

CUTE CASE BOOK

Main Book

*I am
important*



Contains 400 + past
exam questions
& answers

Case Book

I am small, but MOST

IMPORTANT



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Corporate BaBa



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PAST EXAMINATION SOLVED QUESTIONS AND ANSWERS

CHAPTER I – INTRODUCTION

Q. Differentiate between Private Company & a Public Company. (4 marks)

Ans:

Private Limited Company	Public Limited Company
A private company has minimum 2 members.	A public company must have a minimum of 7 members.
A private company can have a maximum of 200 members.	A public company can have unlimited number of members.
There is a restriction on transferability of shares.	Shares of a public limited company are freely transferable.
A private company is prohibited to invite the public for subscription of its securities.	There is no such restriction an invitation to the public for issue of securities.

Q. Explain the concept of OPC along with the reason of its formation. (5 marks)

Ans:

1. One Person Company means a company having only one person as a member. Such companies are incorporated in the form of Private Limited Company.
2. A Natural person who is an Indian Resident and citizen is only qualified to be appointed as member of such OPC.
3. Every OPC shall have atleast one nominee who shall resume the office as a member in case of death or incapacity of original member.
4. No General Meeting is conducted in case of an OPC.
5. The concept of OPC was introduced for the first time by way of Companies Act, 2013. The idea of such structure in place is to boost entrepreneurship amongst individuals and to bring a legal structure with least compliances and maximum benefits to them. Also, for an individual, it becomes easy to get some financial assistance from Bank, Financial Institution since they are working in a corporate structure. Thus, in order to regulate such small business, the concept of OPC was introduced.

Q. “A shareholder is personally liable for the acts of the company if he holds virtually the entire share capital of the Company”. Comment. (4 marks)

Ans:

1. In terms of the provisions of Companies Act, 2013, the day a company is incorporated it becomes a separate legal entity.
2. Separate legal entity simply means a company is separate from the directors, promoters and management.
3. A shareholder holding one share and the shareholder holding all the shares except one have the same status which is that of owners of the company.
4. A member of company having its liability limited by shares is liable to pay to the company only to the amount remaining unpaid over his shares.
5. Thus, even a shareholder who holds almost all the shares in a company cannot be held liable for the acts of the company since company and its member are separate legal entities.

Q. All the members of a company were travelling to attend the AGM of the company in a plane & the plane crashed. All the members died. Decide the fate of company. (4 marks)

Ans:

1. The given case pertains to the provisions relating to perpetuity of a company & company as a separate legal entity.
2. The provisions of the Act states that even if all the members of a company die the company continues to be in existence. In such a case the legal heirs may assume the position as a member & the company continues to exist.
3. By applying above provisions to the given case, all the members of the company died in a plane crash. Even in such a case company continues to exist as a separate legal entity & it shall remain in perpetuity.

Q. X is a wealthy investor earning huge dividend & interest income. Due to heavy profits, his income was subject to high taxes. Thus, in order to reduce his tax liability he divided his income by floating 4 companies name A, B, C & D Ltd. & distributed all his investments in these 4 companies. Is the Act of Mr. X justifiable in the eyes of law. (4 marks)

Ans:

1. The facts of the given case are similar to the leading case of Sir Dinshaw Maneckjee Petit.
2. In the given case, Sir DMP happens to be an investor holding a lot of investments in his personal name. He formed 4 companies & transferred all the investments in these 4 companies in order to divide his income & reduce the tax liability. When the intension of a person is to evade taxes by dividing the income the court has powers to lift or pierce the corporate veil.
3. By applying the above provisions to the given case, Mr. 'X' formed A, B, C & D Ltd as an investor & transferred all his investments to all these companies in order to reduce his tax

liability, such activity is considered to be fraudulent & the court in such cases has the power to lift or pierce the corporate veil.

Q. Common Seal of a company is to be affixed on all the important documents of the company. Comment. (4 marks)

Ans:

1. Since, the company is an artificial person it is required to maintain a common seal of its own which is treated as the official signature of the company.
2. In terms of the provisions of Companies Act, 2013 maintaining a common seal is now optional for a company.
3. If a company chooses not to maintain its own common seal, the said document of a company shall be signed by at least 2 directors or a director & a Company Secretary. Hence, it is optional for a company to maintain its own Common Seal.

Q. “Common Seal can be used by any employee of the company irrespective of its designation. Comment. (4 marks)

Ans:

1. Common Seal is considered to be the official signature of the company since it is an artificial company created by Law.
2. Common Seal is put on all official documents of the company which authenticates the originality of such documents.
3. Maintaining a Common Seal is now optional for a company, if at all it is maintained the same shall be kept in the safe custody of authorized officer.
4. Thus, the use of Common Seal is restricted only to those who have been specifically authorized to use the same in any regards.

Q. “To consider a body corporate as foreign company a place of business in India is to be established.” Justify. (5 marks)

Ans:

1. A Foreign Company means a company incorporated outside India, which has established a place of business in India either on its own or through its agent physically or electronically and conducts some business activities in India.
2. At the same time, the word body corporate means a foreign company & excludes a cooperative society or a company declared by Central Government not as a body corporate.
3. Thus, it is rightfully stated that to consider a body corporate as a foreign company, a place of business in India is to be established.

Q. *The managing director and other directors of a company are not liable to be sued for dues against the company. Comment. (5 marks)*

Ans:

1. Once a company is incorporated it becomes a separate legal entity having capacity to enter into a contract and sue or to be sued in its own name.

2. Directors or managing directors cannot be held liable for any acts of the company unless fraud or misconduct is carried over by such directors.
3. Therefore, if a third party has to sue it shall sue the company and not its directors.

Q. Grow Ltd. is a Government company in which Central Government and many state governments are members. The company has recently convened its AGM at its registered office. Does your legislature have access to the annual reports of such a company. Advice. (5 marks)

Ans:

1. The given case pertains to the provisions of Companies Act, 2013 relating to the audit presentation of accounts of a Government Company.
2. The provisions of the Act states that the audit of Government Companies shall be done by the Comptroller and Auditor General of India (CAG). CAG appoints auditors or such Govt. companies who present their audit report to CAG and CAG in turn submits supplementary audit report to the legislature i.e. Parliament & or State Legislative Assembly.

3. By applying the above provisions to the given case, legislature has the right to ask for copies of annual report of Govt companies since their audit is carried out by CAG and Govt holds stake in these companies as shareholders.

Q. Enumerate the relationship between the promoter and the company. (4 marks)

Ans:

1. In order to establish a principle agency relationship, there needs to be a principle and an agent.
2. In case of a proposed company, there exists promoters, however, the company is not in existence and therefore, there is no principal agency relationship, nor there is a trustee beneficiary relationship.
3. However, a promoter is expected to act in the interest of the company and therefore there exists a fiduciary relationship between the promoters and the proposed company. It means whatever the promoter does shall be in the interest of the company at large.

Q. Short note on Doctrine of Constructive Notice. (5 marks)**Ans:**

1. Doctrine of constructive notice means that a third party while dealing with the company must have information of what is easily available in public domain i.e. such information which can be easily accessed & cannot be sheltered under the fact that the third party did not look for it.
2. Any person who deals with a company remaining unaware of the material fact shall be liable to bear the losses. i.e. Even if the person doesn't have knowledge of material facts it is assumed that he knows about the same.
3. In short, doctrine of constructive notice protects the company, its officers & employees against the third party.

Q. OPC shall be formed only as a company limited by shares. (5 marks)**Ans:**

1. One Person company means a company having only one person as its member.

2. OPC is none other than a private limited company, apart from limit on number of members.

Same rules as that of a private limited company, applies to an OPC.

3. A private limited company may be incorporated as a company limited by shares, guarantee or as an unlimited company and thus similar provisions are applicable to OPC.

Q. A public limited company has only seven shareholders. Being all the shares paid in full, one such shareholder purchased all the shares of another shareholder in a private settlement between them reducing the number of shareholders to six. The company continues to carry on its business thereafter. Discuss with reference to the Companies Act, 2013 the implications of this transaction on the functioning of the company. (5 marks)

Ans:

1. As per section 3(1) (a), a public company may be formed for any lawful purpose by seven or more persons, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

2. By its very nature, a public company is required to maintain minimum seven members.
3. If at any time the number of shareholders fall below statutory minimum requirement, the company has to increase the number of members to atleast seven within next 6 months.
4. If it is not raised, the company is liable to be wound up.

Q. Alok, the MD of yellow Ltd. borrowed a large sum of money and mis-managed it. Later when the lender demanded his money, the company refused to repay stating that money borrowed by MD is mis-appropriated by him & the company is not liable for repayment. Decide whether the lender would succeed in recovering the money from the company. (5 marks)

Ans:

1. The given case pertains to the doctrine of indoor management and a famous judgement in the matter of Royal British Bank V/s. Turquand.
2. In this case, it was decided by the English courts that a third party while dealing with the company should only be aware of the information which is easily available in public. Any

information which is confidential, an outsider is not bound to know such information.

Such doctrine protects the third parties against the company.

3. By applying the above findings to the given case, the lender can recover the money from Yellow Ltd. as a decision of the board is not commonly known to the outsiders. A company may however, recover the same from MD but prima facie it is liable to pay it to the Bank.

Q. Based on the information given in the MOA, Smart Ltd. was incorporated & a certificate of incorporation was issued by ROC, Delhi. The MOA was duly signed except that a major signed it on behalf of 5 minors. Examine the validity of COI issued by ROC.

(8 marks)

Ans:

1. The given case pertains to the findings in a pre-decided case of Moosa V/s. Ebrahim.

2. The court in the given case concluded that a COI signed by 5 minors out of 7 subscribers was held to be void; however, it does not challenge the conclusiveness of the said certificate.
3. By applying the above rule to the given case, in Smart Ltd. the subscription clause was signed by X, Y and Z on behalf of 5 minors. This establishes that the COI issued by ROC was held to be void, however the company shall continue to exist because the COI is a conclusive proof to that affect.

Q. A Company cannot ratify a pre-incorporation contract though it is open to it to enter into a fresh contract. (4 marks)

Ans:

1. Pre-incorporation contract means a contract entered into by the promoters before the date of its incorporation.

2. A company which is not in existence cannot enter into a valid contract and accordingly, it does not bind the company even after its incorporation. However, such contracts are binding upon the promoters who signed such contract on behalf of the company.
3. An exception to this rule is provided under Specific Relief Act, 1963, which provides that if the terms of the contract are warranted by the MOA & AOA of the Company, it shall be binding upon the company after its incorporation.

Q. Kamla, the promoter of Desire Ltd. has incurred Rs. 1 lac for formation of the company. The company refuses to pay all the expenses so incurred by Kamla. Since the Company does not have any provision in the AOA for such payment. Advice Kamla regarding the remedy available to him for his claim. (4 marks)

Ans:

1. The given case pertains to the provisions relating to Reimbursement of Out of Pocket Expenses to the Promoter.

2. Provisions of the Act states that after incorporation, a company can only function based upon what is provided by AOA, else it shall be an ultra vires act. Thus, if Articles do not provide for payment for preliminary expenses, the company cannot pay the same.
3. By applying above provisions to given case, the articles of Desire Ltd. had no provisions for payment of preliminary expenses & Kamla is not entitled for the same. However, if the Company wishes to reimburse Rs. 1 lac to him, they may alter the articles by passing SR in GM.

Q. Absolute power limited desires to commence a business specifically mentioned in its object's clause under the head "Other Objects" the action to be taken by the directors before commencing the new business under other objects. (5 marks)

Ans:

- I The given case pertains to alteration of objects clause of the company under the Companies Act, 2013.

2. The provisions of the Act states that a company can carry out only those business activities which are provided in the main object clause under its MOA.
3. By applying the above provisions to the given case, a company in such case is required to alter its objects clause by shifting it from other objects to main objects. In such case, a company is required to obtain permission of its shareholders by way of a special resolution and file form MGT-14 with a concerned ROC.

Q. Short note on Illegal Association (5 marks)

Ans:

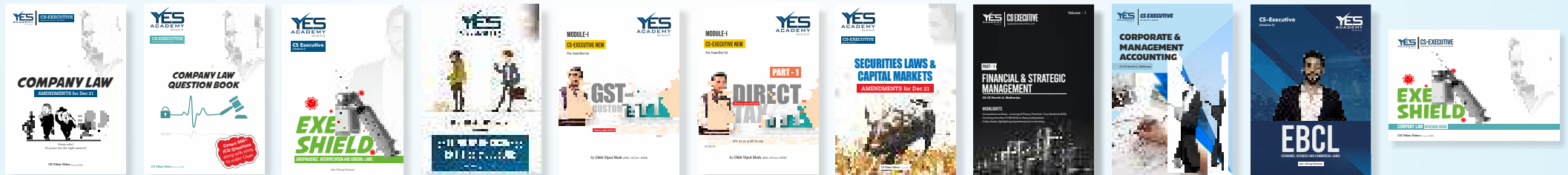
Any association of persons or partnership or any unregistered company, which has 100 or more persons as its members shall be compulsory registered under any particular Act or under the Companies Act. If it is not so registered, it becomes an illegal association.

An illegal association suffers from the following limitation:

- I. Any contract entered into by such association stands void.

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CS Vikas Vohra, Founder - YES Academy

Vikas is a Commerce and Law Graduate and a Company Secretary by profession. He has to his credit, few other Certifications and specialisations in Corporate and Securities Laws. On the teaching side, he has taught more than 10,000 students.

He is also a speaker at various Management Institutes and ICSI on various Corporate matters and Entrepreneurship. In his previous assignments, he worked as an Associate Vice President with LexValueAdd Consulting Private Limited, an Investment Banking firm based out of Mumbai.

He has significant hands on experience in Mergers and Acquisitions, Public Offerings and consequent listing of the Shares and GDR's on the Bourses, fund raising and Deal Structuring. Before that he also worked with Kirloskar Brothers Investments Limited & Bajaj Auto Limited wherein, he was deeply involved in various M&A activities.

Vikas is presently the Founder of YES Academy for CS, Pune He is also a Co-Founder of PapaZapata (Mexican food chain) & GujjuKhakhra (Indian Breads). He enjoys writing poetry and doing meditation in his free time.



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