



BUSINESS LAW

THE COMPANIES ACT, 2013

JUN 2024 - MTP 1

NO	QUE NO.	TOPICS	SUB-TOPIC	MARKS
1	Q1 b	Classes Of Company	Subsidiary Company	7
2	Q2 b	Doctrine of Ultra Vires	Doctrine of Ultra Vires	7
3	Q3 b (i)	Classes Of Company	Small Company	4
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Q1 b - Classes Of Company (Subsidiary Company)

7 MARKS

QUESTION

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

- (a) Whether Darshan Photographs Private Limited is subsidiary of Shadow Evening Private Limited?



- (b) *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?*

ANSWER

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.

In the instant case, Darshan Photographs Private Limited is having paid-up capital of RS 1 Crores in the form of 50,000 Equity Shares of

RS 100 each and 50,000 Preference Shares of RS 100 each. Shadow

Evening Private Limited is holding 25,000 Equity Shares in Darshan Photographs Private Limited.

- (a) 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.

- (b) Answer would remain same even if Shadow Evening Private Limited is also holding 5,000 preference shares as they do not have voting rights.

Q2 b - Doctrine of Ultra Vires

7 MARKS

QUESTION

Explain the 'Doctrine of ultra vires' under the Companies Act, 2013. What are the consequences of 'ultra vires' acts of the company?

ANSWER

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.

Q3 b (i)- Classes Of Company (Small Company)

4 MARKS

QUESTION

Tycoon Private Limited is the holding company of Glassware Private Limited. As per the last profit and loss account for the year ending 31st March, 2023 of Glassware Private Limited, its turnover was RS1.80crore and paid up share capital was RS 80 lakh. The Board of Directors wants to avail the status of a small company. The Company Secretary of the company advised the directors that Glassware Private Limited cannot be categorized as a



ANSWER

As per 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, and*
- (ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees:*

Provided that 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.*

In the instant case, as per the last profit and loss account for the year ending 31st March, 2023 of Glassware Private Limited, its turnover was to the extent of RS 1.80 crore, and paid-up share capital was RS 80 lakh. Though Glassware Private Limited, as per the turnover and paid-up share capital norms, qualifies for the status of a 'small company' but it cannot be categorized as a 'small company' because it is the subsidiary of another company (Tycoon Private Limited).

Hence, the contention of the Company Secretary is correct.

Q3 b (ii)- Intro Features (Perpetual Succession)

3 MARKS

QUESTION

In the Flower Fans Private Limited, there are only 5 members. All of them go in a boat on a pleasure trip into an open sea. The boat capsizes and all of them died being drowned.

Explain with reference to the provisions of Companies Act, 2013:



- (A) *Is Flower Fans Private Limited no longer in existence?*
- (B) *Further is it correct to say that a company being an artificial person cannot own property and cannot sue or be sued?*

ANSWER

- (A) *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. 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.
- (B) 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.



JUN 2024 – MTP 2

NO	QUE NO.	TOPICS	SUB-TOPIC	MARKS
1	Q1 b (i)	Classes Of Company	Unlimited Company	4
2	Q1 b(ii)	Classes Of Company	Section-8	3
3	Q2 b	Classes Of Company	OPC	7
4	Q3 b	Classes Of Company	Small Company	7

Q1 b (i) - Classes Of Company (Unlimited Co.)

4 MARKS

QUESTION

Nolimit Private Company is incorporated as unlimited company having share capital of RS 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?

ANSWER

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.

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

Q1 b(ii)- Classes Of Company (Section-8)

3 MARKS

QUESTION

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

ANSWER

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

Hence in the given case, the contention of the members to distribute dividend from the



profits earned is wrong.

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

Q2 b - Classes Of Company (OPC)

7 MARKS

QUESTION

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?

ANSWER

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.

Rules regarding its membership:

- Only one person as member.*
- 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.*
- 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 of the company along with its e-memorandum and e-articles.*
- Such other person may be given the right to withdraw his consent.*
- 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.*



- *Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.*
- *Only a natural person who is an Indian citizen whether resident in India or otherwise and has stayed in India for a period of not less than 120 days during the immediately preceding financial year-*
 - *shall be eligible to incorporate a OPC;*
 - *shall be a nominee for the sole member of a OPC.*
- *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.*

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.

Q3 b - Classes Of Company (Small Co.)

7 MARKS

QUESTION

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

- Whether the MNP Private Ltd. can avail the status of small company?*
- What will be your answer if the turnover of the company is RS 45 crores?*

ANSWER



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

- (1) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than four crore rupees; and*
- (2) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than forty crore rupees.*

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.*
 - (i) In the present case, MNP Private Ltd., a company registered under the Companies Act, 2013 with a paid up share capital of RS 5 crores and having turnover of RS 35 crore. Since only one criteria of turnover of RS 35 crores is met, but the paid up share capital exceeds RS 4 crores 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 RS 45 crore, then both the criteria are not fulfilled and MNP Ltd. cannot avail the status of small company in this case also.*



JUN 2024 - MTP 3

NO	QUE NO.	TOPICS	SUB-TOPIC	MARKS
1	Q1 b (i)	Intro Features	Separate Entity	4
2	Q1 b(ii)	Classes Of Company	Government Co.	3
3	Q2 b(i)	Classes Of Company	Listed & Unlisted Co	2
4	Q2 b(ii)	Classes Of Company	Types of Co. As per control	5
5	Q3 b	Doctrine of Indoor Management	Doctrine of Indoor Management	7

Q1 b(i)- Intro Features (Separate Entity)

4

MARKS

QUESTION

Mr. Samyak was appointed as an employee of Moonlight Timber Private Limited on the condition that if he was to leave his employment, he will not solicit customers of the company. After some time, he was fired from the company. He set up his own business under proprietorship and undercut Moonlight 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 Nine Stars Timbers Private Limited. In this company, his wife and a friend of Mr. Samyak were the sole shareholders and



directors. They took over Samyak's business and continued it. Moonlight Timber Private Limited files a suit against Nine Stars Timbers Private Limited for violation of contract. Nine Stars Timbers Private Limited argued that the contract was entered into between Mr. Samyak and Moonlight Timber Private Limited and as the company has separate legal entity, Nine Stars Timbers Private Limited has not violated the terms of agreement. Explain with reasons, whether separate legal entity between Mr. Samyak and Nine Stars Timbers Private Limited will be disregarded?

ANSWER

It was decided by the court in the case of *Gilford Motor Co. Vs. Horne*, that 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 a mere sham or cloak, the separate legal entity can be disregarded.

On considering the decision taken in *Gilford Motor Co. Vs. Horne* and facts of the problem given, it is very much clear that Nine Stars Timbers Private Limited was formed just to evade legal obligations of the agreement between Mr. Samyak and Moonlight Timber Private Limited. Hence, Nine Stars Timbers Private Limited is just a sham or cloak and the separate legal entity between Mr. Samyak and Nine Stars Timbers Private Limited should be disregarded.

Q1 b(ii) - Classes Of Company (Government Co.)

3 MARKS

QUESTION

Pacific Motors Limited is a government company. Rama Auto Private Limited is a private company having share capital of ten crores in the form of ten lacs shares of RS 100 each. Pacific Motors Limited is holding five lacs five thousand shares in Rama Auto Private Limited. Rama Auto Private Limited claimed the status of Government Company. Advise as legal advisor, whether Rama Auto Private Limited is government company under the provisions of Companies Act, 2013?



ANSWER

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.

By virtue of provisions of Section 2(87) of Companies Act, 2013, Rama Auto Private Limited is a subsidiary company of Pacific Motors Limited because Pacific Motors Limited is holding more than one-half of the total voting power in Rama Auto Private Limited. Further as per Section 2(45), a subsidiary company of Government Company is also termed as Government Company. Hence, Rama Auto Private Limited, being a subsidiary of Pacific Motors Limited will also be considered as Government Company.

Q2 b(i)- Classes Of Company (Listed & Unlisted Co.) 2 MARKS

QUESTION

Explain listed company and unlisted company as per the provisions of the Companies Act, 2013.



ANSWER

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.

Q2 b(ii)- Classes Of Company (Types of Co. As per control) 5 Marks

QUESTION

Explain the classification of the companies on the basis of control as per the Companies Act, 2013.

ANSWER

In line with the Companies Act, 2013, following are the classification of the Companies on the basis of control:

(a) 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—

- (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:

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.

(b) 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 —

- i. the expression “significant influence” means control of at least twenty per cent of total voting power, or control or participation in business decisions under an agreement;
- ii. 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.

Q3 b - Doctrine of Indoor Management

7 MARKS

QUESTION

Mr. R, a manufacturer of toys approached MNO Private Limited for supply of raw material worth RS 1,50,000/-. Mr. R was offered a credit period of one month. Mr. R went to the company prior to the due date and met Mr. C, an employee at the billing counter, who convinced the former that the payment can be made to him as the billing-cashier is



on leave.

Mr. R paid the money and was issued a signed and sealed receipt by Mr. C. After the lapse of due date, Mr. R received a recovery notice from the company for the payment of RS 1,50,000/-.

Mr. R informed the company that he had already paid the above amount and being an outsider had genuine reasons to trust Mr. C who claimed to be an employee and had issued him a receipt.

The Company filed a suit against Mr. R for non-payment of dues. Discuss the fate of the suit and the liability of Mr. R towards company as on current date in consonance with the provision of the Companies Act, 2013? Would your answer be different if a receipt under the company seal was not issued by Mr. C after receiving payment?

ANSWER

(i) Fate of the suit and the liability of Mr. R towards the company: Doctrine of the Indoor Management

According to the Doctrine of Indoor Management, the outsiders are not deemed to have notice of the internal affairs of the company. 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. This is the indoor management rule, that the company's indoor affairs are the company's problem. This rule has been laid down in the landmark case - the *Royal British Bank vs. Turquand*. (Known as "Turquand Rule")

In the instant case, Mr. R is not liable to pay the amount of RS 1,50,000 to MNO Private Limited as he had genuine reasons to trust Mr. C, an employee of the company who had issued him a signed and sealed receipt.

(ii) Liability of Mr. R in case no receipt is issued by Mr. C:



Exceptions to doctrine of indoor management: Suspicion of irregularity is an exception to the doctrine of indoor management. The doctrine of indoor management in no way rewards those who behave negligently. It is the duty of the outsider to make the necessary enquiry, if the transaction is not in the ordinary course of business.

If a receipt under the company seal was not issued by Mr. C after receiving payment, Mr. R is liable to pay the said amount as this will be deemed to be a negligence on the part of Mr. R and it is his duty to make the necessary enquiry to check that whether Mr. C is eligible to take the payment or not.

JUN 2024 – Main Paper

NO	QUE NO.	TOPICS	SUB-TOPIC	MARKS
1	Q1 b	Classes Of Company	Holding & Subsidiary	7
2	Q2 b	Classes Of Company	OPC	7
3	Q3 b (i)	Classes Of Company	Government Co	4
4	Q3 b (ii)	Intro Features	Perpetual Succession	3

Q1 b- Classes Of Company (Holding & Subsidiary)

7 MARKS



QUESTION

A company, ABC limited as on 31.03.2023 had a paid-up capital of RS1 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.

ANSWER

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.*

In the instant case, as on 31.03.2023, ABC Limited had a paid-up capital of RS 1 lakh (10,000 equity shares of RS 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 RS 2 lakhs (20,000 equity shares of RS 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.

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.

In terms of the above provision, 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.

Q2 b- Classes Of Company (OPC)

7 MARKS

QUESTION

Ram wants to incorporate a company in which he will be the only member. According to provisions of The Companies Act, 2013, what type of company can be incorporated? What are the salient features of this type of company?



ANSWER

Section 2(62) of the Companies Act, 2013 defines one person company (OPC) as a company which has only one person as a member.

Ram wants to incorporate a company in which he will be the only member. Hence, he can incorporate an One person Company.

According to section 3(1)(c) of the Companies Act, 2013, OPC is a private limited company with the minimum paid up share capital as may be prescribed and having one member.

OPC (One Person Company) – salient features

- ◆ *Only one person as member.*
- ◆ *Minimum paid up capital – no limit prescribed.*
- ◆ *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.*
- ◆ *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.*
- ◆ *Such other person may be given the right to withdraw his consent.*
- ◆ *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.*
- ◆ *Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.*
- ◆ *Only a natural person who is an Indian citizen whether resident in India*



or otherwise and has stayed in India for a period of not less than 120 days during the immediately preceding financial year.

- *shall be eligible to incorporate an OPC;*
- *shall be a nominee for the sole member of an OPC.*
- ◆ *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.*
- ◆ *Such Company 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.*
- ◆ *Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of any body-corporate.*
- ◆ *If One Person Company or any officer of such company contravenes the provisions, they shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.*

Here the member can be the sole member-cum-director.

Q3 b(i)- Classes Of Company (Government Co)

4 MARKS



QUESTION

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 is as under:

<i>(1) Government of India</i>	<i>20%</i>
<i>(2) Life Insurance Corporation of India (Public Institution)</i>	<i>8%</i>
<i>(3) Government of Tamil Nadu</i>	<i>10%</i>
<i>(4) Government of Rajasthan</i>	<i>10%</i>
<i>(5) ABC Limited (owned by Government Company)</i>	<i>15%</i>

As per above shareholding, state whether XYZ limited be called a government company under the provisions of The Companies Act, 2013.

ANSWER

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.*

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.



Q3 b(ii)- Intro Features (Perpetual Succession)

3 MARKS

QUESTION

M and N holding 70% and 30% of the shares in the company. Both died in an accident. Answer with reference to the provisions of the Companies Act, 2013, what will be the legal effect on the company as both the members have died?

ANSWER

One of the features of a company is that it has perpetual succession. As per this feature, members may die or change, but the company goes on till it is wound up on the grounds specified by the Companies Act, 2013. The shares of the company may change hands infinitely but that does not affect the existence of the company. Since a company is an artificial person created by law, law alone can bring an end to its life. Its existence is not affected by the death or insolvency of its members.

In the instant case, on the death of M and N, who are holding 70% and 30% shares in the Company, the existence of the company is not affected, since the shares held by M and N will be legally transmitted to their legal heirs.

SEP 2024 - MTP 1

NO	QUE NO.	TOPICS	SUB-TOPIC	MARKS
1	Q1 b (i)	Classes Of Company	Associate Company	4
2	Q1 b(ii)	Classes Of Company	Dormant Company	3
3	Q2 b(i)	Intro Features	Seperate Entity	4



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Q1 b (i) - Classes Of Company (Associate Company) 4 MARKS

QUESTION

ABC Limited has allotted equity shares with voting rights to XYZ Limited worth RS 15 Crores during the Financial Year 2023-24. After that the total Paid-up Equity Share Capital of ABC Limited is RS 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?

ANSWER

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.

In the given case, ABC Ltd. has allotted equity shares with voting rights to XYZ Limited



of RS 15 crore, which is less than requisite control of 20% of total share capital (i.e. RS 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.

Q1 b (ii) - Classes Of Company (Dormant Company) 3 MARKS

QUESTION

MTK Private Limited is a company registered under the Companies Act, 2013 on 5th January 2022. The company did not start its business till 31st July 2024. Identify under which category MTK Private Limited company is classified. Explain the definition of the category of the company in detail.

ANSWER

“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—

- payment of fees by a company to the Registrar;
- payments made by it to fulfil the requirements of this Act or any other law;
- allotment of shares to fulfil the requirements of this Act; and
- payments for maintenance of its office and records.

[Explanation (ii) to Section 455 of the Companies Act, 2013]

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.

Q2 b (i)- Intro Features (Seperate Entity)

4 MARKS

QUESTION

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?

ANSWER

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.

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.

Q2 b (ii) - Classes Of Company (Section-8)

3 MARKS



QUESTION

Alfa school is a section 8 company which started imparting education on 1.4.2015, 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 31st March 2023, it came to the knowledge of the Central Government that the said school was operating by violating the objects of its objective 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?

ANSWER

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 of its objective 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 section 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 essential 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.*

Q3 b (i) - Classes Of Company (Private Company)

4 MARKS

QUESTION

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

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



10

(e) *Others*

5

The Board of Directors of Powertech Limited proposes to convert it into a private company. Also advise whether a reduction in the number of members is necessary.

ANSWER

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.

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

Total Number of members

<i>(i)</i>	<i>Directors and their relatives</i>	<i>190</i>
<i>(ii)</i>	<i>5 Couples (5*1)</i>	<i>5</i>
<i>(iii)</i>	<i>Others</i>	<i>5</i>



	Total	200
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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.

Q3 b (ii) - Classes Of Company (Holding and Subsidiary) 3 MARKS

QUESTION

Popular Products Ltd. is company incorporated in India, having a total Share Capital of RS 20 Crores. The Share capital comprises of 20 Lakh equity shares of RS 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.

ANSWER

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.

In the present case, the total share capital of Popular Products Ltd. is RS 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.

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NO	QUE NO.	TOPICS	SUB-TOPIC	MARKS
1	Q1 b (i)	Doctrine of Indoor Management	Doctrine of Indoor Management	4
2	Q1 b(ii)	Classes Of Company	Foreign Company	3
3	Q2 b	Corporate Veil	Lifting Of Corporate Veil	7
4	Q3 b	Classes Of Company	Government Company	7

Q1 b (i) – Doctrine of Indoor Management

4 MARKS



QUESTION

Mr. Mohan had purchased some goods from Sunflower Limited on credit. A credit period of one month was allowed to Mr. Mohan. Before the due date, Mr. Mohan went to the company and wanted to repay the amount due from him. He found only Mr. Ramesh there, who was the factory supervisor of the company. Mr. Ramesh told Mr. Mohan that the Accountant and the cashier are on leave, he is in-charge of receiving money and he may pay the amount to him. Mr. Ramesh issued a money receipt under his signature. After two months, Sunflower limited issued a notice to Mr. Mohan for non-payment of the dues within the stipulated period. Mr. Mohan informed the company that he had already cleared the dues and he is no more responsible for the same. He also contended that Mr. Ramesh is an employee of the company whom he had made the payment and being an outsider, he trusted the words of Mr. Ramesh as duty distribution is a job of the internal management of the company. Analyse the situation and decide whether Mr. Mohan is free from his liability.

ANSWER

***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.

In the given question, Mr. Mohan has made payment to Mr. Ramesh and he (Mr. Ramesh) gave to receipt of the same to Mr. Mohan. Thus, it will be rightful on part of Mr. Mohan to assume that Mr. Ramesh was also authorised to receive money on behalf of the company. Hence, Mr. Mohan will be free from liability for payment of goods purchased from Sunflower Limited, as he has paid amount due to an employee of the company.

Q1 b (ii) - Classes Of Company (Foreign Company) 3 MARKS

QUESTION

Mike Limited is incorporated in India having Liaison office at Singapore. Explain in detail meaning of Foreign Company and analysis on whether Mike Limited would be called as Foreign Company as it established a Liaison office at Singapore as per the provisions of the Companies Act, 2013?

ANSWER

Foreign Company [Section 2(42) of the Companies Act, 2013]: It means any company or body corporate incorporated outside India which—

- (i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (ii) conducts any business activity in India in any other manner.

Since Mike Limited is a company incorporated in India, hence, it cannot be called as a foreign company. Even though, Liaison Office was officially established at Singapore, it would not be called as a foreign company as per the provisions of the Companies Act, 2013.



Q2 b- Corporate Veil (Lifting of Corporate Veil)

7 MARKS

QUESTION

Mr. Rajeev, 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 Mr. Rajeev as a pretended loan. This way, Mr. Rajeev 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.

ANSWER

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. 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 facade and hold the persons in control of the management of its affairs liable for the acts of the company. 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.

- 1. The problem asked in the question is based upon the aforesaid facts. The three companies were formed by the assessee purely and simply as a means of avoiding tax and the companies were nothing more than the facade of the assessee himself. Therefore, the whole idea of Mr. Rajeev was simply to split his income into three parts with a view to evade tax. No other business was done by the company.*
- 2. The legal personality of the three private companies may be disregarded because*



the companies were formed only to avoid tax liability. It carried on no other business, but was created simply as a legal entity to ostensibly receive the dividend and interest and to hand them over to the assessee as pretended loans. The same was upheld in Re Sir Dinshaw Maneckjee Petitand Juggilal vs. Commissioner of Income Tax.

Q3 b - Classes Of Company (Government Company) 7 MARKS

QUESTION

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 RS 9.5 crore (95 lakh shares of RS 10 each). Y Limited directly holds 2,50,600 shares of Z Private Limited which is having share capital of RS 5 crore in the form of 5 lakh shares of RS 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?

ANSWER

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-

- 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.

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



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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.*

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.