

PAPER II – COMPANY LAW

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COMPANY LAW (PAPER II)

Simplified Study Material for LL.B. II Year IV Semester

UNIT I: COMPANY: MEANING & NATURE

CHAPTER 1: MEANING AND CHARACTERISTICS OF A COMPANY

1.1 WHAT IS A COMPANY?

Have you ever wondered how big businesses like Tata, Reliance, or Infosys operate? They are all companies. But what exactly is a company?

In very simple words, a company is a group of people who come together to do business. But legally, it is much more than that. When these people register their business under the Companies Act, they create a new "person" in the eyes of the law. This new person is called a company.

Legal Definition: According to Section 2(20) of the Companies Act, 2013, a "company" means a company incorporated under this Act or under any previous company law.

Simple Example: Imagine you and your two friends want to start a restaurant. If you just start cooking and serving food, you are running a partnership. But if you go to the Registrar of Companies, fill out forms, pay fees, and get a certificate, you have created a company. Now your restaurant has its own legal identity, separate from you and your friends.

1.2 MAIN CHARACTERISTICS OF A COMPANY

A company has some special features that make it different from other types of businesses. Let us understand them one by one.

1.2.1 Separate Legal Entity

This is the most important feature. The company is separate from its owners (called shareholders).

What does this mean?

- The company can buy property in its own name
- The company can sign contracts in its own name
- The company can sue others and be sued by others
- The company's money belongs to the company, not to the shareholders

Famous Case: Salomon v. Salomon & Co. Ltd. (1897)

Let me tell you a story to understand this better.

Mr. Salomon was a leather businessman in London. He had a successful business selling boots. He decided to turn his business into a company. He formed "Salomon & Co. Ltd." and sold his business to this company. Mr. Salomon, his wife, and his four sons were the only shareholders. Mr. Salomon owned most of the shares.

Later, the company had financial problems and had to close down. The company owed money to many people (creditors). These creditors tried to make Mr. Salomon pay the debts from his personal money. They argued that the company was just another name for Mr. Salomon himself.

What did the court say?

The court said NO. Mr. Salomon and his company are two different persons. The company is separate from Mr. Salomon. The company's debts are not Mr. Salomon's debts. The creditors cannot touch Mr. Salomon's personal money.

This case established the principle of separate legal entity. This is the foundation of company law.

1.2.2 Limited Liability

This is a huge benefit for people who invest in companies.

What does it mean?

If you buy shares in a company, your responsibility for the company's debts is limited.

Example:

You buy 100 shares of ₹10 each in a company. You have paid ₹5 per share, so you have paid ₹500. You still owe ₹5 per share (₹500 total).

Now, if the company incurs debts of ₹10 crore, can the creditors come to you for payment?

Answer: They can only ask you to pay the remaining ₹500 that you have not paid on your shares. They cannot ask for more. Your personal house, car, or savings are completely safe. Your liability is limited to the unpaid amount on your shares.

This encourages people to invest in companies without fear of losing everything.

1.2.3 Perpetual Succession

This means the company never dies. It continues forever.

What does it mean?

- Shareholders may come and go
- Shareholders may die or sell their shares
- Directors may change
- But the company continues to exist

Simple Example:

Tata Sons was started in 1868. Since then, many people who started it have passed away. Many shareholders have come and gone. But Tata Sons still exists today and will continue to exist in the future.

Famous Quote: "Members may come and members may go, but the company goes on forever."

1.2.4 Artificial Person

The company is a person created by law. It is not a human being.

What does it mean?

- Like a human, it can own property, enter contracts, sue and be sued

- Unlike a human, it cannot walk, talk, eat, or sleep
- It needs human beings (directors) to act on its behalf

Analogy: Think of a company as a robot. It can perform actions, but it is not alive. It exists only because the law says it exists.

1.2.5 Common Seal

Since a company cannot sign documents itself, it needs an official signature.

What is a Common Seal?

It is a metal stamp with the company's name engraved on it. When this stamp is put on a document, it becomes the company's official signature.

Important: The Companies Act, 2013 has made the common seal optional.

Companies can now sign documents through authorized directors instead.

1.2.6 Transferability of Shares

Shares of a public company can be easily sold or transferred.

What does it mean?

If you own shares in a company like Reliance, you can sell them to anyone through the stock market. You don't need anyone's permission.

Exception: Private companies can restrict the transfer of shares in their rules (Articles of Association).

1.2.7 Separate Property

The company owns its property. Shareholders do not own the company's property.

Example:

If you own shares in Infosys, you cannot take a Infosys computer home. The computer belongs to Infosys, not to you.

1.3 SUMMARY - CHARACTERISTICS OF A COMPANY

Characteristic

Simple Meaning

Separate Legal Entity	Company is different from its owners
Limited Liability	Owners' risk is limited to their investment
Perpetual Succession	Company never dies
Artificial Person	Created by law, not a human
Common Seal	Official signature (now optional)
Transferable Shares	Shares can be sold easily
Separate Property	Company owns its own assets

CHAPTER 2: CORPORATE PERSONALITY & LIFTING OF CORPORATE VEIL

2.1 WHAT IS CORPORATE PERSONALITY?

We learned in Chapter 1 that a company has a separate legal personality. This means the company is a person in the eyes of the law.

This separate personality creates a "veil" or a "curtain" between the company and its shareholders. This is called the Corporate Veil.

Sometimes, people misuse this protection. They hide behind the company to commit fraud or avoid taxes. In such cases, courts or laws "lift the veil" to see who is really behind the company.

What is Lifting the Corporate Veil?

It means ignoring the separate personality of the company and holding the shareholders personally responsible.

2.3 WHEN IS THE VEIL LIFTED?

There are two types of situations when the veil is lifted:

1. By Courts (Judicial Exceptions)
2. By Law (Statutory Exceptions)

2.3.1 Judicial Exceptions (When Courts Lift the Veil)

A. To Prevent Fraud

If someone uses a company to commit fraud, courts will lift the veil.

Case: Gilford Motor Co. v. Horne (1933)

Facts:

- Mr. Horne worked for Gilford Motor Company
- His contract said he cannot compete with the company after leaving
- After leaving, he formed a company in his wife's name
- This new company started competing with Gilford

Court's Decision:

The court lifted the veil. Mr. Horne had formed the company just to avoid his contract. The company was a "sham" or "mask" to hide his activities. The court held Mr. Horne personally responsible.

B. To Determine Enemy Character

During war time, courts lift the veil to see if a company is controlled by enemies.

Case: Daimler Co. v. Continental Tyre (1916)

Facts:

- A company was incorporated in England
- But most of its shareholders were Germans
- During World War I, someone owed money to this company
- They refused to pay, saying it would be paying the enemy

Court's Decision:

The court lifted the veil to look at who controlled the company. Since Germans controlled it, it was treated as an enemy company.

C. Where Company is a Sham

If a company is just a cover for someone's personal business, courts lift the veil.

Case: Jones v. Lipman (1962)

Facts:

- Mr. Lipman agreed to sell land to Mr. Jones
- Later, he changed his mind
- He formed a company and transferred the land to it
- He thought now he could avoid selling to Jones

Court's Decision:

The court lifted the veil. The company was just "a mask" for Mr. Lipman. The court ordered the company to sell the land to Jones.

D. Agency

If a subsidiary company is acting as an agent for its parent company, the veil may be lifted.

Case: Smith, Stone & Knight v. Birmingham (1939)

The court laid down tests to determine if a subsidiary is really just an agent of the parent company.

2.3.2 Statutory Exceptions (When Law Lifts the Veil)

The Companies Act itself provides for lifting the veil in certain situations.

A. Reduction in Membership (Section 3A)

Rule:

- Public company must have at least 7 members
- Private company must have at least 2 members

If membership falls below these numbers and the company continues business for more than 6 months:

The remaining members become personally liable for all debts of the company.

Example:

A private company has 2 members. One member dies. The surviving member continues the business alone for 8 months. During this time, the company borrows ₹5 lakh from a bank. The company later cannot pay. The bank can sue the surviving member personally for the ₹5 lakh.

B. Misdescription of Company Name (Section 12)

Rule:

Every company must have its name painted outside its office. The name must be mentioned on all letters, bills, etc.

If an officer signs a contract without properly mentioning the company name:

That officer becomes personally liable.

Example:

Mr. Sharma is a director of ABC Pvt. Ltd. He signs a contract as "A. Sharma" without mentioning the company. If the company does not pay, the other party can sue Mr. Sharma personally.

C. Fraudulent Conduct (Section 339)

Rule:

If in winding up, it appears that the company carried on business with intent to defraud creditors:

Consequence:

Persons who were knowingly parties to such fraud can be made personally liable for the company's debts.

D. Holding and Subsidiary Companies (Section 129)

For financial reporting, holding companies must include subsidiary accounts. This recognizes the group as one economic entity.

E. Investigation of Ownership (Section 216)

The government can investigate to find out who really owns and controls a company.

2.4 SUMMARY - WHEN VEIL IS LIFTED

Situation	Who Lifts	Reason
Fraud	Court	To prevent misuse
Enemy character	Court	National security
Sham company	Court	Hidden reality
Below minimum members	Law	Protect creditors
Misdescription	Law	Protect those dealing with company
Fraudulent trading	Law	Punish wrongdoers

2.5 SIMPLE EXAMPLES FOR UNDERSTANDING

Example 1: Fraud

Raju owes money to Sanju. To avoid paying, Raju transfers all his property to a

company he forms with his wife. Sanju can ask the court to lift the veil and treat the company as Raju's alias. Then Sanju can take the property from the company.

Example 2: Below Minimum Members

A private company (needs 2 members) continues with only one member for 7 months. It takes a loan of ₹10 lakh and cannot repay. The lender can sue the sole member personally.

Example 3: Misdescription

Suresh, a director of XYZ Ltd., signs a cheque as "Suresh" without writing the company's name. The cheque bounces. The payee can sue Suresh personally.

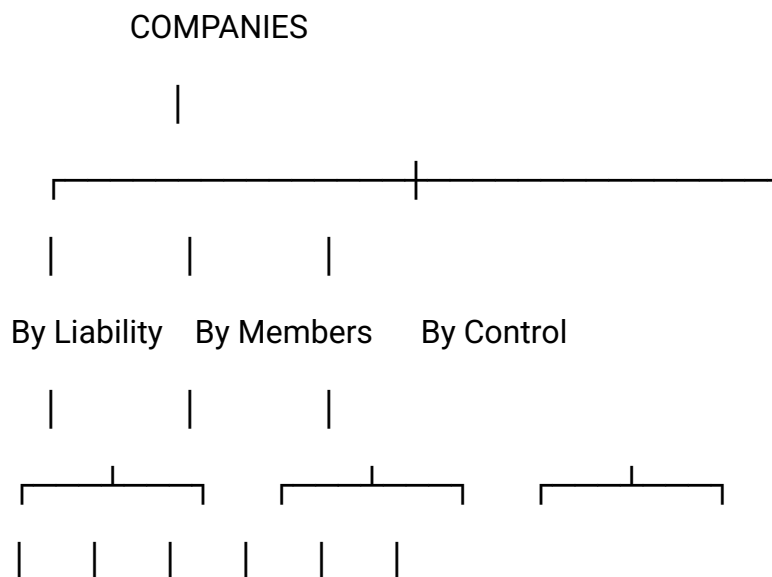
CHAPTER 3: KINDS OF COMPANIES

3.1 INTRODUCTION

Companies can be of different types based on various factors. Understanding these types helps in choosing the right structure for a business.

3.2 CLASSIFICATION OF COMPANIES

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Limited Unlimited Public Private Holding Subsidiary

by Shares Co. Co. Co. Co.

|

Limited by

Guarantee

3.3 ON THE BASIS OF LIABILITY

3.3.1 Company Limited by Shares

Meaning: The liability of members is limited to the unpaid amount on their shares.

This is the most common type of company.

Example:

A company issues shares of ₹10 each. You buy 100 shares. You pay ₹5 per share initially. Your liability is only ₹500 (100 shares × ₹5 unpaid). Even if the company has huge debts, you cannot be asked to pay more than ₹500.

Types:

- Public Company Limited by Shares
- Private Company Limited by Shares

3.3.2 Company Limited by Guarantee

Meaning: The liability of members is limited to the amount they guarantee to pay if the company is wound up.

Features:

- Usually no share capital
- Used for non-profit organizations (clubs, charities, schools)
- Members guarantee a fixed amount (say ₹1000 each)
- This amount is called only when the company closes down

Example:

A sports club is registered as a guarantee company. Each member guarantees

₹1000. The club runs for 10 years and then winds up with debts of ₹50,000. The club has 100 members. Each member may be asked to pay their ₹1000 guarantee.

3.3.3 Unlimited Company

Meaning: The liability of members has no limit. They can be asked to pay all debts from their personal assets.

Features:

- Very rare
- Usually for professional practices
- Members have unlimited responsibility

Example:

An unlimited company has debts of ₹1 crore. Its assets are only ₹20 lakh. The remaining ₹80 lakh can be collected from the members personally, in proportion to their shareholding.

3.4 ON THE BASIS OF MEMBERS

3.4.1 Private Company

Definition (Section 2(68)):

A private company is one which, by its Articles:

1. Restricts the right to transfer shares
2. Limits members to 200
3. Prohibits invitation to public to subscribe for shares

Key Features:

- Minimum members: 2
- Maximum members: 200
- Minimum directors: 2
- Cannot invite public to invest
- Shares cannot be freely sold to outsiders

Advantages:

- Less government control

- Can start business immediately after incorporation
- Fewer compliance requirements
- More privacy

Examples:

Most family businesses are private companies (like many famous business houses in India).

3.4.2 Public Company

Definition (Section 2(71)):

A public company is one which is not a private company.

Key Features:

- Minimum members: 7
- Maximum members: No limit
- Minimum directors: 3
- Can invite public to invest
- Shares are freely transferable

Advantages:

- Can raise huge money from public
- Shares can be traded on stock exchanges
- More prestige
- Better access to capital

Examples:

Reliance Industries, Tata Motors, Infosys are all public companies.

3.4.3 One Person Company (OPC)

Definition (Section 2(62)):

A company with only one person as a member.

Key Features:

- Single person can form a company
- Must nominate another person who will take over if the original person dies
- Minimum directors: 1 (can be up to 15)
- Separate legal entity

- Limited liability

Advantages:

- Sole control over business
- Limited liability protection
- Easy to manage
- Less compliance

When OPC must convert:

- If paid-up capital exceeds ₹50 lakh
- If average turnover exceeds ₹2 crore
- Must convert to private or public company

Comparison: OPC vs Sole Proprietorship

Aspect	OPC	Sole Proprietorship
Legal status	Separate entity	Same as owner
Liability	Limited	Unlimited
Continuity	Continues after owner	Ends with owner
Compliance	Moderate	Minimal

3.5 ON THE BASIS OF CONTROL

3.5.1 Holding Company

A company that controls another company.

Control means:

- Holding more than 50% of shares, OR
- Controlling the Board of Directors

3.5.2 Subsidiary Company

A company that is controlled by another company (the holding company).

Example:

Tata Sons is the holding company. It owns shares in many companies like Tata Motors, Tata Steel, etc. These are subsidiary companies of Tata Sons.

3.6 OTHER TYPES OF COMPANIES

3.6.1 Government Company (Section 2(45))

A company where at least 51% shares are held by:

- Central Government, OR
- State Government, OR
- Both

Examples:

BHEL, SAIL, Coal India Limited

3.6.2 Foreign Company (Section 2(42))

A company incorporated outside India but having a place of business in India.

Example:

Google India is a subsidiary of Google LLC (USA). Google LLC is a foreign company in India.

3.6.3 Section 8 Company (Non-Profit Company)

A company formed for promoting:

- Arts, commerce, science, sports
- Education, research, social welfare

- Religion, charity, environment protection

Features:

- Profits must be used for the object, not distributed as dividend
- Can use "Limited" in name without actually being limited
- Also called "Not-for-Profit Company"

Examples:

Indian Red Cross Society, CRY (Child Rights and You)

3.6.4 Small Company (Section 2(85))

A company (other than public company) where:

- Paid-up capital \leq ₹4 crore
- Turnover \leq ₹40 crore

Benefits:

- Less compliance
- Fewer board meetings
- Simplified reporting

3.7 COMPARISON TABLE

Feature	Public Co.	Private Co.	OPC	Section 8 Co.
Min Members	7	2	1	2

Max Members	No limit	200	1	No limit
Min Directors	3	2	1	2
Share Transfer	Free	Restricted	N/A	Restricted
Public Invitation	Yes	No	No	No
Name Suffix	Ltd.	Pvt. Ltd.	(OPC) Pvt. Ltd.	No suffix

3.8 CHOOSING THE RIGHT COMPANY

If you are...

Choose...

An individual entrepreneur

One Person Company

A family running a business

Private Company

Planning to raise money from public

Public Company

Running a charity/NGO

Section 8 Company

Farmers/producers together

Producer Company

UNIT II: INCORPORATION & DOCUMENTS

CHAPTER 4: MEMORANDUM OF ASSOCIATION (MoA)

4.1 WHAT IS MEMORANDUM OF ASSOCIATION?

The Memorandum of Association is the most important document of a company. It is like the birth certificate or constitution of the company.

Definition: The Memorandum of Association (MoA) is the document that contains the fundamental conditions upon which the company is incorporated.

Why is it so important?

- It defines the company's relationship with the outside world
- It sets the boundaries within which the company must operate
- Any act beyond the MoA is void (invalid)

4.2 CONTENTS OF MEMORANDUM (Section 4)

The MoA must contain six clauses. Let us understand each one.

4.2.1 Name Clause

The company's name is stated here.

Rules for Name:

- Must end with "Limited" (Ltd.) for public companies
- Must end with "Private Limited" (Pvt. Ltd.) for private companies
- For OPC: must end with "(OPC) Private Limited"
- For Section 8 companies: no suffix required

Name Approval:

- Name should not be identical or similar to an existing company
- Name should not be undesirable (offensive, illegal)
- Approval must be taken from ROC before registration

Example:

"Reliance Industries Limited" - Here "Limited" shows it's a public company.

"Tata Motors Private Limited" - Shows it's a private company.

4.2.2 Registered Office Clause

This clause states the name of the state where the company's registered office will be situated.

Example:

"The registered office of the company will be situated in the State of Maharashtra."

Note: The complete address is not required in MoA. Only the state is mentioned. The full address is filed separately.

4.2.3 Object Clause

This is the most important clause. It states the purpose for which the company is formed.

The Object Clause has three parts:

A. Main Objects:

The primary business activities of the company.

B. Ancillary Objects:

Activities necessary to achieve the main objects.

C. Other Objects:

Any other objects not covered above.

Why is this clause so important?

- The company can only do what is stated in this clause
- Any activity outside this clause is ultra vires (beyond powers) and void
- This protects investors and creditors

Example:

If a company's object clause says "to manufacture textiles," it cannot suddenly start a restaurant. That would be ultra vires.

4.2.4 Liability Clause

This states that the liability of members is limited.

For companies limited by shares:

"The liability of the members is limited."

For companies limited by guarantee:

"The liability of the members is limited to the amount guaranteed."

4.2.5 Capital Clause

This states the maximum capital the company can raise.

It includes:

- Authorized Capital (maximum capital)
- Division into shares of fixed amount

Example:

"The authorized capital of the company is ₹10,00,00,000 divided into 1,00,00,000 equity shares of ₹10 each."

4.2.6 Association Clause

This is the declaration by the first members (subscribers) that they wish to form a company.

It includes:

- Names and signatures of subscribers
- Number of shares each subscriber takes
- Witness details

Example:

"We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this Memorandum of Association and we respectively agree to take the number of shares in the capital of the company set opposite our respective names."

4.3 ALTERATION OF MEMORANDUM

The MoA can be changed, but it is not easy. Different clauses have different procedures.

Clause	How to Alter
Name Clause	Special resolution + Central Government approval
Registered Office	Shift within same city: Board resolution; Shift to different city: Special resolution + Regional Director approval
Object Clause	Special resolution + Central Government approval

Liability Clause	Cannot be altered to increase liability without member consent
Capital Clause	Ordinary resolution (if authorized by Articles)
Association Clause	Cannot be altered

4.4 DOCTRINE OF ULTRA VIRES

What is Ultra Vires?

"Ultra" means beyond, "Vires" means powers. So ultra vires means "beyond the powers."

Meaning:

Any act done by the company that is beyond the powers given in the Object Clause of MoA is ultra vires and void (has no legal effect).

Key Points:

- The act cannot be enforced by anyone
- Even if all shareholders agree, it cannot be validated
- Directors may be personally liable for ultra vires acts

Case: Ashbury Railway Carriage Co. v. Riche (1875)

Facts:

- A company was formed to make railway carriages
- Its object clause said it could make railway carriages
- The company bought a concession to build a railway in Belgium
- They later tried to get out of the contract

Court's Decision:

The contract was ultra vires and void. The company had no power to build railways. The contract could not be enforced.

Case: Introductions Ltd. v. National Provincial Bank (1970)

Facts:

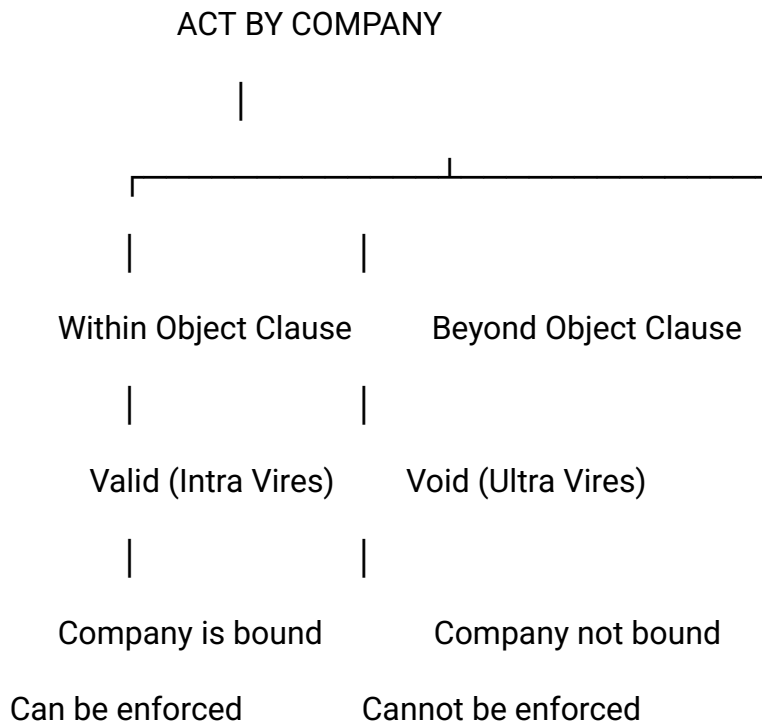
- A company's object was to provide services to visitors
- It started a pig breeding business
- It borrowed money from a bank for this business

Court's Decision:

The pig breeding business was ultra vires. The loan was also ultra vires. The bank could not recover the loan from the company.

Diagram: Effect of Ultra Vires

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4.5 SUMMARY - MEMORANDUM

Clause	What it Contains	Importance
Name	Company's name	Identity
Registered Office	State location	Jurisdiction
Object	Business purpose	Scope of activities
Liability	Limited liability	Protection to members
Capital	Maximum capital	Fundraising limit
Association	Subscribers' declaration	Formation

CHAPTER 5: ARTICLES OF ASSOCIATION (AoA)

5.1 WHAT ARE ARTICLES OF ASSOCIATION?

While the Memorandum is the company's constitution, the Articles are the internal rules and regulations of the company.

Definition: Articles of Association (AoA) are the rules for the internal management of the company.

Simple Understanding:

- MoA = What the company can do (external relations)
- AoA = How the company will do it (internal management)

5.2 CONTENTS OF ARTICLES

The Articles typically contain rules about:

1. Shares:
 - Issue of shares
 - Calls on shares
 - Transfer and transmission
 - Forfeiture of shares
2. Directors:
 - Appointment
 - Powers
 - Removal
 - Remuneration
3. Meetings:
 - Notice of meetings
 - Quorum
 - Voting
 - Proceedings
4. Dividends:
 - Declaration
 - Payment
5. Borrowing Powers:
 - How company can borrow
 - Creation of charges
6. Accounts and Audit
7. Seal

5.3 FORMS OF ARTICLES

The Companies Act provides model forms of Articles:

- Table F: For public companies limited by shares
- Table G: For companies limited by guarantee
- Table H: For unlimited companies
- Table I: For private companies

Note: A company can either adopt these model forms or create its own Articles.

5.4 RELATIONSHIP BETWEEN MoA AND AoA

Key Principles:

1. MoA is supreme: Articles are subordinate to Memorandum
2. No conflict: Articles cannot contradict Memorandum
3. If conflict occurs: Memorandum prevails

Example:

If MoA says company can deal in textiles, but Articles say directors can invest in restaurants - the Articles are invalid to that extent. Directors cannot invest in restaurants because MoA does not permit it.

5.5 DISTINCTION BETWEEN MoA AND AoA

Basis	Memorandum	Articles
Nature	Fundamental charter	Internal regulations
Purpose	Defines scope and relationship with outside world	Governs internal management
Supremacy	Supreme. Anything beyond MoA is void	Subordinate to MoA

Alteration	Difficult, requires approvals	Easier, by special resolution
Compulsory	Compulsory for every company	Private companies must have; Public companies can adopt Table F

5.6 DOCTRINE OF CONSTRUCTIVE NOTICE

What is Constructive Notice?

The Memorandum and Articles are public documents. They are filed with the Registrar of Companies and are open for inspection by anyone.

The Doctrine says:

Every person dealing with the company is deemed to have:

- Read these documents
- Understood their contents
- Known what the company can and cannot do

"Constructive" means:

Even if you have not actually read them, the law assumes you have read them. You cannot say "I didn't know."

Effect:

- If you enter into a contract that is beyond the company's powers (ultra vires), you cannot enforce it
- You are presumed to have known that the company had no power

Criticism:

This doctrine was harsh on outsiders. It assumed they would read lengthy legal documents before every transaction. This led to the development of another doctrine - Indoor Management.

5.7 DOCTRINE OF INDOOR MANAGEMENT (TURQUAND RULE)

What is Indoor Management?

While outsiders are deemed to know the public documents (MoA & AoA), they are not deemed to know what happens inside the company's office.

The Rule:

Outsiders can assume that all internal procedures have been properly followed.

Famous Case: Royal British Bank v. Turquand (1856)

Facts:

- The company's Articles allowed directors to borrow money if authorized by a shareholder resolution
- The directors borrowed money from Turquand
- No shareholder resolution was actually passed
- The company later refused to repay, arguing the internal procedure wasn't followed

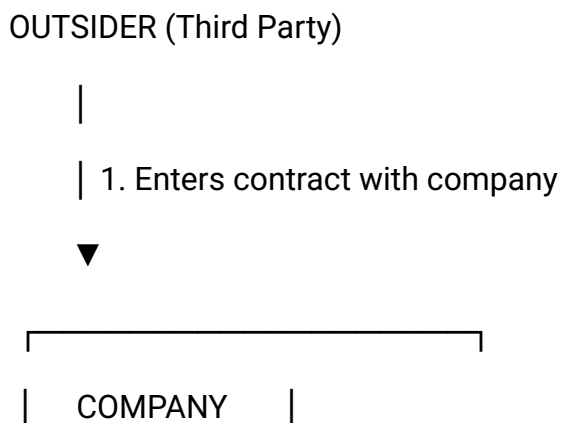
Court's Decision:

Turquand was entitled to assume that the required resolution had been passed. He had no way of knowing what happened inside the company's meetings. The company must repay.

This case established the Turquand Rule - the Doctrine of Indoor Management.

Diagram: Two Doctrines Compared

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| 2. Outsider is deemed to know

| PUBLIC documents (MoA & AoA)

| (DOCTRINE OF CONSTRUCTIVE NOTICE)

|

| 3. BUT, Outsider can assume that

| INTERNAL procedures have been followed

| (DOCTRINE OF INDOOR MANAGEMENT)



Company is bound by the contract

5.8 EXCEPTIONS TO INDOOR MANAGEMENT

The Doctrine of Indoor Management does not apply in certain situations:

5.8.1 Where Outsider Had Knowledge of Irregularity

If the outsider actually knew that internal procedures were not followed, they cannot claim protection.

Example:

If you know that the Board meeting where the loan was approved did not have the required number of directors, you cannot assume it was properly conducted.

5.8.2 Suspicion of Irregularity

If the circumstances would put a reasonable person on inquiry, the doctrine does not apply.

Example:

If a cashier, who has no authority to sign cheques, tries to give you a company cheque, you should be suspicious. You cannot blindly assume everything is fine.

5.8.3 Forgery

The doctrine does not protect against forgery. A forged document is a nullity.

Case: Ruben v. Great Fingall Consolidated (1906)

The company secretary forged signatures on a share certificate. The court held the company was not liable as it was a forgery.

5.8.4 Acts Outside Apparent Authority

If an officer does something that is clearly beyond their usual authority, the doctrine does not protect.

Example:

A junior clerk cannot enter into a major contract on behalf of the company. If you deal with such a person, you cannot claim protection.

5.9 SUMMARY - DOCTRINES

Doctrine	Meaning	Effect
Ultra Vires	Beyond powers (MoA)	Act is void
Constructive Notice	Deemed to know MoA/AoA	Cannot plead ignorance
Indoor Management	Can assume internal procedures followed	Protects outsiders

CHAPTER 6: PROSPECTUS AND MISSTATEMENTS

6.1 WHAT IS A PROSPECTUS?

When a public company wants to raise money from the public, it issues a document inviting people to buy its shares or debentures. This document is called a Prospectus.

Definition (Section 2(70)):

"Prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for subscription or purchase of any securities of the company.

Simple Meaning:

A prospectus is like an invitation letter to the public, asking them to invest money in the company.

6.2 CONTENTS OF PROSPECTUS

A prospectus must contain all material information so that an investor can make an informed decision. It includes:

1. General Information:
 - Name and address of company
 - Date of opening and closing of subscription
 - Names of stock exchanges where listing is proposed
2. Capital Structure:
 - Authorized capital
 - Issued capital
 - Subscribed capital
 - Paid-up capital
3. Terms of Issue:
 - Price of shares
 - Minimum application amount
 - Terms of payment
4. Company Details:
 - History and business
 - Promoters and directors
 - Management and organization
5. Financial Information:
 - Audited financial statements

- Profits and losses
 - Assets and liabilities
6. Risk Factors:
- Internal risks
 - External risks
 - Management perceptions

6.3 MISSTATEMENTS IN PROSPECTUS

Sometimes, prospectuses contain:

- False statements (saying something that is not true)
- Omissions (hiding important information)

This is called misstatement in prospectus.

6.4 LIABILITY FOR MISSTATEMENTS

There are two types of liability:

6.4.1 Civil Liability (Section 35)

Who is liable?

1. Every director at the time of issue
2. Every person named as director
3. Every promoter
4. Every person who authorized the issue

What is the liability?

Any person who subscribed for shares based on the misleading prospectus can claim:

- Compensation for loss
- Damages

Defences (How to escape liability):

A director can avoid liability if they prove:

- They withdrew consent before issue
- Prospectus issued without their knowledge

- They had reasonable grounds to believe the statement was true

6.4.2 Criminal Liability (Section 34)

What is the liability?

If a prospectus includes an untrue statement:

- Every person who authorized it is punishable
- Punishment: Imprisonment, fine, or both

Defence:

They can escape if they prove:

- The statement was immaterial, OR
- They had reasonable grounds to believe it was true

6.5 PENALTIES FOR MISSTATEMENTS

Type	Liability	Punishment
Civil	Pay compensation	Amount of loss suffered
Criminal	Fine/imprisonment	Fine up to ₹50 lakh or imprisonment up to 3 years or both

6.6 IMPORTANT CASE

Case: Re Pacaya Rubber and Produce Co. (1914)

Directors were held liable for misstatements in prospectus about the company's assets. They had to pay compensation to investors.

UNIT III: SHAREHOLDERS & SHARE CAPITAL

CHAPTER 7: SHARES AND SHARE CAPITAL

7.1 WHAT IS A SHARE?

When you invest money in a company, you get a share. A share represents your ownership in the company.

Definition (Section 2(84)):

"Share" means a share in the share capital of a company and includes stock.

Simple Meaning:

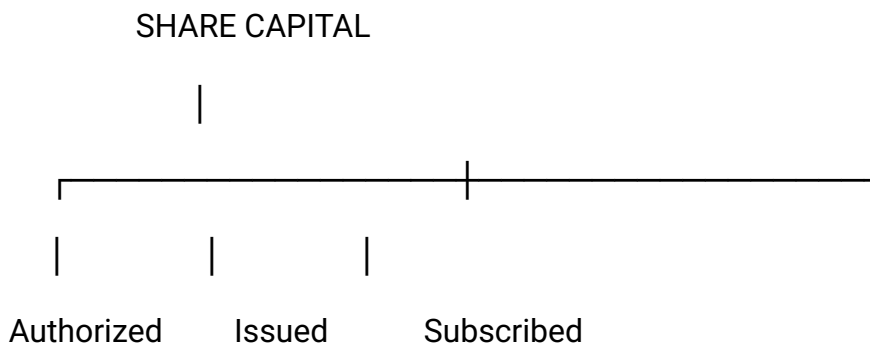
Think of the company's capital as a big pizza. The company divides this pizza into small pieces called "shares." When you buy shares, you own a piece of the pizza.

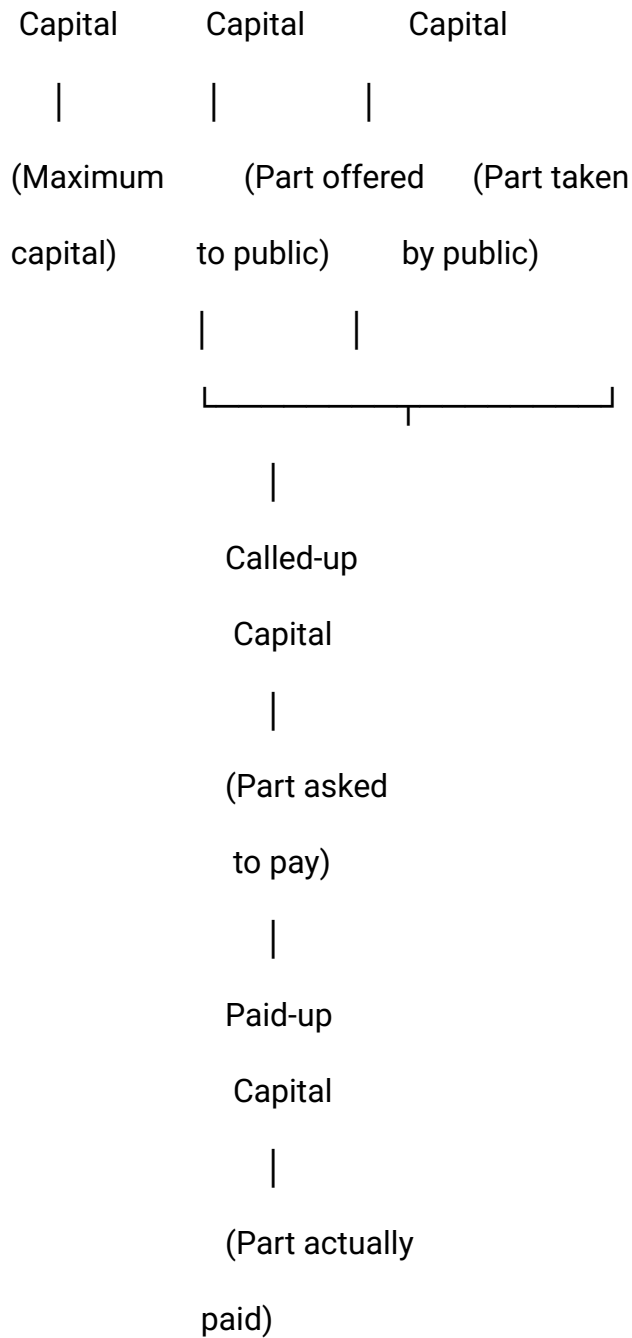
Example:

A company has total capital of ₹1,00,000. It divides this into 10,000 shares of ₹10 each. If you buy 100 shares, you own 1% of the company (100 out of 10,000 shares).

7.2 TYPES OF SHARE CAPITAL

text





7.2.1 Authorized Capital (Nominal Capital)

The maximum capital that a company can raise, as stated in the Memorandum.

Example:

MoA says authorized capital is ₹10 crore. The company cannot raise more than ₹10 crore without changing the MoA.

7.2.2 Issued Capital

The part of authorized capital that the company offers to the public for subscription.

Example:

From the ₹10 crore authorized capital, the company decides to issue ₹5 crore worth of shares to the public. This is issued capital.

7.2.3 Subscribed Capital

The part of issued capital that has been taken by the public.

Example:

The company issued ₹5 crore worth of shares. Public applied for ₹4.5 crore worth. This is subscribed capital.

7.2.4 Called-up Capital

The part of subscribed capital that the company has asked shareholders to pay.

Example:

Shareholders subscribed for ₹4.5 crore shares. The company asks them to pay ₹2.25 crore now (50% of the share value). This is called-up capital.

7.2.5 Paid-up Capital

The part of called-up capital that shareholders have actually paid.

Example:

Out of the ₹2.25 crore called, shareholders have paid ₹2.20 crore. Some have not paid. This ₹2.20 crore is paid-up capital.

7.2.6 Calls in Arrears

The amount called but not paid by shareholders.

Example:

Called-up: ₹2.25 crore; Paid: ₹2.20 crore; Calls in arrears = ₹5 lakh.

7.2.7 Calls in Advance

Amount paid by shareholders before it is called.

7.3 TYPES OF SHARES (Section 43)

A company's shares can be of two main types:

7.3.1 Preference Shares

These shareholders get preference (priority) over equity shareholders.

Features:

- Fixed rate of dividend
- Dividend paid before equity shareholders
- Capital repaid before equity shareholders in winding up
- Usually no voting rights (or limited voting rights)

Types of Preference Shares:

1. Cumulative: If dividend not paid in one year, it accumulates and must be paid later
2. Non-cumulative: If dividend not paid, it is lost
3. Participating: Can share in surplus profits beyond fixed dividend
4. Non-participating: Only fixed dividend
5. Redeemable: Can be bought back by company
6. Irredeemable: Cannot be bought back

7.3.2 Equity Shares

These are ordinary shares. They do not get any preference.

Features:

- Dividend rate not fixed - depends on profits
- Paid after preference shareholders
- Carry voting rights
- Higher risk but higher potential returns

7.4 COMPARISON: PREFERENCE vs EQUITY SHARES

Feature

Preference Shares

Equity Shares

Dividend	Fixed rate	Variable
Payment priority	First	Last
Capital repayment	First in winding up	Last in winding up
Voting rights	Usually no	Yes
Risk	Lower	Higher
Return	Limited	Potentially unlimited

CHAPTER 8: TRANSFER AND TRANSMISSION OF SHARES

8.1 TRANSFER OF SHARES

Meaning: Transfer is when a shareholder voluntarily sells or gives their shares to someone else.

Key Points:

- It is a voluntary act by a living shareholder
- The shareholder decides to sell
- A proper transfer deed must be executed
- The company must register the transfer

Procedure for Transfer:

text

Step 1: Seller executes transfer deed

|



Step 2: Transfer deed stamped properly

|



Step 3: Deed and share certificate delivered to company

|



Step 4: Board considers transfer

|



Step 5: If approved, name of buyer entered in register

|



Step 6: New share certificate issued to buyer

Restrictions:

- Public company shares: freely transferable
- Private company shares: Articles may restrict transfer

8.2 TRANSMISSION OF SHARES

Meaning: Transmission is when shares pass to someone by operation of law, not by voluntary act.

When does transmission happen?

- On death of shareholder
- On insolvency of shareholder
- On lunacy of shareholder

Key Points:

- No transfer deed required
- Legal representative becomes entitled to shares
- Company must register the transmission on receiving proof

Documents Required for Transmission on Death:

- Death certificate
- Succession certificate or probate of will
- Legal heir certificate

8.3 COMPARISON: TRANSFER vs TRANSMISSION

Basis	Transfer	Transmission
Meaning	Voluntary sale/gift	Automatic by law
By	Living shareholder	Operation of law
Deed	Required	Not required
Consideration	Usually present	No consideration

Stamp duty

Payable

Not payable

When

Any time

Death, insolvency, lunacy

CHAPTER 9: SHARE CERTIFICATES

9.1 WHAT IS A SHARE CERTIFICATE?

A share certificate is a document issued by the company certifying that a person is the owner of certain shares.

Definition (Section 46):

A share certificate is a certificate issued under the common seal of the company (if any) specifying the shares held by any person.

9.2 CONTENTS OF SHARE CERTIFICATE

1. Name of the company
2. Name of the shareholder
3. Distinctive numbers of shares
4. Number of shares
5. Amount paid on shares
6. Signature of directors/authorized officers
7. Common seal (if used)

9.3 TIME FOR ISSUE

- Private company: Within 2 months of allotment
- Public company: Within 2 months of allotment
- On transfer: Within 1 month of transfer application

9.4 LEGAL EFFECT

A share certificate is prima facie evidence of title. This means:

- It is proof that the person named owns the shares
- But if someone else has better title, the certificate alone is not conclusive
- The company may be estopped (prevented) from denying the truth of the certificate

Case: Re Bahia and San Francisco Railway (1868)

The company issued a share certificate to a person who was not the real owner. The real owner sued. The company was held liable to the person who relied on the certificate.

CHAPTER 10: CALLS ON SHARES

10.1 WHAT IS A CALL?

When a company issues shares, it may not ask for the full amount at once. When the company needs more money, it "makes a call" on shareholders to pay a part of the unpaid amount.

Example:

You take 100 shares of ₹10 each. At allotment, you pay ₹2. At first call, company asks for ₹3 more. At second call, company asks for the remaining ₹5.

10.2 CONDITIONS FOR MAKING CALLS

As per Table F (if applicable):

1. Call must be made by Board resolution
2. Notice of at least 14 days must be given
3. Call amount cannot exceed 25% of face value
4. At least 1 month gap between calls
5. Calls must be uniform on all shares of the same class

10.3 EFFECT OF NON-PAYMENT

If a shareholder fails to pay a call:

1. Shareholder becomes liable to pay interest
 2. Company may sue for the amount
 3. Company may forfeit the shares
-

CHAPTER 11: FORFEITURE AND SURRENDER OF SHARES

11.1 FORFEITURE OF SHARES

Meaning: Forfeiture means the company takes back shares from a shareholder who has not paid calls.

Procedure for Forfeiture:

text

Step 1: Call made but not paid

|



Step 2: Notice of forfeiture to shareholder

(at least 14 days notice)

|



Step 3: If still not paid, Board passes forfeiture resolution

|



Step 4: Forfeiture recorded in register



Step 5: Forfeited shares become property of company

Effect of Forfeiture:

- Shareholder loses all rights in shares
- Shareholder still liable for calls due before forfeiture
- Company can re-issue forfeited shares

11.2 SURRENDER OF SHARES

Meaning: Surrender is when a shareholder voluntarily gives back shares to the company.

When is surrender allowed?

- Usually not allowed unless Articles permit
- Often done to avoid forfeiture
- Treated like forfeiture

Difference:

Forfeiture

Company takes shares

Against shareholder's will

For non-payment of calls

Surrender

Shareholder gives shares

Voluntary

Any reason (usually to avoid forfeiture)

UNIT IV: DIRECTORS

CHAPTER 12: DIRECTORS - APPOINTMENT AND QUALIFICATION

12.1 WHO IS A DIRECTOR?

Directors are the people who manage the company. They are collectively called the Board of Directors (BoD) .

Definition (Section 2(34)):

"Director" means a director appointed to the Board of a company.

Simple Meaning:

Shareholders own the company. Directors run the company.

12.2 NUMBER OF DIRECTORS

Type of Company	Minimum Directors	Maximum Directors
Public Company	3	15
Private Company	2	15

One Person Company	1	15
--------------------	---	----

Note: Maximum of 15 can be increased by passing a special resolution.

12.3 APPOINTMENT OF DIRECTORS

12.3.1 First Directors

The first directors are appointed by:

- The subscribers to the Memorandum, OR
- As per the Articles of Association

12.3.2 Subsequent Directors

A. By Shareholders:

- Elected at Annual General Meeting (AGM)
- For public companies, at least 2/3rd directors retire by rotation
- Retiring directors can be re-appointed

B. By Board:

- Board can appoint additional directors
- Such directors hold office until next AGM

C. By Small Shareholders:

- Small shareholders (holding less than ₹20,000) can elect one director (if company has prescribed capital)

12.3.3 Director Identification Number (DIN)

Every director must have a unique DIN obtained from the Central Government.

How to get DIN:

1. Apply online to Ministry of Corporate Affairs
2. Submit identity proof and address proof

3. Get unique DIN

12.4 QUALIFICATION OF DIRECTORS

No share qualification required unless Articles specify.

However, certain qualifications are needed:

1. Age:

- Minimum: Not specified (but must be competent to contract)
- Maximum: 75 years (if beyond, special resolution required)

2. Nationality:

- Can be foreign national also
- At least one director must be resident in India (stayed in India for 182 days in previous year)

3. Number of Directorships:

- Maximum 20 companies
- Of these, maximum 10 public companies

12.5 DISQUALIFICATIONS (Section 164)

A person cannot be a director if they:

1. Are of unsound mind
 2. Are an undischarged insolvent
 3. Have applied to be adjudicated as insolvent
 4. Have been convicted of an offense involving moral turpitude (imprisonment for 6 months or more)
 5. Have not paid calls on shares for 6 months
 6. Have been disqualified by court/Tribunal
 7. Do not have DIN
 8. Are directors in a company that has not filed financial statements/returns for 3 continuous years (disqualification for 5 years)
-

CHAPTER 13: POWERS AND DUTIES OF DIRECTORS

13.1 POWERS OF DIRECTORS

The Board of Directors has powers to do everything except what the Act or Articles require to be done by shareholders.

13.1.1 Powers Exercisable Only at Board Meeting (Section 179)

The following powers can only be exercised at a Board meeting:

1. To make calls on shares
2. To issue debentures
3. To borrow money (beyond certain limits)
4. To invest funds of the company
5. To grant loans or give guarantees
6. To approve financial statements
7. To diversify business
8. To approve amalgamation, merger, reconstruction
9. To take over other companies
10. To appoint or remove key managerial personnel

13.1.2 Powers Requiring Shareholder Approval

Some powers require approval of shareholders by ordinary or special resolution:

- Sell, lease, dispose of substantial undertaking
- Invest in other companies beyond limits
- Borrow money beyond paid-up capital and free reserves
- Remunerate directors in certain cases

13.2 DUTIES OF DIRECTORS (Section 166)

The Companies Act, 2013 has specifically listed the duties of directors:

1. Duty to act in good faith (Section 166(2))
Directors must act in good faith to promote the objects of the company for the benefit of its members as a whole.

2. Duty to act in best interest
Directors must act in the best interests of the company, its employees, shareholders, community, and environment.
3. Duty to exercise reasonable care, skill, and diligence (Section 166(3))
A director must exercise reasonable care, skill, and diligence that a reasonably diligent person would exercise.
4. Duty to avoid conflict of interest (Section 166(4))
A director must not involve in a situation where their personal interest conflicts with company interest.
5. Duty not to achieve undue gain (Section 166(5))
A director must not achieve any undue gain or advantage. If they do, they must pay it to the company.
6. Duty not to assign office (Section 166(6))
A director cannot assign their office to another person.

Fiduciary Position:

Directors are in a "fiduciary" position - they are trusted to act in the best interest of the company. They must not misuse this trust.

13.3 LIABILITIES OF DIRECTORS

13.3.1 Civil Liability

- Liability for ultra vires acts
- Liability for misstatements in prospectus
- Liability for breach of trust
- Liability for negligence

13.3.2 Criminal Liability

- For fraud
 - For misstatements
 - For non-compliance with legal provisions
-

CHAPTER 14: REMOVAL AND RESIGNATION OF DIRECTORS

14.1 REMOVAL OF DIRECTORS (Section 169)

Who can remove?

Shareholders can remove a director before the expiry of their term.

Procedure:

text

Step 1: Shareholder gives special notice (at least 14 days)

|



Step 2: Company sends copy to director

|



Step 3: Director can make representation

|



Step 4: Representation sent to all shareholders

|



Step 5: Resolution put to vote at general meeting

|



Step 6: If ordinary resolution passed, director removed

Important Points:

- Director must be given opportunity of being heard
- Removal does not affect any compensation claim director may have
- This section does not apply to directors appointed by Tribunal or on proportional representation basis

Who cannot be removed by shareholders?

- Directors appointed by Central Government/NCLT
- Directors on board of financial institutions under certain statutes

14.2 RESIGNATION OF DIRECTORS (Section 168)

How to resign:

- Director gives notice in writing to the company
- Resignation takes effect from later of:
 - Date mentioned in notice, OR
 - Date received by company

Company's duties on resignation:

1. Inform Registrar within 30 days
2. Inform director about acceptance (if required)
3. Director can also inform Registrar directly if company fails

Liability after resignation:

Director remains liable for offenses that occurred during their tenure, even after resignation.

14.3 COMPARISON: REMOVAL vs RESIGNATION

Basis	Removal	Resignation
Who initiates	Shareholders	Director

Voluntary/Involuntary	Involuntary	Voluntary
Procedure	Special notice, voting	Written notice
Approval needed	Ordinary resolution	No approval needed
Effective date	Date of resolution	Date in notice/date received

CHAPTER 15: MEETINGS AND REGISTERS

15.1 BOARD MEETINGS

Frequency:

- First board meeting: Within 30 days of incorporation
- Minimum 4 board meetings every year
- Gap between two meetings cannot exceed 120 days

Notice:

- Minimum 7 days notice
- Shorter notice allowed if at least one independent director present (for listed companies)

Quorum:

- 1/3rd of total strength or 2 directors, whichever is higher

- For private companies: 2 members personally present

Participation:

- Directors can participate in person or through video conferencing (for specified items)

15.2 COMMITTEES OF BOARD

Mandatory Committees (for certain companies):

1. Audit Committee
 - Minimum 3 directors
 - Independent directors majority
 - Chairperson to be independent director
2. Nomination and Remuneration Committee
 - For identifying persons for directorship
3. Stakeholders Relationship Committee
 - To handle shareholder complaints
4. Corporate Social Responsibility Committee
 - For companies required to spend on CSR

15.3 REGISTERS TO BE MAINTAINED

Every company must maintain several registers at its registered office:

15.3.1 Register of Members (Section 88)

Contains:

- Name, address of each member
- Shares held
- Amount paid
- Date of becoming member
- Date of cessation of membership

15.3.2 Register of Directors (Section 170)

Contains:

- Name, address of directors

- DIN
- Date of appointment
- Terms and conditions
- Other directorships held

15.3.3 Register of Charges (Section 85)

Contains details of all charges (mortgages) created by the company.

15.3.4 Register of Loans, Guarantees, etc.

Records all loans given, guarantees provided.

15.3.5 Register of Related Party Transactions

Records transactions with directors and their relatives.

15.4 INSPECTION OF REGISTERS

- Members can inspect registers free of cost
- Others can inspect on payment of fee
- Registers must be kept open during business hours

15.5 MINUTES OF MEETINGS

Requirements:

- Minutes of all meetings must be recorded
- Must be entered in Minutes Book within 30 days
- Must contain fair and correct summary
- Pages must be numbered
- Cannot be altered once signed

Evidentiary Value:

Minutes are evidence of proceedings. Until contrary is proved, meetings are deemed to have been duly called and held.

SUMMARY TABLES FOR QUICK REVISION

UNIT I: COMPANY - MEANING & NATURE

Topic	Key Points
Characteristics	Separate entity, limited liability, perpetual succession, artificial person, common seal, transferable shares
Lifting of Veil	Fraud, enemy character, sham, below minimum members, misdescription, fraudulent conduct
Kinds	Public/Private/OPC, Limited/Unlimited, Holding/Subsidiary, Government/Foreign

UNIT II: INCORPORATION & DOCUMENTS

Document/Doctrine	Key Points
Memorandum	Name, Registered Office, Object, Liability, Capital, Association clauses
Articles	Internal management rules

Ultra Vires	Beyond MoA = Void
Constructive Notice	Deemed to know public documents
Indoor Management	Can assume internal procedures followed
Prospectus	Invitation to public, liability for misstatements

UNIT III: SHAREHOLDERS & SHARE CAPITAL

Topic	Key Points
Share Capital	Authorized, Issued, Subscribed, Called-up, Paid-up
Types of Shares	Preference (fixed dividend), Equity (variable)
Transfer	Voluntary, by living person, needs deed
Transmission	Automatic, on death/insolvency

Share Certificate

Proof of ownership

Calls

Demand for unpaid amount

Forfeiture

Company takes back shares for non-payment

UNIT IV: DIRECTORS

Topic

Key Points

Appointment

By subscribers, shareholders, or Board

Qualification

DIN, resident director, age limits

Powers

Board meetings, shareholder approval for major decisions

Duties

Good faith, care, avoid conflict, no undue gain

Removal

By shareholders (ordinary resolution)

Resignation

By director (written notice)

Meetings

4 per year, 7 days notice, quorum

Registers

Members, Directors, Charges, etc.

UNIT V: DIVIDENDS & BORROWING POWERS

CHAPTER 1: DIVIDENDS AND CAPITALISATION

1.1 WHAT IS A DIVIDEND?

Have you ever invested money in something and later got back some profit? That's exactly what a dividend is!

Simple Definition:

Dividend is the part of a company's profit that is distributed to its shareholders. It is like a "thank you" payment from the company to the people who invested their money.

Real-Life Example:

Imagine you and your friends start a lemonade stand. You all invest ₹100 each. After a month, you make a profit of ₹500. You decide to share ₹300 of this profit among yourselves equally. This ₹300 is like a dividend. You keep the remaining ₹200 in the business for future needs.

1.2 WHO GETS DIVIDEND?

- Preference Shareholders: They get dividend first, at a fixed rate
- Equity Shareholders: They get whatever is left after paying preference shareholders

1.3 FROM WHERE CAN DIVIDEND BE PAID? (Section 123)

This is very important. A company cannot just pay dividend from anywhere. The law is strict about this.

Sources of Dividend:

1. Current Year's Profits

- Profits earned in the current financial year
- After providing for depreciation
- 2. Past Years' Profits
 - Profits from previous years
 - Kept as reserves
- 3. Money Received from Government
 - In some special cases, if government gives money for dividend payment

What a Company CANNOT Use for Dividend:

- Capital (money raised from shares)
- Borrowed money
- Sale proceeds of fixed assets (except in some cases)

1.4 CONDITIONS FOR DECLARING DIVIDEND

Before declaring dividend, a company must:

1. Provide for Depreciation
 - Assets lose value over time (like your phone becomes old)
 - Company must account for this loss first
2. Transfer to Reserves
 - Company may keep some profit aside for future
3. Set off Past Losses
 - If company had losses earlier, current profits must first cover those losses

1.5 TYPES OF DIVIDEND

1.5.1 Interim Dividend

Meaning: Dividend declared between two Annual General Meetings.

When declared:

- During the financial year
- Based on half-yearly or quarterly results
- Declared by Board of Directors

1.5.2 Final Dividend

Meaning: Dividend declared at the Annual General Meeting.

When declared:

- At the end of financial year
- Based on full year's results
- Recommended by Board, approved by shareholders

1.6 PROCEDURE FOR PAYMENT OF DIVIDEND

text

Step 1: Board recommends dividend

|



Step 2: Shareholders approve at AGM

|



Step 3: Dividend declared

|



Step 4: Must be paid within 30 days

|



Step 5: Unpaid dividend transferred to special account

1.7 IMPORTANT RULES ABOUT DIVIDEND

1. No dividend without profits - You cannot eat what you don't have!
2. Dividend only in cash - Normally paid in money, not in goods
3. Pro-rata basis - If you have more shares, you get more dividend

4. Depreciation first - Must provide for depreciation before dividend
5. 30 days deadline - Must pay within 30 days of declaration

1.8 WHAT IF DIVIDEND IS NOT PAID ON TIME?

If a company fails to pay dividend within 30 days:

- Every director who is knowingly a party to the default
- May be punished with:
 - Imprisonment up to 3 years, AND
 - Fine of ₹1000 per day of default

1.9 UNPAID DIVIDEND ACCOUNT

If dividend is declared but not claimed by shareholders:

1. Company must transfer the amount to a special account called "Unpaid Dividend Account"
2. This must be done within 7 days of the 30-day period
3. If still unclaimed for 7 years, amount goes to:
 - Investor Education and Protection Fund (IEPF)

1.10 CAPITALISATION AND BONUS SHARES

1.10.1 What is Capitalisation?

Sometimes a company makes good profits and keeps building a large reserve. Instead of paying all this as cash dividend, the company may convert these profits into permanent capital.

Simple Example:

Your lemonade stand has made total profits of ₹1000 over 3 years. You have kept this money in the business (not taken out). Now you decide to give your investors "free" shares worth this ₹1000. This is capitalisation.

1.10.2 What are Bonus Shares?

Bonus shares are free shares given to existing shareholders.

How it works:

- Company has accumulated profits
- Instead of paying cash dividend, company issues new shares
- These shares are given FREE to existing shareholders
- The company's profit reserves reduce, and share capital increases

Example:

ABC Ltd. has:

- Share capital: ₹10,00,000
- Reserves: ₹5,00,000

It decides to issue bonus shares of ₹5,00,000 to shareholders in the ratio of 1 bonus share for every 2 shares held.

After bonus issue:

- Share capital: ₹15,00,000
- Reserves: ₹0

1.10.3 Why Companies Issue Bonus Shares?

Reason	Explanation
Reward shareholders	Without paying cash
Reduce share price	More shares = lower price per share, making shares affordable
Show confidence	Indicates company is doing well
Tax advantage	Bonus shares not taxable like cash dividend

1.10.4 Sources for Bonus Issue

Bonus shares can be issued from:

- Free reserves
- Securities premium account
- Capital redemption reserve

Cannot be issued from:

- Revaluation reserve (profit from revaluing assets)

1.10.5 Conditions for Bonus Issue (SEBI Rules)

1. Articles must authorize bonus issue
2. Must have sufficient reserves
3. Must not have defaulted in paying statutory dues
4. Must have shareholder approval (ordinary resolution)

1.11 COMPARISON: CASH DIVIDEND vs BONUS SHARES

Aspect	Cash Dividend	Bonus Shares
Form	Cash	Shares
Company cash	Reduces	Remains same
Share capital	No change	Increases
Reserves	Reduce	Reduce

Shareholder gets	Money	More shares
Tax	Taxable	Not taxable

CHAPTER 2: DEBENTURES

2.1 WHAT IS A DEBENTURE?

Simple Definition:

A debenture is a document issued by a company acknowledging that it has borrowed money from you.

Think of it this way:

- When you buy a share, you become an owner of the company
- When you buy a debenture, you become a lender to the company

Legal Definition (Section 2(30)):

"Debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not.

2.2 KEY FEATURES OF DEBENTURES

1. Acknowledgment of Debt - It's a proof that company owes you money
2. Fixed Interest - You get interest at a fixed rate, whether company makes profit or not
3. Repayment Date - Company promises to repay on a specific date
4. Security - Usually secured against company assets
5. No Voting Rights - You are a lender, not an owner, so no voting

2.3 WHO CAN ISSUE DEBENTURES?

- Public companies
- Private companies (with certain conditions)

2.4 TYPES OF DEBENTURES

2.4.1 On the Basis of Security

A. Secured Debentures

- Backed by a charge on company's assets
- If company fails to pay, you can sell the assets
- Also called "Mortgage Debentures"

B. Unsecured Debentures

- No security
- Just a promise to pay
- Also called "Naked Debentures" (higher risk, higher interest)

2.4.2 On the Basis of Repayment

A. Redeemable Debentures

- Repaid after a fixed period
- Most common type

B. Irredeemable Debentures

- No fixed repayment date
- Repaid only when company winds up
- Also called "Perpetual Debentures"

2.4.3 On the Basis of Convertibility

A. Convertible Debentures

- Can be converted into shares after some time
- If you convert, you become an owner from a lender

B. Non-Convertible Debentures

- Cannot be converted into shares

- Remain as loan till repaid

2.4.4 On the Basis of Registration

A. Registered Debentures

- Company maintains register of debenture holders
- Transfer requires registration

B. Bearer Debentures

- Payable to whoever holds the document
- Transferable by mere delivery

2.5 COMPARISON: SHARES vs DEBENTURES

Feature	Shares	Debentures
Status	Owner	Creditor/Lender
Return	Dividend (depends on profit)	Interest (fixed)
Payment priority	After debentures	First
Voting rights	Yes	No
Security	No	Usually yes

Repayment	Only on winding up	On due date
Risk	Higher	Lower

2.6 DEBENTURE TRUSTEE

When a company issues debentures to the public, it must appoint a Debenture Trustee.

Who is a Debenture Trustee?

A trustee (usually a bank or financial institution) who protects the interests of debenture holders.

Duties of Debenture Trustee:

- Ensure company creates proper security
- Ensure company complies with terms
- Take action if company defaults
- Protect debenture holders' rights

2.7 RIGHTS OF DEBENTURE HOLDERS

1. Right to interest - Fixed interest on time
2. Right to repayment - Principal on due date
3. Right to sue - If company defaults
4. Right to appoint receiver - In case of default (for secured debentures)
5. Right to inspect - Trust deed and register

2.8 REMEDIES OF DEBENTURE HOLDERS

If company fails to pay:

1. Sue for recovery - File lawsuit
2. Appoint receiver - Court appoints person to take control of assets
3. Sell security - Enforce charge on assets

4. File winding up petition - Ask court to close the company

2.9 DISTINCTION: DEBENTURES vs BANK LOAN

Aspect	Debentures	Bank Loan
Source	Public	Bank
Number of lenders	Many	One
Transferable	Yes	No
Interest rate	Fixed	Can be floating
Documentation	Trust deed	Loan agreement

CHAPTER 3: CHARGES AND MORTGAGES

3.1 WHAT IS A CHARGE?

Simple Definition:

When you borrow money from someone, they may ask for security. This security is called a charge. It gives the lender the right to take your property if you don't repay.

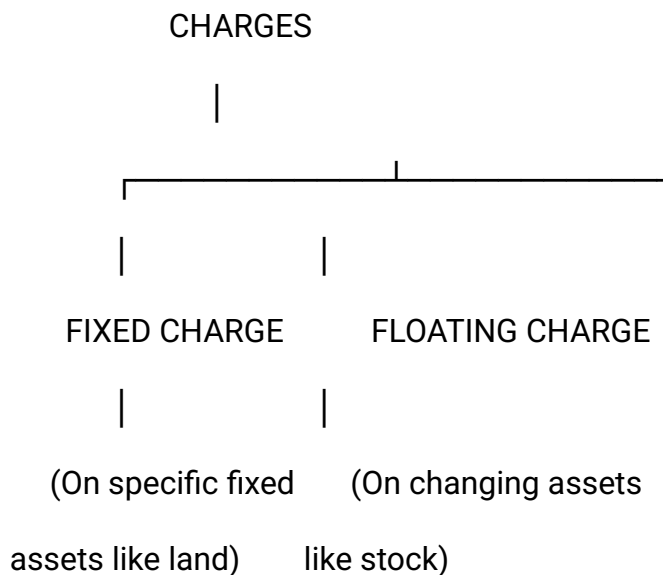
Example:

When you take a home loan from a bank, the bank creates a charge on your house. If you don't pay the loan, the bank can sell your house and recover its money.

3.2 TYPES OF CHARGES

There are two main types of charges:

text



3.2.1 Fixed Charge

Meaning: A charge on specific, identifiable assets.

Characteristics:

- Created on assets that don't change frequently
- Company cannot sell the asset without lender's consent
- Examples: Land, building, plant, machinery

Analogy:

Think of fixed charge like a mortgage on your house. The house is a specific, fixed asset. You cannot sell it without the bank's permission.

3.2.2 Floating Charge

Meaning: A charge on assets that keep changing.

Characteristics:

- Created on assets that are constantly changing
- Company can deal with these assets normally
- The charge "floats" over the assets
- Examples: Stock in trade, raw materials, book debts

Analogy:

Think of floating charge like a net over a pond. The water (assets) keeps moving and changing, but the net remains. The company can use and sell its stock normally.

3.2.3 Crystallization of Floating Charge

What is Crystallization?

When a floating charge becomes fixed.

When does it happen?

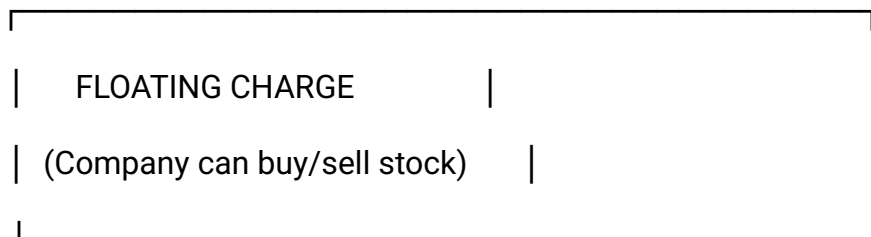
1. When company defaults in payment
2. When company goes into liquidation
3. When company ceases business
4. When something happens that lets lender enforce security

Effect of Crystallization:

- Floating charge becomes fixed
- Company can no longer deal with assets freely
- Lender can take possession

Diagram: Crystallization

text



|
| DEFAULT or LIQUIDATION



| CRYSTALLIZATION |
| (Charge becomes fixed) |



| FIXED CHARGE |
| (Lender can sell assets) |

3.3 COMPARISON: FIXED vs FLOATING CHARGE

Feature	Fixed Charge	Floating Charge
Assets	Specific, identifiable	Changing, circulating
Consent to sell	Required	Not required

Priority	Higher (in winding up)	Lower
Crystallization	Always fixed	Becomes fixed on events
Examples	Land, building	Stock, book debts

3.4 PRIORITY OF CHARGES

When a company has multiple charges, who gets paid first?

General Rule:

1. Fixed charge holders (on specific assets)
2. Preferential creditors (government dues, employees)
3. Floating charge holders
4. Unsecured creditors

Exception:

If a floating charge has a "negative pledge" clause (promising not to create prior charges), and a subsequent fixed charge holder knew about it, the floating charge may have priority.

3.5 REGISTRATION OF CHARGES (Sections 77-87)

3.5.1 Why Register Charges?

- To inform the public that the company's assets are charged
- To determine priority between different charge holders
- To comply with law

3.5.2 Time for Registration

- Must be registered within 30 days of creation

- Can be registered late with additional fee (up to 300 days)

3.5.3 Effect of Non-Registration

If a charge is not registered:

1. Charge becomes void against liquidator and other creditors
2. Money becomes immediately payable
3. But the company is still liable to repay

3.6 COMPANY'S CHARGE REGISTER (Section 85)

Every company must maintain a Register of Charges at its registered office containing:

- Description of the charge
- Amount secured
- Property charged
- Names of charge holders

3.7 SATISFACTION OF CHARGE

When the loan is repaid:

- Company must inform ROC within 30 days
- ROC enters satisfaction in register
- Charge is extinguished

3.8 MORTGAGE

What is a Mortgage?

A mortgage is a type of charge specifically on immovable property (land and buildings).

Types of Mortgages (under Transfer of Property Act):

Type

Meaning

Simple Mortgage	Property pledged, possession with borrower
Mortgage by Conditional Sale	Property transferred, becomes sale if not repaid
Usufructuary Mortgage	Possession given to lender
English Mortgage	Property transferred absolutely, to be re-transferred on repayment
Equitable Mortgage	Deposit of title deeds

UNIT VI: MAJORITY RULE & OPPRESSION

CHAPTER 4: PROTECTION OF MINORITY RIGHTS

4.1 THE PROBLEM: MAJORITY RULE

In a company, decisions are made by majority vote. This seems fair, right? But what if the majority starts cheating the minority?

Simple Example:

A company has 5 shareholders:

- Mr. Big: 60 shares
- Ms. Medium: 30 shares
- Mr. Small: 5 shares
- Ms. Tiny: 3 shares
- Mr. Micro: 2 shares

Mr. Big controls 60% votes. He can pass any resolution he wants. What if he decides to:

- Pay himself huge salary
- Not declare dividend
- Sell company assets to his relatives cheap

How can Mr. Small, Ms. Tiny, and Mr. Micro protect themselves?

4.2 THE RULE IN FOSS v. HARBOTTLE (1843)

This is the most important case on majority rule.

Facts of the Case:

- Mr. Foss and Mr. Harbottle were minority shareholders in a company
- They alleged that the majority directors had misused company property
- They sued the directors on behalf of the company

What did the court say?

The court said: If a wrong is done to the company, only the company can sue. Individual shareholders cannot sue.

Reasoning:

- The company is a separate legal entity
- If every shareholder could sue, there would be chaos
- Majority rule should prevail

The Rule:

- For wrongs to the company, the company is the proper plaintiff
- Courts will not interfere in internal management
- Majority shareholders decide what's best

4.3 EXCEPTIONS TO FOSS v. HARBOTTLE (When Minority Can Sue)

The rule in Foss v. Harbottle has exceptions. Minority shareholders can sue in the following cases:

4.3.1 Ultra Vires Acts

If the company is doing something beyond its powers (ultra vires), any shareholder can sue.

Example:

A textile company starts a casino business. This is ultra vires. A minority shareholder can go to court to stop it.

4.3.2 Fraud on the Minority

If the majority is committing fraud against the minority, the minority can sue.

Case: Cook v. Deeks (1916)

Facts:

- Three directors (majority) and one director (minority) ran a construction company
- The three majority directors took a contract in their own names instead of the company's name
- They passed a resolution saying the company had no interest in the contract

Court's Decision:

This was fraud on the minority. The minority director could sue. The majority cannot use their votes to appropriate company property to themselves.

4.3.3 Acts Requiring Special Majority

If an act requires a special resolution (75% approval) but is passed by ordinary resolution, minority can challenge.

4.3.4 Personal Rights

If a shareholder's personal rights are violated, they can sue.

Personal rights include:

- Right to vote

- Right to attend meetings
- Right to receive dividend (when declared)

4.3.5 Where Company is Controlled by Wrongdoers

If the wrongdoers control the company and won't let the company sue them, minority can sue.

4.4 DERIVATIVE ACTION

What is Derivative Action?

When a shareholder sues on behalf of the company. The shareholder "derives" their right from the company.

Conditions for Derivative Action (Section 245):

1. The shareholder must have good faith
2. Must give notice to company
3. Must show that wrongdoers control the company
4. Must prove that company suffered loss

4.5 CLASS ACTION SUITS (Section 245)

The Companies Act, 2013 introduced class action suits in India.

What is a Class Action?

When many shareholders (a class) join together to sue the company or its directors.

Who can file?

- Members (shareholders)
- Depositors
- Any class of persons

Number required:

- For companies with share capital: 100 members or 5% of total members (whichever is less)
- For companies without share capital: 20% of total members

Grounds for Class Action:

- Fraudulent or unlawful conduct
- Oppression and mismanagement
- Mismanagement of company affairs
- Auditor's negligence

Relief that can be sought:

- Damages
 - Restitution of property
 - Declaration that an action is void
-

CHAPTER 5: PREVENTION OF OPPRESSION AND MISMANAGEMENT

5.1 INTRODUCTION

The Companies Act provides special protection to minority shareholders through Sections 241-246. If the majority is acting unfairly, the minority can approach the National Company Law Tribunal (NCLT) .

5.2 WHAT IS OPPRESSION?

Meaning: Oppression means the majority is acting in a manner that is burdensome, harsh, and wrongful to the minority.

Key Elements of Oppression:

1. Conduct is burdensome and harsh
2. Conduct is lacking in probity (fair dealing)
3. Conduct is against public interest
4. Continues up to the time of petition

Case: Scottish Co-operative Wholesale Society v. Meyer (1959)

Facts:

- A textile company was formed with Scottish society and Meyer as shareholders
- Scottish society had majority shares
- Scottish society started its own textile business and starved the joint company of business
- The joint company's shares became worthless

Court's Decision:

This was oppression. The majority used their power to destroy the company and harm the minority.

5.3 WHAT IS MISMANAGEMENT?

Meaning: Mismanagement means the company's affairs are being conducted in a way that is prejudicial to the interests of the company.

Examples of Mismanagement:

- Directors misusing company funds
- Not holding meetings
- Not maintaining proper accounts
- Making bad investments
- Appointing incompetent persons

5.4 WHO CAN APPLY TO NCLT? (Section 244)

Type of Company	Number Required
Company with share capital	100 members OR 1/10th of total members
Company without share capital	1/5th of total members

In case of oppression only: Any member(s) with 100 members or 1/10th voting power

In case of mismanagement: Any member(s) with 1/5th voting power

Central Government can also apply if it feels the company is being managed in a manner prejudicial to public interest.

5.5 GROUNDS FOR APPLYING TO NCLT

5.5.1 For Oppression

The petitioner must show:

1. The company's affairs are being conducted in a manner oppressive to some members
2. The facts would justify winding up the company
3. But winding up would unfairly prejudice the petitioners

5.5.2 For Mismanagement

The petitioner must show:

1. The company's affairs are being conducted in a manner prejudicial to:
 - Public interest, OR
 - Interests of the company
2. There is material change in management not in public interest

5.6 POWERS OF NCLT (Section 242)

When NCLT finds oppression or mismanagement, it can pass any order it thinks fit:

Types of Orders NCLT Can Pass:

Order	Explanation
Regulate conduct	Direct how company should be run

Purchase shares	Order majority to buy minority's shares at fair price
Reduce capital	Cancel shares obtained by oppression
Terminate agreements	Cancel unfair agreements
Set aside transactions	Cancel fraudulent transactions
Remove directors	Remove wrongdoers
Appoint directors	Appoint new directors
Alter memorandum/articles	Change company's constitution

5.7 INTERIM ORDER BY NCLT

Even before final hearing, NCLT can pass interim orders to:

- Stop oppressive acts
- Appoint administrator
- Restrain transfer of shares

5.8 CONSEQUENCES OF NCLT ORDER

1. Binding effect: Order binding on all parties

2. Appeal: Can be appealed to NCLAT within 45 days
3. Penalty: Non-compliance is punishable

5.9 COMPARISON: OPPRESSION vs MISMANAGEMENT

Basis	Oppression	Mismanagement
Focus	Harm to members	Harm to company
Nature	Burdensome, harsh conduct	Wrongful conduct
Effect	Personal wrong	Corporate wrong
Remedy	Protect members	Protect company

5.10 IMPORTANT CASE

Case: Needle Industries (India) Ltd. v. Needle Industries Newey (1981)

Facts:

- Indian company was subsidiary of UK company
- UK company wanted to increase its stake
- Indian company issued rights shares
- UK company couldn't subscribe due to RBI rules
- Indian minority gained control

Supreme Court held:

This was not oppression. The majority must prove that the conduct is

burdensome, harsh, and wrongful. Mere loss of majority does not amount to oppression.

UNIT VII: OTHER ALLIED ASPECTS

CHAPTER 6: PRIVATE AND PUBLIC COMPANIES

6.1 RECAP: PRIVATE COMPANY

Definition (Section 2(68)):

A private company is one which by its Articles:

1. Restricts right to transfer shares
2. Limits members to 200
3. Prohibits public invitation to subscribe shares

6.2 RECAP: PUBLIC COMPANY

Definition (Section 2(71)):

A public company is one which is not a private company.

6.3 DETAILED COMPARISON

Feature	Private Company	Public Company
Minimum Members	2	7

Maximum Members	200	No limit
Minimum Directors	2	3
Maximum Directors	15 (can be increased)	15 (can be increased)
Share Transfer	Restricted	Free
Public Subscription	Prohibited	Allowed
Prospectus	Not required	Required
Commencement	Can start immediately	Needs certificate
Statutory Meeting	Not required	Required
Quorum for AGM	2 members	5 members
Managerial Remuneration	No limit	Limited to 11% of profits

Loans to Directors	Restricted (with exceptions)	Strictly restricted
Interested Director	Can participate (if disclosed)	Can participate (if disclosed)
Independent Directors	Not required	Required (if listed)
Women Directors	Not required	Required (if listed)
Compliance	Less	More

6.4 ADVANTAGES OF PRIVATE COMPANY

1. Less regulation - Fewer government controls
2. Quick decisions - Smaller board, faster decisions
3. More control - Can restrict outsiders
4. Privacy - Need not disclose as much as public companies
5. Easy formation - Can start business immediately

6.5 ADVANTAGES OF PUBLIC COMPANY

1. Access to capital - Can raise money from public
2. Liquidity - Shares can be sold easily
3. Prestige - More credibility
4. Growth - Better for expansion
5. Employee benefits - Can offer ESOPs easily

6.6 CONVERSION OF COMPANIES

6.6.1 Private to Public

Procedure:

1. Pass special resolution
2. Alter Articles to remove private company restrictions
3. File with ROC (Form INC-27)
4. Obtain new certificate of incorporation

Effect:

- Company becomes subject to all public company regulations
- Shares become freely transferable
- Can issue prospectus

6.6.2 Public to Private

Procedure:

1. Pass special resolution
2. Obtain approval from NCLT
3. Alter Articles to add restrictions
4. File with ROC
5. Obtain new certificate

Note: NCLT approval is required to protect creditors' interests.

CHAPTER 7: HOLDING AND SUBSIDIARY COMPANIES

7.1 WHAT IS A HOLDING COMPANY?

Simple Definition:

A company that controls another company is called the Holding Company.

7.2 WHAT IS A SUBSIDIARY COMPANY?

Simple Definition:

A company that is controlled by another company is called the Subsidiary Company.

7.3 HOW IS CONTROL DETERMINED? (Section 2(87))

A company is a subsidiary if the holding company:

1. Controls Board Composition

- Can appoint or remove majority of directors

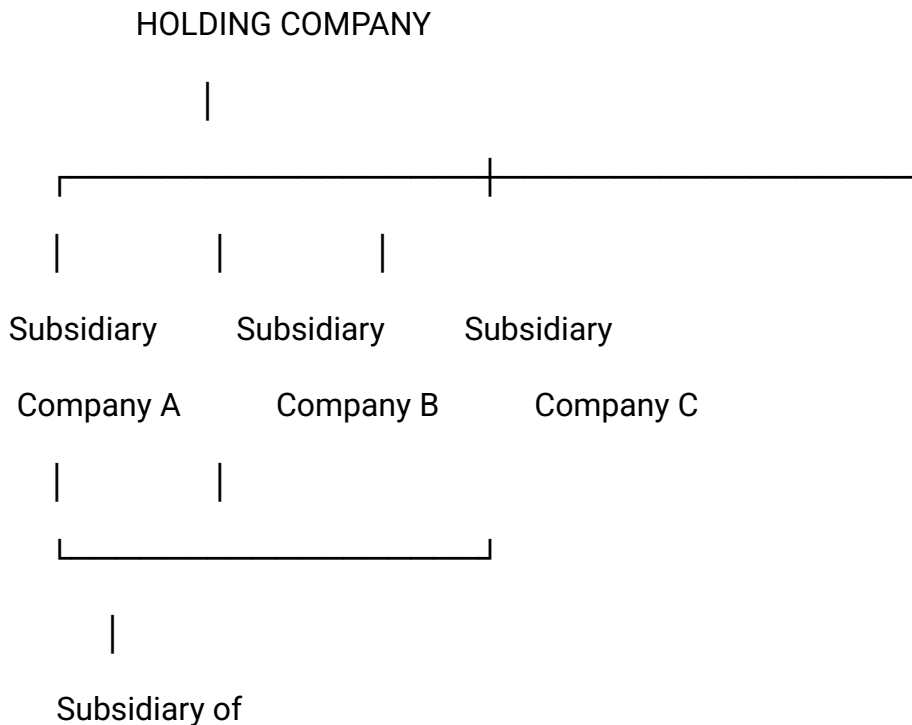
OR

2. Controls Voting Power

- Holds more than 50% of total voting power
- Either directly or through other subsidiaries

7.4 TYPES OF SUBSIDIARY RELATIONSHIPS

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Subsidiary

(Step-down Subsidiary)

7.4.1 Wholly-Owned Subsidiary

Holding company owns 100% shares.

7.4.2 Partly-Owned Subsidiary

Holding company owns more than 50% but less than 100%.

7.4.3 Step-down Subsidiary

A subsidiary of a subsidiary. The holding company indirectly controls it.

Example:

- Tata Sons owns 60% of Tata Motors
- Tata Motors owns 70% of Tata Motors Finance
- Tata Sons indirectly controls Tata Motors Finance

7.5 RULES ABOUT HOLDING-SUBSIDIARY RELATIONSHIP

7.5.1 Subsidiary Cannot Hold Shares in Holding Company (Section 19)

The Rule:

A subsidiary cannot hold shares in its holding company.

Reason:

To prevent circular ownership and confusion about who really controls whom.

Exception:

If subsidiary held shares before becoming subsidiary, it can continue but cannot vote.

7.5.2 Restrictions on Multiple Holding Companies

A company can have only one holding company.

7.5.3 Financial Consolidation (Section 129)

Holding company must prepare consolidated financial statements including all subsidiaries.

7.6 ADVANTAGES OF HOLDING-SUBSIDIARY STRUCTURE

Advantage	Explanation
Risk segregation	Each subsidiary separate, one's failure doesn't affect others
Tax benefits	Can optimize tax across group
Management focus	Each business has focused management
Brand separation	Different brands under different companies
Regulatory compliance	Some businesses need separate licenses

7.7 DISADVANTAGES

Disadvantage	Explanation
---------------------	--------------------

Complexity	Multiple entities, multiple compliance
Cost	Higher administrative costs
Conflicts	Possible conflicts between group companies
Transparency issues	Can hide problems in subsidiaries

7.8 LEGAL POSITION OF SUBSIDIARY

Key Principle:

A subsidiary is a separate legal entity. It is not an agent of the holding company.

Case: Salomon v. Salomon - The principle applies even to subsidiaries.

Exception:

If subsidiary is merely a "sham" or "agent" of holding company, court may lift the veil.

7.9 ACCOUNTS OF HOLDING COMPANY (Section 129)

Holding company's financial statements must include:

1. Its own financial statements
2. Consolidated financial statements of all subsidiaries
3. Separate statement containing salient features of subsidiaries

7.10 INVESTMENT IN HOLDING COMPANY BY SUBSIDIARY

As per Section 19:

- Subsidiary cannot buy shares of holding company
 - If it already holds, cannot exercise voting rights
 - Must dispose of within prescribed period
-

CHAPTER 8: FOREIGN COMPANIES

8.1 WHAT IS A FOREIGN COMPANY? (Section 2(42))

Definition:

A "foreign company" means any company or body corporate incorporated outside India which has a place of business in India.

Includes:

- Companies incorporated outside India
- Having a place of business in India
- Whether by itself or through agent
- Physically or through electronic mode

8.2 WHEN DOES A FOREIGN COMPANY NEED TO COMPLY?

A foreign company must comply with Indian company law if it has a place of business in India.

What is "Place of Business"?

- Office
- Branch
- Factory
- Establishment
- Any place where business is conducted

Does NOT include:

- Mere correspondence with Indian companies
- Occasional transactions
- Appointing agents for specific purposes

8.3 REQUIREMENTS FOR FOREIGN COMPANIES (Sections 380-386)

8.3.1 Documents to be Filed (Section 380)

Within 30 days of establishing place of business, foreign company must file with ROC:

1. Certified copy of charter, memorandum, articles (translated if needed)
2. Full address of registered office in home country
3. List of directors and secretary
4. Names and addresses of persons authorized to accept notices in India
5. Address of principal place of business in India

8.3.2 Financial Statements (Section 381)

Foreign company must file with ROC:

- Balance sheet and P&L account in prescribed form
- In triplicate
- Within 6 months of close of financial year

8.3.3 Display of Name

- Name of company and country of incorporation
- Must be displayed outside every office in India
- Must be mentioned in all business letters, bills, etc.

8.4 SERVICE OF DOCUMENTS

Any document can be served on a foreign company by:

- Leaving at, or sending to, its registered address in India
- Delivering to any person authorized to accept service

8.5 LIQUIDATION OF FOREIGN COMPANY

If a foreign company ceases to have a place of business in India:

- It must give notice to ROC
- ROC removes name from register

8.6 PENALTIES FOR NON-COMPLIANCE

If foreign company fails to comply:

- Company and every officer in default
- Punishable with fine
- Continuing default: additional fine per day

8.7 COMPARISON: INDIAN vs FOREIGN COMPANY

Feature	Indian Company	Foreign Company
Incorporation	In India	Outside India
Registered office	In India	Outside India
Governing law	Companies Act, 2013	Home country + Indian law
Place of business	Only India	Has in India
Compliance	Full Indian law	Limited Indian law
Name	Must end with Ltd./Pvt. Ltd.	As per home country

UNIT VIII: RECONSTRUCTION & AMALGAMATION

CHAPTER 9: RECONSTRUCTION AND AMALGAMATION

9.1 INTRODUCTION

Sometimes companies need to change their structure. They may:

- Combine with other companies
- Split into different companies
- Change their capital structure

This is called reconstruction and amalgamation.

9.2 WHAT IS AMALGAMATION? (MERGER)

Simple Definition:

When two or more companies join together to form one company.

Types of Amalgamation:

9.2.1 Amalgamation by Merger

text

Company A Company B

\ /

\ /

\ /

\ /

\ /

\ /

Company C (New)

Two companies wind up and form a new company.

9.2.2 Amalgamation by Absorption

text

Company A (Absorbing)

↑

|

Company B (Absorbed)

One company takes over another. The absorbed company dissolves.

Example:

When Tata Tea absorbed Tetley, Tata Tea continued, Tetley ceased to exist.

9.3 WHAT IS RECONSTRUCTION?

Simple Definition:

Reconstruction means reorganizing the company without forming a new company.

Types of Reconstruction:

9.3.1 Internal Reconstruction

- Changing share capital
- Reducing share capital
- Reorganizing debts

9.3.2 External Reconstruction

- Selling business to new company

- Shareholders of old company get shares in new company

9.4 DIFFERENCE: AMALGAMATION vs RECONSTRUCTION

Basis	Amalgamation	Reconstruction
Number of companies	Two or more	One (may create new)
Existing companies	Both dissolve	Continues with changes
New company	Formed	May or may not form
Purpose	Combine businesses	Reorganize structure

9.5 PROCEDURE FOR AMALGAMATION (Sections 230-232)

text

Step 1: Board approves scheme

|



Step 2: Application to NCLT for meetings

|



Step 3: NCLT orders meetings of shareholders and creditors

|



Step 4: Meetings held, scheme approved by required majority

|



Step 5: Petition to NCLT for sanction

|



Step 6: NCLT sanctions scheme (if satisfied)

|



Step 7: File order with ROC

|



Step 8: Transfer of assets and liabilities

9.6 APPROVAL REQUIREMENTS

For scheme to be approved:

Group

Approval Required

Shareholders

75% in value present and voting

Creditors

75% in value present and voting

9.7 POWERS OF NCLT

NCLT can:

- Sanction the scheme
- Reject the scheme
- Modify the scheme
- Give directions for implementation

9.8 EFFECT OF SANCTIONED SCHEME

Once NCLT sanctions the scheme:

1. Binding on all - Even those who voted against
2. Transfer of property - Automatically vests in transferee company
3. Liabilities transfer - All liabilities transfer
4. Legal proceedings - Continue against transferee company
5. Dissolution - Transferor company dissolved (without winding up)

9.9 TAKEOVER CODE (SEBI)

If amalgamation involves listed companies, SEBI Takeover Code applies:

- Public announcement required
- Open offer to shareholders
- Minimum price rules

9.10 TAX ASPECTS

- Amalgamation can be tax-neutral if conditions met
- Carry forward of losses allowed in some cases
- Stamp duty payable on transfer of assets

9.11 COMPROMISE AND ARRANGEMENT (Section 230)

What is Compromise?

Settlement with creditors - they agree to take less than what is owed.

What is Arrangement?

Reorganizing share capital or company structure.

Examples:

- Reducing interest rate on debentures
 - Converting debt into shares
 - Changing rights of shareholders
-

UNIT IX: WINDING UP

CHAPTER 10: WINDING UP - INTRODUCTION

10.1 WHAT IS WINDING UP?

Simple Definition:

Winding up is the process by which a company's life ends. Its assets are sold, debts are paid, and whatever remains is distributed to shareholders.

Analogy:

Think of a company like a person. Winding up is like death. Just as when a person dies, their property is distributed to heirs after paying debts, similarly when a company winds up, its property is distributed to shareholders after paying all debts.

10.2 WINDING UP vs DISSOLUTION

Term

Meaning

Winding up

Process of selling assets, paying debts

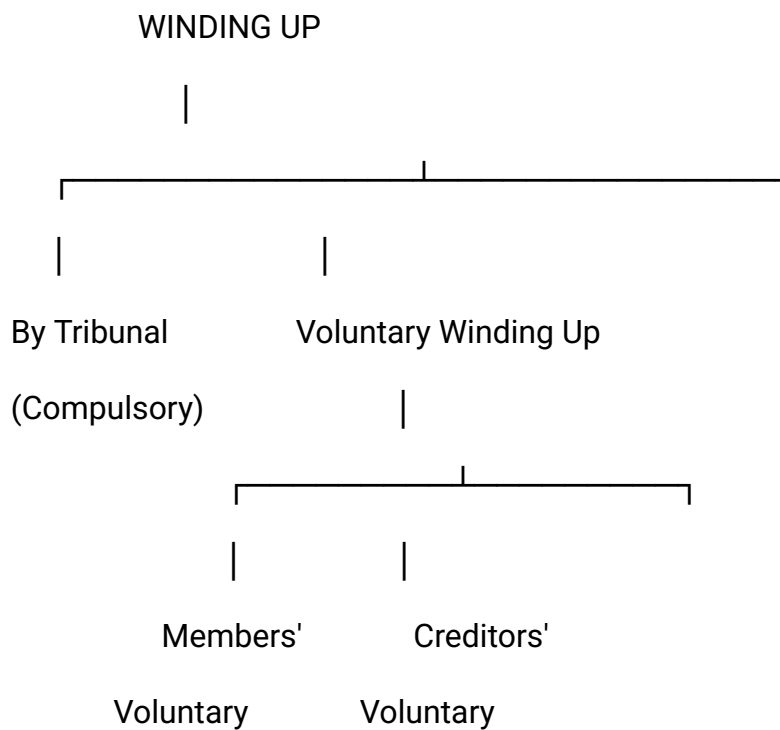
Dissolution

Final stage when company ceases to exist

All winding up ends in dissolution.

10.3 MODES OF WINDING UP

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CHAPTER 11: GROUNDS FOR WINDING UP

11.1 COMPULSORY WINDING UP BY TRIBUNAL (Section 271)

The Tribunal (NCLT) can order winding up on following grounds:

11.1.1 Special Resolution

Company passes a special resolution that it should be wound up.

11.1.2 Default in Filing Financial Statements

Company has not filed financial statements or annual returns for 5 consecutive years.

11.1.3 Acting Against Sovereignty

Company has acted against:

- Sovereignty of India
- Integrity of India
- Security of India
- Friendly relations with foreign states
- Public order, decency, morality

11.1.4 Fraudulent Incorporation

Company was formed for fraudulent or unlawful purpose.

11.1.5 Reduction in Membership

- Public company: Members below 7
- Private company: Members below 2

11.1.6 Inability to Pay Debts (Commercial Insolvency)

Company is unable to pay its debts.

When is company deemed unable to pay debts?

1. Creditor owed ₹1 lakh serves demand notice
2. Company fails to pay within 21 days
3. Execution of decree returned unsatisfied
4. Proved to Tribunal that company cannot pay

11.1.7 Just and Equitable

Tribunal thinks it is just and equitable to wind up the company.

This is a broad ground. Examples:

- Deadlock in management
- Loss of substratum (main business impossible)
- Company is a "bubble" (fraud)
- Oppression of minority

Case: Re Yenidje Tobacco Co. (1916)

Facts:

- Two equal shareholders/directors
- They quarrelled constantly
- Refused to speak to each other
- Business came to standstill

Court's Decision:

Just and equitable to wind up. Deadlock made business impossible.

11.2 VOLUNTARY WINDING UP

11.2.1 Members' Voluntary Winding Up

Conditions:

- Company is solvent (can pay all debts)
- Directors make declaration of solvency
- Shareholders pass resolution

Declaration of Solvency:

- Made by Board
- States company can pay debts within 3 years
- Filed with ROC

11.2.2 Creditors' Voluntary Winding Up

When:

- Company is insolvent
- No declaration of solvency
- Creditors take control of process

Procedure:

1. Shareholders pass resolution
 2. Creditors' meeting called
 3. Creditors appoint liquidator
 4. Creditors may appoint committee of inspection
-

CHAPTER 12: PROCEDURE FOR WINDING UP

12.1 COMPULSORY WINDING UP PROCEDURE

text

Step 1: Petition filed with NCLT

(by company, members, creditors, or government)

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Step 2: NCLT hears petition

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Step 3: If satisfied, NCLT passes winding up order

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Step 4: Official Liquidator appointed

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Step 5: Liquidator takes control of assets

|



Step 6: Liquidator calls for claims from creditors



Step 7: Assets sold, money collected



Step 8: Money distributed in order of priority



Step 9: NCLT orders dissolution

12.2 WHO CAN FILE PETITION?

Petitioner

When

Company

Special resolution

Members

On just and equitable grounds

Creditors

Company unable to pay debts

Registrar

On various grounds

Central Government

In public interest

12.3 EFFECT OF WINDING UP ORDER

Once winding up order is passed:

1. Official Liquidator takes charge
 2. Directors' powers cease
 3. Employees stand discharged
 4. Legal proceedings against company stop (stay)
 5. Transfers of shares after order are void
 6. Statement of affairs to be filed
-

CHAPTER 13: POWERS OF LIQUIDATOR

13.1 WHO IS LIQUIDATOR?

The person appointed to carry out the winding up process.

In compulsory winding up: Official Liquidator (appointed by Tribunal)

In voluntary winding up: Company Liquidator (appointed by members/creditors)

13.2 POWERS OF LIQUIDATOR

13.2.1 Powers with Tribunal Sanction

With Tribunal's permission, liquidator can:

1. Institute or defend lawsuits
2. Carry on business (for beneficial winding up)
3. Appoint lawyers
4. Compromise with creditors
5. Compromise with contributors

13.2.2 Powers without Tribunal Sanction

Liquidator can:

1. Sell company property
2. Execute documents
3. Prove debts in insolvency of contributors
4. Draw, accept, endorse bills of exchange
5. Raise money on security of assets
6. Do all things necessary for winding up

13.3 DUTIES OF LIQUIDATOR

1. Take custody of company property
2. Collect debts and money due
3. Realize assets (convert to cash)
4. Pay company's debts
5. Adjust rights of contributors
6. Distribute surplus among members
7. Submit accounts to Tribunal
8. Report on progress of winding up

13.4 COMMITTEE OF INSPECTION

In some cases, creditors may appoint a committee to supervise the liquidator.

Functions:

- Approve certain actions of liquidator
 - Advise liquidator
 - Ensure proper conduct
-

CHAPTER 14: CONSEQUENCES OF WINDING UP

14.1 EFFECT ON COMPANY

1. Cessation of business - Can only carry on business to wind up

2. Corporate shell remains - Legal entity continues till dissolution
3. Name changes - "In Liquidation" added to name

14.2 EFFECT ON DIRECTORS

1. Powers cease - Cannot manage company
2. Control lost - Liquidator in control
3. Personal liability - May be liable for fraudulent trading

14.3 EFFECT ON SHAREHOLDERS

1. Liability continues - Must pay calls, unpaid amounts
2. No voting rights - Company in liquidation
3. Last in payment - Paid only after all creditors

14.4 EFFECT ON EMPLOYEES

1. Employment terminates - Automatically on winding up
2. Preferential payment - Salaries get priority
3. Retrenchment compensation - May be payable

14.5 EFFECT ON CREDITORS

1. Must prove debts - File claims with liquidator
2. Payment in priority - According to legal order
3. Secured creditors - Can enforce security or prove for balance

14.6 EFFECT ON LEGAL PROCEEDINGS

1. Stay of proceedings - No suit against company without leave
2. Pending suits - Can continue with leave
3. Execution - Cannot execute decree without leave

14.7 EFFECT ON CONTRACTS

1. Contracts continue - But cannot be performed
2. Damages - Breach gives right to prove in winding up

3. Leases - May be disclaimed

14.8 PREFERENTIAL PAYMENTS (Section 327)

Order of Payment:

text

1. SECURED CREDITORS

(Realize their security)

|



2. COSTS OF WINDING UP

(Liquidator's fees, court costs)

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3. PREFERENTIAL CREDITORS

- Government taxes (due within 12 months)
- Employees' salaries/wages (4 months, up to ₹20,000)
- Workmen's compensation
- PF, gratuity dues

|



4. UNSECURED CREDITORS

- Debenture holders (unsecured)
- Trade creditors

- Other debts

|



5. PREFERENCE SHAREHOLDERS

(Return of capital)

|



6. EQUITY SHAREHOLDERS

(Surplus, if any)

14.9 FRAUDULENT PREFERENCE (Section 328)

If a company, before winding up, gave preference to a creditor to defraud others:

- Such preference may be set aside
- Money recovered for benefit of all creditors

14.10 FRAUDULENT TRADING (Section 339)

If in winding up, it appears that business was carried on with intent to defraud creditors:

- Persons knowingly parties may be personally liable
- Without limit on liability

14.11 DISSOLUTION

What is Dissolution?

Final stage when company ceases to exist.

Effect:

- Company's name struck off register

- Legal entity ends
- No further proceedings possible

14.12 AVOIDANCE OF CERTAIN TRANSACTIONS

Transaction	Period	Effect
Fraudulent preference	6 months before winding up	Voidable
Voluntary transfer	1 year before winding up	Void
Charge on uncalled capital	Anytime	Void
Floating charge	12 months before	Void (except for cash)

CHAPTER 15: WINDING UP UNDER IBC, 2016

15.1 INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 (IBC) now governs insolvency resolution and liquidation for companies.

15.2 KEY DIFFERENCES: COMPANIES ACT vs IBC

Aspect	Companies Act	IBC
Focus	Winding up	Resolution first
Adjudicating Authority	NCLT	NCLT
Timeline	Not fixed	Time-bound (330 days)
Management	Liquidator takes over	Resolution Professional, then liquidator
Moratorium	After winding up	Immediately on admission

15.3 CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

Under IBC, the first attempt is to resolve, not liquidate.

Process:

1. Default occurs (minimum ₹1 crore)
2. Financial creditor files application
3. NCLT admits application
4. Moratorium declared
5. Resolution Professional appointed
6. Resolution plan invited

7. Committee of Creditors approves plan (66%)
8. NCLT approves plan

If no plan approved, then liquidation follows.

SUMMARY TABLES FOR QUICK REVISION

UNIT V: DIVIDENDS & BORROWING POWERS

Topic	Key Points
Dividend	Part of profits distributed to shareholders
Sources	Current profits, past profits (after depreciation)
Bonus shares	Free shares from accumulated profits
Debentures	Loan instruments, fixed interest, no voting
Types of debentures	Secured/unsecured, convertible/non-convertible

Fixed charge

On specific assets

Floating charge

On changing assets

Registration

Must register charge within 30 days

UNIT VI: MAJORITY RULE & OPPRESSION

Topic

Key Points

Foss v. Harbottle

Only company can sue for wrongs to company

Exceptions

Ultra vires, fraud on minority, personal rights

Oppression

Burdensome, harsh conduct

Mismanagement

Prejudicial to company interests

NCLT powers

Can regulate conduct, remove directors, order share purchase

Class action

100 members or 5% can sue

UNIT VII: OTHER ALLIED ASPECTS

Topic

Key Points

Private company

2-200 members, restricted shares

Public company

7+ members, free shares

Holding company

Controls another

Subsidiary

Controlled by another

Foreign company

Incorporated outside, place of business in India

UNIT VIII: RECONSTRUCTION & AMALGAMATION

Topic

Key Points

Amalgamation	Two or more companies combine
Reconstruction	Reorganizing company structure
Approval	75% shareholders and creditors
NCLT sanction	Required for scheme to be effective
Effect	Binding on all, property transfers automatically

UNIT IX: WINDING UP

Topic	Key Points
Modes	Compulsory, voluntary (members/creditors)
Grounds	Special resolution, inability to pay, just and equitable
Liquidator	Manages winding up process

Priority

Secured creditors → Costs → Preferential →
Unsecured → Shareholders

Effect

Directors' powers cease, employees
discharged

Dissolution

Final end of company