

Salomon Vs Saloman R. Co. Ltd
17 PG. 67 & 88

10) Define the term Company.

"Company means a company incorporated under this act or under any previous company law." - Sec 20 (sub sec-20)

Companies Act - 2013

Features of a Company.

(Macora vs N.A)

17 PG. 65 & 88

① Separate Legal Entity: Company is different with outsiders & promoters. It enjoy being separate legal entity. Both are separate business & owners.

② Perpetual Succession^{continuity}: Many members will come & go but company will be same & permanent. It can't be die.

③ Limited liability: An investor how much invested that much only liable. He/she can't be pay more than that. limited liability → (Unpaid) amt only should pay & that only can be recovered by Co.
Ex: Janu
↓
Google Co.

④ Artificial Legal person: Its an artfical person (company) created by law. It is not a natural person. It cannot marry nor can go with other.
Ex: Janu
↓
Google Co.

→ Common seal is optional.

⑤ Common Seal: ~~If a~~ The official signature of the company is called as Common seal (stamp)

1) Name of Co. 2) Date of incorporation 3) Place of incorporation
only this is written on stamp.

If there is no stamp for co. then the director or CS should sign. If there is not CS then any two directors should sign.

Government Company (section 2(45)): Government Co. means any company in which not less than 51% of the paid up share capital is held.

- ① The central Govt
- ② By any State Govt (or) Govt.
- ③ Partly by Central & partly by one or more state govt and the section includes a company which is a subsidiary company of such a govt company. (The paid up share capital shall be construed as total voting power).

Example

eg XYZ is a company incorporated under Companies act 2013 the paid

- The paid up share capital of co. is held by others as on 31.3.24 is as under

- 1) Govt of India 20%
- 2) LIC of India (Public institution 8%)
- 3) Govt of Tamil Nadu (10%)
- 4) Govt of Rajasthan (10%)
- 5) ABC Ltd (Owned by Govt Co.) 15%

It's not a govt company.

In 1st condition 51% should be of only central govt / state / central
" 2nd " If a Govt Co. invest in other co. it should invest more than half of it.

Ans **Facts of the case:** XYZ Ltd. incorporated under the companies act 2013, has the following shareholding pattern as on 31.3.2024. Govt of India - 20%, LIC (public institution) - 8%, Govt of Tamil Nadu - 10%, Govt of Rajasthan - 10% & ABC Ltd (a Govt owned co.) - 15%.

Provisions of law: Under the section 2(45) of the companies act 2013 a company qualifies as a "government company" if not less than 51% of its paid up share capital is directly held by the central government, any state government(s) or a combination. Shareholding by other government company does not qualify as direct government shareholding.

Analysis: Direct shareholding by the government of India (20%) Govt of Tamil Nadu (10%) & Govt of Rajasthan (10%) So aggregate is 40% which is less than 51%. Shareholding by LIC (8%) & by ABC Ltd (15%) despite the latter being Govt owned - cannot be taken into account under section 2(45).

Conclusion: Therefore XYZ Ltd. does not qualify as a "government company" under the companies act 2013.

Q6) Doctrine of constructive notice.

Ans) This is also known as ~~contractive~~ notice of memorandum and articles.

1) This doctrine is meant to protect the company against outsiders.

3) According to this doctrine any outsider who wants to enter into any transaction with the co. must obtain the copies of articles, study them & understand them in their true perspective. This is known as the doctrine of constructive notice.

4) If any outsider enters into any contract with the company without consulting the memorandum & article then he cannot acquire any right against the co. in respect of such transaction.

☆☆

Reference: Caselaw - Kotla Venkata Swami vs Chintaramamurti

Q4) Doctrine of indoor management

This doctrine is meant to protect the outsiders against the company. Therefore it can also be described as an ~~ex~~ exception to doctrine of constructive notice.

2) According to the doctrine of indoor management, every person who proposes to ~~be~~ deal with the company must obtain, study and understand the contents of memorandum & articles. But however such person can assume that the requirement of articles have been duly complied with. This is the rule of indoor

management.

Reference: Royal British Bank vs. Turquand (case law)

Common man can take assumption that they are following the rules.

10. Exceptions to doctrine of indoor management.

- 1) Actual or constructive knowledge of irregularity.
[Reference - case law Howard vs. Patent Ivory manufacturing company.]

Common man can take self assumption but not the director. Bcoz director is already having the knowledge of irregularity. But if a common was there in place of him he can recover all 3000 pounds.

- (came in exam) ★
- 2) Suspicion of irregularity.

[Reference - case law Anand Bihari Lal vs. Dinshaw & company] Here suspicion change is there but court dismiss the case. There is not right to own the company by outsiders.

- 3) forgery

[Reference - case law Rubens vs. Great Fingall ^{stock broker,} ^{company.}
consolidated]

Rubens given loan to them. Com. secretary gives shares certificate. He realised the director sign is forgery. Court said forgery transaction is not valid. He won't give shares of that co.

forms of articles

Table - F :- Company limited by shares

Table - G :- limited by guarantee having share capital.

Table - H :- limited by guarantee not have share of capital.

Table - I :- Unlimited company having share capital

Table - J :- Unlimited company not having share of capital.

Table A, B, C, D, E is reverse. [Refer from Pg = 199]

→ Types of capital. [Refer - 196].

★ ★

One person Company (OPC): He cannot issue shares he can raise capital by loans.

Amendments in OPC: Previously NRI's were not allowed to incorporate OPC. Now any natural person who is an Indian citizen either resident in India or otherwise would be allowed to OPC. ^{he should live in India}

- The residency period has been reduced to 120 days from 182 days for NRI.
- Conversion of OPC
- Conversion of OPC into a public company or a pvt co. shall be permitted at any time (no need to wait for 2 years)
- The paidup share capital of 50 L & average annual turnover during relevant period of 2 crores is being done away.

But now he can still continue after crossing 2 cr turnover for which OPC may continue in OPC only if it desires.

But foreigner cannot establish OPC in India. But NPI can establish.

- No person is eligible to incorporate more than one OPC.
- Under sec-8 OPC can't be migrate to charity activities.

Lifting or Piercing of corporate Veil.

Every company which is incorporated under the act enjoy separate legal entity. The concept of separate legal entity will continue to exist only as long as the members and the directors of the company take decisions which are within the limits of law.

If the name of the company is misused and the fraud, illegal activities, criminal activities etc are committed by the members, directors then the separate legal entity will be disregarded & the co. & its members (or) directors will be treated as one & the same. This is known as lifting or piercing of corporate veil.

Since the company is an artificial person it cannot have the capability of committing fraud, illegal activities and criminal activities.

Therefore the actual person who committed such activities will be identified & punished.

Cause where separate legal entity is removed.

- 1) Damlor Co. Ltd, ^(D. Co) continental co. ^(C. Co) incorporated in England. They purchase tyres of credit basis for 3 months. War occurs b/w Germany & England. And most of the C. Co's people work from Germany. D. Co doesn't pay the amt to C. Co. The case went to court now D. Co doesn't need to pay to C. Co. as its test of conduct is being operated from Germany is is considered as an enemy company. After the ^{end of} war ~~it is court~~ D. Co can pay the amt.
- 2) Dinshaw is a billionaire. He gets debentures from shares. He is carrying on 4 companies and invested all his income in the companies. At that time the companies no need to pay any tax. D. took as loan the amt from his four companies. The department has declared that Dinshaw and his companies are one and same. Now he has to pay tax.
- 3) A company's profit must be distributed among employees as bonus but if the owner makes diversification of profit to escape from not paying bonus it is not ~~conduct~~ correct. The owner must pay the amt (bonus) to employees.

- 4) Merchandise Transport limited co's transport application is rejected by Govt. so he ~~and~~ created an another co. and govt got to know abt it so it declared that MTL & another subsidiary co. is one and same.
- 5) Gylford Motor Co. Vs Home
 H is a chief engineer in G.M co. He enters into a contract with G.H co. that G.H co. shall not do any other business. But H will continue business on behalf on other company. so the court has declared him (H) and other company as one & same.

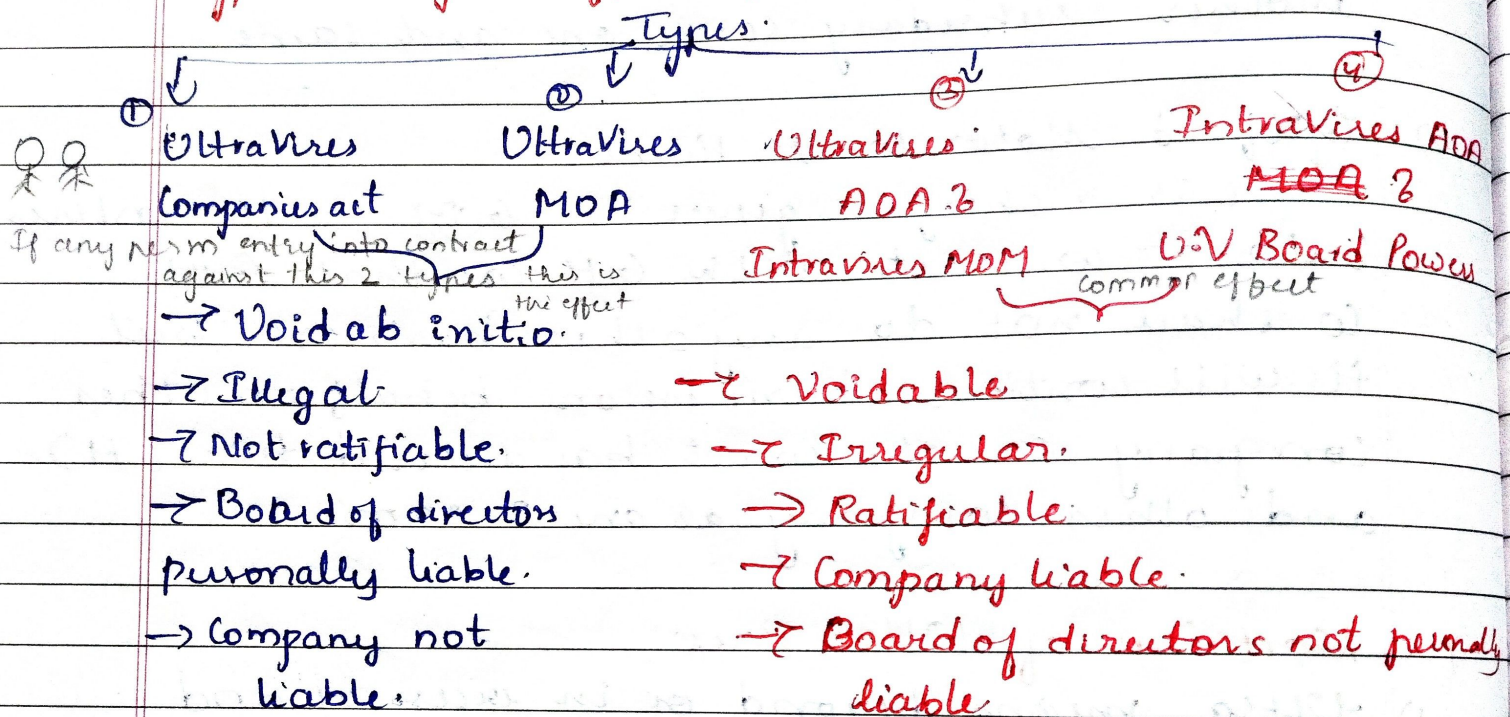
* Doctrine of Ultra virus.

- 1) Ultra means beyond or in excess of and virus means power
- 2) This ultravires means an act or transaction beyond or in excess of the power of the company
- 3) An act or transaction shall be ultravires of:
 - It is not permitted or authorised by the companies Act 2013.
 - It falls outside other object clause of memorandum.
 - It attainment is not incidental or ancillary to the attainment of main object.

All the ultravires transaction are void ab initio
 In General contracts the co's can't enter into finance contract or give loans

As per section 399 MOA & AOA are the public documents.

Types & legal effects of ultra Vires transactions.



Memorandum of Association (Pg: 199 reference)

1) MOA & its clauses.

- ① Name clause.
 - ② Registered office clause.
 - ③ Object clause.
 - ④ liability clause.
 - ⑤ Capital clause.
 - ⑥ Association clause / subscription clause.
- It is related to the promoters.
- ↗ not applicable for OPL.

Unlimited Company (Refer pg: - 183)

- 1) Every member/owner of the company is responsible for all the company's debts.
- 2) But if one member pays more than their share/ his share they can ask other members to ~~pay~~ their part of the amt.
- 3) If the company has the share capital (money raised from selling of shares) then the company rules (AOT) must clearly say
 - The total amount of share capital.
 - The value of each share.
- 4) As long as the co. is running normally, mem only has to pay only what they agreed on for their shares.
- 5) But if the company is closing down (winding up) bcoz it can't pay its debts
 - Creditors can take legal actions
 - A court may appoint a person called liquidator
 - The liquidator can ask mem to pay money to help in clearing the company's debts. & this amt can be unlimited.

Public company:

Subsidiary of a public company is deemed to be a public company.

Small company

Small co. means a co. other than a public co.

→ paid up share capital of which does not exceeds 4 cr. or such higher amt as may be prescribed which shall not be more than 10 cr. ?

→ Turnover as per P&L a/c for the immediately preceding financial year. does not exceeds to 40 cr. or such higher amt as may be prescribed which shall not be more than 100 crs.

Note: The clause small co. does not apply to

- Holding company / subsidiary co.
- Company registered under sec-8. (NON PROFIT)
- A co. governed by any special act (like RBI, etc)

① PSC ——— 4cr ——— 10 cr.
 and.
 shouldn't exceed me than this if income not small co. then
 in future they can increase upto this limit.

② Turnover ——— 40 cr ——— 100 cr
 still not a small co.

not a SC.

→ H / subsidiary.

→ Sec-8. company

→ Spcl act - established co.

→ Bigger co.

already having alot of exemptions so no need to have small co. status.

no need of small company status. separate R/I or them.

C2 tata (holding)

↓
1's

↓
A
↓

Bigger company.

- Associate company (sec-2(6)): It is a company where the another co. has significant influence but it is not a subsidiary. It includes a joint venture.

What is significant influence?

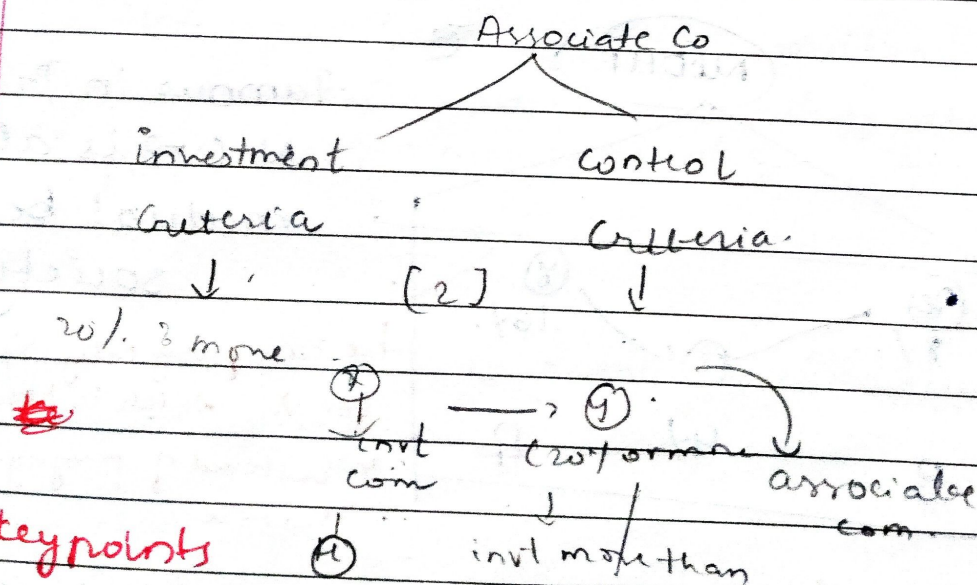
S.I means:

- Holding 20% or more of the voting power. (or)
- Having control in Business decisions. (Through an agreement)

What is a joint Venture?

A joint venture is a business where:

- Two or more parties work together.
- Share the control over the business and its net assets.

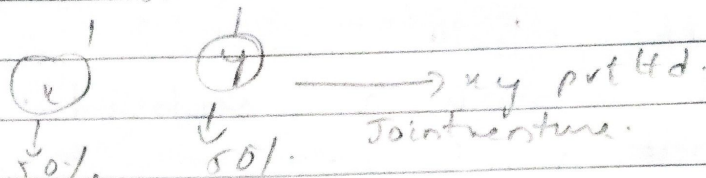


keypoints

- not a subsidiary.
- ~~not~~ Joint ventures.

⑤. 50% - 51% then it becomes Holding & subsidiary

Joint ventures:



- xy pvt ltd. is associate of x, y.
- x, y is the associate of xy pvt ltd.
- x, y are not associate
Bcoz they are not controlling each other.

Pressure:

Midhi company (pg: 191)

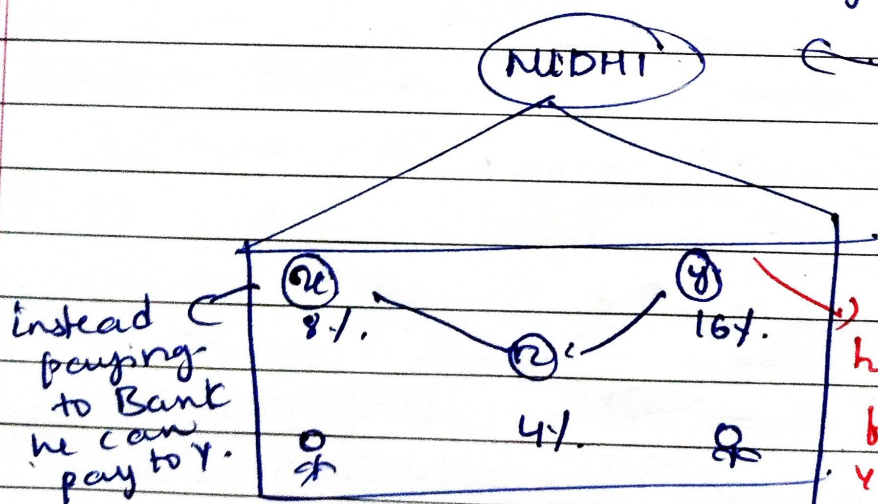
(X)	
Salary - -	800000
exp -	700000
Surplus -	<u>100000</u>

(Y)	
	400000
	500000
	<u>100000</u> - Deficit.

F.D @ 8% P.A.

P.L @ 16% P.A
↓
Personal loan

Both arent happy.



Famous in Tamil.
M.C → is also mutual benefit society.

If any institute is doing the same out like MIDHI Company the govt will consider them as MIDHI Co. Purpose is to help each other. MIDHI Co. can issue the

sharees which is benefit for Co. Means it is helpful for shareholder of that Co. M.C will not give service to non-members its only for Co-mem. (shareholders)

Model of Article of Association. pg-202

They can modify it.
Model articles are pre written rules provided by a govt or regulatory body that companies can adopt wholly or partially as their own rules for running the Co. This articles covers the things like how the directors are appointed, how the meetings are held & how the decisions are made.

applying additional Safeguards
→ Entrenchment provision: Entrenchment means the facts of "something ^{being} ~~being~~ strongly established in the legal sense, it means the additional of the provision which makes amendments in companies act either more difficult or almost impossible (to protect the int of the shareholders).

Shares.

A share is a share in the share capital of the company.

Types of share capital:-

1) equity share capital:-

Equity share capital can have voting rights.

Page No. _____

equity share capital can have differential rights.

Note:- Share is a mobile property and it is mobile in the manner provided in the articles. (share are transferable)

All the share are held in physical form. will have an unique number. But however the numbering concept is not applicable incase, the share are held by depository. (Beneficial interest)

→ Equity shares with voting right mean one share one vote.

(ii) equity share capital with differential rights

Sometimes the company may give 2 shares one vote. To compensate this the company may pay 2 times more dividend or the company will not pay the dividend or pay half the dividend, but double the voting rights can be given.

2) Preference share

- i) The general the preference shareholder receive the dividend first than the equity shareholder.
- ii) Incase of winding up the company first will give the priority to first preference shareholders than after wards to equity shareholders.

Date: _____
Page No.: _____

(iii) ~~particular~~ participating preference share capital:

It means in addition to the fixed dividend they are having the right to participate in dividend before being paid to equity. In addition to the repayment capital to the winding up has right to participate in excess assets after being paid to equity.

The repayment of capital can be paid with ~~or~~ without premium. The dividend can be paid with ~~or~~ without tax.

Spice

1. Spice is a govt form used in India to register the new company.
2. Spice means simplified performa for Incorporating company electronically.
3. It is a digital initiative by Indian govt to simplify and speed up the process of company registration in one form.

Effect of Registration.

Meaning:-

- 1) Once a company is officially registered then it becomes the legal.

- 2) It can have own land.
- 3) It can enter into contracts.
- 4) It can be taken to the court, any of one can file case on company & company can sue.
- 5) It continue to exists even if the members leave or change (perpetual succession).

Effects of memorandum & Articles

- 1) When a company register its MOA & AOA it becomes a legal agreement b/w company & its members, & b/w the members them selves.
- 2) It means everyone [the co. & its members] must follow the rules written in MOA, AOA.
- 3) If a member owes any money to the company as per MOA & AOA, it is considered as legally debt and the company can demand it.

Note: In case of private company - section 43 shall not apply when MOA & AOA of the prt co. so provides.

It means, actually sec 43 talks about 2 types of shares in a company i.e equity share (nominal share) preferential share (share with fixed dividend & preference

If debentures are listed but shares are not listed
it is not a listed co.

Date:	
Page No.:	

of payment.

- If pvt co. writes in MOA & AOA that sec 43 not apply then it doesn't have to follow sec 43.
- So, the pvt co. can create any kind of share structure not only equity & preference share they want.

Listed company

Some specific types of companies even if they list certain kind of securities will not be treated as listed companies.

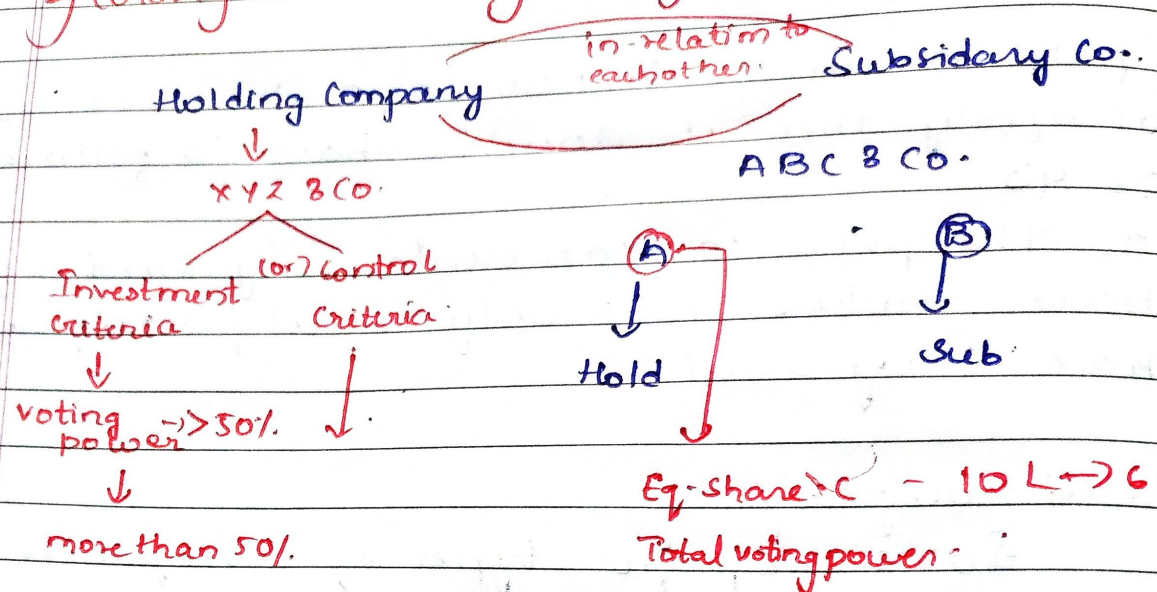
The following co. are not treated as listed co.'s even though they have some securities listed.

- 1) Public companies which are not listed equity shares but listed only debt or preference share. i.e., if a public company lists only non convertible debentures (NCD) or ~~pre~~ redeemable preference shares on pvt placement basis.
- 2) The pvt company lists (NCD) on pvt placement basis (Cuz pvt co cannot transfer the shares)
- 3) A public co. listed their equity shares in abroad

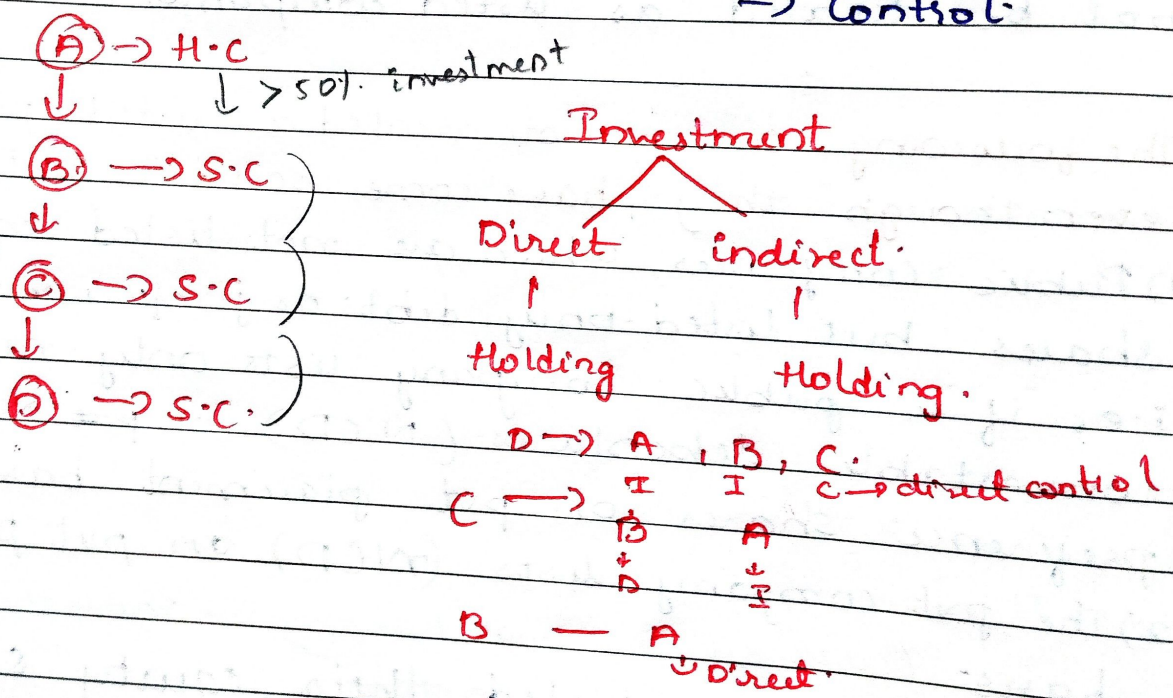
Only the Co. which list their ^{equity} shares in India in a stock exchange is a listed company

practical ques

Holding Subsidiary Company.



② criteria $\rightarrow$ investment $\rightarrow$ Control.



Holding can have not of subsidiaries & subsidiary can have no. of holdings.