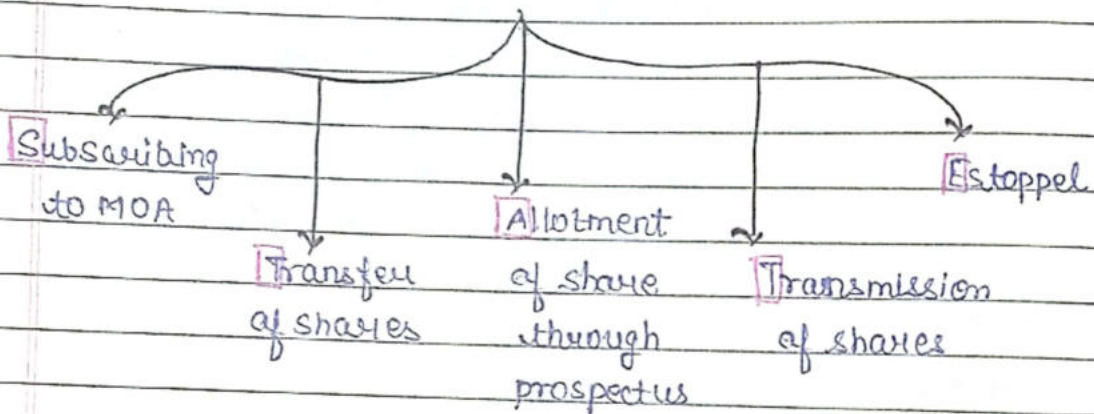


Lecture-15

2(55)

Membership In a Company (2-4m)

Que-1 Define member and ways of acquiring membership.
As per Sec 2(55) member does not include bearer of share warrant following are the ways of becoming a member in a company.



Que-2 Who can become a member in a Co.?

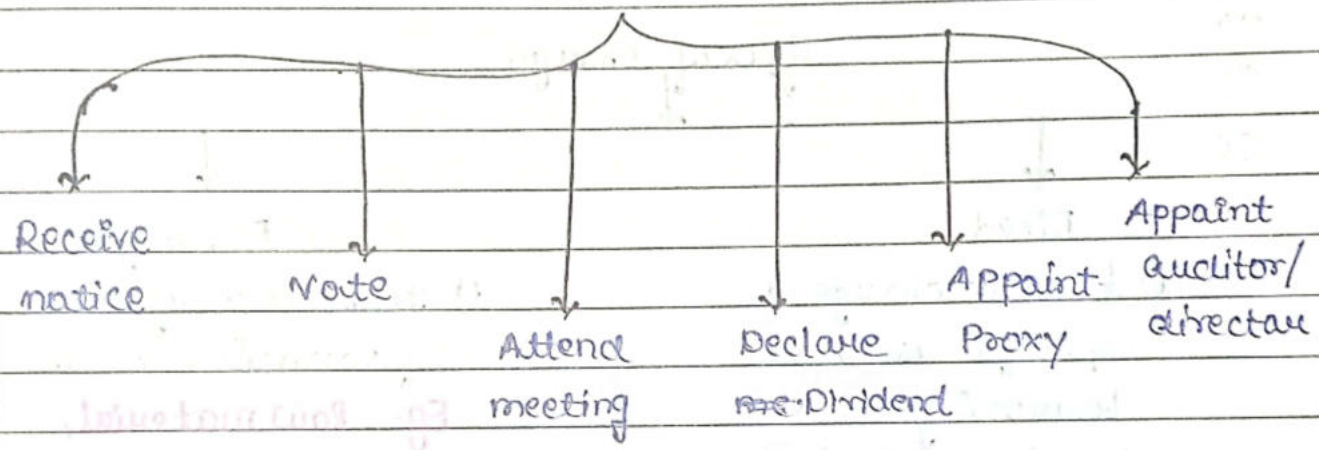
A Co-operative society, trade union, foreigner, government, insolvent (who was already a member), joint share holder can be a member in the Co. Trust, HUF, partnership firm cannot be a member in the company. However, a partnership firm can become a member of Sec 8 Co.

Que-3 Can a minor be a member in a company?

- 1) As per Indian Contract Act, 1872 any agreement with minor is void-ab-initio.
- 2) Companies Act 2013 does not contain any disqualification for minor to be a member.
- 3) In *Mohini Bibi Vs Dhasumobas* (whash) it was held that a minor can be a beneficiary.

- (v) Minor cannot subscribe to MOA as any agreement with minor is void.
- (vi) Minor can become member by transfer or transmission provided the shares are fully paid up.
- (vii) The company should take care to enter the name of guardian in the register of members.

Ques-4 What are rights of transferee?
member



Ques-5 How can a membership be terminated in a Company?

- 1) Forfeiture of shares FIS₂T₂
- 2) Issue of share warrants in exchange of share Certificate
- 3) Surrender of shares
- 4) Sale of shares
- 5) Transfer of shares
- 6) Transmission of shares.

5
12(5)

Lecture-22

13

MOA/AOA

(4-6 marks)

14

15

Que-1 Differentiate between MOA and AOA?

16

17

Ans Memorandum of Association

18

Article of Association

19

20

(i) It is the constitution of the entity

21

(i) These are internal rules of an entity.

22

(ii) In case of any inconsistency the MOA shall prevail over AOA

(ii) It is subordinate to AOA. MOA

(iii) following are the clauses of MOA -
- Name, Register office, object, capital, liability association/ subscription

(iii) These are internal rules and regulations.

OPC → Nomination clause

(iv) Its amendment is difficult

(iv) It is simple.

(v) It cannot be amended retrospectively
(यहाँ से)

(v) can be amended retrospectively.

Date

Que-2
Ans

Forms of MOA :-

Form of MOA is specified in Schedule I

Table A Co. Ltd. by shares

Table B Co. Ltd. by guarantee without share capital

Table C Co. Ltd. by guarantee with share capital

Table D Co. Ltd. by unlimited Co. without share capital

Table E Unlimited Co. with share capital.

Que-3
Ans

Forms of AOA :-

Table F Co. Ltd. by shares

Table G Co. Ltd. by guarantee with share capital.

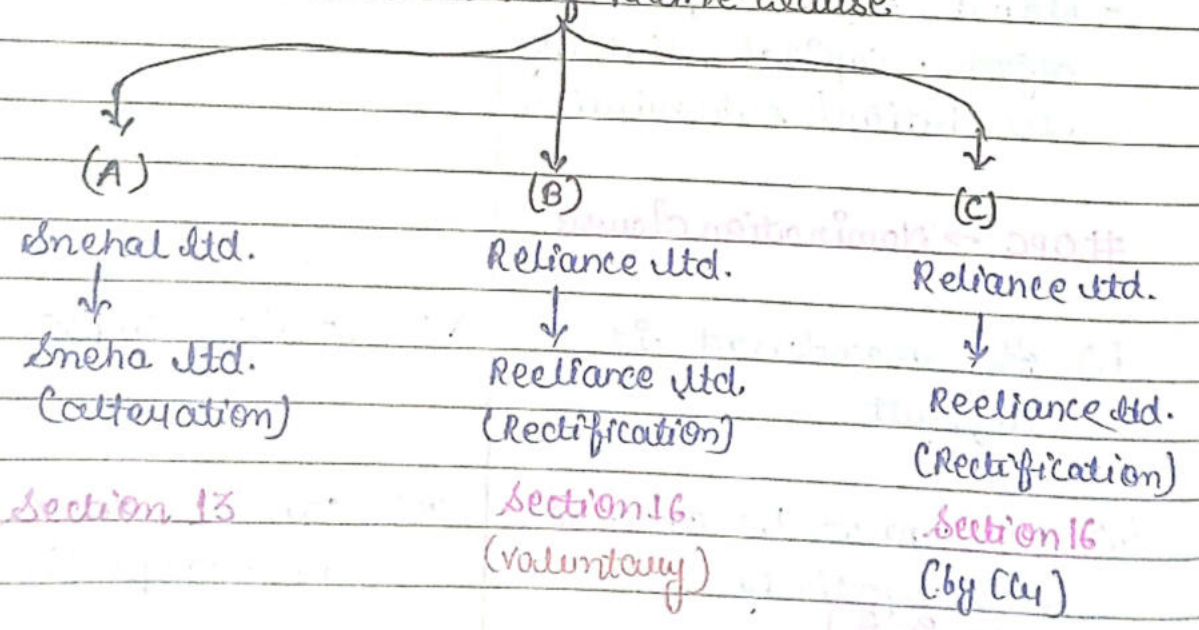
Table H Co. Ltd. by guarantee without share capital

Table I Unlimited Co. with share capital.

Table J Unlimited Co. without share capital.

Que-4

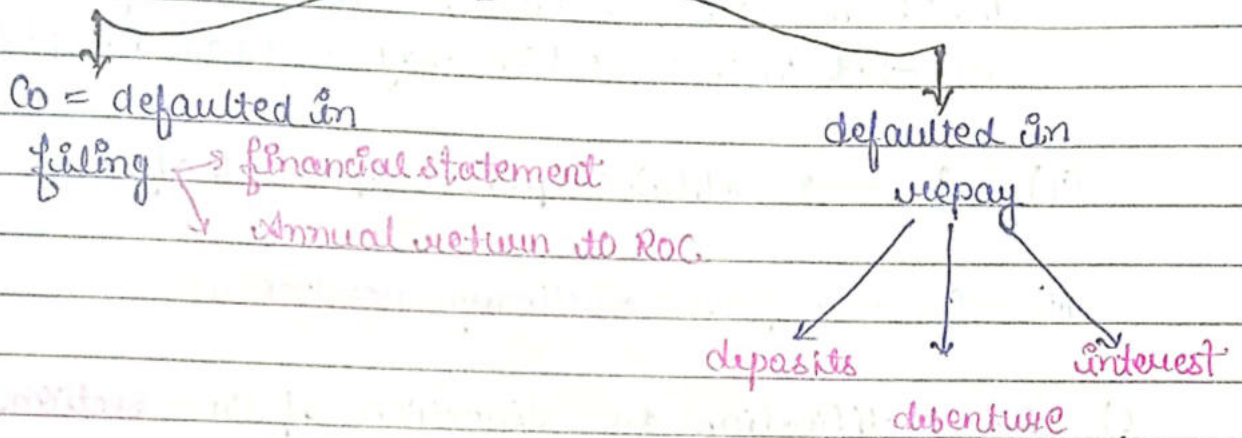
Alteration of Name clause



(a) Voluntary Alteration -

(i) Co. → apply → Cui fac approved to alter its name.

(ii) change of name is not allowed if



(iii) Co. → shall pass SR (Special resolution) at C/M (General meeting) to alter name clause of MOA.

(iv) Copy of SR; Cui Audeu Copy and altered MOA

↳ Sent to ROC within 30 days of SR

(v) ROC will check and issue (CoI) which is a conclusive evidence that all legal formalities have been complied with.
 Certificate of Incorporation

(vi) All rights, liabilities, obligations, legal cases will remain same. No new legal entity comes into existence.

Date

b) Rectification Suo-moto Section 16 (Conits am)

- (i) A Co. may be registered with undesirable name an undesirable name is one which contains any unnecessary or fancy word or which is too similar to an existing Co. in related business which may mislead the placed.
- (ii) Co. → obtains prior approval of C.A.
- (iii) Co. → pass ordinary resolution

c) Ref Rectification on direction of C.A. - Section 16

- (i) If C.A. is of the opinion that Co. is registered with an undesirable name, C.A. is empowered to direct that company should rectify its name.
- (ii) Same as point (b) → 1, 2, 3
- (iii) A registered proprietor of trademark can who also apply to C.A. within 5 years of incorporation or change of name of Co. if it resembles to a registered trademark of such proprietor.
- (iv) If such direction is issued, Co. shall make changes and inform to ROC within 15 days of such change.

- (v) If Co does not make changes then Co will allot a new name to the Co. within 3 months.
- (vi) Section 9 Co. → If Co. has changed its activities which is not in line with its name
 ↳ it should change its name within 6 months from change of its activities.

Lecture-26

Que-5 Procedure for altering object clause of MOA.

Section-13

Ans (i) Company shall call for a board meeting and pass BR (Board Resolution) for convening the meeting of members.

(ii) At GM → SR should be passed.

(iii) SR copy along with altered MOA should be filed with ROC.

(iv) ROC will register the changes within 1 month from the date of filing SR and altered MOA copy.

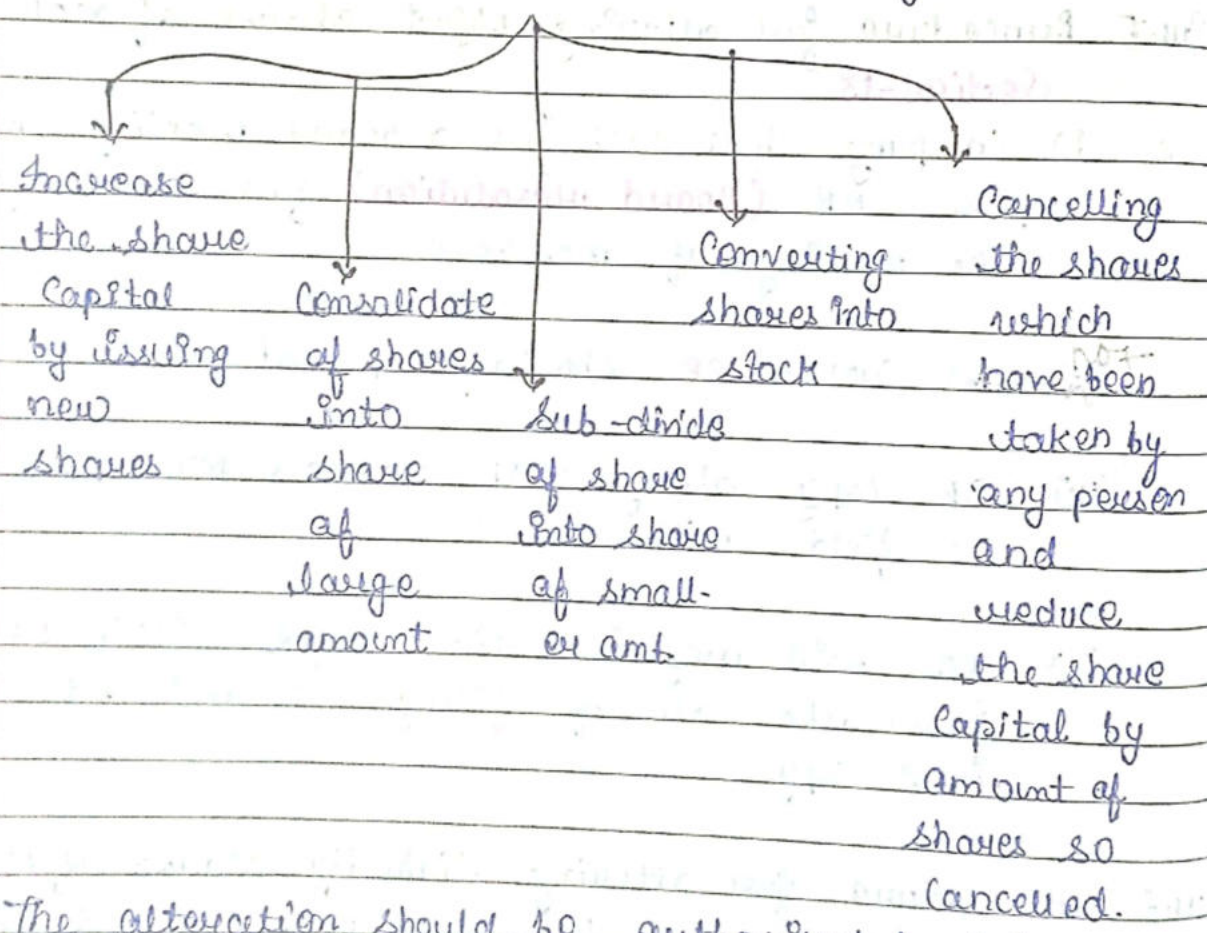
Que-6 Procedure for altering liability clause of MOA
 Ans No members shall be liable by an alteration in MOA/AOA which state that



he is liable to subscribe for more no. of shares than he already holds

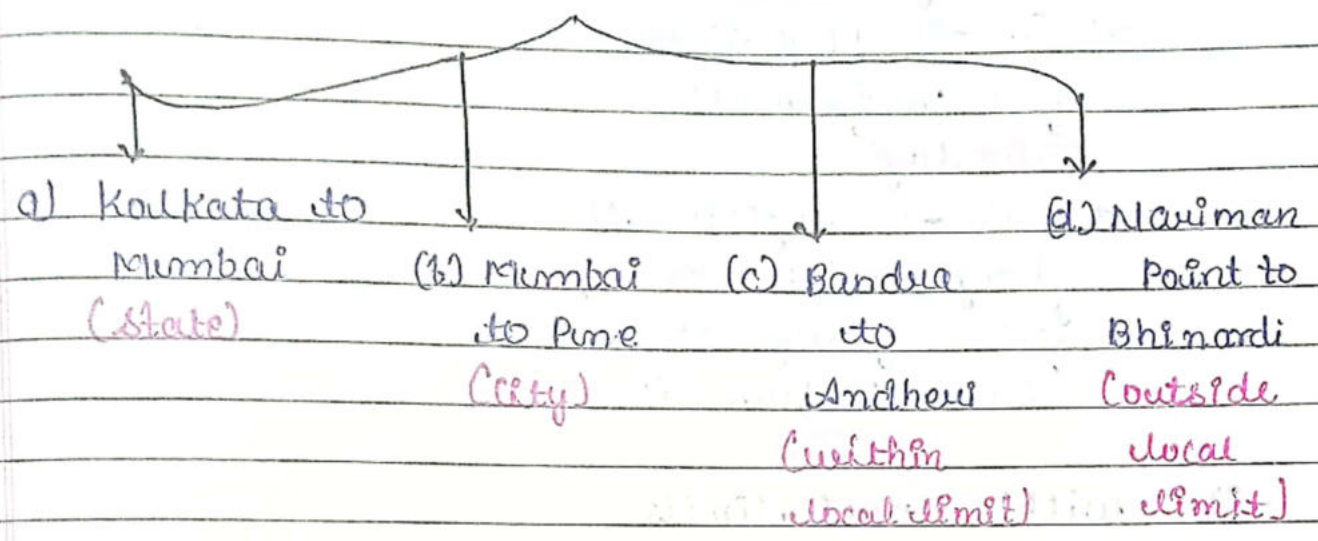
to contribute more than his liability on the nominal value of shares

Que-7 Procedure of altering capital clause- Capital clause can be altered by



The alteration should be authorized by HOA Members should pass OR and inform ROC within 30 days of passing OR (Ordinary resolution)

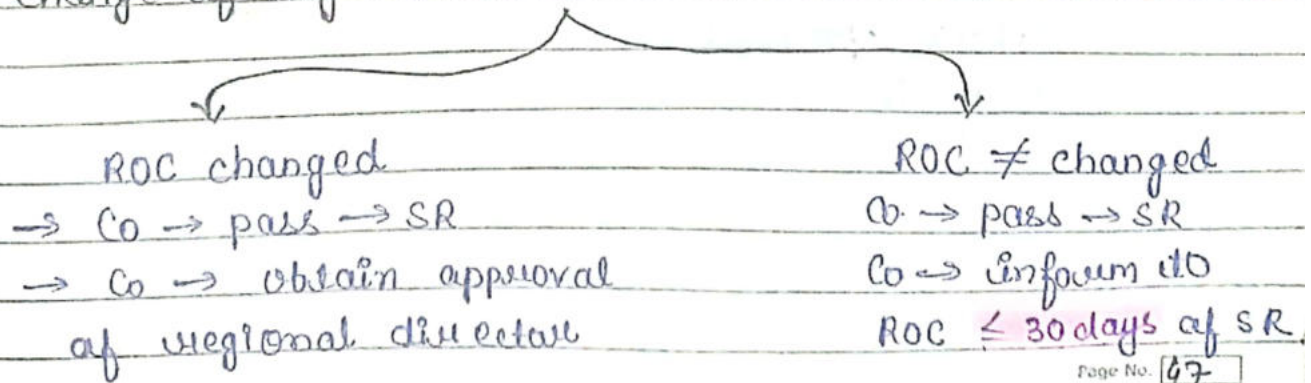
Ques 8 Procedure for altering situational clause of MOA



a) change of state - Section 13

1. BOD → Call BM → pass Board resolution
2. A/DGM → Member → pass special resolution
3. Co → apply to Cb for approval.
4. Cb → approval within 60 days after obtaining consent of
 - creditor
 - debenture holder
 - other person concerned
5. Copy of Cb order → filed with both ROC.
6. New state ROC → issue fresh CoT which is a conclusive evidence have been complied that all legal formalities.

b) change of city (within same state)



Date _____

will give approval
≤ 30 days

→ Co. → apply to ROC

for confirmation

≤ 60 days

→ ROC → register the

changes within 30 days

from filling up

such confirmation

c) within local limits-

Co → pass board resolution

Co → notify to ROC within 30 days of changes

d) Outside local limits

Co → pass SR

Co → notify to ROC within 30 days of change

Ques-9 Procedure for altering AOA → Section 14

↓
TRO Conversion
of Public Co.
→ Pvt Co.

↓
Pass SR and
take approval
of Co.

↓
Other Cases

↓
Pass SR only

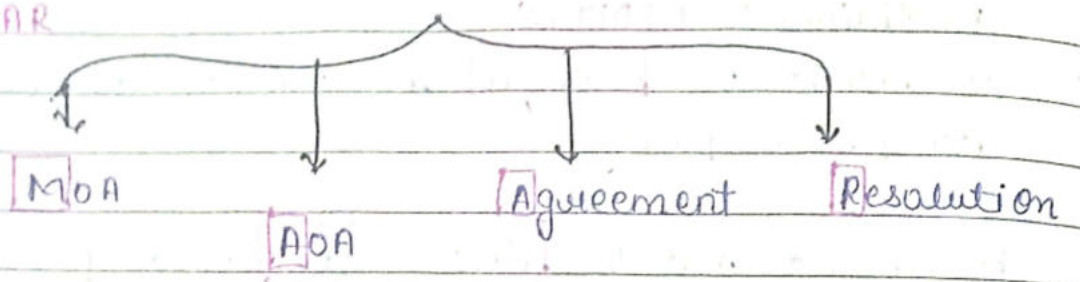
Conditions: **LIMITS**

- (i) It should be **lawful** and not unlawful (opposed to public policy).
- (ii) It should not be **inconsistent** with provision of COA 2013, MOA / order of tribunal.
- (iii) It should not be **oppressive (Chamful)** on any **member**.
- (iv) It shouldn't **increase** the liability of any member.
- (v) **Time** → it will have retrospective effect.
- (vi) It should be **bonafide** & in interest of Co. as whole **Sabki bhalai**.

Ques 10 Notice of alteration of MOA & AOA (**Section 15**)
Every alteration made in MOA & AOA shall be noted in every copy of MOA & AOA.
If there is a default Co. & every officer shall be liable for **> ₹1000** fine every copy of MOA / AOA issued there after.

Ques 11 Copies of MOA & AOA to members **Section 17**
Every company on request by member & on payment of prescribed fees shall send copies of.

MAAR



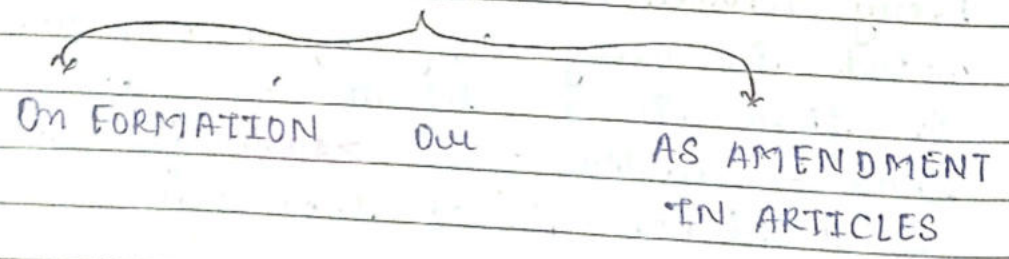
within 7 days of request.

If section 17 is contravened then co. and every officer shall liable for ₹1000/day subject to max ₹100,000

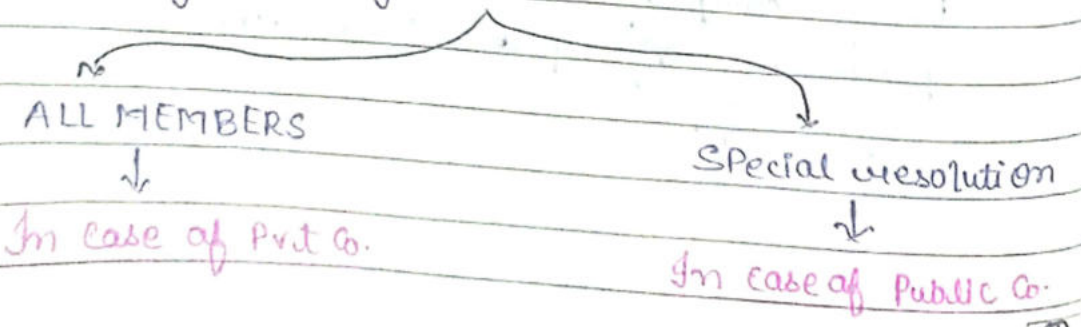
Que-12 Entrenchment Section 5

Ans (i) The article may contain provision for entrenchment of the effect that specified provision of the articles may be altered only if more restrictive conditions than a special resolution are met.

(ii) Provision for entrenchment can be made either



* If amendment is required it should be agreed by



(3) If articles contain entrenchment provision, Co. shall give notice to ROC of such provision

Lecture-27

Imp

most wanted one

Ques-13 Can a subsidiary company become a member of its holding company? Section 19

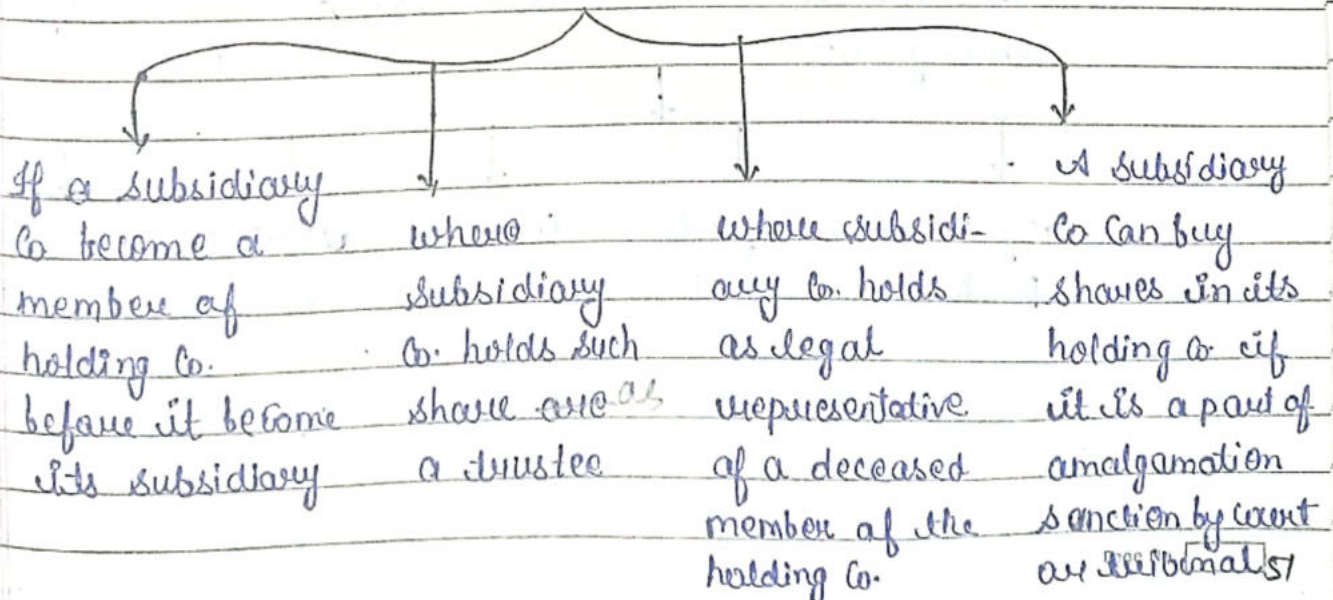
Ans (i) A company can become member of another company provide it is authorized by object clause of memorandum of association.

(ii) A company cannot buy its own share. It cannot become members of its own.

(iii) Subsidiary Co. cannot become member of its holding Co.

Section-19

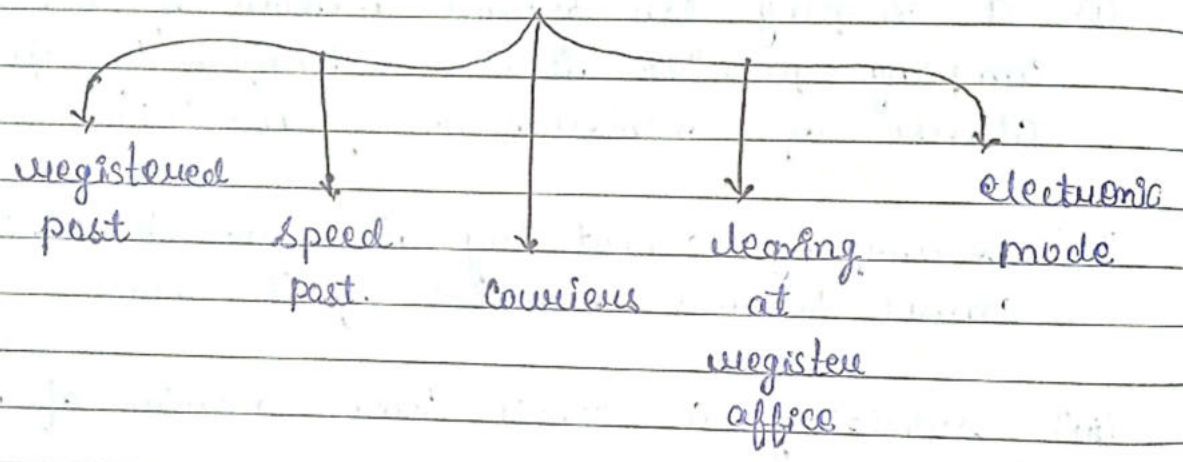
Any allotment of shares by holding Co. to its subsidiary is valid. However there are exceptions-



Note: Right to vote at a meeting of the holding Co. only in respect of the shares held by its as a legal representative or as trustee.

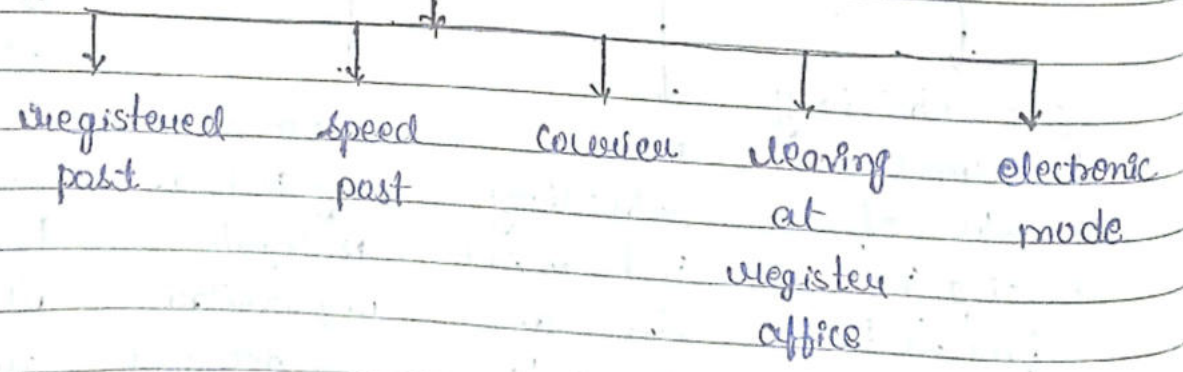
Que-14 Services of document - Section 20

Ans 1) A document → served on Co. or by its officers sending at the registered office of the Co. by



If securities are held with depository records of beneficial ownership may be served by electronic or other mode.

2) A document → served on ROC by sending it member

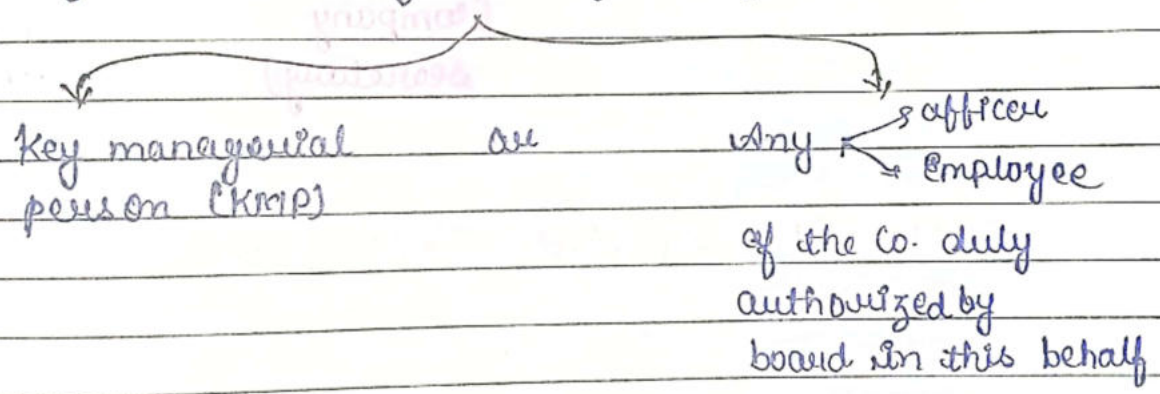


3) A mem. → request. for delivery of any document through a particular mode for which he shall pay such fees as may be determined by the Co. in AGM (Annual general meeting)

4) In case of delivery by post, such services shall be deemed to have effect at the expiration of 48 hours after the letter containing the same is posted

Ques-15 Authentication of Documents processing and contract (DCP) → Section 21

Ans Any DCP → may be signed by



Ques-16 Executive of Bills of Exchange, deeds etc. Section 22

Ans 1) A } shall be made on behalf of Co. if drawn on behalf of the Co. by any person acting under its authority whether

- BOE
- Hundi
- promissory note

Expressed

Implied

2) formal deeds can be executed only through power of attorney

Date _____

→ Co can authorize any person to execute any DEEDS
→ In India
→ outside India

→ Such authorization shall be given through

(Common seal if any (CS))

If CS(x) then

1 DIR
1 CS
(Company Secretary)

all & DIR
If CS is not there

Que - Q85, 9, 18, 20, 22, 24, 29, 32, 33, 34

4-3 marks

Chapter-2 (Lecture-33)

Incorporation of Company

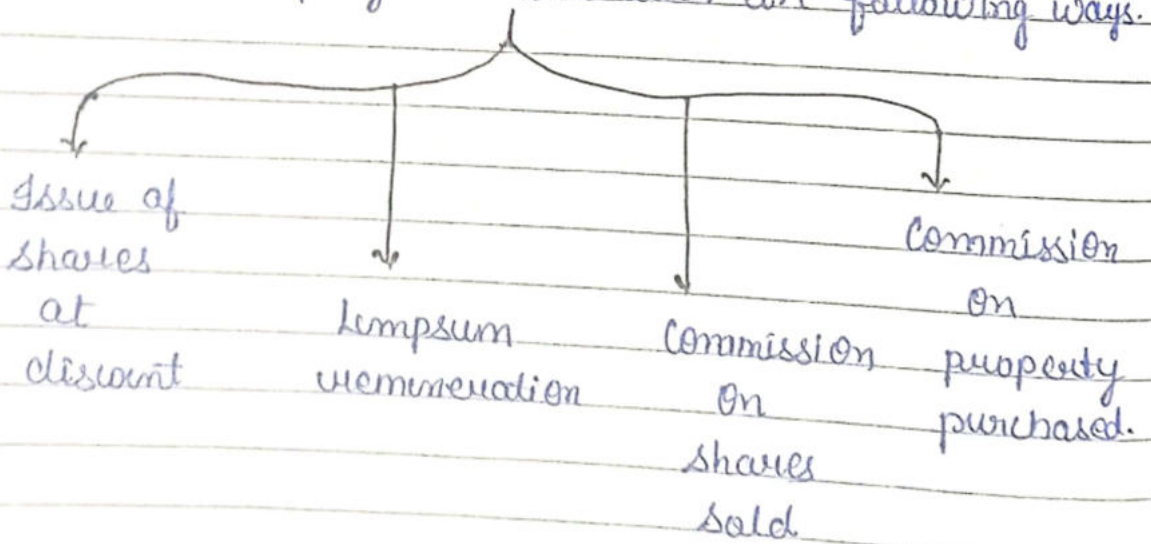
Que-1 Explain Promoter

Ans- (i) Refer definition - page no. 17 - ch 1 notes

(ii) Promoter is not the agent of the company since the company has not yet come into existence.

(iii) Promoters do not have right to receive remuneration or recover expenses incurred before incorporation of the co. Even if AOA provide for payment of remuneration or reimbursement of expenses, it is not binding on the company.

(iv) How ^{ever} Company remuneration in following ways.



(v) Promoters are allowed to make profit from the co but cannot make secret profit. They have to give full disclosure of profit, partial disclosure is not allowed.

If co. becomes aware of secret profit it can recovered from the promoter.

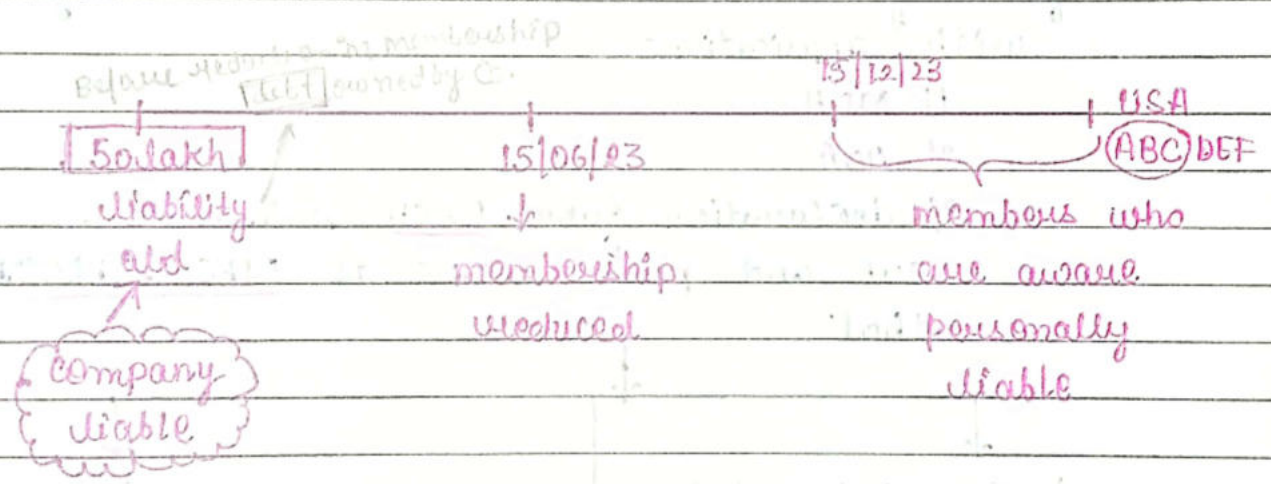
Que-2 Liability of members in case of reduction in membership Section 3(a)

Ans 1) If the no. of members is reduce before below the statutory limit (2/7) (Private/Public) AND

Business is carried on for more than 6 months with reduce membership.

THEN,

Member who are AWARE shall be personally liable for the debts contracted after 6 months



Que-3 Steps for Incorporating company - 1/37

Ans- 1) An application for registration of a company shall be filled with ROC (Registrar of Companies) within whose jurisdiction the registered office of the company is propose to be situated in prescribed form SPICE + INC-32 along with prescribed fees.

- 2) The promoter of the company should decide upon at least three suitable name in order of preference.
- 3) After getting the name approved, ROC will reserve the name for

20 days only
(Incorporation)

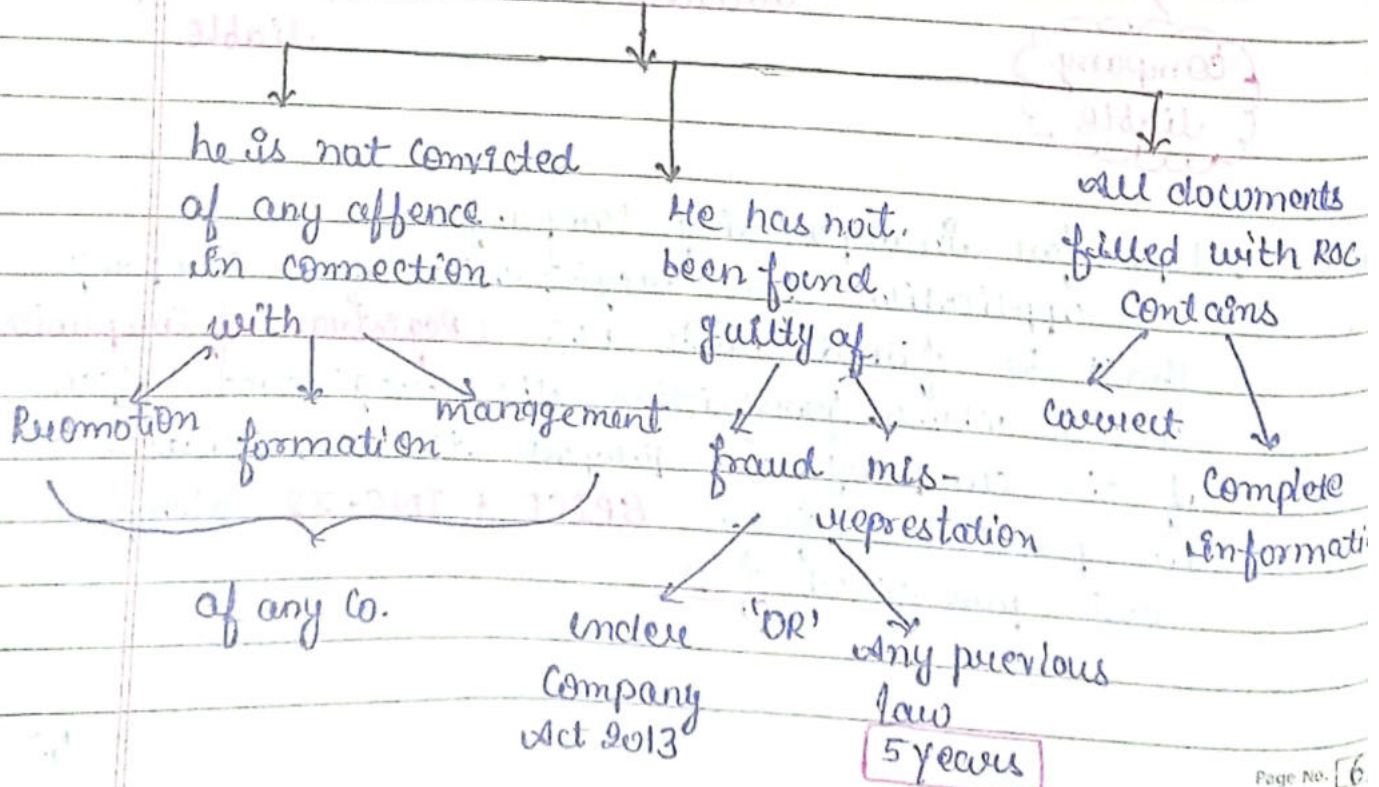
60 days only
(change of name of existing co.)

following documents shall be attached along with application -

1) MOA

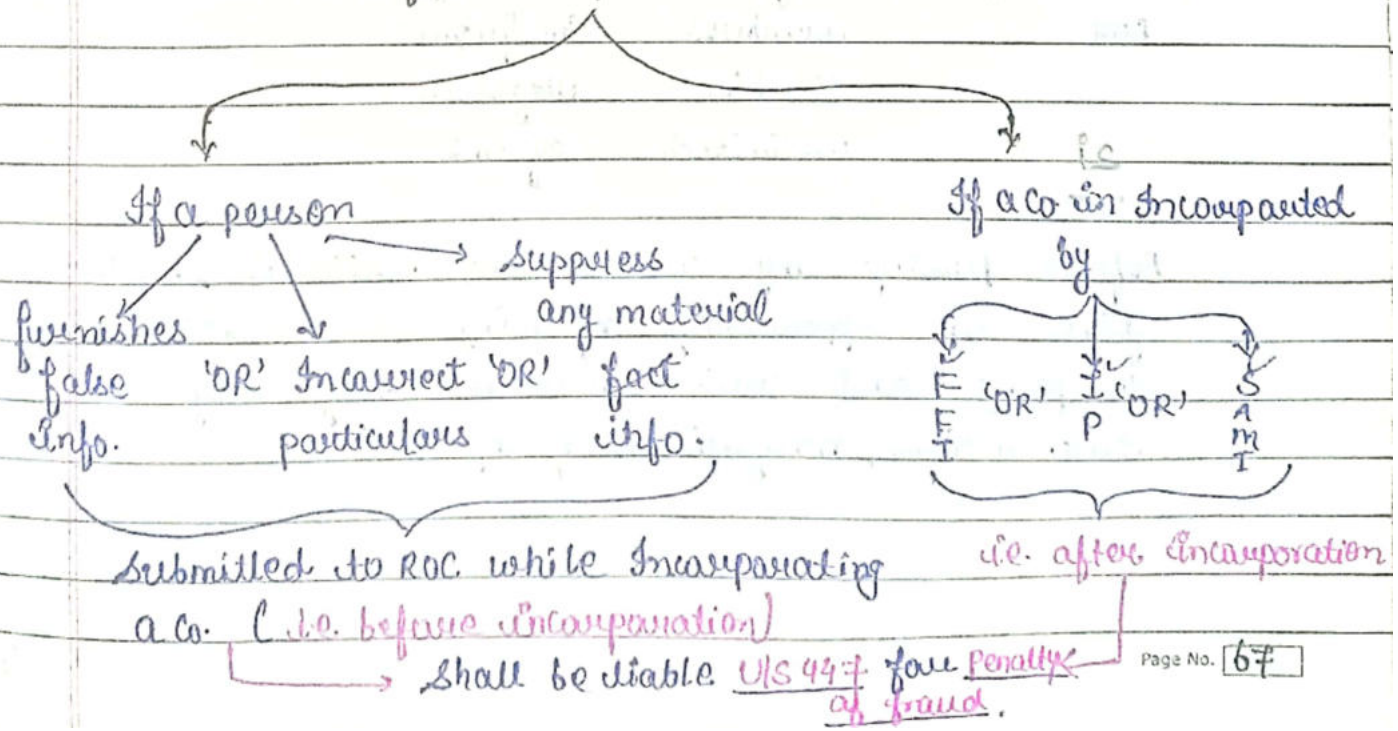
2) AOA

3) declaration from EACH subscriber to MOA and person name as FIRST DIRECTOR that



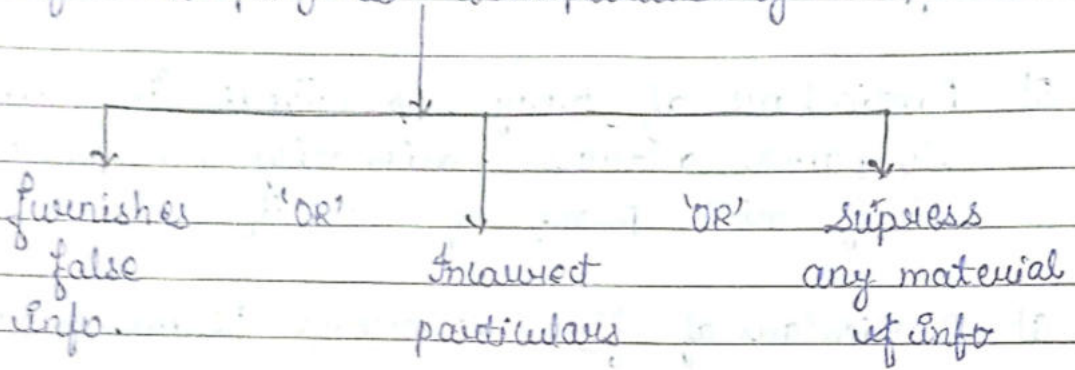
- 4) address for correspondence till its registered office is establish
- 5) Particulars of every subscribers (i.e. name, Surname, address, nationality, email, PAN etc.) along with proof of identity
- 6) Particulars of first directors (same as point 5)
- 7) Particulars of interest of FIRST DIRECTORS in other firms / bodies corporate along with consent to act as DIRECTORS
- 8) A company shall on and from 30th day of incorporation and at all times thereafter shall have a registered office capable of receiving and acknowledging all communication and notices as may be addressed to it.

Ques 4 Penalty for false and incorrect information at the time of incorporation.



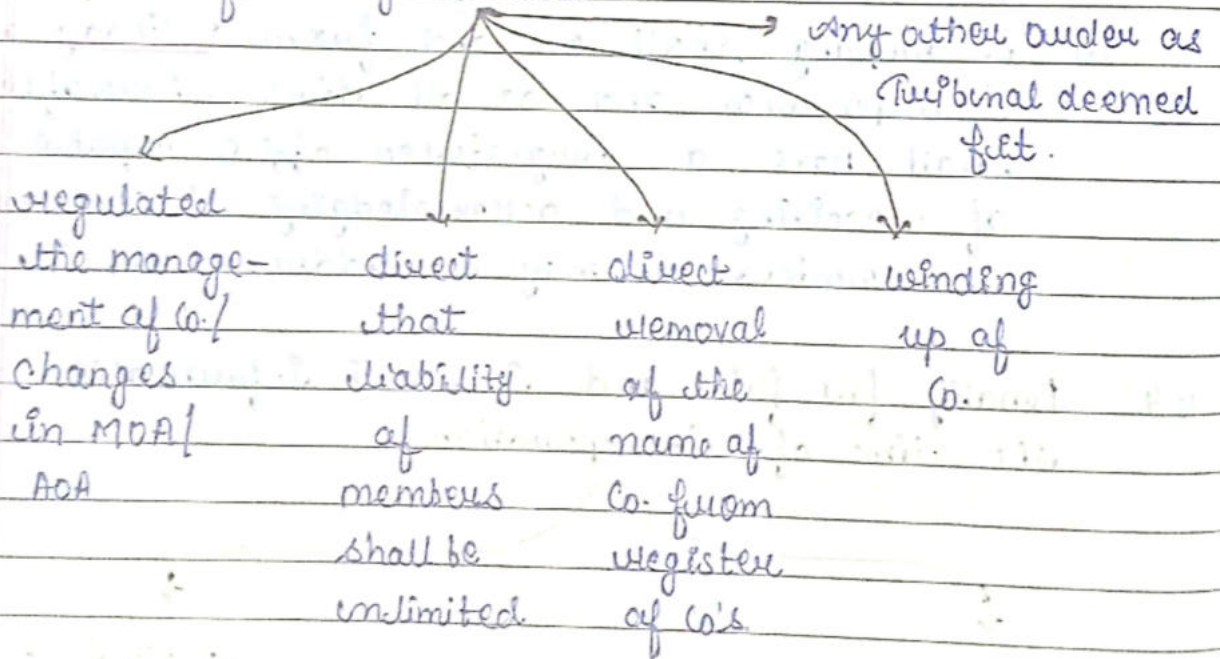
2) Power of Tribunal - V.Vimp. (Exam Que)

If a company is incorporated by -



then,

Tribunal on an application made to it may pass following orders -



Before passing any order the Tribunal shall give an opportunity of being heard to the company and will consider only any transactions, obligation, if any.

Jan 25 m 11:15
Ques-5

Most wanted Que
Explain Section 8 Co.

Ans-11 Name of a Pvt Co. should end with the word 'Pvt Co.' and name of a Public Co. should end with a word 'Ltd'. However, Section 8 gives the power to CbI to grant license to certain non-profit Co. to be registered as a Co. but without the word 'Ltd' or 'Pvt Ltd'.

1) Such NPO should have following objectives -

(a) promotion of arts, commerce, science, charity, religion, or any other useful object.

(b) Income should be applied for promoting the object and not for payment of dividend.

2) Such NPO can alter the object clause of MOA only with prior approval of CbI.

3) Such NPO also enjoys certain privileges e.g. a firm may become a member of section 8 Company unless it dissolve.

Jan 25 m 11:15

If sec 8 Co. contravene any condition the license granted by CbI is revoked before revocation an opportunity of being heard shall be given.

If a license is revoked and CbI satisfied that it is essential in public interest it may by order direct that



Date _____

Addition
of Pvt. Ltd/
Ltd. at the
end of its
name

Co. wound
up &
assets
on payment
of liabilities

Co. to be
amalgamated
with another
Co. having
similar
objects.

transfer to another
Co. having similar
objects subject to
condition imposed
by tribunal

'OR'

may be sold &
proceeds shall
be credited to
Insolvency &
bankruptcy fund
as per IBC, 2016.

If any provision of section 8 contravened

Co. is liable
for 10L-1Cr.

Director/officers
liable for
25K-25L

If affairs of Co. conducted fraudulently
then every officer is liable under section 447

Ques-6 Procedure of conversion of sec. 8 company into another company.

(A small co. & OPC cannot be incorporated / converted into section 8 co.)

Procedure -

1) Co = pass special resolution (SR) at general meeting along with explanatory statement to notice of such general meeting (G.M) for approving such conversion.

2) Co = file Form INC-18 with regional director along with prescribed fees + SR + Explanatory statement copy.

3) Co. = attach the proof of serving the notice to

- chief commission of income tax
- income tax officer
- charity commission
- Chief secretary of state where registered office is situated any other department / organisation

The above authorities shall submit their representation, if any to regional D/R within 60 days of receipt of notice.

4) A copy of application = filed → ROC

5) The Co. = within a week from submitting application to the regional D/R shall publish notice at its own EXPENSE

English
newspaper

OR
and

vernacular newspaper
in vernacular
language of the
district in which
registered office
is situated.

6) The notice shall also be placed on website of Co.

7) The Co. shall also file

financial
statement
(FS)

OR
and

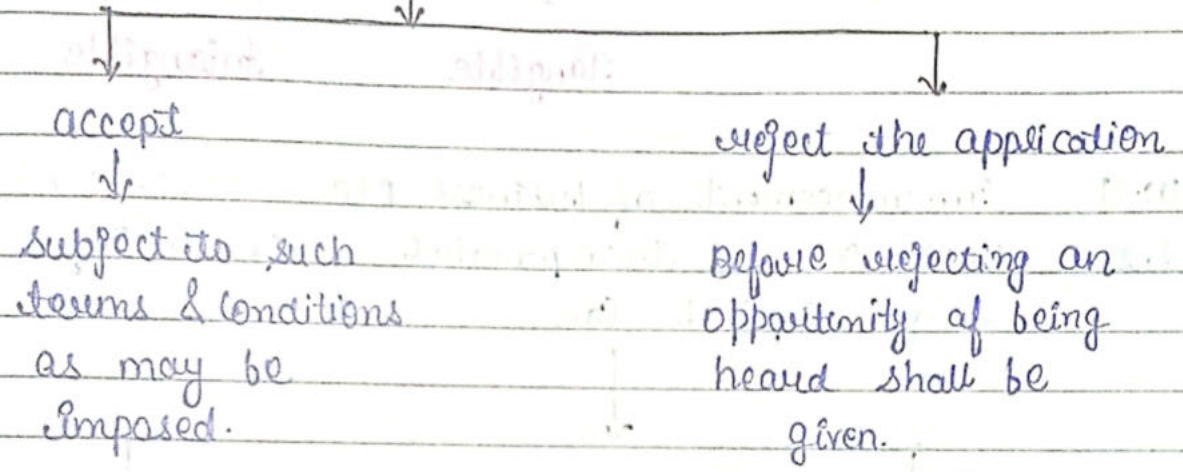
annual
return
(AR)

upto the FY preceding the submission of application to regional D/R

(If application is made after 3m of expiring of FY then a statement of financial position duly certified by CA made upto max 30 days preceding 3 -

- date of filing the application shall also be attached

8) The regional D/R

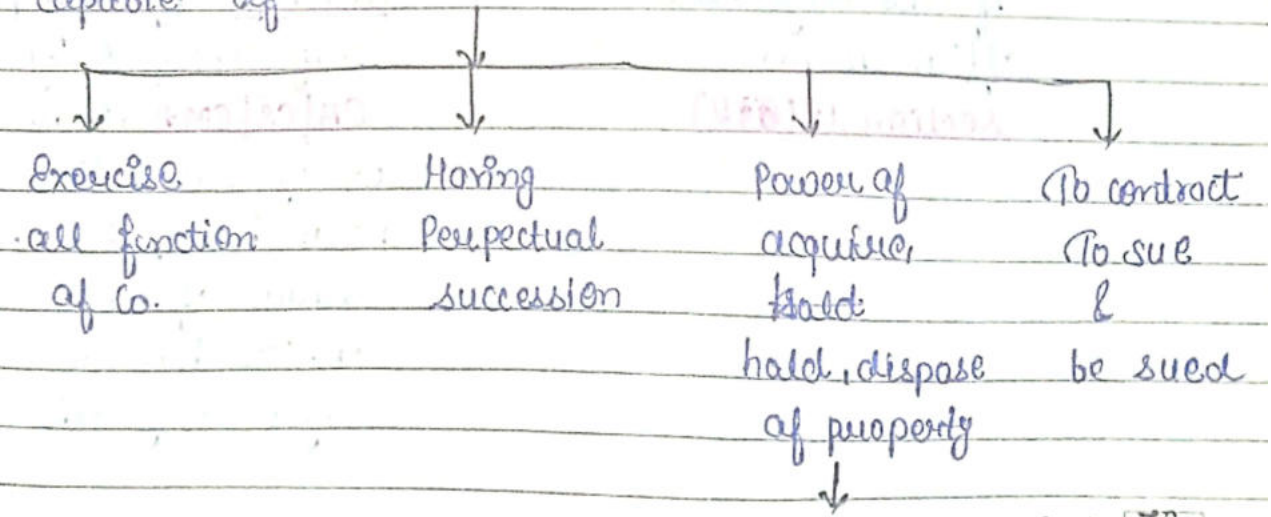


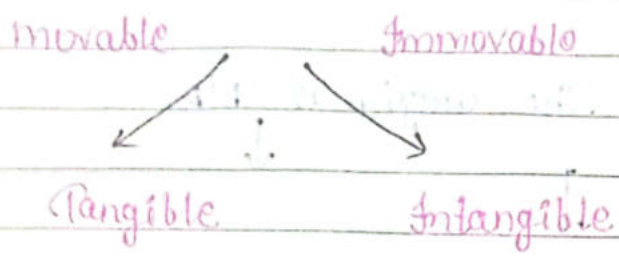
9) On receipt of approval from regional D/R, Co → file → all documents → ROC

10) On receipts of documents, ROC → register & issue fresh certificate of Incorporation (CoI)

Ques-7 effect of registration Section 9

Ans. Once a company is incorporated it shall be a body corporate by the name & shall be Capable of





Ques-8 Commencement of business Etc. Section 10(A)

Ans- Once Co. is incorporated & is having share capital can

Commence any business 'or' Exercise any borrowing power only if

(A) AND (B)

Co. = filed with ROC a verification of its registered office as per Section 12(1)(2)

DIR = filed a declaration with ROC within 180 days of incorporation duly certified by CA/CS/CMA that every subscriber to MoA has paid the value of shares which has been agreed by them.

1) If Co. require approval from RBI, SEBI, Etc.

Such approval shall also be attached with declaration.

2) If section 10A = Controversed

Co = ₹50,000

officer = 1000/day
subject to max ₹100,000

3) If NO DECLARATION has been filed by DIRECTORS within 180 days of Incorporation with ROC

AND

ROC = reasonable cause to believe that Co. is not carrying on any business or operations, he may initiate action for removal of the name of Co. from the register of COMPANY.

(Penalty will be also be levied)

15.04.24

Lecture 36

Effect of MOA & AOA — Section 10

1) Co. is bound to its members for all rights if rights are deprived.
member → Can sue → Co.

2) member bound to Co. for all paying call money, if money \neq paid. ^{not}
Co → can sue → member.

3) members bound inter se ^{with each other} with each other
members can enforce his right against another member through the Co. but not directly.

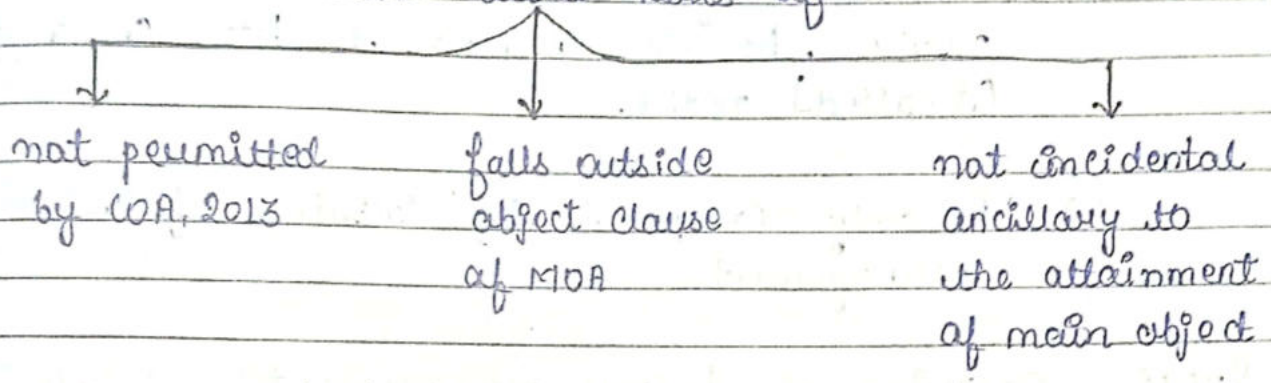
4) Co. is not bound to outsiders
Outsiders can't establish a contract only on basis of MOA/AOA.

If there is a contract which is independent of AOA then third party can sue the company i.e. company will be liable.

Que-10 Doctrine of ultra vires.

Ans- (i) It means beyond the power of Co.

(ii) An act is ultra vires if



(iii) Effects

(i) It is void ab initio

(ii) directors will be personally liable

(iii) Third party can sue directors for breach of loss

(iv) It cannot be ratified.

(v) Third party can obtain injunction order i.e. an order from court stopping the Co. from proceeding with ultra vires act.

(vi) Act can be legally ~~extended~~ exercised by the Co. only to altering object clause of MOA.

Que-11 Doctrine of constructive notice.

Ans- (i) Co. shall mandatorily file $\begin{matrix} \text{MOA} \\ \text{AOA} \end{matrix}$ Once filed,

It becomes public document.

(ii) This doctrine operates in favour of Co.

(iii) Third party is required to appraise himself with consent of $\begin{matrix} \text{MOA} \\ \text{AOA} \end{matrix}$ before contracting with the Co.

500

(iv) It is assumed that third party have read & understood the contents of MOA/AOA. If he does not have actual notice, he is deemed to have constructive (implied) notice.

(v) The only exception is doctrine of Indoor management.

Que-12 Doctrine of Indoor management - V.V. Imp

Ans- (i) Any outsider dealing with Co. is entitled to assume that internal management was done regularly where third party (TP) enters into contract with any director/officer of Co.

(ii) If there is some irregularity in internal proceedings, the contract is valid and enforceable against the Co.

(iii) The TP is required to be satisfied that contract is within the scope of MOA/AOA, he needs not enquire into the internal management of the Co.

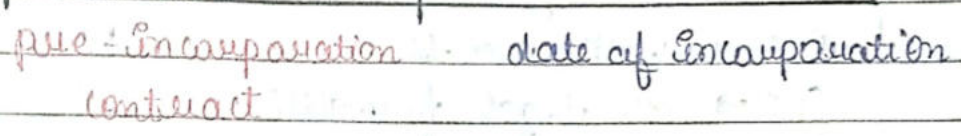
(iv) Exception to DOIM: **FRISK**

- Fraud
- Risk
- Illegal transaction
- Risk
- Suspicious circumstances / negligence of third party.
- No knowledge of AOA

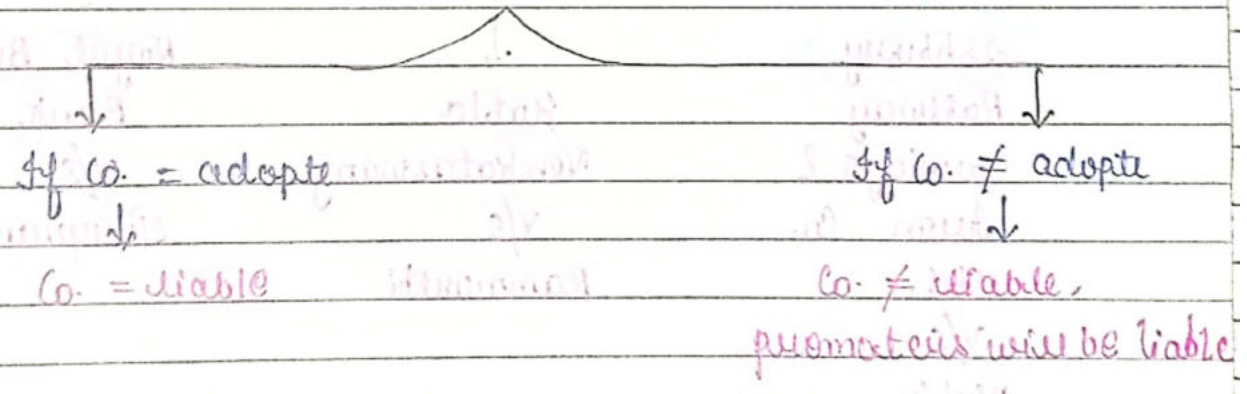
Que-13 Pre-Incorporation Contract.

Ans-

20/5/23



- (i) These are entered by promoters on behalf of the company
- (ii) These are entered before incorporation.
- (iii) These are void with respect to Co.
- (iv) Co. cannot ratify pre-incorporation contract as Co. was not in-existence.
- (v) Co. can adopt/novation pre-incorporation contract.



Que-14 Procedure for conversion of Public Co. into Pvt. Co. and vice-versa - Section 14

Ans.

Pvt Co. → Public

Public → Pvt Co.

1) BOD → BM → BR

✓

2) GM → SR, should be passed

✓

- ↑ members to 7

X

- ↑ Directors to 3

X

- delete Pvt. Ltd & Add. Ltd.

old. Pvt. Ltd. & delete Ltd.

- delete TRP

Add TRP

3) CG - approved

✓

- 4) SR copy + Cr app + altered MOA → sent + ROC within 15 days ✓
- 5) ROC → check and issue ✓
 CoI → all legal formalities have been complied with

DOCTRINES

