comply with statutory requirement of the act

Private

A private company has following restrictions

- * Restrict the right to transfer of share
- * Limitation of the member upto 200
- * It prohibited an invitation to the public to subscribe etc

Public company

* A public company which is not a public company.

No. of shareholders

	Public	Private	One
Sec. No	2(71)	2(68)	2(62)
Minimum	7	2	2
max.	No Limit	200	
who can be	Any person	Any person	Individual

No. of directors

Sec. No	149(1)		
min	3	2	1
max	15 (AOA can provide lower amount)		

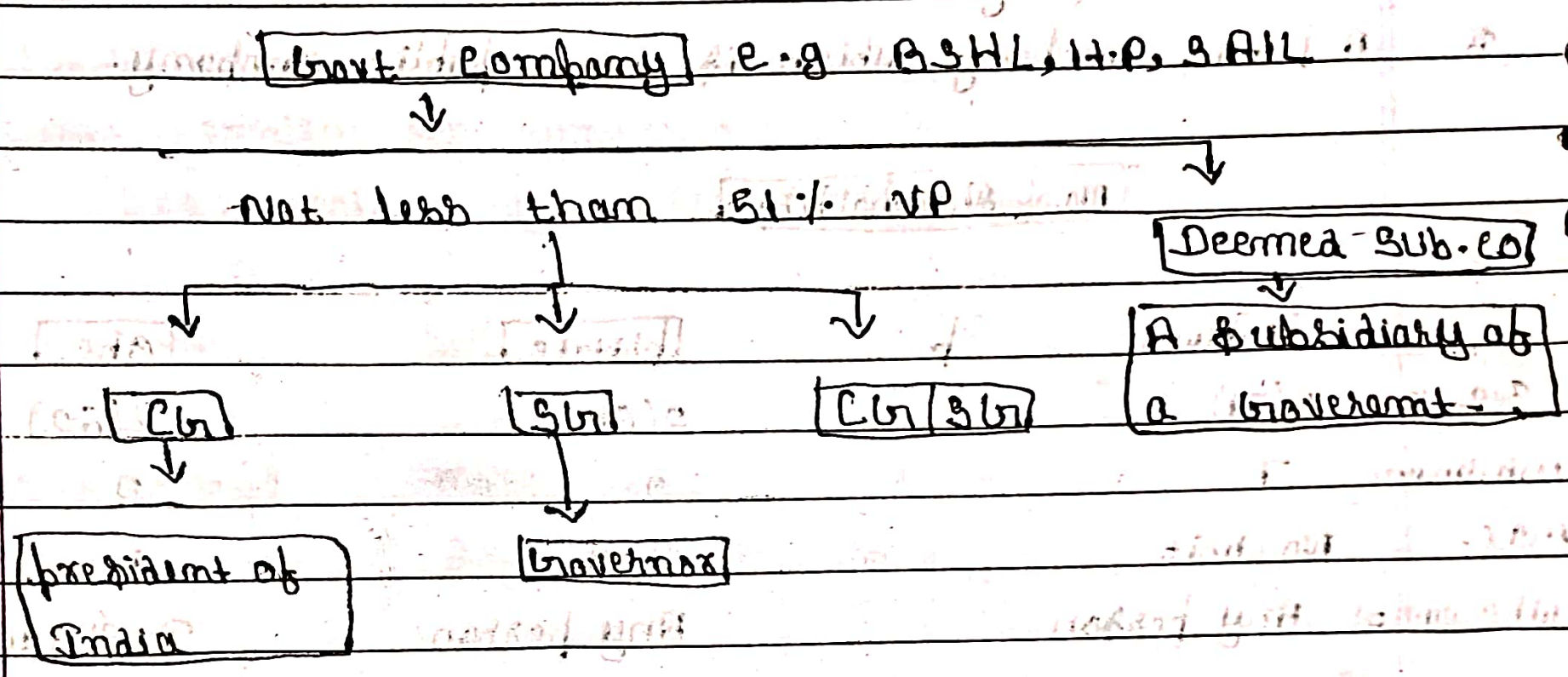
OPC

who can become the sole member/nominee of a OPC?

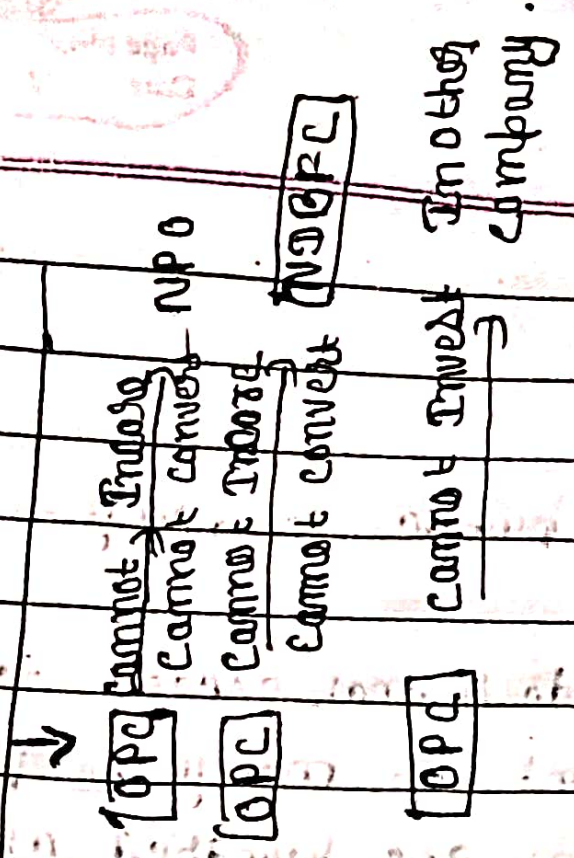
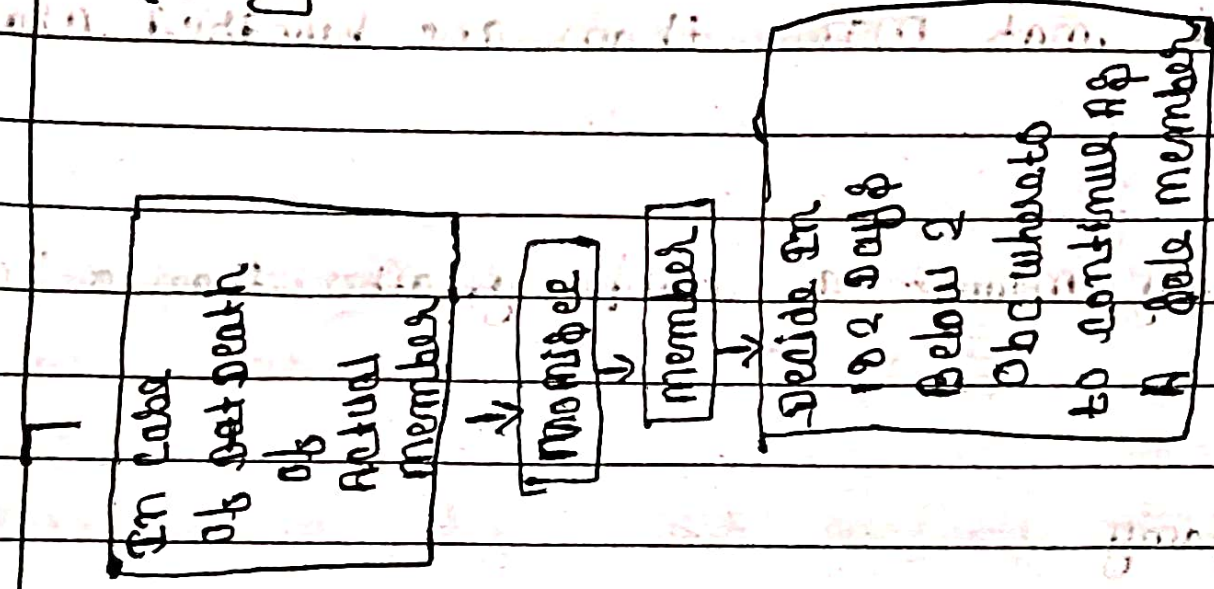
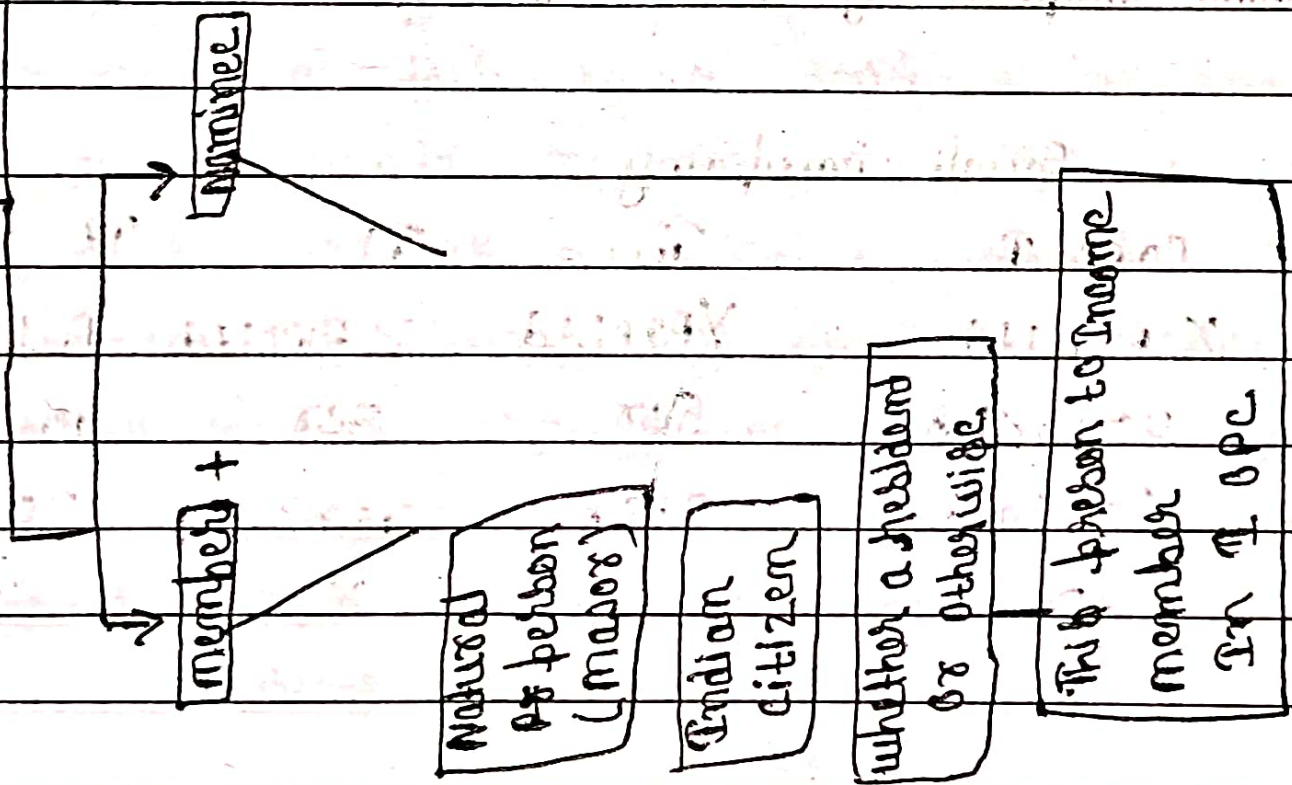
- 1 Natural person
- 2 Indian citizen
- 3 whether you are a resident of India or otherwise
- 4 Major.

(ii) OPC cannot be incorporated or converted into a company under section 8 of the act.

(iii) Such company cannot carry out non-banking financial investment activities including investment in securities of anybody corporate.



One person company 2(60)



Sec 2(45) Investment - company means & includes any company in which not less than fifty per cent of the paid-up share capital is held by one person.

Small company
Sec (85)

means a company, other than a public company -

(i) paid-up share capital of which does not exceed 50 Lakhs rupees or such higher amount as may be prescribed which shall not more than one hundred share rupees.

small company means a company, other than a public company

- 1 private company
- 2 PVSC & 2CR
- 3 T/O & 20CR

(ii) paid-up share capital of which does not exceed 2CR

	Small company			
	Case I	II	III	IV
Name	X PVT Ltd	Y PVT Ltd	Z PVT Ltd	A Ltd
PVSC (2CR)	20 Lakhs	5CR	3CR	10 lakh
T/O (20CR)	50 Lakhs	2CR	7CR	20 lakh
Small CO?	✓	X	X	X

Provided that nothing in this clause shall apply to.

(A)

Holding company (B) Company (C) company or body
or subsidiary company, registered corporate governed by
under Sec(8) any special act.

midhi companies

(Section 406)

Company incorporated as a midhi with the object of cultivating
the habit of thrift savings.

impounded

Sharement company: This company are made for some future
present.

2. Significant accounting transaction

It means any transaction other than

- Payment of fees by a company to the Registrar
- Payments made by it to fulfill the requirements of this Act or any other law
- Allotment of shares to fulfill the requirements of this Act
- Payments for maintenance of its office and records.

Sec 10(A) says that any company cannot start business when these
share is not allot or allotted.

4. Missinours (Illegal association)

① Nidhi companies (Section 406)

A company is incorporated with the objective of cultivating the habit of saving amongst its members.

Dormant company Sec. (459)

A company is formed and registered under this act for the future project or to hold and abet with no significant accounting transaction is a dormant company.

Significant accounting transaction mean any transaction other than.

Sec. 8 Company: the objective of such company is the promotion of Art, Sci, Commerce, Literature

Such company are prohibited from declaring dividend, profit has to be applied in promotion of its objective.

limited to the

by suraj gupta