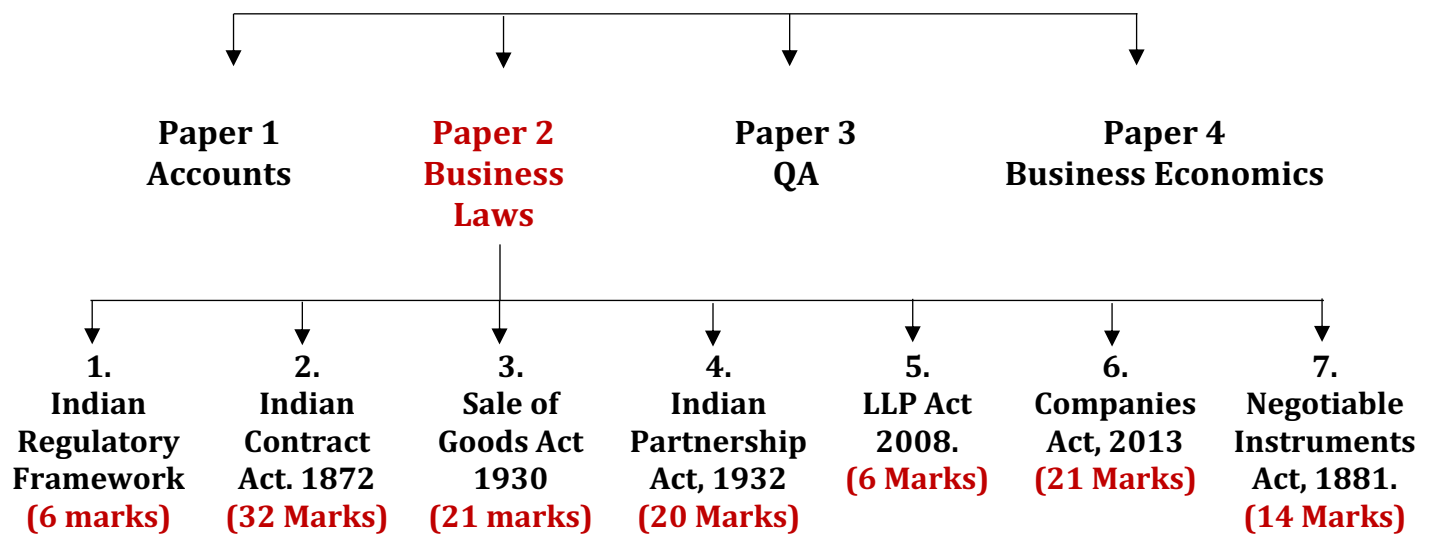


The Companies Act 2013

CA FOUNDATION



The Companies Act, 2013

Introduction

Companies Act 1956



1. To simplify the regulations



2. To improve corporate governance

Management of company



3. To strengthen the interest of 'Minority investors'

Shareholders less than or equal to 50% shares.



4. To protect the 'whistle Blowers.'

Employee of the company who discloses Fraud within company



5. To provide 'Class Action Suit'

Class Action Suit



Class of persons
E.g. Shareholders,
Customers



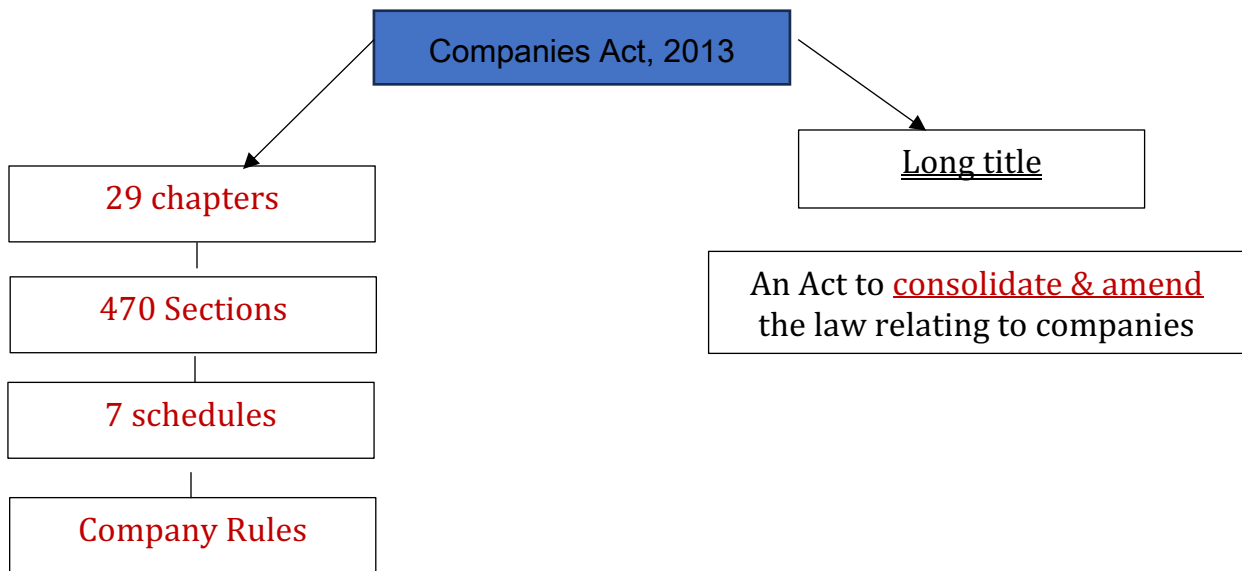
Common Cause of action [same
reason for filing suit]



a single civil-Case on
behalf of all

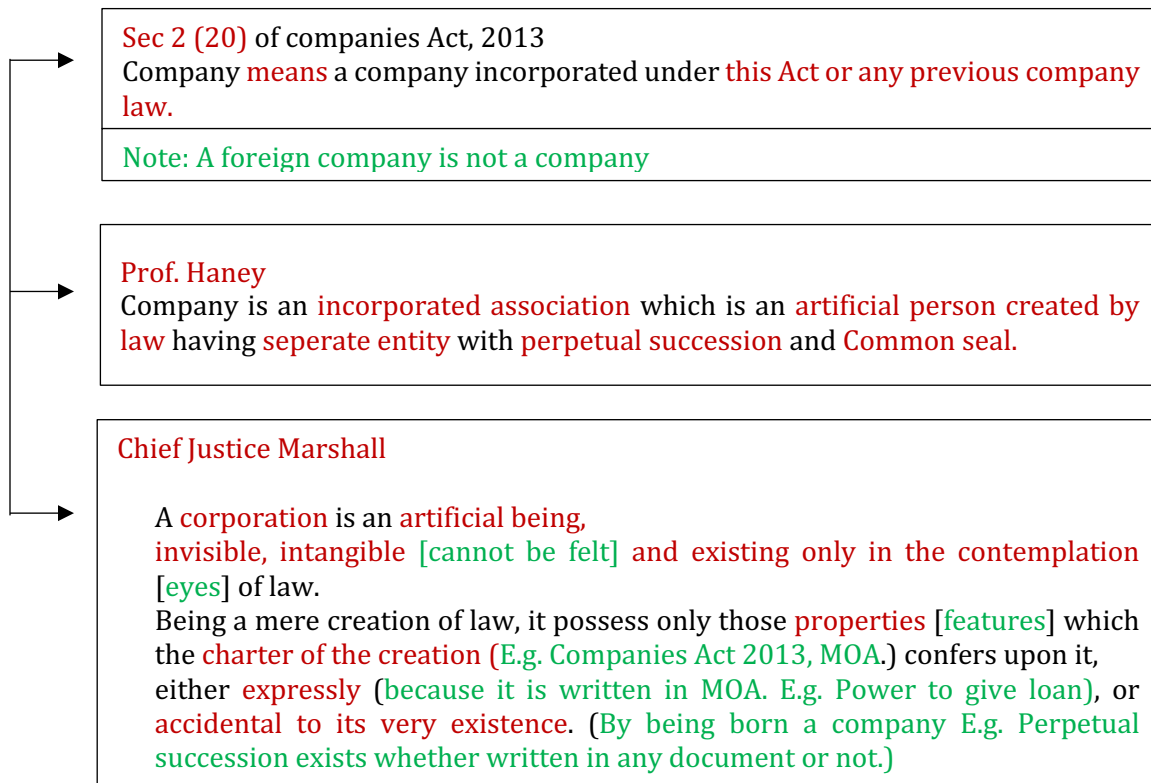


Companies Act, 2013



Whenever the phrase 'as may be prescribed' appears in the Companies Act, 2013, the power to make Rules thereon is delegated to the Ministry of Corporate Affairs. (jahaan jahaan 'prescribed', wahaan wahaan Rules)

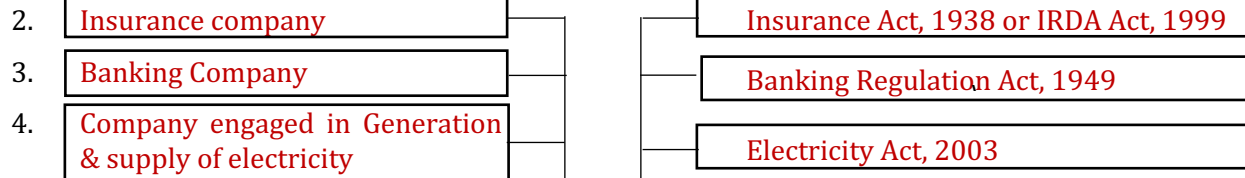
Definitions of Company



Applicability of Companies Act, 2013

Companies Act 2013 is applicable to :

1. Company incorporated under this Act or under any previous company law.



to the extent the provisions of companies Act are **not inconsistent** with the provisions of

5. Company governed under any Special Act, e.g. SBI, LIC
6. Any Body Corporate which the central government CG Shall by notification specify.
E.g.: Flipkart Pvt. Ltd is a company Incorporated in Singapore, however it conducts all its business activities in India. Since Flipkart Pvt. Ltd. is a Foreign company it is not covered by the companies Act 2013. However if CG wishes to covered Flipkart within the Act, it shall notify the same in the Official Gazette.

Features / characteristics of Company

1. Separate Legal Entity-

- A Company at law is a **person altogether different from the subscribers** to the memorandum. [First members]
- Company **can hold property, sued and be sued in its own name, raise loan, open bank account and incur liability and enter into contract in its own name.**
- Since members are different from company, **members can Contract with the company.**
- **Creditors of the company can sue company alone, and not its members.**
- Even though a member contributes asset and capital in the company, he is **not the owner of the assets of the company.** [Company's assets belong to company alone.] Thus, a **member does not have insurable interest in the assets** of the company. [Case Law: **Macaura vs Northern Assurance Company Ltd.**]

2. Perpetual succession-

- **Members may die or change**, but a **company goes on until it is wound up.**
- **Shares** of the company may **change hands infinitely.** However it **does not affect the existence of the company.**
- Company being an artificial person created by law, **law alone can bring the end to its life.**

3. Limited Liability-

- In case of company limited by Shares, the liability of the members is limited to the extent of unpaid amount, if any, on the shares held by them.
- If a company is limited by Guarantee, the liability of the members is limited upto the amount that they have agreed to contribute to the assets of the company in the event of winding up.
- For an Unlimited Company, there is no limit on the liability of members upon winding up. (Note: Liability is limited till winding-up)

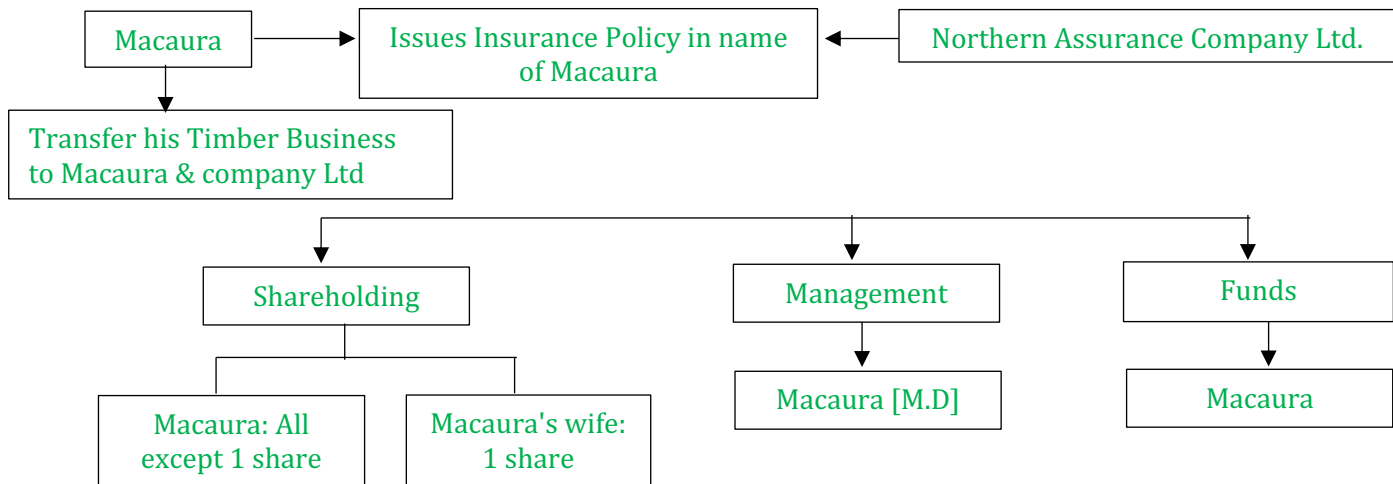
4. Artificial Legal Person-

- Company, being an artificial person, it is formed by a process other than natural birth.
- It can hold property sue and be sued, raise loan, open a bank account, incur liability of enter into contract in its own name.
- It can do anything which a natural person can do, except of course it cannot be sent to jail, it cannot take oath, it cannot marry or it cannot practice any learned profession.
- Since Company is an artificial person it operates through human agents. The directors are the agents of the company but not agents of its members.

5. Common Seal-

- Common seal is the official signature of the company.
- It is a symbol of its incorporation.
- In India, the requirement of common seal has been made optional by the Companies (Amendment) Act, 2015 which omitted the word "common seal" from Section 9 of the companies Act, 2013 [Features of Company]. This is because a common seal is seen as a relic of medieval times. It has optional in UK since 2006.
- In absence of common seal, any document of the company may be authenticated by the signatures of two directors or a director and the Company Secretary, if company has appointed a company secretary.

Case Law:



Northern Assurance Co. Ltd.: Wins

Because a company is a Separate Legal Entity. Therefore Insurance taken by Macaura for the timber belonging to Macaura & Co Ltd is invalid as Macaura lacks Insurable Interest in the Timber belonging to the company.

Doctrine of Corporate veil & lifting of corporate veil

- The corporate veil refers to a concept where a **company is identified separately from its members.**
- The company is considered liable for its own actions and the **members are shielded / insulated** (protected) from the companies' actions.
- This concept was stated in the **landmark case of Salomon vs Salomon and company. Ltd.** In this case it was held that **company is, at law, not an agent or a trustee of its members.**

Lifting of Corporate Veil

- **Lifting or piercing of corporate veil** refers to a concept where the **courts disregard the corporate character of a company and instead pay regards to the realities behind the legal facade** (curtain).
- That is courts **concern themselves with the members and managers and ignore the company** of a separate person.
- Only in **appropriate circumstances** the courts are willing to lift the corporate veil, that too **when the question of control is involved rather than question of mere ownership.**

The courts are willing to lift the corporate veil in the following circumstances:

1. **To determine the character of the company:**

A company does not have a mind or conscience. Therefore it cannot be a friend or foe. Therefore the character of a company is determined based on the character of the persons at the helm (top) of the company.

Case law: **Daimler Co Ltd Vs Continental Tyre & Rubber Company**

2. **To protect revenues/tax:**

If the sole purpose of the company is to evade [avoid] payment of taxes, then the company is a sham and fraud. In such case the corporate veil is lifted and the income of the company is added to the income of the assessee (taxpayer).

Case law: **Dinshaw Maneckjee Petit.**

3. **To avoid legal obligation:**

Where the sole purpose of the company is to use it as a device [mechanism], to avoid legal obligation such as payment of bonuses to its employees, in such case the corporate veil is lifted and the company is considered to be a sham and fraud.

Case Law: **Workmen of Associated Rubber Industries Ltd Vs Associated Rubber Industries.**

4. **Subsidiaries Acting as Agents:**

If the subsidiaries are incorporated solely to act as an agent or trustee of its holding company, then the subsidiary is deemed (assumed) to have lost its individuality in favour of its parent, such parent & subsidiary are treated as a single commercial unit

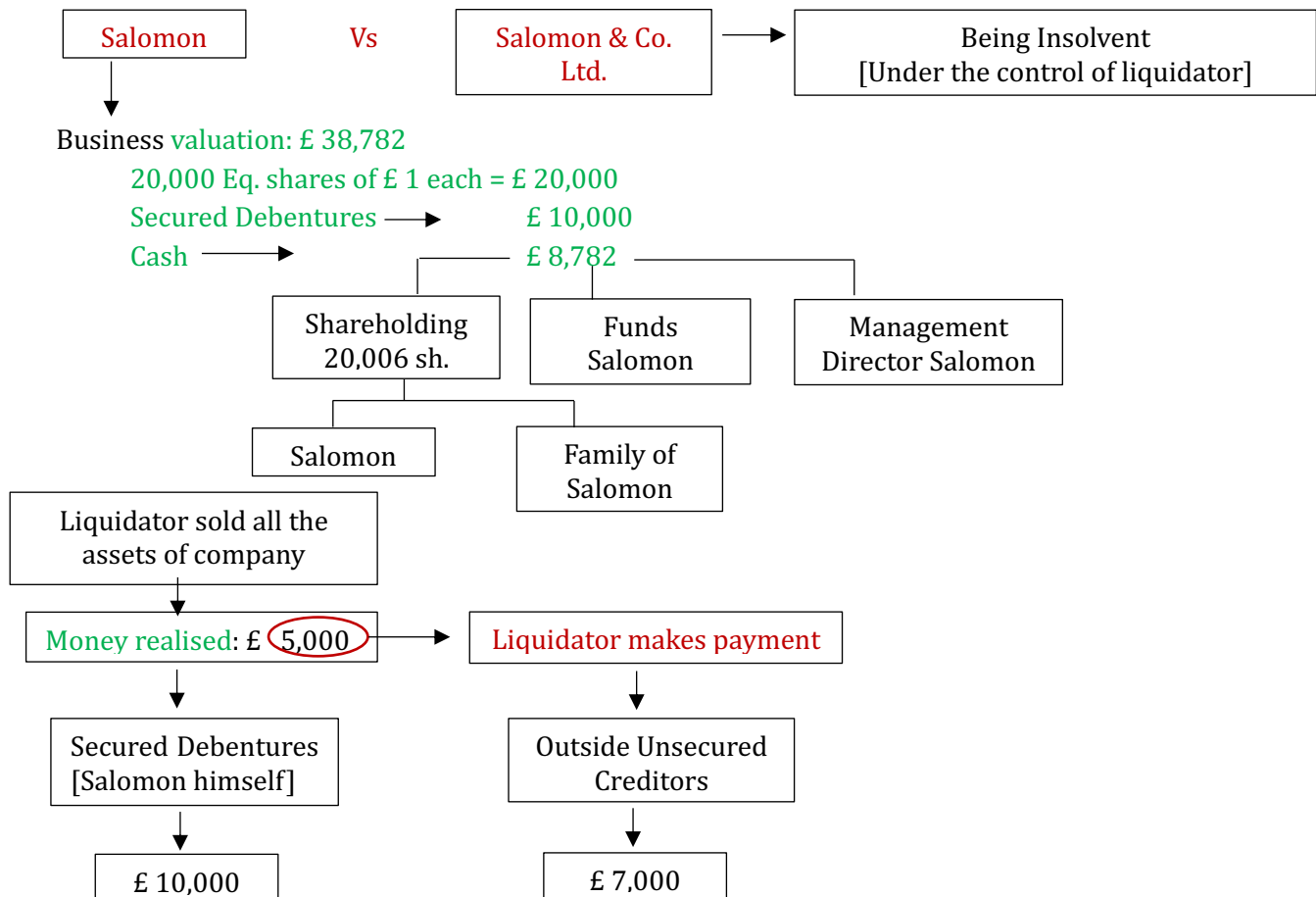
Case law: **Merchandise Transport Ltd Vs British Transport Commission.**

5. **To commit Fraud or to defeat law:**

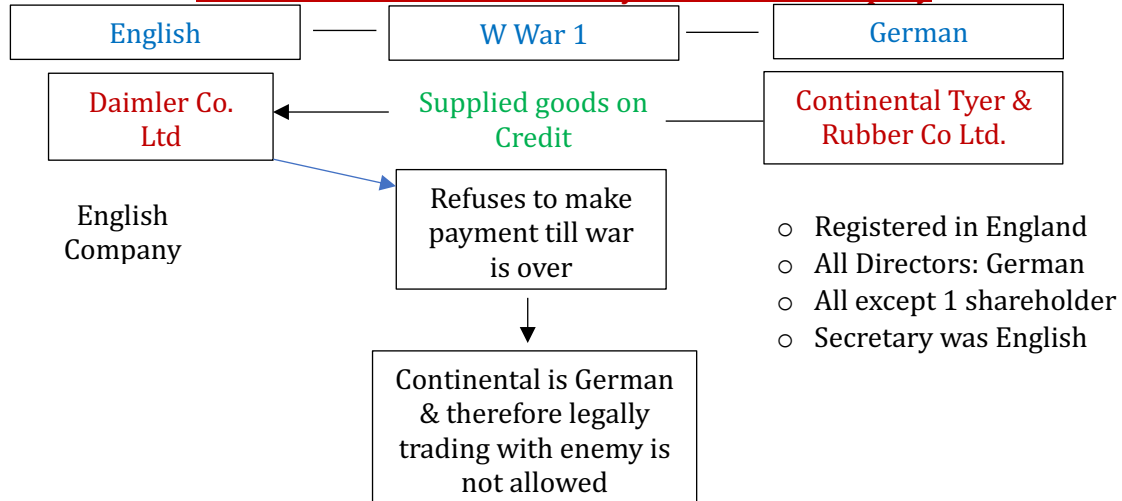
If a company is formed for fraudulent purpose of to defeat law, then in such case the corporate veil is lifted.

Case Law: **Gilford Motor Company Vs Horne**

Salomon vs Salomon and company. Ltd



Daimler Co Ltd Vs Continental Tyre & Rubber Company



Conclusion: since the character of company is determined by the characters of persons at top of company. Corporate veil shall be lifted & hence continental shall be classified as German Company.

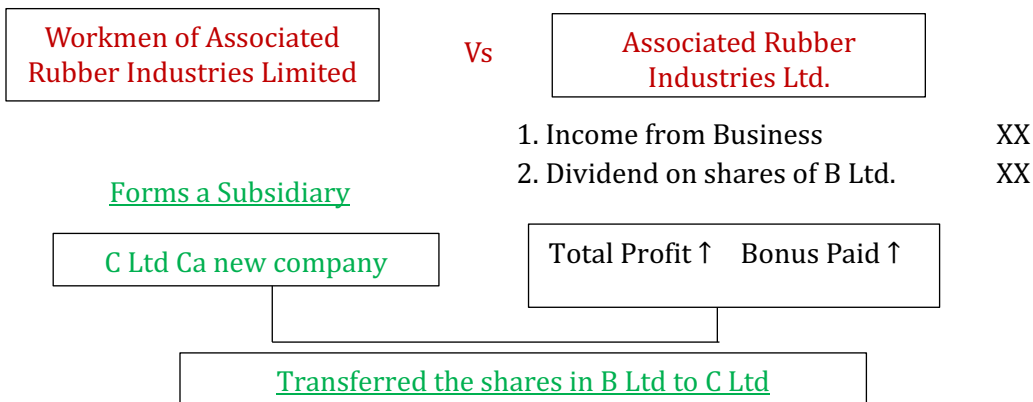
In Re: Dinshaw Maneckjee Petit

Income from Dividend / Interest From investment	XXX	Investments for purchase of shares of
[-] Invt. For purchase of Shares A/B/C/D Ltd.	(XXX)	A Ltd B Ltd C Ltd D Ltd
[-] Interest accrued on Loan from A/B/C/D Ltd.	(XXX)	Provided loan to Dinshaw.
Income ↑ Tax ↑ Income ↓ Tax ↓		

Conclusion:

Here, since the companies A/B/C/D Ltd were formed to solely avoid tax by taxpayer. The companies are sham & fraud, therefore the income of companies shall be added to the income of the taxpayer.

Workmen of Associated Rubber Industries Ltd Vs Associated Rubber Industries

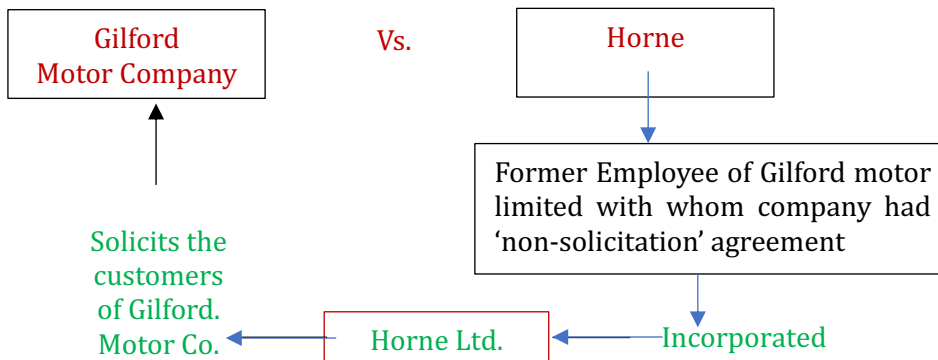


Conclusion:

Since the sole purpose of C Ltd was to avoid Bonus payable (legal obligation) of A Ltd, C Ltd is a sham & fraud and hence profit of C Ltd will be added to the profits of A Ltd for calculating Bonus.

[Corporate veil of C Ltd will be lifted]

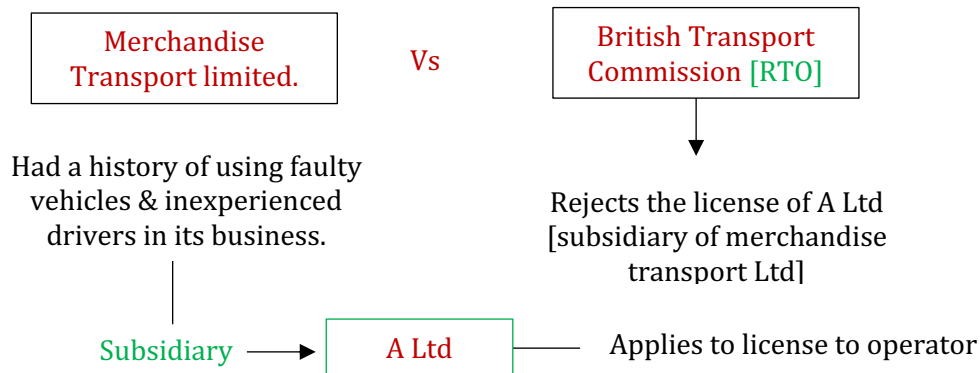
Gilford Motor Company Vs Horne



Conclusion:

Since, Horne Ltd has been formed to commit fraud on Gilford motor Co. & defeat the provisions of law corporate veil shall be lifted. Hence Horne Ltd shall not be allowed to solicit the customers of Gilford motor company.

Merchandise Transport Ltd Vs British Transport Commission



Conclusion:

Since A Ltd has no business of its own & it was formed just to get the license for its holding company. i.e Merchandise Transport Company, the Corporate Veil of A Ltd shall be lifted as it has acted as agent / trustee of holding company.

Types of Companies

On the Basis of Liability of members

<u>Types of Companies</u>		
1. Company Limited by shares [Sec 2(22)] means of company in which <u>liability of members</u> is <u>limited by memorandum</u> to the <u>unpaid amount, if any, on the shares</u> held by them. [Unpaid Amount = Face value (-) paid-up value]	2. Company Limited by Guarantee [Sec 2(21)] means a company in which the <u>liability of members</u> is <u>limited by Memorandum</u> to the amount which each member has <u>respectively undertaken (promised)</u> to <u>contribute to the assets of the company</u> in the event of <u>winding-up</u>	- Difference between Co. Ltd. by shares & Guarantee. - In Co. Ltd by <u>Guarantee</u>, liability of members arises upon <u>winding-up</u> & in Co. Ltd by <u>shares</u>, liability of members is <u>during Companies lifetime & also upon winding up.</u> - Who forms Co. Ltd by Guarantee? Such companies which <u>do not need funds</u> or whose requirement of funds are met from other sources like donation, fees, endowments. (religious donations). <u>Right to transfer ownership</u> in Guarantee Company is different from share Capital Company.
Liability of members of co. ltd by Guarantee		
Till winding-up ↓ No-liability	Upon Winding-up ↓ Liability limited by amt mentioned in MOA	
Similarities between Co Ltd by shares & Guarantee (i) Separate legal Entry (ii) Limited liability of members		

3. Unlimited Company [Sec 2(92)]	
Company having <u>no limit</u> on <u>liability of its members.</u>	
<u>Liability of member of unlimited company</u>	
Till wind-up ↓ Limited	Upon wind -up ↓ Unlimited

Types of Companies on the Basis of Members

(4) Public Company [sec 2(71)]	(5) Private Company [sec 2(68)]	(6) One Person Company [sec 2 (62)]
↓ means a company which is: <u>not a Private Company</u> AND which has such <u>minimum paid-up share capital as prescribed</u> [Nothing is prescribed in Rules] Provided that a <u>Subsidiary of other than private company</u> shall be <u>deemed</u> to be a <u>Public company</u> even if it is Private Company as per its Articles. [Even if a subsidiary of a public company has all the three restrictions of a private company, it will be treated as a public company]	↓ means a company <u>having such minimum paid-up share capital as prescribed</u> [Nothing is prescribed in Rules] AND which as per its <u>Articles</u> (i) restricts the <u>right to transfer its shares</u> (ii) Except OPC, <u>limits maximum members to 200</u>; provided that <u>Joint - Holders</u> shall be counted as <u>single member</u>. Provided further that <u>employees & former employees</u> who <u>acquire the share during employment</u> shall be <u>excluded</u>. [Note: Only if the employee/ ex-employee had acquired shares during his employment, he is to be excluded from the calculation of 200. If he had acquired shares before employment or after retirement, then count him in the limit of 200.] (iii) Prohibits <u>Invitation to Public to Subscribe to its securities</u>. (<u>Both Shares & Debentures</u>) [No Public offer/ No Prospectus]	↓ means a company having <u>only one person as its member</u>. ❖ Features of OPC <u>(1) Nominee</u> → MOA shall state name of persons (<u>nominee</u>) who in the event of <u>death OR incapacity to contract</u> of member, shall become member → Nominee to give his <u>prior written consent</u> → Nominee may at any time <u>withdraw his consent</u> → Member can <u>change the name of Nominee</u>. → However merely changing the name of the nominee is <u>Not treated as Alteration of MOA</u>. <u>(2) Who can be Member / Nominee</u> → <u>Natural person</u> → <u>Citizen of India</u> → <u>Whether resident in India or not</u>. Explanation: A person is 'resident of India' if he has stayed in India for <u>Not less than 120 Days in the Preceding FY</u>. (Note: Even if a person does not stay in India for a single day in the preceeding FY, he can still become member or nominee in OPC as long as he is a natural person and a citizen of India.) <u>(3) A person cannot become:</u> (i) <u>Member</u> in more than 1 OPC (ii) <u>Nominee</u> in more than 1 OPC (Note: A person can become member in one OPC and nominee in another OPC) <u>(4) Other points</u> → <u>Minor cannot become member /nominee/ beneficiary</u> → OPC cannot be a <u>Sec 8 Company</u> → OPC cannot carry <u>Non-Banking Financial Investments</u> activities → OPC <u>cannot invest</u> in the <u>securities of other Body Corporates</u>.

(7) **Small Company [Sec 2 (85)]**

Means a company other than Public Company in which

- (i) Paid-up share capital does not exceed ₹ 50 lakh OR
Such higher Amount prescribed (₹4 Crore)
Which shall not exceed ₹ 10cr. ↑
As per Company Rules
- AND
- (ii) Turnover, as per the P & L Statement of the preceeding Financial year does not exceed ₹ 2 Cr. OR
Such higher Amount prescribed [₹ 40 Crore]
which shall not exceed ₹ 100 Cr. ↓

Provided that this clause shall Not Apply to [i.e. Not a small Co.]

- (a) Holding Company
(b) Subsidiary Company
(c) Section 8 Company
(d) Special Act Company

[Note: Associate Co. /Joint Venture can be a small company]

Note: The limits as per Jan 2026 syllabus for Paid-up capital and Turnover are Rs.4 cr and Rs.40 cr respectively.

(8) **Sec. 8 Company**

Formed for promotion of charitable objects

- | | |
|-------------------|-------------------------------|
| 1. Science | 2. Commerce |
| 3. Arts | 4. Education |
| 5. Sports | 6. Research |
| 7. Social welfare | 8. Charity |
| 9. Religion | 10. Protection of environment |

- Prohibits payment of Dividend to its members
- Its profits are used for the promotion of its charitable objects
- It requires to obtain license from Central Govt.
- After obtaining license, it shall remove
the words 'Limited / Private limited' from its name.

The license of Sec 8 company may be revoked if:

(i)	(ii)	(iii)	(iv)
It <u>contravenes (violates)</u> the <u>condition of the license</u> . Eg: License issued under condition that more than 50% activities carried in rural areas. Company does all activities in city.	it is formed for <u>fraudulent purposes</u> . Eg: sec 8 Co. conducts no charity but is formed to help people avoid tax by giving fake donations.	it is <u>violative of its object</u> Eg: A science Sec. 8 com Undertakes religious activities	it is <u>prejudicial to public interest</u> . Eg. A Sec. 8 Co. sponsors violent protests

Such license of Sec 8 Company may be <u>revoked (Cancelled)</u> after	
(i)	(ii)
Sending <u>written notice to the company &</u>	Giving the company a <u>reasonable opportunity of being heard.</u>

After revocation of license CG may pass following orders:

(i) Add back the word Ltd / Pvt Ltd in its name	(ii) winding Up	(iii) Amalgamate with another Sec 8 Co. having similar objects
➤ Penalty for violating Sec 8.		
Company: ₹ 10 lakh ≤ fine ≤ 1 crore		
Officer in: ₹ 25,000 ≤ fine ≤ ₹ 25 lakh Default		
(+) Penalty u/s 447 if fraud proven.		
➤ Other points:		
i) Before meeting Sec & Co should given <u>14 Days' notice</u>		
ii) <u>Conditions of</u> : Not Applicable for <u>Directors</u> sec. 8 company		
iii) <u>Nomination & Remuneration Committee, Shareholders Relationship Committee</u> Not Applicable for sec. 8 Company.		
iv) <u>Partnership firm can be member</u> of Sec 8 Company.		

Types of Companies:

On the Basis of Control

(9) Holding Company [Sec 2(46)]	(10) Subsidiary Company [Sec 2(87)]
means a company having one or more subsidiary companies	In relation to another company [i.e holding company] means a company in which such holding company:
Explanation: The word 'Company' includes 'Body Corporate'	(i) Controls the Composition of BOD (Board of Director) OR (ii) Exercises or controls More than one half of "Total voting" power.
	either on its own (OR) together with one or more of its subsidiaries A Ltd Has 70% Voting of B Ltd B Ltd is subsidiary of a Ltd A Ltd has Subsidiary Has 40 % Voting in B Ltd C Ltd 20% Voting B Ltd is Subsidiary of A Ltd [40% + 20%]
❖ [Preferential shares do not have voting power, so ignore them while calculating the total voting power for determining control]	

Subsidiary company (cont'd)	(11) Associate Company [Sec 2(6)]	
Provided that such classes of Holding company as prescribed shall not have more than such layers of companies as prescribed. (Rules not part of syllabus.)	Means a company in relation to another company (investor company) in which such other company (investor co.) exercises SIGNIFICANT INFLUENCE , but is <u>not a subsidiary</u> and includes joint venture.	
Explanation:	Explanation:	
(1) Subsidiary of subsidiary company shall be deemed to be subsidiary of Holding Company A Ltd → B Ltd → C Ltd 70% 55% C Ltd is subsidiary of both B Ltd & A Ltd.	1) A company is said to exercise SIGNIFICANT INFLUENCE if it has:	
	1. Control over 20% or more voting power or	2. Participation in Business Decision through Agreement
(2) A company is said to control the composition of BOD if by the power exercisable by it, at its discretion it can appoint or remove All or Majority of Directors.	2) Joint Venture (JV) Joint Venture is a Joint Arrangement in which parties have Joint Control over the Net Assets of entity.	
(3) the word 'Company' includes Body Corporate		

(12) Government Company [Sec 2(45):

Government company means a company in which:

Not less than 51% of the paid-up share capital is held by:

- (i) Central Government;
- (ii) State Government/ Governments; or
- (iii) Partly by Central Government and partly by State Government/ Governments

Note: Do not include Govt companies in this calculation of 51%.

And it includes Subsidiary of a Government Company

[Note: To become subsidiary of a Government company, holding company should hold more than 50% of the total voting power. i.e. Check more than 50% here and not 51%]

Provided that in case of **Government companies having shares with differential voting rights**, the words 'paid-up share capital' shall be read as '**total voting power**'

Note: Since the definition of Government company makes use of the phrase 'paid-up share capital', include both equity and preference shares in the calculation.

(13) Foreign company [Sec 2(42)]

means a **company or a body corporate**

- which is **incorporated outside India**,
- but which has a **place of business in India**, whether through itself or through agent, whether physically or through electronic mode,
- and **conducts any business activities in India**.

(14) Public Finance Institution [Sec 2(72)]

Definition PFI includes (i) <u>Life Insurance Corporation</u> under the LIC Act, 1956 (ii) <u>Infrastructure Development & Finance Company limited.</u> (IDFC)	Conditions to be fulfilled for becoming a PFI (i) It is a company formed under any <u>Central / State Act</u> (i.e Special Act Company) or
(iii) Companies referred under UTI the <u>Unit Trust of India Act, 2002</u> [i.e Government Mutual funds] (iv) Companies <u>notify by the central Govt u/s 465</u> of the companies Act, 2013. (v) Any other <u>institution notified by central govt. in consultation with RBI.</u>	(ii) <u>Not less than 51% of the paid up share Capital.</u> Is held by Central Govt State Govt/Govts or partly by central Govt & partly by State Govt/Govts.

(15) Listed Company [Sec 2 (52)]

“Listed Company means a company horning any of its securities listed on any Recognised Stock Exchange.

Provided that such class of companies which are listed or intend to get listed such classes of securities as may be prescribed shall not be regarded of listed company.”

(A listed company has to follow SERI Regulations as well a File a lot more Documents than unlisted Co Therefore Just because some temporary securities like redeemable Debentures are listed the company would have become listed company and compliance burden on the company would have increased. So despite listing some prescribed securities. Some prescribed companies will still be treated as unlisted companies. Rules where such securities & companies are prescribed one not part of CAFC syllabus.)

The word securities as defined u/s 2(81) of the Companies Act, 2013 shall have the same meaning as assigned to it u/s. 2(h) of the Securities Contract (Regulation) Act, 1956

The company is called as listed company due to the Listing Agreement signed between listed company & Stock Exchange.

(16) Dormant Company [Sec 455]

Dormant Company [sec 455] means a company which

(i) Is formed for future project OR to hold any asset or intellectual Property rights (IPR)

AND

Has no significant accounting transaction

Eg: Patent/trademarks/Copyright

OR

(ii) It is an inactive Company

Significant Accounting Transaction any transaction Other than

- (i) Payment of fees to ROC (registered of company)
- (ii) Payment mode under any law;
- (iii) Allotment of shares
- (iv) Payment for Maintenance of Office & Records

Inactive Company Means a company which

- (i) does not have Business or operations OR
- (ii) during Proceeding 2 F.Y has not filed Financial Statement or Annual Return OR
- (iii) during Proceeding 2 F.Y has no significant accounting transactions

(17) NIDHI COMPANY [Sec 406]

NIDHI Company or mutual benefit society is formed to **cultivate the habit of thrift [cost cutting] & saving** among its members. Unlike bank, a Nidhi company receives deposits &, lends money only to its members. It should comply with such rules as may be prescribed by the central Government.

Promoter Sec 2(69)

Means a person who has been

- (i) Named as such in the prospectus OR identified as Such in the annual return, of the company
OR
- (ii) Who exercises control over the affairs of the company directly or indirectly, whether as a shareholder OR Director OR otherwise → through an agreement
OR
- (iii) In accordance with whose advise, Directions or Instructions the Board of Directors of the company is accustomed to act (ie. Has a habit of acting) but it does not include a person acting in professional capacity (e.g. advocate, CA, etc.)

Formation of a Company [Sec 3]

A company may be formed for any lawful purpose by:

- (i) 7 or more persons in case of a public company
OR
- (ii) 2 or more persons in case of a private company
OR
- (iii) By one person in case of a one person company.
By **subscribing their names to the MOA** and **complying with the requirements of this Act** relating to registration.

List of Documents to be filled with ROC [Sec 7]

- i) MOA and AOA signed by the subscribers to the memorandum.
- ii) A declaration by:
 - a) Persons engaged in formation of the company
[eg: CA, CS, Cost Accountant in practice or Advocate] and
 - b) Persons named in the articles
[eg: Director, manager, secretary, etc]That the company has **complied with the provisions of this Act and Rules** made thereunder in relation to the **Registration of the Company**
- iii) A Declaration from:
 - a) **Subscribers to the memorandum and**
 - b) **First Directors** that:
 - 1) He has not been convicted of any offense in relation to promotion, formation or management of the Company.

- 2) He has not been found guilty of any fraud, misfeasance (wrongful act) or breached of duty during the last 5 years.
- 3) All the documents filed with the RoC are true, correct and complete to the best of his knowledge and belief.
- iv) The address for correspondence till the registered office of the company is established.
- v) The Particulars of the subscribers to the memorandum including his name, address and nationality along with proof of identity.
If such subscriber is a body corporate, then such particulars as may be prescribed.
- vi) The Particulars of the first Directors of the company including their name, address, and director identification number (DIN) and nationality along with proof of identity.
- vii) The Particulars of interest of first Directors in the other forms of body corporates along with their consent to act as directors.

After the following Documents have been filed with Roc

The Roc shall register the documents, allot the company a **unique no** called as **Corporate Identity Number (CIN)** and issue a certificate of **incorporation**. This certificate of incorporation is a conclusive evident that all the documents have been duly filled and the company has been incorporated with such name as it stated in the certificate of incorporation. The said documents. Have to be filed with the Roc through **SPICE Portal (Simplified Proforma for Incorporating Companies Electronically)** and a copy of these documents have to be maintained at the registered office till the winding up of company.

- **Furnishing of false or incorrect information or Suppression of material fact at the time of incorporation.**
If any **person furnishes any false or incorrect particulars** of any information or **suppresses any material information** of which he is aware in any of the documents filed with the registrar in relation to the registration of a company, he shall be **liable for action for fraud under Section 447**.
- **Effect on company already incorporated using false or incorrect information.**
1. **Penalty:** Where after the incorporation of a company, it is **proved** that the company has been got incorporated by furnishing any **false or incorrect information or representation on by suppressing any material fact**,
 - i) The **promoters**, the persons named as the
 - ii) **First directors** of the company and the
 - iii) **Persons making declaration** under this section shall **each be liable** for action **for fraud under section 447**.
 2. **Order of Tribunal:** The Tribunal (NCLT) may, on an application made to it **By RoC**, on being satisfied that the situation so warrants and **after giving reasonable opportunity of being heard** to the company-
 - (a) **Pass such orders as it may think fit** including **changes in MOA and/or AOA** in public interest or in the interest of the company and its members and creditors
 - (b) **Direct that liability of the members shall be unlimited**
 - (C) **Direct removes of the name of the company** from the register of companies **(strike off)** **(the company comes to an end but business survives in some other form eg. partnership)**
 - (d) **Pass on order for the "winding up of the company"**
(Since the assets are sold and liability is repaid, both the company and the business come to an end.)

➤ **Effect of Registration [sec 9]**

From the **date of incorporation (mentioned in the certificate of incorporation)**, the subscribers to the memorandum and all other persons, who may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum. Such a registered. Company shall be capable of exercising all the functions of on incorporated company under this Act and having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to

contract and to sell and be sued by the said name.

From the date of incorporation, company becomes a legal person separate from its members. There comes into existence a binding contract between the company and its members as evidenced by MOA & AOA

[Case law: Hari Nagar Sugar Mills Ltd Vs S.S Jhunjhunwala]

A company on registration acquires a separate existence distinct from its members

[Cove law: State Trading Corporation, of India Vs Commercial Tax officer]

A company may purchase the shares of another company thus become a controlling company (Holding). But just because all the shares of one company are held by another, it will not result in putting an end to the corporate character of the subsidiary company. Thus holding and subsidiary shall be treated as two separate entities.

[Case law: Spencer & Co Ltd Madras Vs CWT Ltd Madras]

Even if the government controls a company and the shares of such company are held in the name of President of India, such company shall not be treated of agent of the president or central government.

[Case law: Heavy Electrical Union Vs State of Bihar]

➤ Effect of Memorandum and Articles [sec 10]

Where the memorandum and articles are registered, it shall **bind the company and the members to the same extent of if it had been respectively signed by them.**

All monies payable by a member to the company under the memorandum or articles (Eg: calls in Arrears)

Shall be a **debt due from him to the company**

Types of Capital

Type of Capital	Sec No.	Particulars	Formula
Authorised / Nominal Capital	2(8)	Maximum capital of a company. Mentioned in the MOA-Capital Clause Capital on which company has paid stamp Duty	No. of shares Authorised X Face value per share
Issued Capital	2(50)	It is Capital issued by the company out of the authorized capital	No. of shares Issued X Face value p. shares
Subscribed capital	2(86)	It is that part of issued capital which is subscribed by the members.	No. of shares subscribed X Face value p. shares
Called up capital	2(15)	It is that part of subscribed capital which is for the time being called by company	No. of shares subscribed X Called up amount per shares
Paid up Capital	2(64)	It is the amount paid-up OR credited as paid-up by the members.	Called up capital (-) Calls in arrears

Paid-up:

Bank A/c Dr.

To Esc A/c

(for cash consideration)

Credited as paid-up:

Consideration other than cash.....Dr.

To Equity sh. Capital A/c

(for consideration other than cash)

➤ **Punishment for not disclosing capital (Sec 60)**

Where any notice, advertisement or other official communication or any business letter, bill head or letter paper of a company states the **authorised capital; the subscribed and paid-up capital** must also be state in **equally conspicuous characters**

A default in this regard will make the **company and every officer who is in default** liable to pay penalty extending **₹ 10,000 and ₹ 5,000 respectively.**

Shares			
Definition	Features:		
	1.	2	3
As per Sec 2(84) a share means shares in share capital of the company and includes stock ↓ A bundle of fully paid-up shares	- Share is Not a sum of money - It is interest (ownership) in a company measured in sum of money	Shares are Movable Property [Sec 44]	- Shares are numbered consecutively [as per certificate] [sec 45] - This is Not Applicable if Shares are held by Depositories ie. Shares held in demat format are Not consecutively numbered.

Types of shares			
Equity Shares		Preference Shares	
Shares other than Preference shares		Preference in relation to eq. shares have preference for the following:	
Ordinary Eq. Shares	Differential Eq. Shares	(i) Payment of Dividend (ii) Repayment of capital during winding-up	
↓	↓		
Homogenous	Differences regarding voting power, Dividend, etc.		

Differential shares
Eg. of class of Eq. shares



Voting Power
Dividend
Any other rights (Bonus sh. Rights sh.)

Class 'A' Promoters shares	Voting Power 3x	Dividend 1/2 x
Class 'B' Normal shares	1x	1x
Class 'C' Minority Investor's	No. voting power	2x

Memorandum of Association

The memorandum of Association (MOA) is the charter of the company and it defines the scope and powers of the company. It enables the shareholders, creditors and all those who deal with the company to know what its powers are and what activities it can engage in. Thus, MOA defines the relationship of the company with the Outsiders.

Memorandum is a public document under section 399 of the Companies Act, 2013. And therefore any person entering into contract with the company is presumed to have knowledge of its contents.

Further a company cannot undertake any transaction beyond the object clause of memorandum. (Doctrine of Ultravires]

The following are the model formats of MOA of the company.

Format of Memorandum - Schedule I

Type of company	Format
1) Company Ltd. by shares	Table A
2) Co. Ltd by Guarantee not having sh. Capital	Table B
3) Co. Ltd by Guarantee having share capital	Table C
4) Unlimited Co. not having sh. capital	Table D
5) Unlimited Co. having sh. capital	Table E

The following are the clauses of MOA:

1) Name clause:-

It contains the name of the company with the last word "Limited" in case of a public company and "Private Ltd" in a private company. This clause is not applicable to a section 8 company, however it may use the words federation, chambers, in case of Foundation, forum association, confederation, council, electoral trust, etc. A Government company's name must end with the word "Ltd" and in case of an OPC the words "one person Company" should be included below the name.

2) Registered Office Clause:-

It contains the state in which the registered office of the company is to be situated.

3) Object Clause:-

It contains the object for which a company is to be incorporated and if any action of the company is beyond the object clause, it is Ultravires the company and hence void. (Invalid)

If any company has changed its activities which are not reflected in its name, it shall change its name in line with its new activities within a period of 6 months from the change of such activities.

Ex: Rajas steel limited, a company which was engaged in Iron and steel production decides to change its business activity into food business. From the date of such change the company shall within 6 months remove the word "steel" from its name.

4) Liability Clause:-

In this clause we mentioned the liability of the members, whether unlimited, limited by shares or limited by guarantee.

In case of **Company Ltd by shares**, the liability of members is limited to the **unpaid amount, if any. on the shares held by them**

In case of **Co Ltd by Guarantee**, the members are liable for :

- Contribution to the assets of the company in the event of winding up.
- Cost, Charges or expenses of winding up [liquidator fees]
- Adjustment in the rights of contributories among themselves

[All the shareholders at the time of winding up are called as A list Contributories and are primarily liable to contribute to the assets of the Company.

However in the case of shortfall on account of default by the A List Contributories, the company can call upon all those persons who sold transferred the shares of the Co. within a period of 12 months before the date of windup they are called as B List Contributories. By using the phrase Adjustment in the Rights of Contributories, we are

denoting the shortfall of a list A contributories to be paid by list B Contributories.]

5) Capital Clause:-

It I shall state the amount of **authorized Capital** of the company divided into the amount of face value and the No. of shares authorized. A company not having share Capital need not have this Clause.

6) Association Clause:-

It contains the details of subscribers to the memorandum including Name, Address, and Occupation, if any along with the No. of shares taken by him which cannot be less than One.

The memorandum shall be signed by at least 7 subscribers in case of a Public Company and two in case of a Private Company. In the presence of at least one witness who shall sign upon the same.

7) Nomination Clause:-

This clause is only applicable for a one person company and contains the name of person who in the event of subscriber's death or incapacity to contract shall become the member.

The above Clauses covered are compulsory clauses or conditions. In addition the company may decide to add any other clause to the MoA.

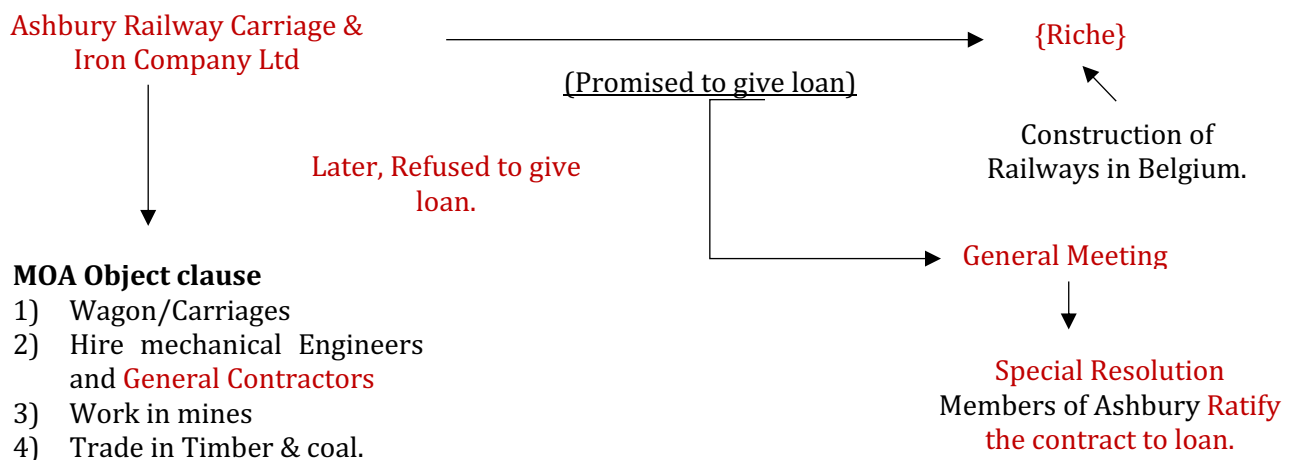
The company cannot have any Clause in the MOA, which is contrary to the provisions of the law and to that extent the MOA shall be void (invalid).

Doctrine of Ultravires

The meaning of the term **Ultravires is beyond the powers.**

Any action of the company which is beyond the object Clause of the MOA is Ultravires the company and hence void.

This has been stated in the landmark case of **Ashbury Railway Carriage and Iron Co. Ltd Vs Riche**



Since, MOA object Clause of Ashbury does not provide giving loans, transaction is (ultra vires) the company & Hence void

- 1) Any transaction, though legal in itself, if it is beyond the object clause of memorandum, it is Ultravires the company
- 2) A transaction ultra-vires the company cannot be ratified.
- 3) A transaction ultra vires the AOA, but introverts the object clause of MOA can be ratified by passing SR & altering the articles.
- 4) A transaction ultra vires the power of Director, but intra vires the object clause can be ratified by passing a resolution of members in General meeting.

If **you have supplied goods or performed service on an ultravires contract or if you lent money, you cannot obtain payment or recover the money Amt.** But **if the money advance to the company has not been spent, the lender may stop the company from parting with it by means of an Injunction** (stop/ stay order).

However if the ultra vires loan has been utilised in meeting lawful debt of the company, then the lender steps into the shoes of the debtor paid off and consequent he would be entitled to recover his loan to that extent from the company.

Eg: Mr Ojas has given loan to Joel limited, a company engaged in food Business. This loan was given for the purpose of purchasing medicine which is not covered within the object clause of memorandum. The transaction is ultra vires and hence void. Here Ojas cannot get back the money if it is already utilized by Joel Ltd. However if the money is unutilised, Ojas may, by court order of Injunction stop Joel Ltd from spending such money.

Articles of Association

The Articles of Association (AOA) of a company are its rules and regulations to manage its internal affairs. AOA is the byelaws of the company according to which directors and other officers are required to perform their functions.

Articles shall contain such matters as are prescribed under the rule. However a company may also include such additional matters in its artily as may be consider necessary for its management

The Articles of a company shall be in accordance with **Tables F, G, H, I, J of Schedule I**. Any company registered under the preview company law may continue it's articles as per that law

If the articles of a Association of the company do not modify or exclude anything contain in the mod I articles [Table F-]. then we show presume that the regulations in the model articles are applicable to the company.

Entrenchment Provision in AOA

What is Entrenchment	Example	How to introduce Entrenchment Provision in AOA? [i.e. Para 5]
To Entrench = to make something difficult to charge Generally for Altering AOA Special Resolution [75% votes] is required Therefore when Entrenchment provision is applicable to alter that para of AOA. you required approvals more restrictive than Special Resolutions Eg. i) Approval of 90% votes OR ii) Special Resolution (+) Approval of Audit Committee	Soham Steel Limited Articles of Association { - The meeting of BOD Shall be held in the city of Mumbai { { - Entrenchment provision To alter Para (2), the approval of member having 90% votes shall be required. - Other provisions To alter only S.R required	During Introduction of Company Since AOA contains signature of all subscribers of MOA No separate Approval required
Filling of Entrenchment Provision Entrenchment Provision is filed with ROC After Introduction of company Public Company: SR Private Company: All members		

➤ **Entrenchment Provision in AOA**

- The articles may contain provision for entrenchment (to protect something) to the effect that certain provisions of the articles may be altered only if contains on procedure that are more restrictive than a special resolution are complied with.
- The provision for entrenchment shall be made either on formation of a company or by an amendment in the articles agreed to by all the members in cate of a private company and by a public company a special resolution in case of a public company
- When a company introduce entrenchment provisions in its articles, it shall give notice of the same to the ROC.

Difference between MOA and AOA:

- 1) Objective
MOA beguines the objectives of the company, whereas the AOA lays down the rules and regulations for the internal management of the company, thus determining how the objectives stated in MOA can be achieved
- 2) Relationship
MOA defines the relationship of the company with outside. World and the AOA defines the relationship between the company and its members
- 3) Alteration
Different clause of MoA can be altered only under certain circumstance and may require the permission of Regional Director or the Tribunal is required the Articles of Association can be altered by passing a Special Resolution.
- 4) Ultra Vires
Any Act done by the company beyond the scope of MOA is ultra vires the company and hen cannot be ratified even by unanimous approval of all the Shareholders. However on Act Ultravires the AOA can be ratified by a special Resolution of the shareholders, provided it is not beyond MOA.

Doctrine of Constructive Notice.

- As per section 399, Any document filed with the ROC is a public document, therefore, any third party who deals with the company is presumed to have read the public document and understood it in the right context. Third party shall be responsible for its own losses. If it had not read the public document.
- Examples of Public document include MOA, AOA, Certificate of Incorporation, Special Resolution and every other document filed with the ROC.
- Therefore, it is the duty of every person dealing with a company to inspect it's document and make sure that is contract is conformity with their provision and whether he reads them or not, it will presumed that he knows the contents of the documents. These kind of presumed/implied notice is called constructive Notice.

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 an outsider is deemed to Have notice of the internal affairs of the company
If an Act is Authorised by MOA/ AOA, an outsider Ps that all the detail formalities entitled to assume have been observed.
This was stated in the landmark case of **Royal British Bank Vs Turquand**. Thus Doctrine of Indoor management is also popularly known of **Turquand Rule**.

Exception to the Doctrine of Indoor Management:

In the following Carer the doctrine of Indoor management shall not apply:

(a) Actual or Constructive knowledge of irregularity

In case of this "outsider" has actual knowledge of **irregularity within the company, the benefit under the rule of Indoor management would no longer be available**

The directors could not defined the issue of debentures to themselves because they should have known that the extent to which they were lending money to the company-required the assent of the general meeting which they had not obtained.

[Howard vs Patent Ivory Manufacturing Co]

(b) Suspicion of Irregularity

The doctrine in no way, rewards those who behave negligently where the person dealing with the company is put upon an inquiry, for example, where the transaction is usual or not in the ordinary course of business, it P5-the duty of the outsider to make the necessary enquiry

The plaintiff accepted a transfer of a company's property from its accountant, the transfer was held void. The plaintiff-could not have supposed in absence of a power of attorney that the accountant had authority to effect transfer of the company's property [Anand Bihari Lol vs Dinshaw & Co.]

(c) Forgery

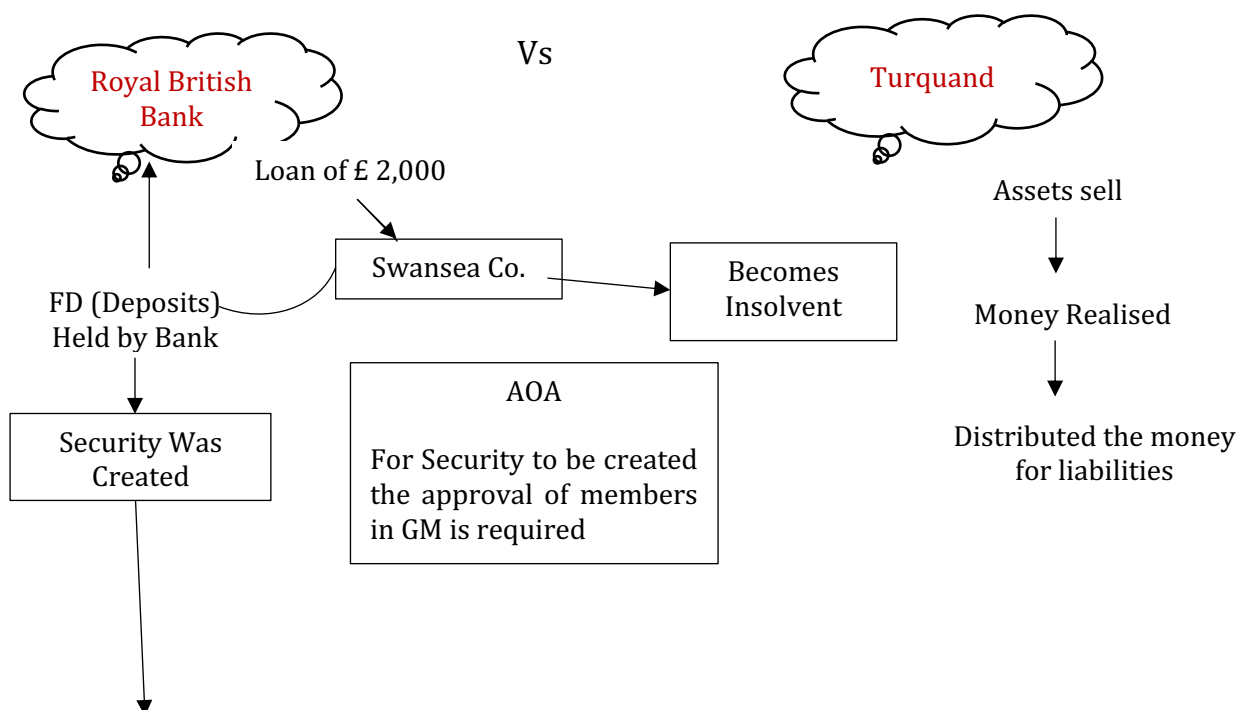
The doctrine of indoor management applies only to irregularities which might otherwise affect a transaction **but it, cannot apply to forgery which must be regarded as utility [void]**

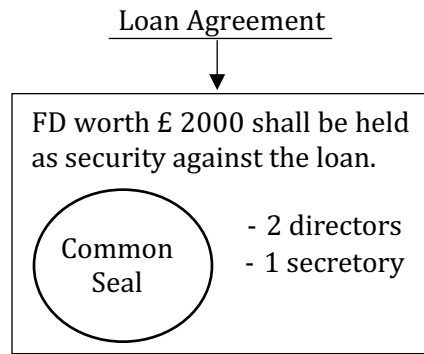
Forgery is Not defect in consent, but rather it is absence of Consent

The plaintiff was the transferee of a share of a share certificate. Issued under the seal of the defendant's company. The company's secretary, who had affixed the seal of the company and **forged the signature of the two directors, issued the certificate**

The plaintiff contended that whether the signature were genuine or forged way apart of the internal management and there, fore, the company should be estopped from denying geniuses of the document. But it was held, that the rule has never been entered extended to cover such a complete forgery

[Ruben Vs Great Fingal Consolidated]





Here, Royal British Bank would not have known whether resolution by members is passed or not. Thus, since it is not a public Document. Royal British Bank is free to assume that the approval was obtained. Thus Royal British Bank should be treated as a secured Creditor.