Chapter II

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL

Q	Section	Topic
1	2(69)	Promoters
2	5	Entrenchment Clause
3	5	Entrenchment Clause
4	5	Entrenchment Clause
5	10	MOA,AOA doesn't bind outsider
6	Doctrine	Ultra vires Act
7	Doctrine	Indoor management and Exceptions
8	Doctrine	Indoor management vs Constructive Notice
9	Doctrine	Exception to Indoor management
10	Doctrine	Exception to Indoor management
11	Doctrine	Exception to Indoor management
12	16	Name too identical to name of existing company
13	13	Procedure to alter Object clause
14	14	Procedure to alter AOA
15	3A	Reduction below statutory minimum
16	7	company incorporated by furnishing false or incorrect information
17	19	Subsidiary not to hold shares in holding
18	19	Subsidiary not to hold shares in holding
19	19	Subsidiary not to hold shares in holding
20	19	Subsidiary not to hold shares in holding

CA WALLAH

21	19	Subsidiary not to hold shares in holding
22	20	Service of Documents

PRACTICAL QUESTION	
Question 1	**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) (5 Marks) (MTP Dec 24)**
Law:	As per section 2(69) of companies Act,2013 (i)Promoter means a person a) who has been **named** as such in a **Prospectus**; or b) is identified by the Company in the **Annual Return**; c) who has **control** over the affairs of the company directly or indirectly, d) in accordance with whose advice, directions or instructions; the BOD of a company is accustomed to **Act**. **(ii)However, a person acting merely in a professional capacity shall not be regarded as promoter under point (d).**
Conclusion:	In present case, As the job profile of Mr. Kaushal is only limited to advise the Board of Directors on various compliance matters, strategies, business plans and risk matters relating to business of the company and that to only in a professional capacity, he will not be classified as a Promoter of XYZ Limited.

PRACTICAL QUESTION	
Question 2	Mr. Shyamlal is a B. Tech in computer science. He has promoted an IT start up and got it registered as a Private Limited Company. Initially, only he and his family members are holding all the shares in the company. While drafting the Articles of Association of the company, it has been included that Mr. Shyamlal will remain as a director of the company for lifetime.

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	Mr. Mehra, a close friend of Mr. Shyamlal has warned him (Mr. Shyamlal) that in future if 75% or more shares in the company are held by non- family members then by passing a Special Resolution, the relevant articles can be amended and Mr. Shyamlal may be removed from the post of director. Mr. Shyamlal has approached you to advise him for protecting his position as a director for lifetime. Give your answer as per the provisions of the Companies Act, 2013. (6 Marks) (MTP M 21)
Law:	As per the provisions of section 5 of the Companies Act, 2013, (i) Usually, an article of association may be altered by passing a special resolution but entrenchment makes it one difficult to change it. So, entrenchment means making something more protective. (ii)As per the provisions of sub-section (4) of section 5 of the Companies Act, 2013, the provisions of entrenchment shall only be made either on formation of a company, or by an amendment in the Articles of Association as agreed to by all the members of the company in the case of a private company and by a special resolution in case of a public company.
Conclusion:	In the said situation , the IT startup company is a private company. Therefore, Mr. Shyamlal can get the articles altered which is agreed to by all the members whereby the amended article will say that he can be removed from the post of director only if, say, 95% votes are cast in favour of the resolution and give notice of the same to the Registrar.

PRACTICAL QUESTION	
Question 3	Yadav Dairy Products Private limited has registered its articles along with memorandum at the time of registration of company in December, 2014. Now directors of the company are of the view that provisions of articles regarding forfeiture of shares should not be changed except by a resolution of 90% majority. While as per section 14 of the Companies Act, 2013 articles may be changed by passing a special resolution only. Hence, one of the directors is of the view that they cannot make a provision against the Companies Act, 2013. You are required to advise the company on this matter. (RTP MAY 2020)
Law:	(i) As per section 5 of the Companies Act, 2013 the article may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if more restrictive conditions than a special resolution, are met.

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	(ii) 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. (iii) 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 prescribed manner.
Conclusion:	In the present case, Yadav Dairy Products Private Limited is a private company and wants to protect provisions of articles regarding forfeiture of shares. It means it wants to make entrenchment of articles, which is allowed. But the company will have to pass a resolution taking permission of all the members and it should also give notice to Register of Companies regarding entrenchment of articles.

	4.The Articles of Association of a Company may contain provisions for entrenchment under Section 5 of the Companies Act, 2013. *What* is meant by entrenchment provisions in this context? Also State the relevant provisions of the said Act dealing with entrenchment provisions.(3 Marks)(Nov 2020) (MTP Oct. 22)
	<u>Entrenchment Clause</u> 1.Usually an AOA may be altered by passing special resolution but entrenchment makes it more difficult to change it. So entrenchment means making something more protective. 2.The AOA may contain the provisions for entrenchment, i.e. certain specified provisions of the articles can be altered only by complying with such conditions or procedures as are more restrictive than those as are applicable in case of a SR. 3.The provisions for entrenchment may be made at the time of formation of the company; or by an amendment of articles, (a) In case of a private company, with the consent of all the members; (b) In case of a public company, by passing Special Resolution. 4.Where the articles contains the provisions for entrenchment, the company shall give notice of such provisions to the Registrar: (i) In Form No. INC-2 & SPICe+ INC-32, as the case may be, at the time of incorporation of the company; (ii) In Form No. MGT-14, within 30 days from the date of entrenchment of the articles in case of existing companies.

PRACTICAL QUESTION	
Question 5	The Articles of a Public Company clearly stated that Mr. A will be the solicitor of the company. The company in its general meeting of the shareholders resolved unanimously to appoint B in place of A as the solicitor of the company by altering the articles of association. Examine,

	whether the company can do so? State the reasons clearly. Does it make any difference if A also member of the company (RTP May 2015) (RTP May 2016) (MAY 2013)
Law:	(i)According to Section 10(1) of the Companies Act, 2013, the memorandum and articles shall, when registered, 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 (ii) MoA and AoA binds a) Company to members b) Members to company c) Members Interse (iii)The Memorandum and Articles **do not bind** either the company or the members **to any third party**. (iv)Further, under Section 14 (1) subject to the provisions of this Act and to the conditions contained in the Memorandum, a company may, by a special resolution, alter its Articles.
Ref Case	**Eley v Positive Life Insurance Co**
Conclusion:	In the present case, (i)Since sec 10 do not bind outsiders so A can be terminated ,the company has altered the Articles by a unanimous resolution of the members passed at a general meeting. Hence, the alteration is valid and after registration of the altered Articles, the appointment of B will stand and A will be terminated. (ii)No it doesn't make any difference if he is also member of company as being solicitor is not right attached with membership

PRACTICAL QUESTION	
Question 6	The object clause of the Memorandum of Association of Miranda Private Ltd, Kolkata authorized it to do trading in fruits and vegetables. The company, however, entered into a Partnership with Mr. Karan and traded in steel and incurred liabilities to Mr. Karan. The company, subsequently, refused to admit the liability to Karan on the ground that the deal was 'Ultra Vires' the company. Examine the validity of the company's refusal to admit the liability to Karan. Give reasons in support of your answer. (RTP Nov 2016)

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Law:	As per Doctrine of Ultra Vires, the acts beyond the powers of a company/Memorandum/object clause are ultra vires and void and cannot be ratified even though every member of the company may give his consent [Ashbury Railway Carriage Company Vs Richee]
Conclusion:	Miranda Pvt. Ltd is authorized to trade directly on fruits and vegetables. It has no power to enter into a partnership for iron and steel with Mr. Karan. Such act cannot be treated as being within either the 'express' or 'implied' powers of the company. Mr. Karan who entered into partnership is deemed to be aware of the lack of powers of Miranda Pvt. Ltd. In the light of the above, Mr. Karan cannot enforce the agreement or liability against Miranda Pvt. Ltd under the Companies Act, 2013. Mr. Karan should be advised accordingly.

	7.The Doctrine of Indoor Management always protects the persons (outsiders) dealing with a company." Explain the above statement. Also, state the exceptions to the above rule(MAY 2015) (NOV 2018) (MTP Sep 22)
	<u>**Doctrine of Indoor Management**</u> (i)As per this doctrine, outsiders dealing with the company are not required to enquire into the internal management of the company. (ii)Outsiders dealing with the company are entitled to assume that as far as internal proceedings of the company are concerned, everything has been done regularly. (iii)If not, company is in fault and cannot deny liability on said ground (iv)Thus, the doctrine protects an innocent outsider from any irregularity present in the working of the company <u>**Exceptions to Doctrine of Indoor Management**</u> Relief on the ground of 'indoor management' cannot be claimed by an outsider dealing with the company in the following circumstances: 1. **Knowledge of irregularity** - In case this '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**.** 2. **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. 3. **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. 4. Where the **question** is in regard to the very **existence of an agency.** 5. Where a **pre-condition** is required to be fulfilled before company itself can exercise a particular power. In other words, the act done is not merely ultra vires the directors/officers but ultra vires the company itself.

	8.The role of doctrine of 'Indoor management' is opposed to that of the role of 'Constructive notice'. Comment on this statement with reference to the Companies Act, 2013.(6 Marks) (MTP Nov. 23)
	Yes **doctrine of 'Indoor management' is opposed to that of the role of 'Constructive notice' because of following reasons** (i)It protects outsiders from company whereas **'Constructive notice** protects company from outsiders. (ii) In Constructive notice outsider is at fault whereas in indoor management company is at fault (iii)In Constructive notice outsider is presumed to have knowledge of Moa and AoA whereas in indoor management he is presumed that all internal proceeding are done regularly (iv)Constructive notice makes contract void whereas Indoor management makes contract valid

PRACTICAL QUESTION	
Question 9	The directors of Smart Computers limited borrowed a sum of money from Mr. Tridev. The company's articles provided that the directors may borrow on bonds such sums as may, from time to time, be authorized by resolution passed at a general meeting of the company. The shareholders claimed that there had been no such resolution authorizing the loan, and therefore, it was taken without their authority and the company is not bound to repay the loan to Tridev. In the light of the contention of shareholders, decide whether the company is bound to pay the loan.(MTP MAY 2020) (NOV 2016)
Law:	**Doctrine of Indoor Management:** According to this doctrine, persons dealing with the company need not enquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that

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	the transaction is in accordance with the memorandum and articles of association.
Ref Case	Royal British Bank vs Turquand.
Conclusion:	In the given question, Mr. Tridev being a person external to the company, need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. Even if the shareholders claim that no resolution authorizing the loan was passed, the company is bound to pay the loan to Mr. Tridev.

PRACTICAL QUESTION	
Question 10	The Secretary of a company issued a share certificate to 'A' under the company's seal with his own signature and the signature of a Director forged by him. 'A' borrowed money from 'B' on the strength of this certificate. 'B' wanted to realize the security and requested the company to register him as a holder of the shares. Explain whether 'B' will succeed in getting the share registered in his name. (RTP Nov 2013)
Law:	As per doctrine of Indoor Management which says that persons dealing with the company are entitled to assume that the acts of the directors or the officers of the company are validly performed, if they are within the scope of their apparent authority. The rule of Indoor Management is not applicable if the transaction involves **forgery.** A company can never be held bound for forgeries committed by its officers.
Ref case	**Ruben vs Great Fingall consolidated company.**
Conclusion:	In the stated problem, the doctrine of indoor management can apply only in case of irregularities which might otherwise affect the transaction, but it cannot apply to forgery which must be regarded as nullity. Hence, 'B' will not succeed in getting the share registered in his name.

PRACTICAL QUESTION	
Question 11	Under the Articles of Association of ABC Ltd. Company, directors had power to borrow up to ₹ 10,000 without the consent of the general meeting. The Directors themselves lent ₹ 35,000 to the company without such consent and took debentures of the Company. Decide under the provisions of the Companies Act, 2013, whether the company is liable? If

	so, what is the extent of liability of the company in this case? (MTP MAY 2013)
Law:	As per exception to doctrine of Indoor management, where a person dealing with a company has actual or constructive notice of the irregularity as regards internal management, he cannot claim the benefit under the rule of indoor management and such contract will not be enforceable on the company.
Ref case	**Howard vs Patent Ivory Manufacturing Company**
Conclusion:	In this case, the directors of a company could borrow any amount up to ₹ 10,000/- without the resolution of the company in a general meeting. But for any amount beyond ₹ 10,000/- they had to obtain the consent of the shareholders in a general meeting. The directors themselves lent ₹ 35,000/- to the company without such consent and took debentures. The directors had the notice of the internal irregularity and hence the company was liable to them only for ₹ 10,000/-.

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PRACTICAL QUESTION	
Question 12	**Paritosh and friends got registered a company in the name of Taxmann advisory Private Limited.Taxmann is a registered trademark. After 5 years when the owner of trademark came to know about the same, it filed an application with relevant authority. Can the company be compelled to change its name by the owner of trademark? Can the owner of registered trademark request the company and then company changes its name at its discretion? (April 22)(6 Marks) (RTP Mar 23)**
Law:	**According to section 16 of the Companies Act, 2013** (i)if a company is registered by a name which,in the opinion of the Central Government, is identical with the name by which a company.had been previously registered, it may direct the company to change its name. Then the company shall by passing an ordinary resolution change its name within 3 months. (ii)If it is identical with a registered trade mark and owner of that trade mark apply to the Central Government within three years of incorporation of registration of the company, it may direct the company to change its name. Then the company shall change its name by passing an ordinary resolution within 3 months.

Conclusion:	In the given case, owner of registered trade- mark is filing objection after 5 years of registration of company with identical name. While it should have filed the same within 3 years. Therefore, the company cannot be compelled to change its name. As per section 13, company can anytime change its name by passing a special resolution and taking approval of Central Government. Therefore, if owner of registered trademark requests the company for change of its name and the company accepts the same then it can change its name voluntarily by following the provisions of section 13.

	13.Rishi Pharmacy Ltd. decided to take up the business of food processing because of the downward trend in pharmacy business. There is no provision in the object clause of the Memorandum of Association to enable the company to carry on such business. State whether its object clause can be amended? Mention briefly the procedure to be adopted for change in the object clause. (MAY 2016)
	<u>Procedure to alter Object Clause</u> Company can pursue only that object which is mentioned in object clause of memorandum. Any contract not supported by object clause of MOA is void ab initio Following are procedure to alter object clause of MOA (i) A company may alter its object clause by **passing SR**. (ii) If a company has raised money from the public by issue of a prospectus, and any part of it **remains unutilized** with the company, then the company shall alter its objects for which it raised the money through prospectus if following conditions are satisfied: a) the company has **published** the prescribed details and justification for such alteration in 2 -newspapers (one English newspaper and one newspaper in vernacular language) circulating at the place where the registered office of the company is situated; b) the prescribed details and justification for such change have been **placed on the website** of the company, if any, and c) the **dissenting shareholders have been given an exit opportunity** by the promoters and shareholders having control in accordance with the regulations to be specified by SEBI (iii)The company shall file a copy of SR with the Registrar within 30 days. (iv)The Registrar shall register the alteration and issue a certificate of registration within 30 days of receipt of the SR.

	14.The Board of Directors of Sindhu Limited wants to make some changes and to alter some Clauses of the Articles of Association which are to be urgently carried out, which include the increase in Authorized Capital of the company, issue of shares, increase in borrowing limits and increase in the number of directors. Discuss about the provisions of the Companies Act, 2013 to be followed for alteration of Articles of Association. (RTP NOV 2018)
	<u>Alteration of Articles of Association</u> Section 14 of the Companies Act, 2013, vests companies with power to alter its articles. The law with respect to alteration of articles is as follows: (i)A company may alter its articles by a special resolution, subject to the provisions of this Act and the conditions contained in its memorandum. (ii)Every alteration of the articles and a copy of the order of the Central Government approving the alteration, shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of **fifteen days** in Form No. INC 27

PRACTICAL QUESTION	
Question 15	**Red Limited was incorporated on 1st April, 2014 is facing severe effects of depression of the economy. Owing to its bad financial status most of the members have started withdrawing their holding from the company. The company had 250 members on 10th January, 2019. By 15th January, 2019, 244 members had withdrawn their holding. No new member has invested in the company after 15th February till date. Now, Mr. A, an existing member has approached you to advise him regarding his liabilities in such a situation. (RTP NOV 2019)**
Law:	As per sec 3A of the Companies Act, 2013, If at any time the number of members of a company is **reduced below 2/7,** {in the case of a private company, **below 2,** and in the case of a public company, **below 7}, and** the company **carries on business** for **more than 6 months** while the number of members is so reduced, **Every person who is a member** of the company during the time that it so carries on business after those 6 months **and is cognizant of the fact** that it is carrying on business with less than 2/7 members, shall be severally liable (personally liable) for the payment of the whole debts of the company contracted during that time
Conclusion:	In present case , since 244 out of 250 members has withdrawn membership is restricted to 6 i.e less than 7 if the membership remains less than 7 till 6 months from 10th January , every contract entered by company after that

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	will make personally liable to A and all existing members who knew about such reduction.

	16.ABC Pvt. Ltd., a company that has been operational for two years, was incorporated with the submission of false information and suppression of material facts. The company's founders, Mr. X and Ms. Y, provided incorrect financial statements and concealed significant liabilities during the incorporation process. This misrepresentation was recently uncovered during an internal audit initiated by the company's new CFO, Mr. Z.Upon discovering these fraudulent actions, Mr. Z has filed an application with the National Company Law Tribunal (NCLT). Explain the provisions of the Companies Act, 2013 in respect where a company has been incorporated by furnishing false or incorrect information. (RTP sep 24)
	<u>company incorporated by furnishing false or incorrect information</u> According to 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— (a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or (b) direct that liability of the members shall be unlimited; or (c) direct removal of the name of the company from the register of companies; or (d) pass an order for the winding up of the company; or (e) pass such other orders as it may deem fit. However, before making any order under this sub-section, - (i) the company shall be given a reasonable opportunity of being heard in the matter; and (ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

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PRACTICAL QUESTION	
Question 17	***As at 31st March, 2018, the paid up share capital of S Ltd. is ` 1,00,00,000 divided into 10,00,000 equity shares of ` 10 each. Of this, H Ltd. is holding 6,00,000 equity shares and 4,00,000 equity shares are held by others. Simultaneously, S Ltd. is holding 5% equity shares of H Ltd. out of which 1% shares are held as a legal representative of a deceased member of H Ltd. On the basis of the given information, examine and answer the***

	following queries with reference to the provisions of the Companies Act, 2013 : (MAY 2019) ***(i)Can S Ltd. make further investment in equity shares of H Ltd. during 2018-19?*** ***(ii)Can S Ltd. exercise voting rights at Annual general meeting of H Ltd.?*** ***(iii)Can H Ltd. allot or transfer some of its shares to S Ltd.?***
Law:	(i) Section 2(87) provides that a company shall be deemed to be a subsidiary of another, if any of the following conditions are satisfied: (a) That other controls the **composition of its board of directors**; (b) That other 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; or through its Subsidiaries (ii) As per sec 19 of the Companies Act, 2013 a) A **subsidiary company shall not hold any shares** in its **holding company** either itself or through its nominee. b) **A holding company shall not allot** or transfer its shares to any of its subsidiary companies and if so done, it shall be void. Sec. 19 is **not applicable** to a case: (a) where the subsidiary company holds such shares as the **legal representative** of a deceased member of the holding company; or (b) where the subsidiary company holds such shares **as a trustee**; or (c) where the subsidiary company is a **shareholder even before it became a subsidiary company** of the holding company: However, the subsidiary company to whom section 19 does not apply, shall have a right to vote at a meeting of the holding company only in case (a) or (b) mentioned above.
Conclusion:	In the instant case, (i) As per the provisions of sub-section (1) of Section 19 of the Companies Act, 2013, no company shall, either by itself or through its nominees, hold any shares in its holding company. Therefore, S Ltd. cannot make further investment in equity shares of H Ltd. during 2018-19. (ii) As per second proviso to Section 19, a subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee. Therefore, S Ltd. can exercise voting rights at the Annual General Meeting of H Ltd. only in

	respect of 1% shares held as a legal representative of a deceased member of H Ltd. (iii) Section 19 also provides that no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void. Therefore, H Ltd. cannot allot or transfer some of its shares to S Ltd.

PRACTICAL QUESTION	
Question 18	**Octagon Limited is holding 58% of the paid up share capital of Pentagon Limited. Vijay, one of the shareholders of Octagon Limited, holding 10% shares of the company, has made a charitable trust. He donated his 10% shareholding in Octagon Limited and ` 20 crore to the trust. He appointed Pentagon Limited as the trustee. All the assets of the trust are held in the name of Pentagon Limited.As per the provisions of the Companies Act, 2013, decide whether Pentagon Limited can hold shares of Octagon Limited.(6 Marks) (MTP Sep. 22) (5 Marks) (MTP Aug 24)**
Law:	Hint – similar to above question
Conclusion:	In the given case, one of the shareholders of holding company (Octagon Limited) has transferred his shares in the holding company to a trust where the shares will be held by subsidiary company (Pentagon Limited). It means now subsidiary will hold shares in the holding company. But it will hold shares in the capacity of a trustee. Therefore, we can conclude that in the given situation Pentagon Limited can hold shares in Octagon Limited.

PRACTICAL QUESTION	
Question 19	**ABC Limited issued equity shares worth 1,00,000 (10,000 shares of 10 each) on 1st April, 2023 which has been fully subscribed, whereby XYZ Limited holds 3,500 equity shares and PQR Limited holds 2,500 equity shares. Prior to the issue of equity shares, ABC Limited already hold 20% of the equity shares of MNP Limited. Further, XYZ Limited holds 10% of MNP Limited's equity shares as a trustee. MNP Limited controls the composition of the Board of Directors of XYZ Limited and PQR Limited on 01.07.2023. Examine with reference to the relevant provisions of the Companies Act, 2013 —** **(i) Whether ABC Limited is a subsidiary of MNP Limited ?** **(ii) Whether ABC Limited and XYZ Limited have the right to vote on the Annual General Meeting of MNP Limited held on 30th September, 2023 ? (Nov 23) 5 Marks**

Law:	Similar to above question
Conclusion:	In present case , (i)since **MNP Limited controls the composition of the Board of Directors of XYZ Limited and PQR Limited they are subsidiaries of MNP ltd and since XYZ Limited holds 3,500 equity shares and PQR Limited holds 2,500 equity shares i.e subsidiaries of MNP holds more than half of its voting rights(6000 out of 10000 shares) in ABC ltd , ABC ltd is subsidiary of MNP ltd** (ii)ABC ltd has no voting rights in MNP ltd as it held shares before becoming subsidiary but **XYZ Limited have the right to vote on the Annual General Meeting of MNP Limited as it held shares as a trustee**

PRACTICAL QUESTION	
Question 20	S Ltd acquired 10% paid up share capital of H Ltd on 15th March 2017. H Ltd acquired 55% paid up share capital of S Ltd on 10th March 2018. H Ltd. on 25th September, 2020 decided to issue bonus shares in the ratio of 1:1 to the existing shareholders. Accordingly, bonus shares were allotted to S Ltd. Examine under the provisions of the Companies Act, 2013 and decide *(i)* the validity of holding of shares by S Ltd. in H Ltd. *(ii)* allotment of Bonus shares by H Ltd. to S Ltd. (Nov 2020)
Law:	As per Section 19 of the Companies Act, 2013, no company shall, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void. However, this shall not apply where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.
Conclusion:	In the given case, H Ltd. has acquired 55% paid up share capital of S Ltd. on 10th March 2018. Whereas, S Ltd. has been holding 10% paid up share capital of H Ltd. since 15th March, 2017. The said instance as asked in the question falls under the exception stated above. Therefore - (i) Holding of shares by S Ltd. in H Ltd. is valid in view of the proviso (c) to sub-section of section 19 of the Act, which states that the restrictions of

	provisions of section 19(1) will not be applicable where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company. (ii) Allotment of bonus shares by H Ltd. to S Ltd. is also valid in view of the above proviso.

PRACTICAL QUESTION	
Question 21	New Ltd. is a company in which Old Ltd. is holding 65% of its paid up share capital. One of the shareholder of Old Ltd. made a charitable trust and donated his 10% shares in Old Ltd. and `50 crore to the trust. He appoints New Ltd. as the trustee. All the assets of the trust are held in the name of New Ltd. Can a subsidiary hold shares in its holding company in this way? (MTP Sept 24)
Law:	According to section 19 of the Companies Act, 2013 a company shall not hold any shares in its holding company either by itself or through its nominees. Also, holding company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void. Following are the exceptions to the above rule: **a)** where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or **b)** where the subsidiary company holds such shares as a trustee; or **c)** where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company but in this case it will not have a right to vote in the meeting of holding company.
Conclusion:	In the given case one of the shareholders of holding company has transferred his shares in the holding company to a trust where the shares will be held by subsidiary company. It means now subsidiary will hold shares in the holding company. But it will hold shares in the capacity of a trustee. Therefore, we can conclude that in the given situation New Ltd. can hold shares in Old Ltd.

	22.Explain the provisions of the Companies Act, 2013 relating to the 'Service of Documents' on a company and the members of the company? (MTP May 25)
	Service of Documents Under section 20 of the Companies Act, 2013 (i)a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed. (ii) However, in case where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode. (iii)Under section 20(2), save as provided in the Act or the rule thereunder for filing of documents with the registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed. (iv) However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

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