The Companies Act,2013

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PRACTICAL QUESTION	
Question 1	*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:* *Is Flower Fans Private Limited no longer in existence?* *Further is it correct to say that a company being an artificial person cannot own property and cannot sue or be sued?* **(RTP Nov 23) [RTP June 2023]**
Issue raised in question (optional)	Whether company whose all members die, cease to exist
Provision	According to companies Act,2013 Perpetual Succession – A company on incorporation becomes a separate legal entity. It is an artificial legal person and have perpetual succession which means even if all the members of a company die, the company still continues to exist. It has permanent existence.
Analysis and Conclusion:	(i)The existence of a company is independent of the lives of its members. It has a perpetual succession. In this problem, the company will continue as a legal entity. The company's existence is in no way affected by the death of all its members. Even if all the members die, their shares will be transferred to their nominee or legal heir (ii) The statement given is incorrect. 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 can own property, have banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with company, acquire right against it or incur liability to it. It can sue and be sued in its own name. It can do everything which any natural person can do except be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a legal person in its own sense.

PRACTICAL QUESTION	
Question 2	***Mr. Sooraj sold his business of cotton production to a cotton production company, CPL Private Limited, in which he held all the shares except one which was held by his wife. He is also the creditor in the company for a certain amount. He also got the insurance of the stock of cotton of CPL Private Limited in his own name and not in the name of the company. After one month, all the stocks of the cotton of CPL Private Limited were destroyed by fire. Mr. Sooraj filed the claim for such loss with the Insurance company. State with reasons that whether the insurance company is liable to pay the claim?*** *(4 Marks)*
Issue raised in question (optional)	Whether members have any insurable interest on property of Company
Provision	According to the decision taken in the case of Salomon Vs. Salomon & Co. Ltd., a company has a separate legal entity. A company is different from its members. Further, according to the

	decision taken in the case of Macaura Vs. Northern Assurance Co. Ltd., a member or creditor does not have any insurable interest in the property of the company. Members or creditors of the company cannot claim ownership in the property of company.
Analysis and Conclusion:	On the basis of the above provisions and facts, it can be said that Mr. Sooraj and CPL Private Limited are separate entities. Mr. Sooraj cannot have any insurable interest in the property of CPL Private Limited neither as member nor as creditor. Hence, the insurance company is not liable to pay to Mr. Sooraj for the claim for the loss of stock by fire.

	*3.**Whether it is mandatory to have common seal for the company? If not, then what are the other options available as per the Companies Act, 2013? (2 Marks)(Jan 25)***
	No, it is not mandatory to have common seal for the company. In case a company does not have a common seal, the authorization shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

	4.Explain the concept of 'Corporate Veil'. Briefly state the circumstances when the corporate veil can be lifted as per the provisions of the Companies Act, 2013.[June 2023 (6 Marks)] *"Corporate veil sometimes fails to protect the members of the company from the liability connected to the company's actions." Explain any three instances.**(5 Marks)(Sep 24)***
	'Corporate Veil A company is a legal entity **separate from its members.**The term Corporate Veil refers to the concept that **members of a company are shielded from liability connected to the company's actions**. If the company incurs any debts or contravenes any laws, the corporate veil concept implies that members should not be liable for those errors. In other words, they enjoy corporate insulation.Thus, the shareholders are protected from the acts of the company **lifting or Piercing the corporate veil** It means looking behind the company as a Separate legal person, i.e., disregarding the corporate entity and paying regard, instead, to the realities behind the legal facade. **circumstances when the corporate veil can be lifted** 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: 1) **To determine the character of the company i.e. to find out whether co-enemy or friend:** In the law relating to trading with the enemy where the test of control is adopted. It may, however, be characterised as an enemy company, if its affairs are under the control of people of an enemy country The leading case in this point is ***Daimler Co. Ltd. vs. Continental Tyre & Rubber** Co.,*

	2) **To protect revenue/tax:** In certain matters concerning the law of taxes, duties and stamps particularly where question of the controlling interest is in issue. ***Ref case -*** In ***[Dinshaw Maneckjee Petit*** 3) **To avoid a legal obligation:** Where it was found that the sole purpose for the formation of the company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction **Ref case -** ***Workmen of Associated Rubber Industry Ltd., v. Associated Rubber Industry Ltd*** **4) Formation of subsidiaries to act as agents:** A company may sometimes be regarded as an agent or trustee of its members, or of another company, and may therefore be deemed to have lost its individuality in favour of its principal. Here the principal will be held liable for the acts of that company.***Ref case - Merchandise Transport Limited vs. British Transport Commission (1982)*** **5) Company formed for fraud/improper conduct or to defeat law:** 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. ***[Gilford Motor Co. vs. Horne]***

PRACTICAL QUESTION	
Question 5	*ABC Pvt Ltd, has been overstating expenditures in their Profit & Loss account for the past few years. On Inquiry, it was found that the mere purpose was to avoid tax. However, there was no fraudulent intentions. Should the corporate veil of the company be lifted? Kindly justify.****(RTP May 22)***
Issue raised in question (optional)	Whether corporate veil of company be lifted if company was formed to exade tax
Provision	(i)The House of Lords in **Salomon Vs. Salomon & Co. Ltd**. laid down that a company is a person distinct and separate from its members, and therefore, has an independent separate legal existence from its members who have constituted the company. (ii)But under certain circumstances the separate entity of the company may be ignored by the courts. When that happens, the courts ignore the corporate entity of the company and look behind the corporate façade and hold the persons in control of the management of its affairs liable for the acts of the company. *(iii)Where a company is incorporated and formed by certain persons only for the purpose of evading taxes, the courts have discretion to disregard the corporate entity and tax the income in the hands of the appropriate assessee.*
Analysis and Conclusion:	In the given scenario, though the intention of the company was not fraudulent to defeat law, it had the intention of avoiding taxes and protecting revenue. Hence, corporate veil should be lifted and the principles of corporate personality will be disregarded.
Ref. Case	Sir Dinshaw Maneckjee Pettit

PRACTICAL QUESTION	
Question 6	***Krishna, an assessee, was a wealthy man earning huge income by way of dividend and interest. He formed three Private Companies and agreed with each to hold a bloc of investment as an agent for them. The dividend and interest income received by the companies was handed back to Krishna as a pretended loan. This way, Krishna divided his income into three parts in a bid to reduce his tax liability. Decide, for what purpose the three companies were established? Whether the legal personality of all the three companies may be disregarded.(4 Marks) (Mar 18)*** **(Apr, 2019) (March, 2019) (6 Marks)**
Issue raised in question (optional)	Whether corporate veil will be lifted if companies were formed to evade taxation
Provision	Same as above question
Analysis and Conclusion:	In given situation , (1)The three companies were formed by the assessee purely and simply as a means of avoiding tax and the whole idea of Mr. Krishna was simply to split his income into three parts with a view to evade tax. (2)The legal personality of the three private companies may be disregarded and all 3 private companies and income of all 3 companies will be taxed in hands of Mr.Krishna
Ref case	Sir Dinshaw manickjee pett

PRACTICAL QUESTION	
Question 7	***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 June 24) ?(RTP May 22)***
Issue raised in question (optional)	Whether corporate veil will be lifted if companies were formed to evade legal obligation
Provision	It was decided by the court in the case of Gilford Motor Co. Vs. Horne, if the company is formed simply as a mere device to evade legal obligations, though this is only in limited and discrete circumstances, courts can pierce the corporate veil. In other words, if the company is mere sham or cloak, the separate legal entity can be disregarded.
Analysis and 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.

PRACTICAL QUESTION	
Question 8	*A transport company wanted to obtain licences for its vehicles but could not obtain licences if applied in its own name. It, therefore, formed a subsidiary company and the application for licence was made in the name of the subsidiary company. The vehicles were to be transferred to the subsidiary company. Will the parent and the subsidiary company be treated as separate commercial units? Explain in the light of the provisions of the Companies Act, 2013.**(RTP May 22)*** **. [RTP Nov 2022]**
Issue raised in question (optional)	If a company is formed merely as a subsidiary to act as a agent , whether corporate veil will be lifted
Provision	If the subsidiary is formed to act as agent of the Principal Company, it may be deemed to have lost its individuality in favour of its principal. The veil of Corporate Personality is lifted and the principal will be held liable for the acts of subsidiary company. The facts of the case are similar to the case of **Merchandise Transport Limited vs. British Transport Commission (1982)**, wherein a transport company wanted to obtain licences for its vehicles but could not do so, if applied in its own name. It, therefore, formed a subsidiary company, and the application for the licence was made in the name of the subsidiary. The vehicles were to be transferred to the subsidiary company. Held, the parent and the subsidiary were held to be one commercial unit and the application for licences was rejected.
Analysis and Conclusion:	Hence, in this case the parent and the subsidiary company shall not be treated as separate commercial units.

	**9.Examine with reasons whether the following statement is correct or incorrect:** **(i)A private limited company must have a minimum of two members, while a public limited company must have at least seven members.** **(ii)Affixing of Common seal on company's documents is compulsory. (3 Marks) (Mar 18) (March, 2019)**
	(i) Correct: Section 3 of the Companies Act, 2013 deals with the basic requirement with respect to the constitution of the company. In the case of a public company, any 7 or more persons can form a company for any lawful purpose by subscribing their names to memorandum and complying with the requirements of this Act in respect of registration. In exactly the same way, 2 or more persons can form a private company. (ii) Incorrect: Common seal is the official signature of the company.Any document, on which common seal is affixed, is deemed to be signed by the company.The Companies (Amendment) Act, 2015 has made the common seal optional This amendment provides that the documents which need to be

	authenticated In case a company does not have a common seal, the authorization shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

PRACTICAL QUESTION

Question 10

Flora Fauna Limited was registered as a public company. There are 230 members in the company as noted below:

(a)	Directors and their relatives	190
(b)	Employees	15
(c)	Ex-Employees (Shares were allotted when they were employees	10
(d)	5 couples holding shares jointly in the name of husband and wife (5*2)	10
(e)	Others	5

The Board of Directors of the company propose to convert it into a private company. Also advise whether reduction in the number of members is necessary.**(3 Marks) (March, 2019) .[MTP Apr 2023(3 Marks)]**

Issue raised in question (optional)

Whether public company needs to reduce number of members if they are contemplating to convert itself into private company

Provision

According to section 2(68) of the Companies Act, 2013, "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, except in case of One Person Company, limits the number of its members to two hundred.

However, where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member.

It is further provided that -

(A) persons who are in the employment of the company; and

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

shall not be included in the number of members

Analysis and Conclusion:

In the instant case, Flora Fauna Limited may be converted into a private company only if the total members of the company are limited to 200.

Total Number of members counted as per counting sec 2(68)

(i)	Directors and their relatives	190
(ii)	Employees	nil
(iii)	Ex-Employees	nil
(iv)	5 Couples (5*1)	5

(v)	Others	5
	Total	200

Therefore, there is no need for reduction in the number of members since existing number of members are 200 which does not exceed maximum limit of 200.

PRACTICAL QUESTION	
Question 11	*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:* *Whether Jagannath Oils Limited is required to reduce the number of members.* *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?* ***(RTP May 22)***
Issue raised in question (optional)	*Whether Public Company is required to reduce the number of members depending on their shareholding while converting into Public company*
Provision	According to Section 2(68) of Companies Act, 2013, "Private company" means a company 1.having a minimum paid-up share capital as may be prescribed, and which by its articles,— 2.restricts the right to transfer its shares; 3.except in case of One Person Company, limits the number of its members to two hundred: Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member: Provided further that— (i) persons who are in the employment of the company; and (ii) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and 4.prohibits any invitation to the public to subscribe for any securities of the company;
Analysis and Conclusion:	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. 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.

PRACTICAL QUESTION	
Question 12	*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?(7 Marks)*
Issue raised in question (optional)	Whether company can avail status of small company if its paid up capital exceeds 4 cr
Provision	Small Company: According to Section 2(85) of the Companies Act, 2013, Small Company means a company, other than a public company,— 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 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. 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.
Analysis and Conclusion:	In the present case, 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.

PRACTICAL QUESTION	
Question 13	*State with reasons whether the following companies can be treated as Small Companies with reference to the provisions of the Companies Act, 2013:* *(i) STS Pvt. Ltd., having a turnover of ` 10 crores and the paid-up capital of ` 1 crore (1,00,000 equity shares of ` 100 each). Out of these 60,000 equity shares are held by UV Infratech Pvt. Ltd.* *(ii) ZX Ltd., having a paid-up capital of ` 3 crores and turnover of 35 crores.* ***(4 Marks)(May 25)***

Provision	According to Section 2(85) of the Companies Act, 2013, Small company means a company, other than a public company— i. **paid-up share capital** of which does not exceed four crore rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and ii. **turnover** of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees: **Exceptions:** This clause shall not 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.
Analysis and Conclusion:	In the instant case, (i) STS Pvt. Ltd. though is a small company taking into account its turnover and paid up share capital (i.e. ` 10 crores and ` 1 crore respectively), but since it is the subsidiary c.ompany of UV Infratech Pvt. Ltd. (UV Infratech Pvt. Ltd. holds ` 60,00,000 equity share capital of STS Pvt. Ltd.), hence STS Pvt. cannot be considered as small company. (ii) ZX Ltd. cannot be considered as a small company since it is a public company.

	14. 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? (6 Marks) (Oct, 2019)
	One Person Company (OPC) [Section 2(62) of the Companies Act, 2013] The Act defines one person company (OPC) as a company which has only one person as a member. Following are provision related to OPC (i) **Basics** a) The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company. b) The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation. c) Such other person may be given the right to withdraw his consent. d) The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar. (ii) **Qualification to be member or nominee** Only a natural person who is an Indian citizen whether resident in India or otherwise shall be eligible to incorporate a OPC;shall be a nominee for the sole member of a OPC. (iii) **Restrictions** No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.

	No minor shall become member or nominee of the OPC or can hold share with beneficial interest. (iv)**Conversion-** OPC cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases.

PRACTICAL QUESTION	
Question 15	***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 considerations the provisions of the Companies Act, 2013 answer the questions given below.*** ***a) If Navita is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?*** ***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? (module)***
Law:	As per Rule 3 of the Companies (Incorporation) Rules, 2014: Only a natural person who is an Indian citizen whether resident in India or otherwise,shall be eligible to incorporate a OPC or shall be a nominee for the sole member of a OPC.
Conclusion:	In Instant case, (i) Even if Navita is leaving India permanently it is not mandatory to withdraw nomination as even a non resident can continue to be nominee in a OPC (ii) If Navita maintained status of Resident of India after marriage even then also she can continue her nomination , although it is not mandatory

PRACTICAL QUESTION	
Question 16	**Mr. Anil formed a One Person Company (OPC) on 16 April, 2018 for manufacturing electric cars. The turnover of the OPC for the financial year ended 31 March, 2019 was about ₹ 2.25 crores. His friend Sunil wanted to invest in his One Person Company (OPC), so they decided to convert it voluntarily into a private limited company. Can Anil do so, as per the provisions of the Companies Act, 2013? [Nov. 2022 (4 Marks)]**
Law:	Section 2(62) of the Companies Act, 2013 defines one person company as a company which has only one person as a member. However, a private company shall have minimum 2 members without any restriction on the share capital or turnover. A One Person Company can voluntarily convert itself into a private company by following the compliances given under the Companies Act, 2013.There is no turnover limit on OPC

Conclusion:	In the instant case, OPC formed by Mr. Anil can be voluntarily converted into a private company by following the compliances given under the Companies Act, 2013. Here, the information given relating to turnover for the financial year ended 31st March, 2019 is immaterial.

	17.Explain the classification of the companies on the basis of control as per the Companies Act, 2013.**(RTP Nov 23)**
	In line with the Companies Act, 2013, following are the classification of the Companies on the basis of control: **Holding and subsidiary companies**: 'Holding and subsidiary' companies are relative terms. A company is a holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies. [Section 2(46)] For the purposes of this clause, the expression "company" includes any body corporate. Whereas section 2(87) defines "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company— controls the composition of the Board of Directors; or 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: Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed. **Associate company [Section 2(6)]:** In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company. Explanation. — For the purpose of this clause — the expression "significant influence" means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement; the expression "joint venture'' means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement. The term "Total Share Capital", means the aggregate of the - Paid-up equity share capital; and Convertible preference share capital.

PRACTICAL QUESTION	
Question 18	*BC Private Limited and its subsidiary KL Private Limited are holding 90,000 and 70,000 shares respectively in PQ Private Limited. The paid-up share capital of PQ Private Limited is ` 30 Lakhs (3 Lakhs equity shares of ` 10 each fully paid). Analyse with reference to provisions of the Companies Act, 2013 whether PQ Private Limited is a subsidiary of BC Private Limited. What would be your answer if KL Private Limited is holding 1,60,000 shares in PQ Private Limited and no shares are held by BC Private Limited in PQ Private Limited?* ***(RTP jan 25)***
Issue raised in question (optional)	Whether a company is holding company of another company if he along with its subsidiary holds more than half of shares having voting rights
Provision	Section 2(87) of the Companies Act, 2013 defines "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company— (i) controls the composition of the Board of Directors; or (ii) 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: For the purposes of this section — a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub- clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
Analysis and Conclusion:	In the instant case, BC Private Limited together with its subsidiary KL Private Limited is holding 1,60,000 shares (90,000+70,000 respectively) which is more than one half in nominal value of the Equity Share Capital of PQ Private Limited. Hence, PQ Private Limited is subsidiary of BC Private Limited. (ii) In the second case, the answer will remain the same. KL Private Limited is a holding 1,60,000 shares i.e., more than one half in nominal value of the Equity Share Capital of PQ Private Limited (i.e., holding more than one half of voting power). Hence, KL Private Limited is holding company of PQ Private Company and BC Private Limited is a holding company of KL Private Limited. Hence, by virtue of Chain relationship, BC Private Limited becomes the holding company of PQ Private Limited.

PRACTICAL QUESTION	
Question 19	***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?(7 Marks)***

Issue raised in question (optional)	Whether a company is holding company of another company if he holds half of shares having voting rights
Provision	According to Section 2(87) of Companies Act, 2013 "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company— (i)controls the composition of the Board of Directors; or (ii)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: For the purposes of this section — (i)the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors; (ii)the expression "company" includes any body corporate; It is to be noted that Preference share capital will also be considered if preference shareholders have same voting rights as equity shareholders.
Analysis and Conclusion:	In the instant case, Darshan Photographs Private Limited is having paid-up capital of ` 1 Crores in the form of 50,000 Equity Shares of 100 each and 50,000 Preference Shares of ` 100 each. Shadow Evening Private Limited is holding 25,000 Equity Shares in Darshan Photographs Private Limited. (i) On the basis of provisions of Section 2(87) and facts of the given problem, Shadow Evening Private Limited is holding one – half of total equity paid up share capital of Darshan Photographs Private Limited. Therefore, Darshan Photographs Private Limited cannot be considered as subsidiary company of Shadow Evening Private Limited as for being subsidiary company other company should control more than one – half of the total voting power. (ii) Answer would remain same even if Shadow Evening Private Limited is also holding 5,000 preference shares as they do not have voting rights.

PRACTICAL QUESTION	
Question 20	*Popular Products Ltd. is company incorporated in India, having a total Share Capital of ` 20 Crores. The Share capital comprises of 20 Lakh equity 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. Can Jovial Ltd. be termed as a subsidiary company of Popular Products Ltd.* *State the related provision in favour of your answer, if Jovial Ltd. controls the composition of directors of Popular Products Ltd.(3 Marks)*
Issue raised in question (optional)	Whether a company is holding company of another company if he doesn't hold any shares in other company but all its subsidiary holds more than half of shares having voting rights

Provision	According to Section 2(87) of the Companies Act, 2013 "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company— (i)controls the composition of the Board of Directors; or (ii)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.
Analysis and Conclusion:	In the present case, the total share capital of Popular Products Ltd. is ` 20 crores comprised of 20 Lakh equity 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 hold 8,50,000 shares in Popular Products Ltd., which amounts to less than one-half of its total voting power. Hence, Jovial Ltd. by virtue of shareholding is not a holding company of Popular Products Ltd. 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.

PRACTICAL QUESTION	
Question 21	*A company, ABC limited as on 31.03.2023 had a paid-up capital of ` 1 lakh (10,000 equity shares of ` 10 each). In June 2023, ABC limited had issued additional 10,000 equity shares of ` 10 each which was fully subscribed. Out of 10,000 shares, 5,000 of these shares were issued to XYZ private limited company. XYZ is a holding company of PQR private limited by having control over the composition of its board of directors.* *Now, PQR private limited claims the status of being a subsidiary of ABC limited as being a subsidiary of its subsidiary i.e. XYZ private limited. Examine the validity of the claim of PQR private limited. State the relationship if any, between ABC limited & XYZ private limited as per the provisions of the Companies Act, 2013.* ***(7 Marks)(June 24)***
Provision	As per Section 2(46) of the Companies Act, 2013, holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies. Section 2(87) defines "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company— (i) controls the composition of the Board of Directors; or (ii) 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. As per section 2(6) of the Act, Associate Company in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company. The expression "significant influence" means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement.
Analysis and Conclusion:	In the instant case, as on 31.03.2023, ABC Limited had a paid-up capital of

	` 1 lakh (10,000 equity shares of ` 10 each). In June 2023, ABC Limited issued additional 10,000 equity shares, which was fully subscribed. Post- issue, the total paid-up capital of ABC Limited is ` 2 lakhs (20,000 equity shares of `10 each). Out of these, 5,000 shares were issued to XYZ Private Limited. Since XYZ Private Limited holds only 25% of the shares in ABC Limited, it does not have control of more than one-half of the total voting power of ABC Limited. Hence, XYZ Private Limited cannot be considered as a subsidiary company of ABC Limited in terms of the second criteria stated above, that of controlling of voting power. XYZ Private Limited is the holding company of PQR Private Limited by having control over the composition of its Board of Directors. But since XYZ Private Limited cannot be termed as a subsidiary company of ABC Limited, PQR Private Limited cannot claim the status of being a subsidiary of ABC Limited in terms of the first criteria, that of controlling of the composition of directors , the relationship between ABC Limited and XYZ Private Limited can be of an Associate Company. Since XYZ Private Limited holds more than 20 percent of voting power in ABC Limited, it can be considered as an Associate Company of ABC Limited.

PRACTICAL QUESTION	
Question 22	*ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ` 15 Crores during the Financial Year 2023-24. After that the total Paid-up Equity Share Capital of ABC Limited is ` 100 Crores.* *Define the Meaning of Associate Company and comment on whether ABC Limited and XYZ Limited would be called Associate Company as per the provisions of the Companies Act, 2013?(4 Marks)* **.[June 2023 (4 Marks)]**
Provision	As per Section 2(6) of the Companies Act, 2013, an Associate Company in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company. The term "significant influence" means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement.
Analysis and Conclusion:	In the given case, ABC Ltd. has allotted equity shares with voting rights to XYZ Limited of ` 15 crore, which is less than requisite control of 20% of total share capital (i.e. ` 100 crore) to have a significant influence of XYZ Ltd. Since the said requirement is not complied therefore ABC Ltd. and XYZ Ltd. are not associate companies as per the Companies Act, 2013.

PRACTICAL QUESTION	
Question 23	*The paid-up equity share capital of ACD Ltd. is ` 80 crores & preference share capital of ` 20 crores. B Ltd. holds equity shares in ACD Ltd. worth ` 15 crores and preference shares worth ` 10 crores.Can B Ltd. be considered as an Associate Company of ACD Ltd.?* ***(3 Marks)(May 25)***

Provision	As per Section 2(6) of the Companies Act, 2013, an Associate Company in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company. The term "significant influence" means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement.
Analysis and Conclusion:	In the given case, the paid up share capital of ACD Ltd. is ` 80 crores. B Ltd. holds equity share capital of ` 15 crore in ACD Ltd. i.e. less than 20% significant influence. Therefore ACD Ltd. cannot be considered as an Associate Company of B Ltd.

	**24.Explain the meaning of Guarantee Company? State the similarities and dissimilarities between a 'Guarantee Company' and 'Company Limited by Shares'.(6 Marks) (Mar 18) (Apr, 2019)**
	**Meaning of Guarantee Company:** Section 2(21) of the Companies Act, 2013 defines a Company Limited by Guarantee as a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up. Thus, the liability of the members of a guarantee company is limited to a stipulated amount in terms of individual guarantees given by members and mentioned in the memorandum. The members cannot be called upon to contribute more than such stipulated amount for which each member has given a guarantee in the memorandum of association **Similarities between the Guarantee Company and the Company limited by shares**: The common features between a "guarantee company" and the "company limited share" are legal entity and limited liability. In case of a company limited by shares, the liability of its members is limited to the amount remaining unpaid on the shares held by them. Both these type of companies have to state this fact in their memorandum that the members' liability is limited. **Dis-similarities between the Guarantee Company and the Company limited by shares** However, the dissimilarities between a 'guarantee company' and 'company limited by shares' is that in the former case the members will be called upon to discharge their liability only after commencement of the winding up of the company and only to the extent of amounts guaranteed by them respectively; whereas in the case of a company limited by shares, the members may be called upon to discharge their liability at any time, either during the life of the company or during the course of its winding up.

PRACTICAL QUESTION	
Question 25	*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? ***(RTP sep 24)***
Issue raised in question (optional)	Whether a creditor of unlimited company can directly sue shareholders
Provision	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. In case the company has share capital, the Articles of Association must state the amount of share capital and the amount of each share. So long as the company is a going concern the liability on the shares is the only liability which can be enforced by the company. The creditors can institute proceedings for winding up of the company for their claims. The official liquidator may call the members for their contribution towards the liabilities and debts of the company, which can be unlimited.
Analysis and Conclusion:	On the basis of the 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 though the company is an unlimited company. Mr. Innocent is liable for 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.

	26.Explain listed company and unlisted company as per the provisions of the Companies Act, 2013.(2 Marks) (Nov 22)
	**Listed company**: As per the definition given in the section 2(52) of the Companies Act, 2013, it is a company which has any of its securities listed on any recognised stock exchange. Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies. Whereas the word securities as per section 2(81) of the Companies Act, 2013 has been assigned the same meaning as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956. **Unlisted company** means company other than listed company

PRACTICAL QUESTION	
Question 27	***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 favorable 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 the maximum amount of dividend that can be declared by the company as per the provisions of the Companies Act, 2013.****(4 Marks) (Oct, 2019)* **[RTP Nov 2022]**

Issue raised in question (optional)	Whether sec 8 company can distribute dividend to its members
Provision	Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to i. promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc. ii. Such company intends to apply its profit in a) promoting its objects and b) prohibiting the payment of any dividend to its members. Hence, a company that is registered under section 8 of the Companies Act, 2013, is prohibited from the payment of any dividend to its members.
Analysis and Conclusion:	In the present case, the company in question is a section 8 company and hence it cannot declare dividend. Thus, the contention of members is incorrect.

	28.Alfa school started imparting education on 1st April, 2010, with the sole objective of providing education to children of weaker society either free of cost or at a very nominal fee depending upon the financial condition of their parents. However, on 30th March 2018, it came to the knowledge of the Central Government that the said school was operating by violating the objects clause due to which it was granted the status of a section 8 company under the Companies Act, 2013. Describe what powers can be exercised by the Central Government against the Alfa School, in such a case?(3 Marks) (May 2020) ***(RTP sep 24)***
	Power of Central government to revoke licence 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. Since, Alfa School was a Section 8 company and it had started violating the objects clause, hence in such a situation the following powers can be exercised by the Central Government (i)The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter. (ii)Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section. However, no such order shall be made unless the company is given a reasonable opportunity of being heard.

	(iii)Where a licence is revoked and where the Central Government is satisfied that it is essen tial in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, 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

	**29.Can a non-profit organization be registered as a company under the Companies Act, 2013? If so, what procedure does it have to adopt? (module)**
	1.Yes, a non-profit organization be registered as a company under the Companies Act, 2013 by following the provisions of section 8 of the Companies Act, 2013. 2.Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to (i) promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc. (ii) Such company intends to apply its profit in promoting its objects and (iii) prohibiting the payment of any dividend to its members. 3.The Central Government has the power to issue license for registering a section 8 company. 4.Section 8 allows the Central Government to register such person or association of persons as a company with limited liability without the addition of words 'Limited' or 'Private limited' to its name, by issuing licence on such conditions as it deems fit. 5.The registrar shall on application register such person or association of persons as a company under this section. 6.On registration the company shall enjoy same privileges and obligations as of a limited company.

PRACTICAL QUESTION	
Question 30	**A group of enthusiastic women is planning to establish the Nursing Medicare Association, a limited liability company with the objective of providing comprehensive theory and practical training to aspiring nurses. The association aims to operate under the provisions of section 8 of the Companies Act, 2013, with a core objective of education. The intended duration for the association's operation is set at ten years, after which a dissolution will be initiated. In the event of dissolution, any**

	remaining assets exceeding liabilities will be allocated among the members according to the standard procedures permitted by the Companies Act. Assess the viability of the proposal and offer guidance to the promoters, taking into account the regulations outlined in the Companies Act, 2013. 5 M (Nov 23)
Law:	Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to (i) promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc. (ii) Such company intends to apply its profit in promoting its objects and (iii) prohibiting the payment of any dividend or surplus to its members. 2.The Section 8 company operates under a special licence from Central Government and the Licence revoked if conditions contravened.
Conclusion:	The proposal is not viable as sec 8 company cannot distribute surplus to its member

PRACTICAL QUESTION	
Question 31	*"Harmony Foundation" is a newly incorporated company focused on promoting education and healthcare services in rural areas. The company is registered as a section 8 company with a clear plan to reinvest all profits into its activities, and a license has been accorded by the Central Government. For the financial year ending on 31st March, 2024, the company earned a substantial profit and transferred some amount to M/s LMP Associates (a Partnership firm and one of the member of the Harmony Foundation). Subsequently, on the complaint of one of the members, the Central Government, after giving an opportunity of being heard, directed the company to be wound up on the ground that a partnership firm cannot be a member of the section 8 company and it cannot transfer any part of profit to the firm. Explain, in the light of the provisions of the Companies Act, 2013, whether the ground taken for winding up is sufficient.**(4 Marks)(Jan 25)*
Issue raised in question (optional)	*Can a partnership firm cannot be a member of the section 8 company and it cannot transfer any part of profit to the firm*
Provision	**1.Formation of companies with charitable objects etc. (Section 8 company):** Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to (iv) promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc. (v) Such company intends to apply its profit in promoting its objects and (vi) prohibiting the payment of any dividend or surplus to its members. 2.The Section 8 company operates under a special licence from Central Government and the Licence revoked if conditions contravened. 3.On revocation, Central Government may direct it to (i) Converts its status and change its name (ii) Wind–up (iii) Amalgamate with another company having similar object.

	4.A partnership firm can be a member of Section 8 company.
Analysis and Conclusion:	In the instant case, "Harmony Foundation" a section 8 company transferred some amount to M/S LMP Associates (a Partnership firm and one of the members of the Harmony Foundation). The Central Government, after giving an opportunity of being heard, directed the company to be wound up on the ground that a partnership firm cannot be a member of the Section 8 company and it cannot transfer any part of profit to the firm. Hence, the ground for winding up taken on the basis of transfer of any part of profit by Harmony Foundation to the M/S LMP Associates is correct and sufficient. However, M/S LMP Associates can become a member of Section 8 company. Therefore, this ground is not correct hence not sufficient.

PRACTICAL QUESTION	
Question 32	*HP Polytech 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 HP Polytech Limited can be treated as a Government Company.**(RTP sep 24)***
Issue raised in question (optional)	Whether a company is a government company if more than 51% of voting rights is held by central government and state government jointly
Provision	Government Company [Section 2(45) of the Companies Act, 2013]: Government Company means any company in which not less than 51% of the paid-up share capital is held by- the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and the section includes a company which is a subsidiary company of such a Government company.
Analysis and Conclusion:	In the instant case, the paid-up share capital of HP Polytech Limited is 6,00,000 equity shares of ` 100 each. 200,000 equity shares are held by Central government and 1,20,000 equity shares are held by Government of Maharashtra. The holding of equity shares by both government is 3,20,000 which is more than 51% of total paid up equity shares. Hence, HP Polytech Limited is a government company.

PRACTICAL QUESTION	
Question 33	*XYZ is a company incorporated under the Companies Act, 2013.* *The paid up share capital of the company is held by others as on 31.03.2024 in as under:* *Government of India 20%*

	Life Insurance Corporation of India (Public Institution) 8% *Government of Tamil Nadu 10%* *Government of Rajasthan 10%* *ABC Limited (owned by Government Company) 15%* *As per the above shareholding, state whether XYZ limited be called a government company under the provisions of the Companies Act, 2013.**(RTP jan 25)(June 24)***
Provision	Under the Companies Act, 2013, a Government company is defined in Section 2(45) as a company in which not less than 51% of the paid-up share capital is held by: The Central Government, or Any State Government or Governments, or Partly by the Central Government and partly by one or more State Governments, And includes a company which is a subsidiary company of such a Government company.
Analysis and Conclusion:	In the instant case, total Government Shareholding is 40% [i.e. 20% (Government of India) + 10% (Government of Tamil Nadu) + 10% (Government of Rajasthan)] = 40% The holding of the Life Insurance Corporation of India i.e. 8% and ABC Limited i.e. 15%, total amounting to 23% cannot be taken into account while counting the prescribed limit of 51%. Since the total shareholding held by the Central Government and State Governments combined is 40%, which is less than 51%, XYZ Limited does not qualify to be a Government company under the provisions of the Companies Act, 2013.

PRACTICAL QUESTION	
Question 34	*Narendra Motors Limited is a Government Company. Shah Auto Private Limited have share capital of ` 10 crore in the form of 10,00,000 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. Advise as legal advisor, whether Shah Auto Private Limited is Government Company under the provisions of Companies Act, 2013? **(RTP jan 25)*** **[RTP Dec 2023]**
Issue raised in question (optional)	Whether a company is a government company if it becomes a subsidiary of government company
Provision	According to the provisions of Section 2(45) of Companies Act, 2013, Government Company means any company in which not less than 51% of the paid-up share capital is held by- (i) the Central Government, or (ii) by any State Government or Governments, or (iii) partly by the Central Government and partly by one or more State Governments, and the section includes a company which is a subsidiary company of such a Government company. 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.
Analysis and Conclusion:	By virtue of provisions of Section 2(87) of Companies Act, 2013, 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.

PRACTICAL QUESTION	
Question 35	**The State Government of X, a state in the country is holding 48 lakh shares of Y Limited. The paid up capital of Y Limited is ₹ 9.5 crore (95 lakh shares of ₹ 10 each). Y Limited directly holds 2,50,600 shares of Z Private Limited which is having share capital of ₹ 5crore in the form of 5 lakh shares of ₹ 100 each. Z Private Limited claimed the status of a subsidiary company of ₹ 100 each. Z Private Limited claimed the status of a subsidiary company of Y Limited as well as a Government company. Advise as a legal advisor, whether Z Private Limited is a subsidiary company of Y Limited as well as a Government company under the provisions of the Companies Act, 2013?[Dec 2023(4 Marks)]**
Law:	According to Section 2(45) of the Companies Act, 2013, Government Company means any company in which not less than 51% of the paid-up share capital is held by- the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and the section includes a company which is a subsidiary company of such a Government company. As per Section 2(87) of the Companies Act, 2013, "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company— i. controls the composition of the Board of Directors; or ii. 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.
Conclusion:	In the instant case, the State Government of X, a state in the country is holding 48 Lakh shares in Y Limited which is below 51% of the paid up share capital of Y Limited i.e. 48.45 Lakh shares (51% of 95 Lakh shares). Hence Y Limited is not a Government Company. Further, Y Limited directly holds 2,50,600 shares in Z Private Limited, which is more than one-half of the total shares of Z Limited i.e. 2,50,000 shares (50% of 5 Lakh shares). Thus, the

	Company controls more than one-half of the total voting power of Z Limited. Hence Z Private Limited is a subsidiary of Y Limited. Therefore, we can conclude that Z Private Limited is a subsidiary of Y Limited but not a Government Company since Y Limited is not a Government Company.

PRACTICAL QUESTION	
Question 36	*Mike LLC incorporated in Singapore having an office in Pune, India. Analyze whether Mike LLC would be called a foreign company as per the provisions of the Companies Act, 2013? Also explain the meaning of foreign company.* ***(RTP June 24)(Nov 22)***
Provision	Foreign Company [Section 2(42) of the Companies Act, 2013]: It means any company or body corporate incorporated outside India which— has a place of business in India whether by itself or through an agent, physically or through electronic mode; and conducts any business activity in India in any other manner.
Analysis and Conclusion:	As Mike LLC is incorporated in Singapore and having a place of business in Pune, India, it is a foreign Company.

PRACTICAL QUESTION	
Question 37	*XYZ Ltd. was incorporated to hold the patent for a new product. The company is expecting to start its commercial production within the next two years. In the meanwhile, for timely installation, the company has placed the purchase order for plant and machinery with a down payment of ₹ 1 crore. Referring to the provisions of the Companies Act, 2013 examine, whether the company can go for acquiring the status of a dormant company?* ***(RTP May 25)(Sep 24)***
Issue raised in question (optional)	Whether a company doing any significant accounting transaction can avail dormant status
Provision	According to Section 455 of the Companies Act, 2013, where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.
Analysis and Conclusion:	In the instant case, XYZ Ltd. has made a significant accounting transaction (down payment of ₹ 1 crore for plant and machinery), it does not meet the criteria of a dormant company under Section 455 of the Companies Act, 2013. Therefore, XYZ Ltd. cannot acquire the status of dormant company.

PRACTICAL QUESTION	
Question 38	*MTK Private Limited is a company registered under the Companies Act, 2013 on 5th January 2022. The company did not start its business till 31s July 2024. Identify under which category MTK Private Limited company is classified. Explain the definition of the category of the company in detail.(3 Marks)(Dec 23)*
Provision	"Inactive company" means a company which has not been carrying on any business or operation or has not made any significant accounting transaction during the last two financial years or has not filed financial statements and annual returns during the last two financial years. [Explanation (i) to Section 455 of the Companies Act, 2013] "Significant accounting transaction" means any transaction other than— (a)payment of fees by a company to the Registrar; (b)payments made by it to fulfil the requirements of this Act or any other law; (c)allotment of shares to fulfil the requirements of this Act; and (d)payments for maintenance of its office and records. [Explanation (ii) to Section 455 of the Companies Act, 2013]
Analysis and Conclusion:	In the instant case, MTK Private Limited was registered on 5th January 2022 and did not start its business till 31st July 2024. Since the Company has not started its business and a period of more than two years has already elapsed, it will be treated as an inactive company.

PRACTICAL QUESTION	
Question 39	*The extract of the major shareholders holding paid-up share capital in Rural Development Fin. Corp. Ltd., are as follows:* *Central Government* — *26%* *State of Maharashtra* — *18%* *State of Tamilnadu* — *24% and* *Public* — *32%* *Whether the company would be considered as a Public Financial Institution (PFI) under the provisions of the Companies Act, 2013? Explain in brief about various institutions regarded as 'Public Financial Institutions' under the Companies Act, 2013.* ***(5 Marks)(Jan 25)***
Provision	**By virtue of Section 2(72) of the Companies Act, 2013, the following institutions are to be regarded as public financial institutions:** i.the Life Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956; ii.the Infrastructure Development Finance Company Limited, iii.specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;

	iv. institutions notified by the Central Government under section 4A(2) of the Companies Act, 1956 so repealed under section 465 of this Act; v. such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India. **Conditions for an institution to be notified as PFI (Section 2(72) of the Companies Act, 2013:** No institution shall be so notified unless— A. it has been established or constituted by or under any Central or State Act other than this Act or the previous Companies Law; or B. not less than fifty-one per cent of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments.
Analysis and Conclusion:	In the instant case, the major shareholders holding paid-up share capital in Rural Development Fin. Corp. Ltd. by the Central Government and State Governments is 68% (i.e. Central Government: 26%, State of Maharashtra: 18% and State of Tamil Nadu: 24%), hence it will be regarded as 'Public Financial Institution' under the Companies Act, 2013

PRACTICAL QUESTION	
Question 40	**Mr. Abhi is a Chartered Accountant and MBA by profession, has been appointed as an Executive Director on the Board of XYZ Limited. His job profile includes advising the Board of Directors of the company on various compliance matters, strategies, business plans, and risk matters relating to the company. Keeping in view of above position whether Mr. Abhi can be classified as the Promoter of XYZ Limited? Please examine the same under the provisions of the Companies Act, 2013. (RTP May 2022)**
Law:	**PROMOTERS:** The Companies Act, 2013 defines the term "Promoter" under section 2(69) which means a person— a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or c) in accordance with whose advice, directions, or instructions the Board of Directors of the company is accustomed to act. Provided that persons acting only in a professional capacity e.g., the solicitor, banker, accountant etc. are not regarded as promoters.
Conclusion:	In instant case , since Abhi is acting in his professional capacity he cannot be regarded as promoter

	*41.Write in brief the content and model of the Articles of Association (AOA), according to which the director and other officers are required to perform their functions as regards the management of the company, its accounts and audit.* ***(7 Marks)(Jan 25)***
	The Articles of Association are in fact the Bye-Laws of the company according to which director and other officers are required to perform their functions as regards the management of the company, its accounts and audit. It is important therefore that the auditor should study them and, while doing so he should note the provisions therein in respect of relevant matters. **Section 5 of the Companies Act, 2013 seeks to provide the contents and model of articles of association. The section lays the following law-** **1. Contains regulations:** The articles of a company shall contain the regulations for management of the company. **2. Inclusion of matters:** The articles shall also contain such matters, as are prescribed under the rules. However, a company may also include such additional matters in its articles as may be considered necessary for its management. **3. Contain provisions for entrenchment:** The articles may contain provisions for entrenchment (to protect something) to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with. **4. Manner of inclusion of the entrenchment provision:** The provisions for entrenchment shall only be made either on formation of a company or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company. **5. Notice to the registrar of the entrenchment provision:** Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed**.** **6. Forms of articles:** The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company**.** **7. Model articles:** A company may adopt all or any of the regulations contained in the model articles applicable to such company. **8. Company registered after the commencement of this Act:** In case of any company, which is registered after the commencement of this Act, in so far as the registered articles of such company do not exclude or modify the regulations contained in the model articles applicable to such company, those regulations shall, so far as applicable, be the regulations of that company in the same manner and to the extent as if they were contained in the duly registered articles of the company.

PRACTICAL QUESTION	
Question 42	*Justice Private Limited has 9 directors on its Board of Directors. The company's Articles of Association currently state that the quorum for board meetings shall be 1/3rd of the total strength or 2 directors, whichever is higher. The company now intends to amend this article to specify that the quorum for board meetings shall be 1/3rd of the total strength or 4 directors,*

	whichever is higher. Advise the company on the procedure for including this entrenchment provision in its Articles, in accordance with the provisions of the Companies Act, 2013. Would your advice differ if the company were a public company? (3 Marks)(Jan 25)
Provision	Section 5(4) and (5) of the Companies Act, 2013 contains the following provisions: **Manner of inclusion of the entrenchment provision:** The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company. **Notice to the registrar of the entrenchment provision:** Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.
Analysis and Conclusion:	In the instant case, Justice Private Limited can follow the above procedure i.e. with the consent of all the members and notice to the registrar to include the entrenchment provision in its Articles. Yes, the advice will differ, if the company is public company, since it has to pass Special Resolution and also inform to the registrar.

	43.Distinguish between MOA and AOA
	**The following are the key differences between the Memorandum of Association and Articles of Association:** 1. **Nature –** Memorandum is the most basic document of the company on strength of which company is incorporated whereas Articles contains rules and regulation for internal management of company 2. **Scope and objective :** Memorandum of Association defines and delimits the objectives of the company whereas the Articles of association lays down the rules and regulations for the internal management of the company. Articles determine how the objectives of the company are to be achieved. **3. Relationship:** Memorandum defines the relationship of the company with the outside world and Articles define the relationship between the company and its members. **4. Alteration:** Memorandum of association can be altered only under certain circumstances and in the manner provided for in the Act. In most cases permission of the Regional Director, or the Tribunal is required. The articles can be altered simply by passing a special resolution. **5. Ultra Vires:** Acts done by the company beyond the scope of the memorandum are ultra-vires and void. These cannot be ratified even by the unanimous consent of all the shareholders. The acts

	ultra-vires the articles can be ratified by a special resolution of the shareholders, provided they are not beyond the provisions of the memorandum

	44.Briefly explain the doctrine of "ultravires" under the Companies Act, 2013. What are the consequences of ultravires acts of the company? (module) [May 2022 (6 Marks)]
	**Doctrine of ultra vires:** The meaning of the term ultra vires is simply "beyond (their) powers". The legal phrase "ultra vires" is applicable only to acts done in excess of the legal powers of the doers. This presupposes that the powers in their nature are limited. To an ordinary citizen, the law permits whatever does the law not expressly forbid. It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act, thus far and no further *[Ashbury Railway Company Ltd. vs. Riche].* In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company. On this account, a company can be restrained from employing its fund 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. **Consequences of 'ultra vires' acts of the company:** The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandum is a "public document", it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this one enters into a transaction which is ultra vires the company, he/she cannot enforce it against the company. An act which is ultra vires the company being void, cannot be ratified by the shareholders of the company. However, some ultra vires act can be regularised by ratifying them subsequently. For instance, if the act is ultra vires the power of the directors, the shareholders can ratify it; if it is ultra vires the articles of the company, the company can alter the articles; if the act is within the power of the company but is done irregularly, shareholders can validate such acts

PRACTICAL QUESTION	
Question 45	***The Object Clause of Memorandum of Association of ABC Pvt. Ltd. authorised the company to carry on the business of trading in Fruits and Vegetables. The Directors of the company in recently concluded Board Meeting decided and accordingly, the company ordered for fish for the purpose of trading. FSH Limited supplied fish to ABC Pvt. Ltd. worth Rs. 36 Lakhs.***

	The members of the company convened an extraordinary general meeting and negated the proposal of the Board of Directors on the ground of ultra vires acts. FSH Limited being aggrieved of the said decision of ABC Pvt Ltd. seeks your advice. Advice them.(4 Marks) (August, 2018)
Issue raised in question (optional)	Whether contract which are ultra vires valid and enforceable on the company
Provision	As per Doctrine of ultra vires in companies act, 2013 , The meaning of the term ultra vires is simply" 'beyond (their) powers". The legal phrase "ultra vires" is applicable only to acts done in excess of the legal powers of the doers. (i) 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. (ii) An act which is ultra vires the company is **void** and is of no legal effect. (iii) Even **ratification of an ultra vires** contract by the whole body of shareholders **does not make an ultra vires contract valid** or enforceable.
Analysis and Conclusion:	Therefore, the resolution passed by the Board of Director ABC Pvt. Limited for an ultra vires transaction is invalid because as per its object clause company can only trade in fruits and vegetables . As a result of this, the transaction entered into the supply of fish with FSH Limited is not legal and is void.

PRACTICAL QUESTION	
Question 46	*ABC Limited was into sale and purchase of iron rods. This was the main object of the company mentioned in the Memorandum of Association. The company entered into a contract with Mr. John for some finance related work. Later on, the company repudiated the contract as being ultra vires.* *With reference to the same, briefly explain the doctrine of "ultravires" under the Companies Act, 2013. What are the consequences of ultravires acts of the company?* **(RTP Nov 23)**
Issue raised in question (optional)	Whether company dealing in iron and rods can contract to provide finance
Provision	Doctrine of ultra vires: The meaning of the term ultra vires is simply "beyond (their) powers". The legal phrase "ultra vires" is applicable only to acts done in excess of the legal powers of the doers. This presupposes that the powers in their nature are limited. It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act, thus far and no further. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company. On this account, a company can be restrained from employing its fund 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. The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandum is a "public document", it is open to

	public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company. An act which is ultra vires the company being void, cannot be ratified even by the unanimous consent of all the shareholders of the company.
Analysis and Conclusion:	Hence in the given case, ABC Limited cannot enter into a contract outside the purview of its object clause of Memorandum of Association as it becomes ultra vires and thus null and void.
Ref case	***Ashbury Railway Carriage and Iron Company Limited v. Riche-(1875).***

PRACTICAL QUESTION	
Question 47	***AK Private Limited has borrowed ` 36 crore from BK Finance Limited. However, as per memorandum of AK Private Limited, the maximum borrowing power of the company is ` 30 crore. Examine whether AK Private Limited is liable to pay this debt? State the remedy, if any available to BK Finance Limited.(RTP June 24)***
Provision	'Doctrine of Ultra Vires'. According to this doctrine, any act done, or a contract made by the company which travels beyond the powers of the company conferred upon it by its Memorandum of Association is wholly void and inoperative in law and is therefore not binding on the company. This is because the Memorandum of Association of the company is, in fact, its charter; it defines its constitution and the scope of the powers of the company. Hence, a company cannot depart from the provisions contained in the memorandum however imperative may be the necessity for the departure. Hence, any agreement ultra vires the company shall be null and void.
Analysis and Conclusion:	**Whether AK Private Limited is liable to pay the debt?** As per the facts given, AK Private Limited borrowed ` 36 crore from BK Finance Limited which is beyond its borrowing power of ` 30 crore. Hence, contract for borrowing of ` 36 crore, being ultra vires the Memorandum of Association and thereby is void. AK Private Limited is not, therefore, liable to pay the debt. **Remedy available to BK Finance Limited:** In light of the legal position explained above, BK Finance Limited cannot enforce the said transaction and thus has no remedy against the company for recovery of the money lent. BK Finance limited may take action against the directors of AK Private Limited as it is the personal liability of its directors to restore the borrowed funds. Besides, BK Finance Limited may take recourse to the remedy by means of 'Injunction', if feasible.

PRACTICAL QUESTION	
Question 48	*JV Limited borrowed a secured loan of ` 5 crore from Star Bank Limited (the bank) to meet its working capital requirement. However, the borrowing powers of the company, under its Memorandum of Association, were restricted to ` 1 crore. The bank released the loan amount in two instalments of ` 1 crore and ` 4 crore. On the due date for repayment of the loan, the company refused to accept the liability of ` 5 crore on the ground that the borrowing was ultra vires the company. The company's books of account show that the company has utilised the loan amount of ` 3 crore for repayment of its lawful debts. The utilisation of the remaining ` 2 crore cannot be traced. Referring to the doctrine of ultra-vires under the Companies Act, 2013, examine the validity of the decision of the company denying the repayment of the loan and explore the remedy, if any, available to the bank for recovery of the loan.**(4 Marks)(Sep 24)**
Issue raised in question (optional)	Can company deny to pay loan if it is ultra vires act but used for legitimate business purpose
Provision	**Doctrine of ultra vires:** The meaning of the term ultra vires is simply "beyond (their) powers". It is a fundamental rule of Company Law that any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company. The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandum is a "public document", it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.
Analysis and Conclusion:	In the instant case, borrowing more than ₹1 crore was clearly beyond JV Limited's powers as per its MoA, making the loan transaction ultra vires to the extent of the excess amount over ₹1 crore. Hence, the decision of the company denying the repayment of the loan being ultra virus the company shall be valid for ` 4 crore. If the funds have been applied for legitimate business purposes (such as repaying lawful debts), the lender steps into the shoes of the debtor paid off and consequently he would be entitled to recover his loan to that extent from the company. Therefore, JV Limited cannot deny repayment of ₹3 crore, as it was utilised for lawful purposes, despite the ultra vires nature of the loan. Ultimately, the company has no remedy available to recover the balance amount of loan of ` 1 crore as the spending thereof is not traceable.

PRACTICAL QUESTION	
Question 49	*Articles of Association of XYZ Private Limited provides that Board of Directors (BOD) can take the loan upto ` 5,00,000 for Company by passing the board resolution. In that case, the loan amount is in excess of the limit, special resolution is required to be passed in general meeting. Due to urgent needs of funds, BOD applied for loan in a reputed bank for` 10,00,000 without passing the resolution in the general meeting. BOD gave an undertaking to bank that Special Resolution has been passed for such loan. The bank on believing on such undertaking lend the*

	money. On demanding the repayment of loan, company denied the payment as act was ultra vires to company. Kindly, advise. ***(RTP Nov 23)***
Provision	According to doctrine of Indoor Management, persons dealing with the Company are presumed to have read the registered documents and to see that the proposed dealing is not inconsistent therewith, but they are not bound to do more; they need not enquire into the regularity of internal proceedings as required by Memorandum and Articles. This was also decided in case of Royal British Bank Vs. Turquand.
Analysis and Conclusion:	In the instant case, XYZ Private Limited have taken loan from reputed bank for 10,00,000 by passing Board Resolution while Special Resolution was necessary for such amount. BOD gave an undertaking to bank that Special Resolution has been passed for such loan. The bank on believing on such undertaking lends the money. On demanding the repayment of loan, company denied the payment as act was ultra vires to company. On the basis of provisions of doctrine of indoor management, the bank can claim the amount of his loan from the company. The bank can believe on the undertaking given by board and no need to enquire further.

	50.The persons (not being members) dealing with the company are always protected by the doctrine of indoor management. Explain. Also, explain when doctrine of Constructive Notice will apply.(6 Marks) (May, 2020)
	Doctrine of Indoor Management (i)According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association. (ii)Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner. (iii)The doctrine helps to protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies. (iv)The doctrine of indoor management is opposite to the doctrine of constructive notice. Whereas the doctrine of constructive notice protects a company against outsiders, the doctrine of indoor management protects outsiders against the actions of a company. This doctrine also is a safeguard against the possibility of abusing the doctrine of constructive notice **Exceptions to Doctrine of Indoor Management (Applicability of doctrine of constructive notice)** **(a) Knowledge of irregularity:** In case an 'outsider' **has actual knowledge** of irregularity within the company, the benefit under the rule of indoor management would no longer be available. In fact, he/she may well be considered part of the irregularity. **(b) Negligence:** If, with a **minimum of effort**, the irregularities within a company could be discovered, the benefit of the rule of indoor management would not apply. The protection of the rule is also not available where the circumstances surrounding the contract are so **suspicious as to invite inquiry**, and the outsider dealing with the company does not make proper inquiry.

	(c) Forgery: The rule does not apply where a person relies upon a document that turns out to be forged since **nothing can validate forgery**. A company can never be held bound for forgeries committed by its officers.

PRACTICAL QUESTION	
Question 51	***Sound Syndicate Ltd., a public company, its articles of association empowers 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 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 have been actually passed by the company and the lender should have enquired about the same prior providing such loan hence company not liable to pay such loan.Analyse the above situation in terms of the provisions of Doctrine of Indoor Management under the Companies Act, 2013 and examine whether the contention of Sound Syndicate Ltd. is correct or not?(module)(May 22)***
Issue raised in question (optional)	Whether outsider dealing with company is required to enquire into internal proceedings to ensure it has been properly complied to make contract enforceable on company in case of internal irregularity
Provision	Doctrine of Indoor Management According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association. Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner. The doctrine helps protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies. Thus, 1.What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but do not know the information he/she is not privy to. 2.If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf
Analysis and Conclusion:	In the given question, Easy Finance Ltd. being external to the company, need not enquire whether the necessary resolution was passed properly. Even if the company claim that no resolution authorizing the loan was passed, the company is bound to pay the loan to Easy Finance Ltd.

PRACTICAL QUESTION	
Question 52	***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 from 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 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. Analyse the situation and decide whether Mr. X is free from his liability.*** *(4 Marks) (March, 2019)* **(Oct, 2019)**
Issue raised in question (optional)	Whether outsider dealing with company should inquire into internal management of company
Provision	**Doctrine of Indoor Management:** The Doctrine of Indoor Management is the exception to the doctrine of constructive notice. The doctrine of constructive notice does not mean that outsiders are deemed to have notice of the internal affairs of the company. For instance, if an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed. The doctrine of Indoor Management is important to persons dealing with a company through its directors or other persons. They are entitled to assume that the acts of the directors or other officers of the company are validly performed, if they are within the scope of their apparent authority. So long as an act is valid under the articles, if done in a particular manner, an outsider dealing with the company is entitled to assume that it has been done in the manner required.
Analysis and Conclusion:	In the given question, Mr. X has made payment to Mr. Z and he (Mr. Z) gave to receipt of the same to Mr. X. Thus, it will be rightful on 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 free from liability for payment of goods purchased from M/s ABC Limited, as he has paid amount due to an employee of the company.

	53.What is the effect of Memorandum and Articles when registered? (2 Marks)(Sep 24)
	Effect of Memorandum and Articles: As per Section 10 of the Companies Act, 2013, where the memorandum and articles when registered, shall bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and an agreement to observe all the provisions of the memorandum and of the articles. All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

PRACTICAL QUESTION	
Question 54	*Ratanmul Milk India Limited is a public company and formed on 01.01.2023. On this date, Mr. Sharman was appointed as Legal Advisor of the company. It was mentioned in the Articles of Association of the company that Mr. Sharman will not be removed from the post of Legal Advisor till 31.03.2027. On 01.07.2024, a Special Resolution was passed for the alteration in Articles of Association and Mr. Sharman was removed from the company. Mr. Sharman filed the suit against Ratanmul Milk India Limited for removal as a Legal Advisor. Referring the provisions of the Companies Act, 2013, whether can company remove Mr. Sharman?* ***(RTP May 25)***
Provision	The Articles of Association of a company are its rules and regulations, which are framed to manage its internal affairs. Just as the Memorandum contains the fundamental conditions upon which the company is allowed to be incorporated, so also the Articles are the internal regulations of the company (Guiness vs. Land Corporation of Ireland).
Analysis and Conclusion:	In the instant case, the AOA of Ratanmul Milk India Limited provided that Mr. Sharman will be the Legal Advisor of the company and shall not be removed upto 31.03.2027. But company removed him on 01.07.2024 by passing the Special Resolution in the meeting of members and making the alteration in AOA. On the basis of above provisions of Law and facts of the case, Mr. Sharman cannot enforce any right against the company. Company had right to remove him by making alteration in AOA.

	55.What is the meaning of "Certificate of Incorporation" under the provisions of the Companies Act, 2013? What are the effects of registration of a company? (6 Marks) (August, 2018)
	Certificate of Incorporation - Under section 7(2) the Registrar shall on the basis of documents and information filed for the formation of a company, shall register all the documents and information and issue a certificate that the company is incorporated in the prescribed form to the effect that the proposed company is incorporated under

	this Act. The company becomes a legal entity form the date mentioned in the certificate of incorporation and continues to be so till it is wound up. **Effects of registration of a company** Section 9 of the Companies Act, 2013 provides that when a company is registered and a certificate of incorporation is issued by the Registrar, three important consequences follow: (a) from the date of incorporation mentioned in the certificate of incorporation, such of the subscribers to the Memorandum and all other persons, as may from time to time become members of the company (b) the company becomes body corporate which is distinct legal entity. Its life commences from the date mentioned in the certificate of incorporation capable of entering into contracts in its own name, acquiring, holding and disposing of property of any nature whatsoever and capable of suing and being sued in its own name. (c) it acquires a life of perpetual existence by the doctrine of succession. The members may come and go, but it goes on forever, unless it is wound up. (d) Its property is not the property of the shareholders. The shareholders have a right to share in the profits of the company as and when declared either as dividend or as bonus shares. Likewise any liability of the company is not the liability of the individual shareholders

PRACTICAL QUESTION	
Question 56	***FAREB Limited was incorporated by acquisition of FAREB & Co., a partnership firm, which was earlier involved in many illegal activities. The promoters furnished some false information and also suppressed some material facts at the time of incorporation of the company. Some members of the public (not being directors or promoters of the company) approached the National Company Law Tribunal (NCLT) against the incorporation status of FAREB Limited. NCLT is about to pass the order by directing that the liability of the members of the company shall be unlimited.*** ***Given the above, advice on whether the above order will be legal and mention the precaution to be taken by NCLT before passing order in respect of the above as per the provisions of the Companies Act, 2013.(3 Marks) (August, 2018)***
Issue raised in question (optional)	Whether NCLT can order to convert ***liability of the members of the company from limited to unlimited. If company was formed by furnishing false information and suppression of material facts***
Provision	As per section 7(7) of the Companies Act, 2013, where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants, direct that liability of the members shall be unlimited.
Analysis and Conclusion:	Hence, the order of NCLT will be legal. **Precautions Before making any order**,— (a)the company shall be given a **reasonable opportunity of being heard** in the matter; and

	(b)the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liabilit y.

	57.Explain the kinds of share capital as per the Companies Act, 2013. ***(RTP May 25)(Dec 23)***
	Kinds of share capital: Section 43 of the Companies Act, 2013 provides the kinds of share capital. According to the said provision, the share capital of a company limited by shares shall be of two kinds, namely:— 1.''Equity share capital'', with reference to any company limited by shares, means all share capital which is not preference share capital; Equity share capital— can be (i) with voting rights; or (ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed; 2.''Preference share capital'', with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to— (a)payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and (b)repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company. 3.Capital shall be deemed to be preference capital, despite that it is entitled to either or both of the following rights, namely:— that in respect of dividends, in addition to the preferential rights to the amounts specified as above, it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid; that in respect of capital, in addition to the preferential right to the repayment, on a winding up, of the amounts specified above, it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.