**UNIT-1**

**Managerial Authority Of The Company**

**QUE-1 Define Secretary & describe the qualities required for a successful company secretary.**

**OR**

**QUE-1 Describe the qualifications required for company secretary.**

**Ans:**

**1.00 Introduction:**

Secretary is originally a latin word which means one who keeps secret details and observes correspondence in order to look after the day to day activities and administration of the company, the post of secretary becomes inevitable now a days. Company secretary is essential as the new company act, 2013, has given special status of KMP (Key Managerial Personnel) to the secretary. In the company law, the following three persons have been included as KMP.

(1) The managing director or chief executive officer or manager.

(2) Company secretary

(3) Chief financial officer/ such other officer as may be prescribed.

**2.00 Meaning & Definition:**

In a general sense, secretary means a person who performs the activities of maintaining secrecy, observes correspondence, documentation, keep records of agreement and undertakes other activities as directed on behalf of another person, association, corporation or public institution.

According to section 2(1)(c) of Company Secretary Act 1980, “Company Secretary means a person who is a member of Institute Of Company Secretaries Of India(ICSI)”.

**3. 00 Qualities of an Ideal Secretary:**

**3.1 Good health:**

As the company secretary is chief administrator head. He has to work hard at different levels. He has to face irregularities. To fulfill his commitment, he has to work hard, for that good health is essential, then he’ll be fit mentally also.

**3.2 Honesty:**

The secretary is key managerial personnel, he knows each & every matter of the company. So it becomes his moral duty to be honest, his good character and good habits will motivate other officers. He has to see interest of the company instead of his own, for that honesty is essential.

**3.3. Attractive Personality:**

The company secretary has to work with many people like shareholders, debenture holders, Board Of Directors, govt. officer, Employees, General public, etc. Moreover he has to work with bank. Govt. dept and other specialized professional person. For that his personality should be attractive and impressive to such people.

**3.4 Intelligence:**

The company secretary has to look after the administrative function, business affairs, economic affairs, rules & regulation of the company act along with policy matters. To carry out all this commitments, the company secretary must be highly intelligent and sharp to tackle all the matters effectively & efficiently.

**3.5 Decision power:**

It is very difficult to take proper decision at a proper time for any matter. At the same time it’s also very essential to take prompt decision for effective administration and to take advantage of available opportunity. If the secretary has quick, proper decision power then time, resources and energy can be saved.

**3.6 Analytical capacity :**

The secretary has to prepare contracts, agreements for that he must have capacity to analyze different aspects of such agreements. Whenever any admin or executive problems occurs he must have the ability to unfold it and take proper decision. If he doesn’t have such capacity there is possibility of wrong decisions.

**3.7 Enthusiasm:**

If the company secretary is energetic he’ll motivate other employees because person with lack of enthusiasm make the work burdensome while enthusiastic person make it easy.

**3.8 Loyalty:**

As the company secretary is a KMP he has sensible and confidential information with him. So loyalty is essential. He shouldn’t provide any information to other competitive company for his own interest.

**3.9 Confidence:**

Whatever the decision is taken by the secretary he must have confidence. His confidence must be reflected in his work he must have such confidence that whatever work is done by him will be a success. The confident person is easily able to manage complicated situations. He should always be optimistic towards work.

**3.10 Tactfulness & smartness:**

The secretary must have the ability to understand the complication of law. Tactful company secretary turns tough situation easy. A smart secretary has ability to understand what’s happening around him and what type of changes are going to take place. The tactful and smart secretary is able to manage situations according to the requirement.

**3.11 Foresight:**

The company secretary is closely associated with day to day functions. He must know that a decision taken by him in the present will affect its consequences on future.

**3.12 Leadership:**

The company secretary is a high ranked responsible officer. He must be responsible officer. He must have quality to get the work done timely and effectively from other officer for this the secretary must have leadership quality like co-operativeness, courageousness and capacity to motivate other officers.

**4.00 Qualifications:**

**4.1. Academic qualification:**

(A) In case of company having paid up share capital of Rs.5 crore or more the membership of the institute of company secretaries of India, New Delhi is required.

(B) In case of company having paid up share capital less than Rs.5 crores may have one of the following qualifications.

(i) Membership of the institute of company secretary of India.

(ii) Pass the intermediate examination conducted by ICSI.

(iii) Post graduate degree in commerce or co-operative secretaryship granted by any university in India.

(iv) Degree in law granted by any university.

(v) Membership of the Institute of Cost and Work Accountants of India.

(vi) Membership of Chartered Accountants of India.

(vii) post graduate degree in commerce and diploma in managerial science granted by any university or the Institute of Management from Ahmadabad, Kolkata, Bangalore, or Lucknow.

(viii) Post graduate Diploma in company secretary granted by institute of commercial practice, Delhi or Diploma in corporate laws and management Granted by the Indian Law Institute New Delhi.

(x) Post graduate diploma in Company Law & Secreterial Practice granted by university of Udaipur.

(xi) Membership of the Association of secretaries and administration of the Kolkata.

Where the paid up share capital of a company is enhanced by Rs. 5 crores or more the company shall within a period of 1 year from the date of such enhancement, have a whole time, secretary who must be a member of the institute of company secretary of India, new Delhi.

**4.2 Professional Qualifications:**

1. He must be an expert of company law, income tax, labour law, mercantile law, banking and insurance law, foreign exchange regulation act, MRTP act etc.

2. He must be well-versed/skilled in correspondence recording and reporting.

3. He must have complete knowledge of office organization and secretarial practice.

4. He must have sound practical knowledge of the latest & best system of filing indexing, labour saving techniques.

5. He must have a good command over english.

6. He must be thoroughly familiar with the laws relating to the conduct and procedure of company meetings.

7. He must be having a knowledge of books of accounts.

**QUE-2 State the provisions of the company’s act regarding the appointments of secretary. OR**

**QUE-2 State the appointment and termination of company secretary.**

**Ans:**

**1.00 Introduction: As per Q-1.**

**2.00 Meaning: As per Q-1.**

**3.00 Appointment of secretary:**

In current times, the appointment of secretary is subject to its provisions. The secretary has to look after a no. of activities such as to undertake correspondence, to prepare document and provide for their registration, to observe the meeting, to inform the board etc. as per the new company’s act 2013 the secretary is KMP, at the time of appointment of company secretary provisions of company law should be follow:

**3.1. Legal provisions regarding appointment of company secretary :**

* 1. For the company which has subscribed capital of Rs. 5 crore or more, appointment of secretary is mandatory,
  2. Only living persons can be appointed as secretary. The partnership firm or any institute or corporate units can’t be appointed.
  3. The person who is going to be appointed as secretary must have certificate from institute of co-secretary of India.
  4. As a company secretary minor person or insolvent person or insane (mentally disturbed) person can’t be appointed.
  5. To appoint company secretary resolution of the board should be passed in the board of directors meeting. In this resolution.
     1. Terms& Conditions of appointments.
     2. Remuneration
     3. And membership no. are essential
  6. Willingness certificate is to be taken from the secretary to be appointed as KMP.
  7. With the register of co.

(i) Form MGT 14 along with resolution of B.O.D. and consent letter to work as KMP should be register.

(ii) Form MR 01 and willingness letter to work as KMP and resolution of BOD should be registered within 60 days.

**4.00 Termination of the Company Secretary:**

The company secretary is appointed a resolution passed in the meeting of BOD usually his appointment is terminated as per the terms & conditions of agreement.

The secretary can be terminated from his position in following circumstances:

1. In case of death of secretary.

2. When the secretary is incapable for contract.

3. When the secretary resigns himself.

4. When co-issues notice for termination.

5. When any fraud or misappropriations are done with the co. by secretary.

6. For willful neglect of duties while performing the work as secretary and due to which company incurs/ financial loss.

7. When the secretary violate the provisions of company law.

8. When any secret profit or commission at the cost of the company is earned or taken by secretary.

9. When the Company goes in to liquidation or legally winds up. The secretary can be terminated.

**QUE-3:Describe the functions and responsibilities or duties of company secretary OR**

**Explain “Board is the mind of the company where as secretary is its eyes, ears and hands.”**

**ANS:**

**1.00 Introduction: As per Q-1.**

**2.00 Meaning: As per Q-1.**

**3.00 Functions and responsibilities or duties of secretary:**

The position of secretary is considered as very important irrespective of a private company or a public company. His or her function depends on the nature of business activity and size of the company. He or she co-operate the board to look after the day to day i.e. administrative activities of the company. Following are the duties and responsibilities.

**3.1 The functions & responsibilities before the incorporation of the company:**

* To help the promoters in preparing documents like MOA, AOA and others.
* To prepare the list of directors, Bankers and auditors etc.
* To confirm the legality of objects of proposed Company.
* To negotiate with experts in various fields and with the govt.
* To file various documents with the company registrar and to observe the necessary formalities to obtain the certificate of incorporation.
* To conduct the meetings of the board according to the direction of the board.

**3.2 The functions & responsibilities or duties after the registration / incorporation of the company:**

A private company can commence the business activities soon after getting the certificate of incorporation. But a public company has to obtain another certificate called commencement of business certificate. Before starting its business, in such a case following are the functions of CS:

* To prepare the prospectus or the statement in lieu of prospectus.
* To prepare the agreement with the underwriters to fulfill minimum subscription.
* To promote the activities to facilitate the allotment of share.
* To merge to open necessary bank account.
* To conduct the meeting of the board.
* To file necessary document with company registrar along with formalities to obtain certificate of commencement of business are fulfill.

**3.3 The functions & responsibilities or duties after commencement of business activities:**

The private company can start with its business activities after getting certificate of incorporation and public company can start after getting certificate of commencement of business. The following are the functions of secretary in such contexts.

**A. Legal duties:**

The secretary is responsible for observance of legal formalities of the company. He or she has to confirm that all rules and regulations for documentation, registration, Indian contract act, sale of goods act, income tax act, etc. are properly followed by company.

**B. Duties towards the B.O.D.:**

Secretary’s acts according to directions of B.O.D., he has to conduct the board meeting, prepare the notice, agenda, minutes, etc. according to the direction of the B.O.D. Thus, it is rightly said that the board is the mind of the company and the secretary is eyes, ears and hands.

**C. Duties toward the share holders:**

The secretary undertakes the work of correspondence by sending annual statements, dividends, share certificates, warrants, share transfer, etc. and also responsible to the queries of share holders.

**D. Duties towards employee:**

The secretary is supposed to follow the decisions of the board. The policy decision may seem idealistic but can prove worthless. When there are not properly executed. He or she has to confirm their work accurately; they are disciplined and work in harmony. It has to solve the problems of employees which can prove obstacles in morale of employees & thus prove as link between Board & employee.

**E. Duties as an administrator:**

The secretary has to decide the provision of work among different departments and to provide guidance, So that the work can be achieved within the time. Proper co-ordination, discipline in work must be observed.

**F. Duties as a public relation officer:**

The secretary has to work for the favorable view developed by the public for the company which can increase its reputation for this. He or she has to establish healthy relation with all the parties affecting the business of the company, shareholders, employees, Bankers, press and other media of information etc.

**G.Duties as a trustee:**

As a trustee of the shareholder and the employees, the secretary has to win their trust and confidence and to make secure that the assets of the company are not wasted but properly used for productive purpose.

**4.00 Conclusion:**

Thus, as responsible officer the secretary has to observe number of duties and responsibilities.

**QUE-4: State the rights, authorities and liabilities or responsibilities of CS. OR**

**Write a short note on authority of a company secretary. OR**

**Write a short note on liabilities, responsibilities of CS.**

**ANS:**

**1.00 Introduction: As per Q-1.**

**2.00 Meaning: As per Q-1.**

**3.00 Rights or authorities of a company secretary:**

Company’s act does not provide specifically for the authority of a secretary. It is provided in the A.O.A. If it is not defined in A.O.A. also then the B.O.D. pass resolution in board meeting to clarify the authority and responsibilities of the secretary.

**4.00 Rights and authority:**

* To file the necessary documents with the registrar of company.
* To look after and control various departments of the company.
* To sign the letters on behalf of the company which may be related to allotment of shares call-on-arrears, forfeitures of shares, etc.
* To make use of common seal of the company for lawful purpose.
* To undertake correspondence.
* To act as an agent of company.
* To receive remuneration for such duties performed.
* To executed the work as directed by the board.
* To prepare notice, agenda, minutes, etc. as directed by the board.

**5.00 Limitations of authority of a CS:**

* The secretary cannot enter into any agreement on behalf of the company.
* The secretary cannot borrow the finance on behalf of the company.
* The secretary cannot make any decision on policy matter.
* The secretary cannot arrange any meeting according to his or her wishes.
* The secretary cannot issue share to the public.
* The agreements entered into are null and void for which the secretary is not empowered by the Board.

**6.00 Liabilities or responsibilities of a secretary:**

* The secretary is chief executives of company for violation of any provisions of company’s act or misuses of powers. He or she is liable to a punishment or a fine or imprisonment.
* The secretary can be held responsible for any fraud, misappropriation of funds or any act beyond the authority delegated.
* The secretary is responsible for misuse of power of taking any secret commission.
* The secretary can be held responsible for willful neglect of duties.
* The secretary can be held responsible for unauthorized changes introduce in the documents.
* The secretary is responsible for not writing necessary recommendence of the meeting, its minutes etc.
* The secretary is responsible if he or she fails to present annual report at the general meeting within agreed period.

**QUE-5: Discuss the legal position of directors:**

**ANS:**

**1.00 Introduction:**

A company is an artificial person in the eyes of law. It’s a legal entity but it has no physical existence. It has neither soul nor a body of its own as such it can’t act in its own name. it can act only through some human agency i.e. directors.

* **2.00 Meaning & Definition:**

The directors are brain of the company. They occupy a very important position in the structure of the company .the importance of directors or BOD is that they are the brain of the co. which is the body and company does act only through them. It’s only when the brain function, the corporation is said to function.

The company’s act 2014 doesn’t contain an exhaustive definition of the term “director”. Section of the act prescribed that the director means a director appointed to the board of a company.”

Section 2(10) of the company’s act 2013 defined that “Board of directors or Board in relation to a company means the collective body of the directors of the company.

**3.00 No. of Directors in a company:**

Section 149(1) of the companies act 2013, requires that every co. shall have a minimum no. of 3 directors in case of a public company, 2 directors in the case of private company and 1 directors in case of one person company. A company can appoint maximum 15 directors.

**4.00 No. of Directorship:**

According to section 165, maximum no. of directorship inclusive any alternate directorship a person can hold is 20. It has come with a rider that no. of directorship in public co. or private co. that are either holding or subsidiary co. of a public co. shall be ltd. to 10.

**5.00 Legal position of director:**

It is very difficult to pin point the exact legal position of directors of a company. They have been described by various names such as agents, trusties, managing partners of the company. The directors have been given the following positions:

**5.1 Directors as agents:**

Company as an artificial person acts through directors who are elected representatives of the share holders. They are in the eyes of the laws, agents of the company for which they act the general principles of the law of principal and agent regulate in most respects the relationship between the company and its directors:

1. Where directors of a company act on its behalf, they are not personally liable for contract which they make for the company provided, they act within the scope of their authority and do not make the contracts in their personal name. The directors are personally liable where:

1. The contracts are in their own name.

2. They use the company’s name incorrectly i.e. by omitting the word or words ‘Limited’ or ‘Private Limited’.

3. The contract is signed in such a way that it is not clear whether the principal or agents who signed it.

4. They exceed the powers given to them by the MOA and AOA.

* **5.2 Directors as Employees:**

Although the directors of the company are its agents, they are not employees or servants of the company for being entitled to privileges and benefits which are granted under the company’s act to the employees. But there is nothing to prevent a director from being employee of the company under a special contract of service which he may enter into with the company.

* **5.3 Directors as Officers:**

For certain matters under the company’s act, the directors are treated as officers of the company. As such they are liable to certain penalties, if the provisions of the company’s act are not strictly complied with.

* **2.4 Directors as Trustees:**

Directors are treated as trustees:

1. Of the company’s money & property. &

2. Of the power’s entrusted to them.

**1. Of the company’s money & property:**

There are directors in the sense that they must account for all the company’s money & property over which they exercise control. They have also to refund to the company any of its money or property which they have improperly paid away or transferred.

**2. Of the power’s entrusted to them:**

Directors are trustee of powers entrusted to them in the sense that they must exercise their powers honestly & in the interest of the company and the share holders and not in their own interest.

**3.** Directors are trustees for the company and not for third person who have made contracts with the company or for individual share-holders.

**QUE.6: What do you understand by the term director of the company? Explain how the director of the company are appointed or removed.**

**ANS:**

**1.00 Introduction: As per Q-5.**

**2.00 Meaning& Definition: As per Q-5.**

**3.00 Provisions:**

1. Except as provided in the act, every director shall be appointed by the company in general meeting.

2. Director Identification Number is compulsory for appointment of director of a company

3. Every person proposed to be director shall give his DIN and a declaration that he is not disqualified to become a director.

4. A person shall give his consent to the hold the office of director in physical form DIR-2

5. Articles of the company may provide rules of retirement of the directors. If it is not given, then not less than 2/3rd of director shall retire by rotation and 1/3rd of director are permanent directors.

6. The person should promise to purchase qualification share and pay for it within 2 month of appointment.

7. Every company shall have atleast one woman director.

**4.00 Appointment of directors:**

The directors of company may be appointed as follows:

**4.1.First directors:**

Generally the name of the first directors are mentioned in the AOA of the company. If the first directors are not named in AOA, then the directors shall be determined in writing by the subscriber of MOA.

If first directors are not appointed in the above manner, the subscribers of the MOA who are individuals become the directors of the company.

In the case of one person company an individual being a member shall be deemed to be first director until the directors are duly appointed by the members as per provisions of sec. 152.

**4.2. Directors appointment by small shareholders:**

According to sec. 151, every listed company may have one director elected by such small shareholders. Here, small share holders means a shareholders holding shares of nominal value of not more than twenty thousand rupees. Or other amount as may be prescribed.

**4.3 Appointment of directors by the company:**

Directors must be appointed by shareholders in general meeting in case of a public company or a private company which is a subsidiary of a public company. At least 2/3 of the directors shall be liable to retire by rotation, only 1/3 of the total number of directors can be permanent directors. This is a statutory requirement which cannot be avoided.

**4.4 Appointment of directors by directors:**

The directors of a company may appoint directors as follows:

**1. Additional Directors:**

Any additional directors appointed by the directors shall hold office only up to the date of next annual general meeting.

**2. In a casual vacancy:**

The casual vacancy of directors in the company may be filled by B.O.D. casual vacancy means any vacancy which occurs due to the reason of death, resignation, disqualification or for any reason other then retirement by rotation.

**3. As alternate directors:**

An alternate directors can be appointed by the B.O.D., if it is so authorized by the articles of the company or a resolution passed by a company in general meeting.

He shall act for directors called the original directors during his absence for a period of at least 3 months from the state in which Board meeting are generally held.

**4.5 Appointments of directors by third parties:**

The articles under certain circumstances give power to the debenture holders or other creditors to appoint directors. The number of directors shall not exceed 1/3 of the total directors. They are not liable to retire by rotation.

**4.6 Appointment of directors by court:**

The court has the power to appoint directors to prevent oppression and mismanagement of the company.

**4.7 Appointments of directors by Central Government:**

The central government is improved to appoint directors by the company’s act-1956 on passing an order by the company law board. The central government can appoint directors. The appointment will be not more than for a period exceeding 3 years.

The central government may issue necessary directions to the company when an appointment of the directors is so made. Further directors so appointed are required to keep central government informed about the affairs of the company.

**5.00 Removal of directors:**

Removal of directors implies that he is removed from his office before expiring of his period of office. A director may be removed by following ways:

**5.1 Removal by shareholders:**

The share holders may removes a director before the expiry of his period of office by passing an ordinary resolution.

Share holders cannot remove directors:

* In case of directors appointed by central government.
* In case of private company, a director holding office for lifetime on April 1,1952.

**5.2 Removals of directors by central government:**

The central government in certain circumstances removes managerial personnel from office on the recommendation of the tribunal. The central government may exercise his power where he is of the opinion.

* That any person concerned in conduct and management of company has been guilty of fraud, misfeasance or default in caring out his functions or
* That the business of company has not been managed with sound principles by such persons.

The persons so removed shall not hold the office of a director or any other office connected with conduct and management of affairs of the company for a period of 5 years.

**5.3 Removal by tribunal (NCLT):**

**(NCLT: National Company Law Tribunal)**

Where on an application to the NCLT, for prevention of mismanagement [Sec-398] or oppression [Sec-397] find that relief which has been granted or modify any agreement between the company and managing director or any other director where the appointment of managerial personnel is so terminated he cannot sue the company for damages or compensation, nor can he be appointed except with the permission of NCLT.

**QUE-7write a note on Director Identification Number-DIN**

**ANS:**

Except the specific provision made in the Act every director will be appointed in the general meeting of the company. The person who has been allocated Director Identification Number - DIN can only be appointed as director. Every individual, who is to be appointed as director of a company shall make an application electronically in Form DIR-3 (Application for allotment of Director Identification Number) to the Central Government for the allotment of a Director Identification Number (DIN).

If the company intends to appoint a person as director in the general meeting or in any other manner, the same person has to provide his Director Identification Number as well as also declare that he is not disqualified to become director as per the provisions of the Act.

The person who is to be appointed has to give his consent to the effect that he is ready to function as director. Till such consent is received from him, he cannot hold the directorship. Not only that his such consent should be presented to the registrar.

* **Procedure for application for allotment of DIN - Section 154 & Rule 9**

(1) On the submission of the Form DIR-3 on the portal and payment of the requisite amount of fees through online mode the provisional DIN shall be generated by the system automatically which shall not be utilized till the DIN is confirmed by the Central Government.

(2)After generation of the provisional DIN, the Central Government shall process the application. It may approve or reject the application and communicate the same to the applicant within a period of one month from the receipt of application. Such communication may be sent by post or electronically or in any other mode.

(3) If the Central Government, on examination, finds such application to be defective or incomplete in any respect, it shall give intimation of such defect or incompleteness, by placing it on the website and by email to the applicant who has filed such application, directing the applicant to rectify such defects or incompleteness by resubmitting the application within a period of fifteen days of such placing on the website and email:

Provided that Central Government shall-

(a) reject the application and direct the applicant to file fresh application with complete and correct information, where the defect has been rectified partially or the information given is still found to be defective;

(b) treat and label such application as invalid in the electronic record in case the defects are not removed within the given time; and

(c) Inform the applicant either by way of letter by post or electronically or in any other mode.

(4) In case of rejection or invalidation of application, the provisional DIN so allotted by the system shall get lapsed automatically and the fee so paid with the application shall neither be refunded nor adjusted with any other application.

(5) All Director Identification Numbers allotted to individual(s) by the Central Government before the commencement of these rules shall be deemed to have been allotted to them under these rules.

(6) The Director Identification Number so allotted under these rules is valid for the life-time of the applicant and shall not be allotted to any other person.

* **General Provisions regarding DIN**

According to Section 155. No individual shall apply for/obtain/ possess another Director Identification Number who has already been allotted a Director Identification Number under section 154.

Section 156 stipulated that Every existing director shall intimate his DIN to the company or all companies wherein he is a director within 1 month of the receipt of DIN from the Central Government.

Section 157(1) of the Act stipulated that every company shall, within fifteen days of the receipt of intimation under section 156, furnish the DIN of all its directors to the Registrar/authorised office by the Central Government, every such intimation shall be furnished in such form and manner as may be prescribed.

If a company fails to furnish Director Identification Number under section 157(1), before the expiry of the 270 days period from the date by which it should have been furnished with additional fee, the company shall be punishable with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 1,00,000 and every officer of the company who is in default shall be punishable with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 1,00,000.

Section 158 specified that every person or company shall mention the DIN in return, information or particulars as required to be furnished under this act, in case such return etc relate to the director or contain any reference of any director.

**QUE.8: State the powers of B.O.D. of a company.**

**ANS:**

**1.00 Introduction and Meaning:** As per Q. 5

**2.00 Powers of B.O.D.:**

According to Company’s act – 1956, the B.O.D. of a company shall exercise the following powers.

**2.1 General powers of the Board:**

The B.O.D. of the company is entitled to exercise all such powers and to do all such acts and things as the company is authorized to exercise and do.

The Board shall not do any act which is to be done by the company in general meeting. The board shall exercise its power subject to the provisions contained in company’s act or in memorandum or in AOA of the company.

**2.2 Powers to be exercised at board meeting:**

The B.O.D. of a company shall exercise the following powers on behalf of the company by means of resolution passed at the board meeting.

1. The power to make calls-on-shares.
2. The power to issue debentures.
3. The power to borrow money other than debentures
4. The power to invest the funds of the company.
5. The power to make loans.
6. The power to authorized buy-back of shares.
7. The power to fill casual vacancy in the board.
8. The power to make declaration of solvency at the time of winding up.
9. The power to appoint any person as a managing director or as a manager who is already managing director or manager of another company.
10. The power to invest in shares and debentures of another company.
11. To sanction certain contract in the interest of the directors.

**2.3 Power to be exercised with the approval of company in general meeting:**

The following powers with the consent of the company are exercised by the B.O.D. in general meeting:

1. To sue, lease or otherwise dispose of the whole or part of the undertaking of the company.
2. To remit or give time for repayment of any debenture due to the director by the company.
3. To invest the amount of compensation received by company in respect of the compulsory acquisition of any under taking or property of the company.
4. To borrow money where the money to be borrowed are more then the paid up share capital of the company and its free reserves.
5. To contribute to charitable and other funds not directly relating to the business of the company or the welfare of its employees.

**2.4 Other powers:**

1. Power to fill up any casual vacancy in the office of an auditor.
2. Power to forfeit the share.
3. Power to allot the shares.
4. Power to arrange the general meeting of the company.
5. Power to approve transfer and transmission of shares.
6. General power to control the affairs of the company. The M.D., the managers and other employees of the company.

**QUE.9: State the various duties of the directors,**

**ANS:**

**1.00 Introduction and Meaning:**As per Q. 5

**2.00 Duties of a directors:**

**2.1 Statutory duties:**

**1. To file returns of allotment of shares:**

Directors must file returns of allotment of shares with the registrar of a company within the period of 30 days. Failure in filing such return shall make the directors liable for Rs. 5000 per day till the default continuous.

**2 To attend board meeting:**

The powers of the company are exercised by the B.O.D. in the meeting. It is not necessary for a director to attend all the meetings but if he does not attend constant 3 meetings or all meeting for a period of 3 months without permission, his office shall automatically vacant.

**3 To deliver statutory report:**

It is the duty of the directors to deliver the statutory report to the shares holders before 21 days of the statutory meeting. Statutory meeting shall be held within 6 months from the date of the registration.

**4 To call all meetings:**

The directors have to call statutory meeting, Annual general meeting and also extra ordinary general meeting within specific period as per the statutory requirement.

**5 To prepare and present annual report:**

The directors have to prepare B/s, P&L a/c, etc. They shall present it in the annual general meeting to the share holders. They should also present a report on the affairs of the company.

**6. To use of fund of company for objects of company only:**

It is the duty of the directors to invest the fund of the company for the purpose of business of the company. Further it is the duty of directors to prevent misuse of funds & property of the company.

**7. To purchase qualification share:**

Every director shall purchase the qualification shares as per the provision is the articles. It is the duty of the directors to purchase such shares within 2 months from the date of appointment as a director.

**8. To disclose the interest:**

If any director has personal interest in a contract entered in to with the company he must disclose it at the first meeting of the board held after the director becomes interested in the contract where the real nature of the interest is known to all the directors there is no necessity to disclose such interest.

**9. Not to act as a director more than 20 company:**

It is the duty of the director that he shall not act as director in more than 20 companies at a time as per statutory requirement.

**10. To give information:**

It is the duty of the director to give information about the shareholding of the directors in another company & position of directors in that company if any.

**11. To disclose the receipt to transfer of company’ property:**

If any director has received money from the transfer of property where property belongs to the company it must disclose it to the members and approved by the company in general meeting.

**12. At the time of liquidation:**

It is the duty of the directors to give all information to the liquidator about assets and liabilities of the company, about the financial position of the company at the time of liquidation.

**2.2 General duties:**

1. **Must act in the interest of the company:**

The directors must act with good faith he should act in the best interest of the company the directors should not make an secrete profits out of his office.

1. **Duty of care:**

A director must take care in performance of his duties. He is not expected to display any extra ordinary care but only that much care which an ordinary man would take in his own case.

1. **Not to delegate power to others.**

The directors have to work on behalf of the company. He is an agent of the company. He is bound by the souls of agency “A delegate cannot further delegate”. Thus, a director must perform his functions personally.

**QUE. 10: State the circumstances in which a person shall be disqualified for appointment as a director of a company.**

**ANS.** The following persons are disqualified for appointment as a director of the company.

The person of unsound mind.

A person who has applied to be an insolvent and his application is pending.

A person who has been convicted by the court of any offence and a period of 5 years has not elapsed from the date of expiry of the sentence.

A person whose calls in respect of shares of the company held for more than 6 months have been arrears.

A person who is disqualified by order of the court under section 203 on the ground of fraud of or misfeasance.

He has not got the DIN

Such person is already a director of the company which

Has not filed annual accounts and annual returns for any continuous 3 financial years. **OR**

Has failed to repay his deposits or interest there. On due date or paid dividend and such failure continuous for one year or more.

Moreover such persons shall not be appointed as a director of any other public company for a period of 5 years from the date on which such public company is in default.

A private company which is not a subsidiary of a public company may by its articles provide that a person shall be disqualified for the appointment as a director on any additional grounds.

A director who has been removed from office by central government shall not be a director of any company for a period of 5 years from the date of removal.

**QUE-11How the Agreement having Director's Interest should be disclosed?(Section 184)**

**ANS:**

(1) Company's director, his relative who is having partnership in a firm or the director who is holding directorship or membership in such a private company without the consent of the Board of Directors will not do the following with that company:

(a) He cannot reach an agreement to provide any material, goods or service or for purchasing or selling the same or

(b) He cannot reach an agreement for underwriting the company's shares or debentures.

But such provision has been made that if such an agreement is reached at the current market rate, then such provision is not applicable to it, but within a year the price of purchase or sell should not exceed Rs. 5,000. Besides it on the one side a company and on the other side director are doing such business routinely, then such provision is not applicable to them.

(2) Despite the fact mentioned above in the case of emergency need, the director, his relative, partner of firm can reach an agreement for the above mentioned goods or services without obtaining the permission of Board of Directors and if its price exceeds more than Rs. 5,000 even then it does not affect them, but provision has been made that within 3 months of the agreement permission of Board of Directors should have to be obtained.

(3) The consent to such an agreement can be obtained by resolution in the Board meeting only.

(4) If the consent is not given in the board meeting, then such agreement is voidable as an alternative of the Board.

If any director is holding any interest in the agreement with the company, then following two points are worth noting :

(1) First of all, When the director is having interest the director should declare his interest in the next board meeting. The director who is holding directorship and is having transactions with the firm or company and the same director is the member of the same firm or company, then he should give common notice to the Board of Directors about his interest. Every year such notice should be renewed.

(2) The agreement in which the director holds interest comes to the Board of Directors for consideration then the director holding interest cannot participate in its discussion. At that time his attendance is not taken into consideration for quorum and cannot vote on it and if he votes, then it is null and void.

But if the Board of Directors is aware about the interest of the director, then the director need not declare his interest.

**QUE-12Write a note on: Remuneration of Directors (Section 197)**

**ANS:**

(1) Prima facie directors do not have any right to get any remuneration from the company. Even then if any remuneration is to be paid to the directors, then there should have been provision to that effect in the Articles.

(2) The remuneration of directors will be determined in relation to the provisions of section 197. The remuneration of the director will include the service provided by the director in any other manner also but (a) if the service provided by the director is professional type (b) if he is qualified by Central government to do practice for the service then the service provided in another manner by the director will not be included in the remuneration.

(3) For attendance of the directors in the meeting of Board of Directors or other committee meeting, remuneration can be given to director per meeting also. It can be maximum Rs. 1000, with the prior sanction from the Central government. such fees can be increased also.

(4) The director who is the whole time director or managing director can be paid monthly salary or certain percent commission from the net profit of the company can also be paid. Such salary -commission should not exceed 5% of the net profit. If there are more than one directors, then totally not more than 10% salary commission of net profit should be paid to all the directors together.

(5) The director who is neither full time director nor managing director can be paid monthly or annual salary, it can be resolved to pay commission. If the managing director or manager carries out the management of the company, then the director can be paid 1% of net profit as commission. If the management of the company is not done by the director or the manager, then such director can be paid up to 3% commission. The commissions paid to managing director, director, manager etc. should not exceed 11% of net profit of the company.

(6) If a director has received salary by breach of the provisions of law or if received excess salary, then the director is responsible to return that amount. The company cannot exempt the director from giving exemption except that the Central Government sanctions it.

(7) Company will not pay tax-free salary.

(8) If any public company or private company (subsidiary company of the public company) wants to amend the law and raise the remuneration of Director, that amendment does not come into effect till central government's approval is received.

**QUE-13 Explain the concept of Manager, Managing Director and other types of director as used in the Companies Act, 2013. OR**

**Discuss the appointment, reappointment & disqualification of managing director in detail**

**ANS.** The Companies Act, 2013 has for the first time recognized the concept of Key Managerial Personnel. As per section 2(51) "key managerial personnel", in relation to a company, means

(I) the Chief Executive Officer or the managing director or the manager,

(ii) the company secretary; (iii) the whole-time director; (iv) the Chief Financial Officer: and (v) such other officer as may be prescribed,

**(i) Managing Director**

Section 2(54) of the Companies Act. 2013, defines 'managing director’. It stipulates that a ''managing director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

The explanation to section 2(54) excludes administrative acts of a routine nature when so authorised by the Board such *as* the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, from the substantial powers of management.

**(ii) Whole Time Director**

Section 2 (94) of the Companies Act, 2013 defines "whole-time director" as a director in the whole-time employment of the company.

**(iii) Manager**

Section 2(53) of the Companies Act, 2013 defines "manager" as an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not.

**(iv) Chief Executive Officer and Chief Financial Officer**

Section 2(18)/(19) of the Companies Act, 2013 defined "Chief Executive Officer"/ "Chief Financial Officer" as an officer of a company, who has been designated as such by it;

**(v) Company Secretary**

Section 2(24) of the Companies Act, 2013 defines "company secretary " or "secretary" means a company secretary as defined in clause(c)of sub-section(1) of section2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act;

**1.00 managing director in detail:**

A managing director means a director who is entrusted with substantial powers of management which would not otherwise be exercisable by him. These powers may be conferred upon him by virtue of an agreement with the company and a resolution passed by the company in general meeting or by its B.O.D. or by virtue of its MOA & AOA.

**2.00 Appointment of Managing Director:**

* Every public company or a private company which is a subsidiary of a public company having a paid up share-capital of Rs. 5 crore or more shall have a managing director or whole time director.
* No such appointments shall be made except with the prior approval of the central government. However no such approval is required where the appointment is made in accordance with the conditions specified in schedule-XIII (13).
* Schedule-XIII prescribes conditions to the fulfilled for the appointment of a managing or whole time director without the approval of central government. It also lays down the remuneration payable to managerial personnel.
* The central government may permit approval for a period lesser than the period for which the appointment is proposed to be made.
* If appointment is not approved by central government the person shall vacate his office on date on which decision of the central government is communicated to the company. Otherwise he may pay a fine of Rs. 5000.

**3.00 Disqualification of Managing Director:**

(a) is below the age of twenty-one years or has attained the age of seventy years:

Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person;

(b) is an undischarged insolvent or has at anytime been adjudged as an insolvent;

(c) has at any time suspended payment to his creditors, or makes, or has at any time made, a composition with them; or

(d) has at any time been, convicted by a court of an offence and sentenced for a period of more than six months.

The disqualifications of director are also applicable to M.D.

**4.00 Number of Managing Directorship:**

Any person may be appointed as a M.D. in a public company or in a private company which is a subsidiary of a public company provided he is not holding the office of the M.D. or the manager in not more than 2 companies. However, he can hold such office in any number of private companies which are not subsidiaries of public companies.

**5.00 Term of office:**

The maximum term of appointment of a M.D. can be 5 years at a time. There is nothing to prohibit reappointment, reemployment, or the extension of the term of office of the M.D. But any such new term shall not be sanctioned earlier than 2 years from the date on which it is to come into force.

**QUE-14 Difference between:**

1. **Managing Director & Whole time Director.**

**ANS:**

**1. Meaning:**

A M.D. is given specific powers to manage the different activities of the company still he can move from the company to other company as and when required.

He is given the specific powers to manage the company but he has to remain present throughout the day in the company.

**2. Powers:**

He is entrusted with substantial powers of Management.

He is just an ordinary employee of the company.

**3. Consent / Approval of share-holders:**

Consent of the shareholder is not required in appointing M.D.

Consent of the shareholders is required in appointing whole time director.

**4. Existence at the same time:**

A Managing director and manager cannot exists simultaneously (At the same time) in any company.

A whole time director and managing director or manager can exist simultaneously.

**5. Number of companies:**

He can be M.D. of more than 1 company.

A whole time director cannot be a whole time director of other companies.

**6. Term of office / appointment:**

He can be appointed for a period of 5 years.

There is no such restriction in appointing a whole time director.

1. **Managing director and manager**

* A managing director is entrusted with the substantial powers of the management

A manager has the management of the whole, or substantially the whole of the affairs of a

company.

* A company may have 2 managing directors.

A company can have only 1 manager as he is vested with the management of the whole or substantially the whole of the affairs of the company.

* A managing director must be a director.

A Manager may or may not be a director.

* A managing director is appointed by the directors from among themselves and appointed either under as agreement or by a resolution of the Board or general meeting.

A manager is usually appointed by the Board of directors.

**UNIT-2**

**Decision Making System In The Company**

**QUE.1 Classify the different kinds of meeting of company.**

**ANS:**

**1.00 Introduction:**

The management of company’s business is necessarily left to the hands of the directors. However, the estimate of the board of director is vested in the members or the shareholders of the company and from time to time they must meet to express their approvals or disapprovals of the directors past conduct and to consider their future plans.

The members express their opinion at annual general meeting by passing a resolution.

**2.00 Different kinds of meeting:**

**2.1 General meeting of shareholders:**

**A. Statutory meeting (Sec-165):**

Every public company shall hold a general meeting of the members of the company within a period of not less than 1 month, not more than 6 months from the date at which the company is entitled to commence business. This meeting is called the statutory meeting. This is the meeting of the shareholders of a public company and is held only once in the life time of a company.

**B. Statutory report:**

The B.O.D. shall forward a report called the statutory report, to every member of the company at least 21 days before the day on which the meeting is to be held. The notice of the meeting shall mention that the meeting is a statutory meeting.

**C. Contents of statutory report:**

1. The total number of shares allotted, distinguishing shares allotted as fully or partly paid-up.
2. The total amount of cash received by the company in respect of all shares allotted.
3. An abstract of the receipt and of the payment made up to a date within 7 days of the report.
4. The name, addresses, occupation of the directors, managers and secretary.
5. Particulars of any contract which is to be submitted to the meeting for its approval or modification.
6. Details of under writing contracts and the extent to which such contracts has been completed or not.
7. The arrears due on calls from the every director and from the managers.
8. The particulars of any commission or brokerage to any directors or to the manager in connection with the issue on sale of shares and debentures.

The statutory report should be certified as correct by at least two directors out of which one shall be the managing director if any. After the statutory report has been certified, the auditors of the company shall also certify it as correct. A copy of the report shall be sent to the registrar.

**D. Objects of meeting and reports:**

The objects of the statutory meeting and forwarding of statutory report to member is:

* To inform the members of a company of all the important facts relating to the company what shares have been taken up, what money received, what contracts enter into and the amount spent on preliminary expenses etc.
* To provide the members an opportunity of meeting and discussing the management methods and prospectus of the company.
* To approve the modification of the term of any contract named in the prospectus.

Private company and a company limited by guarantee and a company not having a share capital need not to hold a statutory meeting.

**2.2 Annual general meeting (Sec-166,167):**

Every company must in each year held in addition to any other meeting. A general meeting as its annual general meeting and shall specify the meeting as such in the notice calling it.

There shall not be an interval of more than 15 months between first annual general meeting of the company and the next meeting. “A company may hold its first annual general meeting within the period of 18 months from the date of its incorporation”.

The registrar may extend the time for holding annual general meeting by a period not exceeding 3 months for any special reasons. But no extension of time is granted for holding the first annual general meeting.

**A. Time and place of meeting:**

Every annual general meeting shall be called during business hours on the day i.e. not a public holiday. It shall be held either at the registered office of the company or at some other place within the city, town or village in which registered office of the company is situated.

The annual general meeting of a company is statutory requirement. It has to be called even when the company did not function during the year.

If the AGM is not convened during the year then the central govt may call the meeting on the application of any of the members or gives instructions to hold such meetings

**B. Consequence of failure to hold annual general meeting then:**

1. Any member can apply under sec-167 to the tribunal or central government for calling the meeting.
2. The company and every officer who is in default shall be punishable with fine up to Rs. 50,000 and in case of continuing default a further find which may extent to Rs. 2500 for every day during which such defaults continues.

**C. Importance of annual general meeting:**

1. The shareholder can exercise any control over the affairs of the company only at the annual general meeting of the company.
2. They also get an opportunity to discuss the affairs and reviews of the working of the company. They can also take the necessary step for the protection of the interest.

Ex.: They may refuse to select director whose action and policy they disapprove.

1. Appointment of auditor is also made at annual general meeting.
2. Annual accounts are presented for consideration of the shareholders and dividends are declared in the annual general meeting.

**2.3 Extra ordinary general meeting:**

A statutory meeting and annual general meeting of a company are called ordinary meeting, any meeting other then this meeting is called an extra ordinary general meeting. This meeting is called for transacting some urgent or special business which cannot be postponed till next annual general meeting. It may be conveyed:

1. By the B.O.D. on its own Or

2. On the requisition of the members Or

3. By the requisitionist themselves on the failure of the B.O.D. to call the meeting.

**1. Extra ordinary meeting conveyed by the B.O.D. on its own:**

The B.O.D. call an extra ordinary general meeting whenever some special business is to be transacted which cannot be postponed till the next annual general meeting.

**2. On the requisition of the members:**

The requisite number of members of a company may also ask for an extra ordinary general meeting to be held. In such a case, the B.O.D. shall proceed duly to call such a meeting of the company.

**3. Extra ordinary meeting convinced by the requisitionist:**

Every shareholders of a company has right to requisition on an extra ordinary general meeting. If the B.O.D. fails to call of meeting required by the requisition, a meeting may be called.

1. By the requisitions themselves.
2. In the case of a company having a share capital by such requisition having at least 1/10 of the paid up share capital of the company. In case of a company not having a share capital by the requisitionist having at least 1/10 of the total voting power.

**2.4 Class meeting:**

When a company issues more than one type of shares it is called meeting for particular types of shareholders. This meeting is called a class meeting. In this meeting the shareholders of that kind of shares have right to present at the class meeting.

**2.5 Other meetings:**

**1. Meeting of directors:**

In case of every company a meeting of its B.O.D. must be held at least once in every 3 months and at least four meetings of the board must be held every year.

**2. Meeting of creditors:**

The company may call creditors meeting. The court may call meeting on the application of the creditors or the members. In this meeting compromise or arrangement is made between a company and its creditors.

**3. Meeting of debenture holders:**

These meetings are called where the interest of debenture holders are involved. At the time of reconstruction, reorganization or winding up of the company, usually these meetings are held in accordance with the conditions contained in the debenture trust deed.

**QUE.- 2 Write a short note on ‘notice of meeting’.**

**ANS.:** A proper notice of the meeting should be given to the members and all others who are

entitled to attend the meeting.

* **Length of notice:**

**1. Not less than 21 days notice:**

A general meeting of the company may be called by giving not less than 21 days notice in writing to the members.

The expression “not less than 21 days notice” implies notice of 21 whole or clear days. The period of 21 day is completed from the date of receipt of the notice by the members. It excludes the days of service of the notice and the day on which the meeting is to be held. Notice is deemed to have been received by the members at the expiration of 48 hours, after the letter containing it is posted.

**2. Less than 21 days notice:**

A general meeting may be called by giving a notice of less than 21 days if it is so agreed:

1. In the case of annual general meeting the members can voluntarily consent to a shorter notice either before or after the meeting.
2. In the case of any other meeting of a company (Example: statutory meeting or an extraordinary general meeting) having a share capital by members holding at least 95% of the paid up share capital.
3. In a company not having share capital by members having at least 95% of the voting power

* **Notice to whom:**

Notice to every member of a company shall be given to:

1. Every member of the company entitled to vote.
2. The persons on whom the share of any deceased or insolvent members may have transferred.
3. The auditor or auditors of the company.

* **Contents of notice:**
  1. Every notice of a company calling a meeting shall specify a place and a day and time of the meeting
  2. It shall also contain a statement of the business to be transacted at the meeting.
  3. The notice of the general meeting must fairly and intelligently specify the purpose for which the meeting is called, to enable a person to make-up his mind whether to attend or not. Notice should not be miss-leading.
* **How the Notice should be Issued ? :**

The company notice can be dispatched personally hand to hand or by post. If the member wants, he can get the notice by registered post or under certificate of posting by paying money in

advance. Otherwise, the notice is dispatched by normal post at the address registered in the register. In case of death, insolvency or madness of the member, the notice is issued to the authorized person at his address, if the member is out of India, then at the address mentioned by him and if there is no permanent address then the notice should be published in the newspaper of the place where the registered office of the company is situated.

**QUE- 3** .**Explain in short the Agenda.**

**ANS:**

**1.00 Meaning :**

The list of tasks to be handed in its order in the meeting is called agenda. In other words, the method for systematically handling the function of company's meeting, details of which are dispatched in writing prior to convening the meeting is called agenda.

**2.00 Objective :**

Agenda is dispatched to the members in order to see that the task of conducting meeting can be done systematically, easily and rapidly. Besides it, it is also the objective of the agenda to see to it that no point remains without discussion in the meeting. From the point of view of members, if the members are informed about the agenda in advance, they can consider and discuss it.

**3.00 Details :**

Sometimes agenda is included in the notice and sometimes it is attached with the notice. On top of the agenda company's name, address, date etc. are mentioned. Moreover the place, date, time of the meeting are also mentioned and then the tasks to be handled in its order are mentioned. Though there are no specific rules about the sequence of tasks. Even then the routine tasks are given priority. Moreover, inter-connected tasks are attached together. Resolution can also be included in the agenda.

**4. 00 Nature :**

Generally the nature of agenda is divided into two parts :

(1) In normal form

(2) In detailed form

**(1) In normal form :** The tasks to be handled in the meeting are listed in sequence briefly. On the left side of a normal paper, above details are mentioned while on the right side a space is left for noting down the proceedings of meeting and the notes on the discussion held. Such type of agenda becomes much useful when there are going to be lengthy discussion, different opinions and amendments in the resolution.

**(2) In the expansive nature of agenda** a detailed list of the tasks to be carried out in the meeting are listed. If it is possible, the draft of the resolution is also included in it. When the routine tasks are to be handled, such type of agenda becomes more convenient. It is not desirable to make changes in the agenda, with the consent of chairman of the meeting and members, changes can be made in it. Secretary's efficiency is tested in preparing the agenda.

**QUE-4.Write a note on Quorum (Section 103)**

**ANS**.

Quorum refers to the minimum number of members required to constitute a valid meeting. Following are the minimum numbers provided in section-103, for various categories of companies. However the Articles of Association of the company may provide for a higher number.

**(a) Public company**

\* 5 members personally present if the number of members as on the date of meeting is not more than 1000;

\* 15 members personally present if the number of members as on the date of meeting is more than 1000 but up to 5000;

\* 30 members personally present if the number of members as on the date of the meeting exceeds 5000.

**(b) Private company**

\* 2 members personally present, shall be the quorum for a meeting of the company.

* **Absence of quorum**

If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company:

(a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or

(b) the meeting, if called by requisitionists, shall stand cancelled.

* **Adjourned meeting**

In case of an adjourned meeting or of a change of day, time or place of meeting, the company shall give not less than 3 days notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated,

If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

**QUE-5 Explain Proxy**

**Ans. 1.00 Meaning - Explanation :**

Members of different companies spread throughout the country or overseas are not able to attend the meeting of the company. Despite they being the actual proprietors, they are not able to participate in the administration and management of the company. So, provision has been made in the Companies Act for proxy, so that they can give their opinion, vote and participate to the maximum possible way and draw self-satisfaction. As per the provision the member, instead of himself attending the meeting, can give right to another person as his representative to attend the meeting and vote on his behalf. The right given in this manner is called proxy.

In brief, it can be said that, "Proxy means" in place of the member of the company, right to attend and give vote in the meeting. And the person who has received such right is called proxy-holder.

Proxy holder has only the right to attend the meeting and give vote. He cannot participate in the discussion of the meeting and he can neither praise anything nor criticize it. As per section 105(1) the proxy does not have the right to speak in the meeting.

**2. Provisions of Companies Act :**

Following are the provisions of Companies Act for proxy :

(1) Any member of the company who holds the right to attend the meeting and has right to vote, only that person can appoint any other person as proxy on his behalf, be it that person is the member of the company or not.

(2) As a proxy holder, only a person can be appointed, be it that the person may be the member of the company or not.

(3) The proxy holder cannot participate in the meeting. Only at the poll he can give his vote, other than that he cannot express his opinion.

(4) The members of the company without share capital does not have the right to appoint proxy.

(5) For every company with share capital, for proxy it is declared in the notice for the meeting.

(6) The member of the private company does not have right to appoint more than one proxy simultaneously in the same event.

(7) The document of proxy should be in writing. If in a company if there is specific form for the proxy, then he should fill it and sign it.

(8) The member of the public company or subsidiary private company of the public company who appoints the proxy holder, should submit his proxy holding letter before 48 hours.

(9) As per the Stamp Act on the proxy holding document a 30 paise revenue stamp should have been affixed.

(10) Any member holding the right to vote in the meeting can verify the proxy documents 24 hours before the meeting. Of course, for the same he must have given 3 days' notice.

(11) If the member who has given the voting right to proxy, himself votes, then the right of proxy automatically stands cancelled.

(12) A company at its cost cannot invite any person to be proxy work.

(13) As per the rules framed by the Supreme Court of India : (i) Minor cannot be appointed as proxy holder.

(ii) If any company is the creditor to the company and if a person of that company is appointed as proxy to attend the meeting, then 48 hours prior to the meeting it should dispatch a copy of the resolution and proxy form to the company.

(iii) If any creditor of the company is illiterate or blind, then also his proxy can be accepted, but he must have given his thumb impression in presence of a witness and the witness must have signed it. At the same time it should be written on the last page of the proxy form that in the presence of the creditors and with their request proxy has been given.

**QUE-6 Explain the terms: 'Motion' and 'Resolution' and state the essential of a motion.**

**ANS:**

* **Motion**

A motion is a proposal or proposition or concrete suggestion placed before a meeting for discussion and decision. The items of business to be transacted in a meeting are listed on the agenda. A discussion is invited on each item on the agenda. In order to make a discussion healthy, to the point and fruitful, it is customary to move a proposition. This proposition is called motion. Every member has a right to move a motion for the consideration of a meeting. The member who proposes a motion is called a proposer or mover. Another member who is called the seconder usually second it. During the discussion some amendments to the motion may be suggested. Each amendment treated as a motion and therefore, is discussed and voted upon. If it is passed, the original motion is modified by incorporating the amendment. The modified motion is called the substantive motion. If the amendment is not passed, the discussion of the original motion continues. Finally, the substantive or the original motion is either accepted or rejected.

* **Essentials of a motion**

(1) A motion should be in writing. The mover should sign it.

(2) It should be worded in clear and unambiguous manner. Generally, it should be in affirmative form and should begin with the word 'that'.

(3) It should be formally proposed by one member and seconded by another member. However, the motion proposed by the Chairman does not require to be seconded.

(4) It should be within the scope of the notice convening the meeting. It should not be outside the scope of the business of the meeting.

(5) A motion once proposed and second is left to the attitude of the meeting. The proposer or the seconder without the permission of the meeting cannot withdraw it.

(6) Every member can express his view on the motion only once.

(7) The proposer is allowed to speak twice: (i) When he makes the proposal and (iii) When he replies to the member at the end.

(8) The members minority should be given an opportunity to speak on each motion.

* **Resolution & different kinds of resolution passed at the company meetings:**

**1.00 meaning:**

The question which generally comes for consideration at the general meeting of the company are presented in the form of a proposal called motion. A motion may be proposed by chairman of the meeting or by any other member of the company. The motion offers the clause of discussions which is formally put to vote by a show of hands or on a pull. The final result is declared after poll is taken. This motion is adopted by meeting and become resolution.

**2.00 Kinds of resolution:**

**2.1 Ordinary resolution: [Sec-189(1)]**

An ordinary resolution is a resolution passed at a general meeting of a company by simple majority of votes (i.e. votes cast in favor or resolution exceeds votes cast against it) including the casting vote of the chairman if any. The votes may be cast by the members in person or by proxy where proxies are allowed. In any certainty simple majority of members only the votes cast including the casting vote of the chairman have to be taken into account.

* **When is an ordinary resolution is passed:**

1. Rectification of name or adoption of new name by a company where it resembles the name of an existing company with the previous approval of the central government.
2. Issue of shares at discount.
3. Alteration of the share-capital
4. Re-issue of redeemed debentures.
5. Adoption of statutory reports.
6. Passing of annual accounts and balance sheet along with the reports of B.O.D. and auditors.
7. Appointment of auditors and fixation of their remuneration.
8. Removal of directors and appointment of directors in his place.
9. Appointment of managing or whole time directors.
10. Winding up of the company voluntarily in the certain events.

**2.2 Special resolution: [Sec- 189 (2)]**

Special resolution is one which satisfies the following conditions.

1. The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting.
2. The notice has been duly given of the general meeting.
3. The votes cast in favor of resolution by members entitled to vote are not less than 3 times the number of votes cast against the resolution
4. The members may vote either in person or by proxy where proxies are allowed.
5. An explanatory statement stating out all the material facts concerning the subject matter of the special resolution.

A copy of every special resolution together with the copy of explanatory statement shall be filed with the registrar within 30 days of passing the resolution. Simply stated a resolution is a special resolution which is passed by a majority of ¾ of the members voting on the show of hands or on poll either in person or by proxy.

* **When is a special resolution require:**

1. Alteration of memorandum for changing the place of registered office from one state to another state with the permission of company law board.
2. Special resolution is also required for changing the object clause of memorandum.
3. Alteration of articles of the company.
4. Omission or addition of the word ‘private’ from or to the name of the company.
5. Change of the name of a company with the consent of central government.
6. For reduction of share capital.
7. Variation of shareholders rights.
8. Keeping registers and returns at a place other than registered office.
9. Payment of interest out of capital.
10. Alteration of memorandum to render the liability of directors unlimited.

**2.3 Resolution requiring special notice:**

Resolution requiring a special notice is not an independent class of resolution. It is only a different kind of ordinary resolution of which notice of intention to move a resolution has to be given to the company by proposer. A notice shall be given not less than 14 days before the meeting at which the resolution is to be moved.

The object of special notice is to give the members sufficient time to consider the proposed resolution and to give B.O.D. an opportunity to indicate their views on the resolution if it is proposed by shareholders.

* **When a resolution requiring a special notice is required:**

1. Appointment of an auditor other than the retiring ones.
2. Provisions that a retiring auditor shall not be re-appointed.
3. Removal of a director before the expiry of the period.
4. Appointment of director in place of one who is removed.

The articles of a company may provide for an additional matter in respect of which special notice is required.

**QUE- 7: Discuss the methods of voting at a company meeting.**

**ANS:**

**1.00 Introduction:**

The motion proposed in a general meeting of a company are decided on the votes of the members of the company. The members holding any equity share capital have the right to vote on every motion placed before the company members. Members holding preference shares can vote only on those motions which affect rights attached to their capital. There are different methods of voting in company meeting.

**2.00 Methods of Voting:**

**2.1 Voice or acclamation:**

Under this method, the chairman request the members in favor of proposition to say “Yes” and the members against the proposition to say “No”. sometimes other ways such as clapping hands, cheering, thumping tables etc are also used to indicate the approval of member. The louder voice indicates the sense of meeting.

The main defect of this method is that it may not always give the correct idea about the majority of the votes in the meeting. Hence this method is rarely used in company meetings.

**2.2 Show of hands:**

1. In this method, every member is asked to cast his vote in favor or against a motion by raising his hands.
2. After counting the hands in both the cases the majority of votes are easily known.
3. This method is very common and every motion which is put to vote is decided by this method unless poll is demanded.
4. It helps in making quick decision but this method of voting is not secret.
5. Every member can give only one vote. He can’t exercise voting in proportion to the shares held by him.
6. In this method there is possibility of errors and hence the decision taken under this method is not final and can be challenge.
7. Proxies can’t vote in this method.

**2.3 Division:**

1. Under this method chairman request the members in favor of a proposition and those against the proposition to divide themselves into two groups by passing in separate rooms.
2. The number of members in two rooms is counted and the result is declared by the chairman.
3. This method is rarely used in the company meeting as the voting does not remain secret. Moreover proxies cannot take part in voting.

**2.4 Ballot:**

1. Every member is given a ballot paper (voting paper). He has to record his vote and drop the paper in the ballot box.
2. The chairman appoints scrutinizer to count the votes. The chairman declares the results on the basis of counting.
3. This method ensures complete secrecy. In this every member has one vote and proxies can’t vote under this method.

**2.5 Voting by poll:**

1. Poll literally means counting of heads.
2. In company meeting the result of meeting is ascertain by show of hands or by a poll.
3. Poll is demanded when some members present in the meeting are not satisfied by the result of show of hands or it is demanded by the chairman.
4. In this method, every member is given a voting paper where he can mention his vote. “For” or “against” a proposal he has to record the number of votes in proportion to the equity shares held by him.
5. The result of the poll cancels the result of show of hands.
6. The chairman or member can demand a poll when the chairman desire a poll, he fixes a time and place of the meeting.
7. When the members demand it, the chairman decides to have it immediately or within 48 hours of the demand.
8. The chairman appoints 2 scrutinizers to distribute voting papers to the members and conduct the poll. One of the two scrutinizers must be a member present at the meeting.
9. The scrutinizers give the result to the chairman who declares it finally to the meeting.

**06) By Postal Ballot** :

Despite whatever has been stated about this matter in the provisions under section 110(A) of Companies Act, even then, the registered company can make arrangement for voting by postal ballot by passing a resolution. For carrying it out, a resolution must have been passed. Besides it, if the Central Government has issued notification to do the voting by postal ballot, then the company can pass the resolution for voting by postal ballot instead of doing it in the general meeting.

When the company decides to do voting by postal ballot by passing such resolution, then it has to issue notice to its all the shareholders with the causes for such requirement as well as the draft of the resolution. Moreover, the company will request its all the shareholders that, within the time limit of 30 days from the date of posting, the members may return the ballot by writing their consent or disconsent in the ballot.

**(7)By Voting through Electronic Means (Section 108) :**

The Central Government can decide as to the member of the company can do voting by which class or classes the voting through electronic means.

**QUE-8 Write a short note on minutes (Sec-193):**

**ANS.:** Minutes are record of what the company and directors do in the meeting. Every company shall keep a record of all proceeding of every, general meeting and all proceedings of every meeting of B.O.D. and of every committee of the board. This is done by making entries of the proceedings in the minutes book within 30 days of the conclusion of every such meeting. The records are known as minutes.

* **Minutes book:**

The books in which the record of the proceeding of a meeting is kept is known as “Minutes Book”. Separate minutes book are required to be kept for shareholders general meeting, directors meeting, committee meeting of the B.O.D.

* **Details to be Mentioned :**

The difficult task of preparing the minutes of the meeting is done by the secretary as under :

(1) Type and nature of meeting (2) Place, date and time of meeting (3) Names of members and directors who attended the meeting (4) Details regarding conducting the meeting and the chairman of the meetings (5) Resolutions passed in the meeting (6) The names of members, directors who voted against the passed resolution (7) Complete details of the officer if he has been appointed (8) Notes of the proceedings of the meeting. Besides it on the top of the minutes of the meeting name, address and at the end sign of the chairman and the date are included.

* **Chief use of minutes:**

1. They contained a record of the business transaction with the decision of the shareholders and directors at their respective meeting.
2. They are available for inspection by interested parties such as shareholders, directors, secretary, auditors etc.
3. They can be produced as evidence (proof) of the proceeding in a court of law.

* **Numbering of pages:**
  1. The pages of every minutes book shall be consecutively (serial wise) numbered.
  2. In case the attaching or sticking of papers of proceedings of meeting is not allowed in minutes book:
* **Signing of minutes:**

1. Each page of the minutes book which contains proceeding of a meeting shall be signed and

the last page of the record of the proceedings of each meeting shall be dated and signed by the chairman of the said meeting or by the chairman of the next succeeding meeting.

1. In case of a general meeting by the chairman of the meeting or by directors duly authorized by the board, if the chairman has not signed within 30 days of the meeting or in the event of death or inability of that chairman.
2. In case of minutes of a board meeting or its committee by the chairman of the said meeting or by the chairman of the next succeeding meeting.

* **Fair and correct summary:**

The minutes of each meeting shall contain a fair and correct summary of the proceedings at the meeting so that the absent share holder may get a reliable idea about the proceedings of the meeting. All appointment of officers made at any of the meeting shall also be included in the minutes of the meeting.

* **Location and inspection of a minute book:**

1. The minutes book of any general meeting of a company shall be kept at the registered office of the company.
2. It shall be kept open during business hours for the inspection of any members without any charge at least two hours every day.

* **Penalty:**

If default is made in sec-193, the company and every officer of the company who is in default shall be punishable with fine which may extend to Rs. 500.

**QUE-9 Write in detail about the rights and duties of Chairman of the Meeting (Section 104)**

**ANS:**

**1.00 Definition :**

"The person who is authorized for conducting the meeting is called the Chairman of the meeting." Proper and qualified person is appointed as the chairman of the meeting for conducting the meeting, in order to see that working of the meeting is easily and systematically can be done.

**2. 00 Legal Provision :**

Generally, the provisions are made in the articles of the company regarding the chairman. If no provision has been made in the articles, the members present in the meeting can elect the chairman by showing their hands or if demand is made by poll, then accordingly the chairman is elected. The court has also the right to appoint independent chairman. When the shareholders are divided in two groups and if there is need for conducting the meeting, then the court can appoint the chairman of the meeting.

That's why it is rightly said that "an ideal chairman is the key to the successful conducting of meeting. Ideal chairman should be clever, patient, with sense of judgment, neutral, able to find out ways from difficult situation, polite and strong will power."

Gordon Palin, in his chairman's Manual writes, "An ideal chairman should be well conversant with the procedure of meeting with sense of proper judgment, fearless having the best speaking skill."

It is very much essential that the chairman of the meeting should have the complete knowledge of Companies Act and management of the company. Besides the business knowledge, it is desirable that he should have the legal and technical knowledge. The chairman of the meeting should be educated and experienced. He should be the respectable officer and graceful person having quick decision taking ability.

**3.00 Duties of Chairman :**

In the case of Ramnarayan Vs. Ramkishan the court stated, "The chairman conducting the meeting is neither completely an administrative officer nor a judicial officer. His duties are of mixed kind."

Company makes provision for the duties of chairman in its articles. A mention has also been made in Table-A also. Accordingly following are the duties of the chairman of the meeting :

**(1)** **Legality of Meeting:**

First of all the legality of the meeting should be ensured. It should be verified whether the meeting is convened as per rules or not; proper timely notice has been issued or not, is the quorum in the meeting or not. At the same time he should verify his appointment also.

**(2) Arrangement of Meeting:**

The proceedings of the meeting should be held peacefully, cordially and systematically.

**(3) Conducting Meeting:**

As per the provisions of Companies Act and articles and as per the rules of the meeting. The meeting should be conducted which is his duty.

**(4) For Motion:**

The propriety of motion or resolution should be verified.

**(5) As per the Order of the Agenda:**

It is his duty to see to it that the proceedings of the meeting are carried out as per the order mentioned in the agenda. Except that with the consent of the general meeting the sequence has been changed.

**(6) For Equal Opportunity :**

Every member should be provided equal opportunity to give his opinion on the motion or resolution.

**(7) Interest of the Minority :**

It is essential to see that while hearing the opinions of members and proceeding as per their voting, injustice should not have been done to the interest of the minority.

**(8) Regarding Voting and Its Result :**

Arrangement should be made in the meeting for voting on the motion or resolution presented in the meeting by doing voting by showing hands or by poll and it should be verified and declare the result remaining neutral.

**(9) Regarding control over the behaviour of the members :**

It is essential to see to it that the meeting is conducted systematically, no inconsistent or futile discussion is carried out by any member and there is no disturbance or hindrance in the proceedings of the meeting.

**(10) Regarding mismanagement, adjournment of meeting:**

It is essential to see to it that law and order in the meeting are strictly followed. If any member breaches it, creates problems then he should be removed from there. Even then if the further proceedings of the meeting is not possible, then the meeting should be adjourned.

**(11) Regarding Decisive Vote :**

As per the provisions of articles the casting vote available to him should be utilized naturally.

**(12) Regarding minutes of the meeting:**

It is the duty of the chairman to see to it that for the proceeding of the meetings minutes of meeting should be systematically written. After reading the minutes of the meeting and getting the sanction of the meeting, it should be signed by him.

**(13) Use of power in the interest of the meeting:**

The power received by the chairman should be utilized in the best interest of the meeting and the company.

**4.00 Rights of Chairman :**

The chairman of the meeting can sincerely and efficiently carry out his duty and successfully conduct the meeting. Some rights are bestowed upon him which can be shown as follows :

**(1) Decide the Order**:

The chairman has the power to decide the sequence of members for presenting his opinion at the time of the discussion. As per that sequence the member will make his presentation.

**(2) Control our Discussion**:

If there is futile lengthy discussion on any matter in the meeting, then he can control it. If needed the discussion can be prevented also.

**(3) Regarding Point of Order**:

Sometimes any member does the improper criticism, do incongruent lecture and if any member raises point of order, then the chairman will decide whether the point of order is proper or not. Of course, the chairman can take the help of another person regarding the authenticity of the point of order, but the verdict by the chairman is considered as final.

**(4) Regarding Casting Vote** :

Generally, every member of the company has a right to give one vote, but when for any resolution if equal votes are received in favour and against the matter, then as per the provisions of articles, the chairman has the authority to give his casting vote.

**(5) Expulsion for Indiscipline** :

If any member behaves with indiscipline, improper or unconstitutionally creates frequent disturbances in the proceeding of the meeting, then the chairman of the meeting has the right to expel him for the meeting.

**(6) Adjournment of Meeting** :

If the proceedings of the meeting are not conducted systematically or create pandemonium (chaos), then the chairman has the right to adjourn the meeting.

**QUE-10 Write a short note on Meeting through Video Conferencing**

**ANS:**

**Board meeting through video conferencing or through audio-Video equipment.**

Following are the provisions for the meeting through video-conference or with the help of audio-video equipment. The company which wants to do meeting through video-conference, has to follow the following conditions :

(1) The company has to make necessary arrangement for the video conference so that continuous internet connection remains uninterrupted during the video conference and the director can see and hear properly at the other end and thus participate in the meeting.

(2) Company secretary and chairman of the meeting should take proper care and proper arrangement so that ....

(i) The integrity and secrecy of the meeting are maintained.

(ii) Whatever the technological and communication tools are required should have to be properly working so that at the other end the director can participate in the meeting.

(iii) The recording of the meeting should have to be properly done and minutes are to be prepared,

(iv) To maintain the recording for audit,

(v) The care is also to be taken that other than the director no one can hear the proceedings of the meeting. The proceedings should not get leaked unauthorized,

(vi) Care should also be taken that the director at the other end is also able to see all the members present in the meeting and also talk to them.

(3)(i) Necessary notice for meeting should have been issued,

(ii) It should have been mentioned in the notice that the director can participate in the meeting through video conference,

(iii) Director should have informed the secretary or chairman of the meeting in advance that he would participate in the meeting through video-conference.

(4) When the meeting starts, the chairman will note the attendance of the members, and he will note down the following details of those members who are to participate in the video conferencing meeting :

(i) Name (ii) Place (iii) He has received the agenda and the necessary information.

(iv) Except the concerned director, no one will remain present there.

(5) After noting down the attendance the chairman will ensure whether quorum is there or not. In the calculation of the quorum the director participating in the video-conference will also be taken into consideration, if he is going to attend the meeting for the complete period of meeting. The chairman will also ensure whether the quorum is maintained throughout the meeting.

(6) The location of the meeting by video- conferencing should have been mentioned in the notice and it should be within the boundary of India.

(7) The director will have to introduce himself before participating in the video- conferencing meeting and only then his statement will be recorded and will be considered as legal. If his statement is unclear then he will again has to give his statement and then only it will be placed on record.

(8) If vote is sought for any resolution the directors participating in the video conferencing, can also vote. Of course, before voting they have again to give their introduction.

(9) During the meeting by video conferencing any director if he is going to attend the meeting for the complete period of meeting. The chairman will also ensure whether the quorum is maintained throughout the meeting.

(10) In the minutes of the meeting note will be made of those directors, who were present through video conference.

(11) All the directors will be dispatched the minutes of the meeting within 15 days of meeting. Minutes of the meeting will be sent to those directors also who have participated in the meeting through video- conferencing.

(12) Following decisions will not be recognized by the meeting through video- conferencing :

(i) Approval of annual financial registers, (ii)Approval of Board Report (iii)Approval of Prospectus (iv) Audit committee in which the annual report is to be taken into consideration

(v) Approval of amalgamation, merger, demerger, takeover and acquisition.

(13) The resolution which is to be passed through circulation will be sent and received through e-mail or fax.

All the directors will have to give self-declaration in form DIR-8 to the effect that they have not been disqualified as directors in the beginning of the year.

**UNIT-3**

**Liquidation Of The Company**

**QUE-1: What is winding up? Discuss the types of winding up of the company. OR**

**Is Winding up and dissolution are synonymous?**

**ANS:**

**1.00 Introduction:**

A company is an artificial legal person. It is a creation of law, as company comes into existence by the law. It shall also end by the law. Winding up or liquidation of a company represents the last stage in its life. It means a proceeding by which a company is dissolved. The assets of the company are disposed off, the debts are paid off and surplus if any is there, then it is distributed among the members in proportion of holding, the two term winding up and liquidation are used interchangeably.

**2.00 Meaning of winding up / Liquidation:**

Winding up of the company is a process where by its life is ended and its properties administration for the benefit of its creditor and members an administrator called liquidator, is appointed and he takes the control of the company, collects its assets, pay its debts and finally distributes any surplus among the members in accordance with their right.

**-Prof. Grower**

**3.00 Kinds or means (types) of winding up:**

1. Compulsory winding up or winding by the court.

2. Voluntary winding up.

A. By the members

B. By the creditors.

3. Winding up under the supervision of court.

**4.00 Is Winding up and dissolution are synonymous?**

The terms "Winding up" and "Dissolution" are sometimes erroneously used to mean the same thing. But, the legal implications of these two terms are quite different and there are fundamental differences between them as regards the legal procedure involved. The main points of distinction are given below:

1. The entire procedure for bringing about a lawful end to the life of a company is divided into two stages - 'winding up' and 'dissolution'. Winding up is the first stage in the process whereby assets are realised, liabilities are paid off and the surplus, if any, distributed among its members. Dissolution is the final stage whereby the existence of the company is withdrawn by the law.

2. The liquidator appointed by the company or the Court carries out the winding up proceedings but the order for dissolution can be passed by the Court only.

3. According to the Companies Act the liquidator can represent the company in the process of winding up. This can be done till the order of dissolution is passed by the Court. Once the Court passes dissolution orders the liquidator can no longer represent the company.

4. Creditors can prove their debts in the winding up but not on the dissolution of the company.

5. Winding up in all cases does not culminate in dissolution. Even after paying all the creditors there may still be a surplus; company may earn profits during the course of beneficial winding up; there may be a scheme of compromise with creditors while company is in winding up and in all such events the company will in all probability come out of winding up and hand over back to shareholders/old management. Dissolution is an act which puts an end to the life of the company.

**QUE-2What is winding up? Discuss the circumstances in which a company may be wind up by the court. OR**

**Discuss the grounds for compulsory wining up of the company.**

**ANS:**

**1.00 Meaning of Compulsory winding up / winding up by the court:**

Winding up of the company under the order of the court is also known as compulsory winding up. The various circumstances for compulsory winding up are discussed as follows:

**1.1 Special resolution of the company:**

If company has decided by passing a special resolution to wind up the company only by the court, then members of company can do so. If the members of the company want to make liquidation of the company in some circumstances then they can do so by passing a special resolution. The BOD have the authority to make petition to the court with such resolution.

**1.2 Default in delivering the statutory report or holding a statutory meeting:**

After getting certificate of commencement of business, the company must hold such meetings known as statutory meeting. When a company fails to hold such meetings within the time, the court may order for winding up to the company. A petition on these grounds can be made either by registrar or by a contributory.

Moreover when a company hold statutory meeting but fails to deliver the statutory report to the registrar, the court may give order to wind up the company.

**1.3 Failure to commence or suspension of business:**

The court exercises power in this case if company has no intention of carrying on its business. If a company has not begun to carry on business within a year from its incorporation or has suspended its business for a whole year, the court will not wind up if….

* There is reasonable prospect of the company to start business within the reasonable time out.
* They are good reason for the delay.

**1.4 Reduction in membership:**

If at any time the no. of members of company is reduced in case of the public company below “7” or in case of private company below “2”, the company may be ordered to be wound up by the court. If the company carries on business for more than 6 months with such reduce members then such members will be liable for the payment of the whole of the debts of the company after those 6 months.

**1.5 Inability to pay its debts:**

The company may be wound up by the court, if it is unable to pay its debts. The company reached its insolvent means its assets are not sufficient to pay its debts, it may be wound up by the court.

**1.6 Just and equitable:**

The word just an equitable are the widest significance and do not limit the authority of the court to any particular case. The court may order

for winding up under just an equitable clause in the following cases.

* When the main base for the survival is gone.
* When the main object of the company has the substantially failed or become impracticable.
* When the company is carrying on its business at a loss and there is no reasonable hope that the profit can be attended.
* When the existing assets of the company are insufficient to meet the existing liabilities.
* When the management is carrying on in such a way that the minority is oppressed.
* When the public interest is likely to be prejudicial.
* When the company was formed to carry out fraudulent or illegal business.
* When the business of the company has become illegal.
* When the company does not carry on business and does not have any property.

**1.7 Acting Against National Interest:**

If the Tribunal is of the opinion that the company has acted against the interests of (1) the sovereignty and integrity of India, (2) the security of the State, (3) friendly relations with foreign States, (4) public order, (5) decency or (6) morality, it may order the company for its winding up.

**2.00 Who can apply to the court for liquidating the company ?**

Any one of the following can apply to the court for liquidating the company:

(1) From Company (2)From Creditors

(3) From Contributory (4) From Registrar

(5) From Central or State Government. Now, let us consider each of above in detail :

**(1) From Company (Section 272):**

If the general meeting has given powers to the directors, then they can apply for the liquidation of the company, otherwise the managing director or all the directors do not have the power to apply for the liquidation of the company. If the directors have applied for the same without the authority from general meeting, then the general body can give its approval later on.

**(2) From creditors (Section 272):**

Majority of applications for liquidating the company are received from the creditors. Creditors not only include the present creditors but future creditors also. In this sense the secured creditor, trustee of debenture holder are also considered as creditors. When the future creditor applies, then he has to do so after getting the permission from the tribunal,

**(3) From contributory (Section 272):**

Contributory means such a person who asked to pay the specific amount of contribution for fulfilling liability if the company is liquidated. He may be the shareholder of partially or fully paid up share or he would be such a person whose membership in the company would have been ceased or any person who can be called partial contributory. On the date of application the partial contributory should have been the member of the company.

**(4) From Registrar (Section 272):**

Before presenting the application, the Registrar should have received the prior permission of the Central Government. After getting permission from the Central Government, the Registrar should have made application in proper time. If it is delayed, then the Tribunal will not consider it. The registrar has to apply in the same relation for which the prior permission from Central Government has been obtained.

Without giving opportunity for hearing the company's submission, the Central Government will not give permission to the Registrar.

**(5) From Central or State Government:**

If there are conditions leading to a company towards liquidation and if the Central or state government deems fit that it is essential to liquidate the company due to any one of the following reasons, then the Central government will submit application for liquidation through its authorized person. If it is found from the report of the observer that -

(1) The company's business is run with the purpose of cheating the creditors, members or other persons or if the company's business is deceiving or illegal or

(2) If the persons connected with the incorporation or management of the company are criminals and cheating or if company or any member of the company has misbehaved, or

(3) If the necessary information about the transactions of the company are not provided to the members of the company, then the Central government can get the application for liquidation be submitted. The Central government is given powers for it by section 243.

**QUE-3 Explain the procedure of voluntary winding up by the members of the company. OR**

**State the provision for members voluntary by winding up.**

**ANS:**

**1.00 Introduction:** As per Q-1.

**2.00 Meaning:** As per Q-1.

**3.00 Voluntary winding up of the company:**

Voluntary winding up means winding up by the members or creditors of the company without interference by the court.

The object of the voluntary winding up is that the company members and the creditors are left free to settle their affairs without going to the court. However, they may apply to the court for any direction if and when necessary.

**4.00 Circumstances:**

Company may be wound up voluntarily in the following circumstances:

**4.1 By passing an ordinary resolution:**

When period fixed for duration of company by the articles has expired. The company may pass an ordinary resolution for its voluntary winding up.

**4.2 By the passing a special resolution:**

A company may at any time pass a special resolution that it would be wound up voluntarily. No reasons need to be given where the members pass a special resolution for voluntary winding up of the company.

**5.00 Members voluntarily winding up:**

In a voluntarily winding up of a company, if a declaration of its solvency is made in accordance with the provision, it is a members voluntarily winding up.

The declaration shall be made by a majority of directors at the board meeting that the company has no debt and it will be able to pay its debts in full within 3 years from a commencement of winding up.

**6.00 Provisions applicable to members voluntary winding up:**

**6.1 Appointments and remuneration of liquidators:**

The company in general meeting shall appoint one or more liquidator for the purpose of winding up its affairs and distributing its assets. It shall also fix the remuneration to be paid to liquidators.

**6.2 Board’s power to cease on appointment of liquidator:**

On the appointment of liquidators all the powers of B.O.D., managing directors and manager shall be cease except when the company in general meetings or the liquidator to approve may section them to continue.

**6.3 Power to fill vacancy in office of liquidators:**

If a vacancy occurs by death, resignation or otherwise in the office of any liquidator appointed by the company, a company may fill the vacancy by appointing a new liquidator in general meeting.

**6.4 Notice of appointment of liquidator to be given to registrar:**

The company shall give notice to the registrar for the appointment of liquidator. It shall also give notice of the liquidator occurring in office of the liquidator and of the names of the newly appointed liquidators.

**6.5 Powers of liquidator to accept shares etc. as consideration for sale of property:**

The liquidator has an authority to receive cash, shares, policies, etc. as the consideration from another company to whom the property of the company is sold.

**6.6 Duty of liquidator to call creditors meeting in case of insolvency:**

At any time, if the liquidator is of opinion that the company will not be able to pay its debts within the period stated in the declaration, he shall have power to call a meeting of the creditors. He shall present before the meeting, a statement of assets and liabilities of the company. There after the winding up shall become creditors voluntary winding up.

**6.7 Duty to call general meeting at the end of each year:**

In the event of winding up, continuing for more than 1 year, the liquidator shall call a general meeting of the company, at the end of first year from the commencement of winding up and at the end of each succeeding year. He present before the meeting conducts of the winding during the year.

**6.8 Final meeting and dissolution:**

As soon as the affairs of the company are fully wound up, a liquidator shall make account of winding up showing how the winding up has been conducted and how the property of the company has been disposed off. He shall then call a general meeting of the company and present before it the account showing how the winding up has been conducted.

**6.9 Provisions as to annual and final meeting in case of insolvency:**

If in the case of members voluntary winding up, the liquidator shall find that the company is insolvent. It becomes creditors voluntary winding up. The procedure for winding up by creditors will be followed.

**QUE-4: Explain the procedure of voluntary winding up by the creditors of the company. OR**

**State the provisions for the creditor’s voluntary winding up.**

**ANS.:**

**1.00 Introduction:** As per Q-1.

**2.00 Meaning of winding up:** As per Q-1**.**

**3.00 Meaning of voluntary wining up:** As per Q-1.

**4.00 Creditor’s voluntary wining up:**

A voluntary winding up of a company in which a declaration of its solvency is not made is referred to creditor’s voluntary winding up. In other words, if a company is not able to pay its liabilities then it would be wound up by the creditors.

**5.00 Provisions applicable to creditors voluntary winding up:**

**5.1 Meeting of creditors:**

The company shall call a meeting of the company of which winding up is to be held or on in the next day. The resolution for voluntary winding up is to be proposed at this meeting. It shall send notices of the meeting to the creditors and members simultaneously by the post.

**5.2 Notice of dissolution to be given to registrar:**

Notice of any resolution passed at the meeting of the creditors shall be given by the company to the registrar within the 10 days of passing such resolution.

**5.3 Appointment of liquidator:**

The creditors and the members at their respective meetings may nominate a liquidator. If they nominated different persons, the creditors, the persons nominated by the members shall be liquidator. If they both have not appointed, then court shall appoint a liquidator.

**5.4 Appointment of committee of inspection:**

The creditors at this meetings may if they think fit, appoint the committee of inspection consisting of not more than 5 persons. If such a committee is appointed the company may also at a general meeting appoint not more than 5 members to the committee.

**5.5 remuneration of liquidator:**

The committee of inspection or the creditors may fix the remuneration of the liquidator. When the remuneration is not so fixed it shall be determined by the court. The remuneration shall not be increase in any accordance.

**5.6 Board’s power shall cease on appointment of liquidator:**

On the appointment of the liquidator, all the powers of the board of directors shall cease but the committee of inspection or creditors in general meeting may sanction the continuity of the board.

**5.7 Power to fill vacancy in office of liquidator:**

If any vacancy occurs by death, resignation or otherwise in the office of a liquidator, then the creditors in general meeting may fill the vacancy.

**5.8 Powers of liquidator to accept shares etc as a consideration:**

The liquidator has an authority to accept cash, shares policies etc. as the consideration for sale of property. However, the power of liquidator shall be exercised only with the sanction of the committee of inspection.

**5.9 Duty of liquidators to call meeting at the end of each year:**

As per Q-3 (7)

**5.10 Final meeting and dissolution:**  As per Q-3 (8)

**QUE-5:Difference between members voluntary winding up and creditors voluntary winding up.**

**ANS:**

**1. Declaration of the solvency:**

In this case, there is a declaration of solvency.

In this case, there is no such declaration.

**2. Control of winding up:**

In this case, the members control the winding up of a company as it makes declaration of solvency.

In this case, creditors control the winding up of a company as the company is deemed to einsolvene.

**3. Meeting:**

In this case, there is no meeting.

In this case, whenever there is a meeting of members, there is a corresponding meeting of creditors.

**4. Appointment of liquidator:**

In this case, the liquidator is appointed by the company.

In this case, the liquidator is appointed by creditors or members.

**5. Remuneration of liquidator:**

Liquidator’s remuneration is fixed by the company.

Liquidator’s remuneration is fixed either by creditors or by committee of inspection.

**6. Committee of inspection:**

In this case, there is no committee of inspection.

Creditors may appoint the committee of inspection in this case.

**7. Powers of liquidator:**

The liquidators can exercise certain power with the sanction of the special resolution of the company

Liquidators can exercise certain power with the sanction of the court or committee of inspection or the creditors.

**QUE-6: What do you understand by winding up under the supervision of court:**

**ANS:**

**1.00 Introduction:** As per Q-1.

**2.00 Meaning of winding up:** As per Q-1.

**3.00 Winding up under the supervision of court:**

Winding up under the supervision of court is the thin mode of winding up. It is dealt within Sec-522 to 527. When a company is being wound up voluntarily, the court may order for its winding up under its supervision though the voluntary winding up continues. Such an order of the court does not affect the voluntary winding up, which may have already commenced. The court may interfere at any time in the winding up of a company whenever it is necessary as if it were compulsory winding up.

**4.00 Objects of Winding up under the supervision of court:**

Objects of this mode of winding up are to safe guard the interest of the company, share holders and the creditors.

**5.00 Advantages:**

1. No suit (case) can be filed against the company without the leave of the court.
2. If any legal proceedings have already commenced, such proceedings are stayed unless the court gives necessary permission.
3. The court may appoint a liquidator in addition to the one who had already been appointed by the company.
4. The court may call and enforce its payment in case the call had already been made by the liquidators as if the winding up was compulsory winding up.
5. The court may remove the liquidator already appointed if there is any complain against him.
6. The court may require the liquidator, to file with the registrar, a quarterly report about the progress of the winding up.

**QUE-7: Who is an official liquidator? Discuss his duties and powers.**

**ANS:**

**1.00 Introduction:**

In case of voluntary winding up, the company in general meeting of creditors shall appoint one or more persons for the purpose of winding up the affairs and distributing the assets of the company. Such person is called liquidator or liquidators.

**2.00 Meaning of Official Liquidator:**

For the purpose of winding up of a company by the court, there shall be an official liquidator who:

1. May be appointed from the panel of professional firm of CA, advocates, CS, cost and work accounts or firms having a combination of these professionals by the central govt.
2. May be a body corporate consisting of such professionals as may be approved by central govt. or
3. May be a whole time or part time officer appointed by central govt.

**3.00 Appointment of Official Liquidators (Sections 275, 359)**

When the company is to be liquidated, then the tribunal appoints the liquidator. When the order is passed by the tribunal for liquidation of the company, then the tribunal appoints liquidator for the protection of the interests of public, shareholders and creditors of company. When the company is liquidated by the members or creditors, then for supervising the proceedings of liquidation, a liquidator is appointed. There are two types of liquidators :

(1) Official Liquidator (Section 359);

(2) Liquidator

* **Official Liquidator and Liquidator :**

The official liquidator is appointed by the tribunal or subject to the supervision of the tribunal, then the person appointed as liquidator is called official liquidator. When the company is voluntarily liquidated and a person is appointed as liquidator by the members and creditors, then he is called liquidator.

**4.00 Duties of Liquidator:**

**4.1 Proceeding in winding up:**

The liquidator shall conduct a proceeding in winding up the company and perform duties imposed by the court. He shall not make any secret profit out of his office as he occupies a reliable position.

**4.2 Report:**

The official liquidator shall as soon as practicable offer the receipt of the statement of affairs of the company and not later than 6 months from the date of order of winding up. From the date of winding up, he shall submit a preliminary report that shall contain particulars…

* As to the amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities.
* If the company has failed as to the cause of the failure and
* Whether further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company.

**4.3 Custody of the company’s property:**

Where a winding up order has been made the liquidator shall take into his custody all the property and payable/actionable claims to which company is entitled. So long as there is no liquidator all the property of the company shall be deemed to be in the custody of the court.

**4.4 Exercise and control of liquidator’s power:**

* The liquidator shall have the right in the administration of the assets of the company and distribution there of amount of creditor.
* The liquidator may arrange general meeting of contributors or the creditors whenever he thinks fit.
* The liquidator may apply to the court for directions in relation to any particular matters arising in winding up.

**4.5 Proper books:**

The liquidator shall keep proper books or minutes of the proceeding at meeting and such other matters as may be prescribed. Any creditors or members may inspect any such books personally subject to the control of the court.

**4.6 Audit of accounts:**

The liquidator shall present to the court and account of his receipt and payment as liquidators at such times as may be prescribe but atleast twice in each year during his duty. The account shall be in prescribed form, shall be made in duplicate and shall be dully verified and audited. One copy of the audited account shall be filed and kept by the court. The other copy shall be delivered to the registrar for filing. The next copy will be kept by company. Each copy shall be open to inspection to any creditors, members or person interested.

**4.7 Appointment of committee of inspection:**

The court may at the winding up of a company or at any time thereafter, direct that there shall be appointed a committee of inspection to act with the liquidator. The liquidator shall within two months from such direction by the court arrange the meeting of the company and creditors to determine the members of committee of inspection.

**4.8 Pending liquidation:**

Liquidation shall within 2 months of the expiring of each year from the commencement of winding up, file a statement dully audited by a qualified auditor of the company with respect to proceedings and position of the liquidation. The statement shall be filed:

1. In the case of a winding up by the court, to the court.

2. In the case of a voluntary winding up, with the registrar.

**5.00 The powers of the liquidator:**

**5.1 Power exercisable with sanction of the court:**

* To institute or defend suit (cases) and other legal proceeding in the name and on behalf of the company.
* To carry on the business of the company so far as may be necessary for the beneficial winding up of the company.
* To sell the immovable and movable property with power to transfer the whole or sell the same.
* To raise money on security of company’s assets.
* To do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

**5.2 Power exercisable without the sanction of the court:**

* To do all acts and deeds on behalf of the company under its seal.
* To inspect the records and returns of the company or the files of the registrar without payment of any fees.
* To appoint an agent to do any business which he is unable to do himself.
* To do any other act necessary for obtaining payment of the money due from any contributory.

Within 21 days of the relevant date (i.e. date of appointment of provisional liquidator or where no such liquidator is appointed the date of winding up order), the company shall submit a statement to the official liquidator as to the affairs of the company. Also the statement shall be in prescribed form.

**QUE-8 Write a brief note on Statement of Affairs of the Company**

**ANS:**

The directors of the company have to give the statement of affairs about the condition of the company. So, such a statement is also called the statement of condition indicator. Such statement of affairs regarding the condition of the company is prepared by the directors of the company.

When the court orders the liquidation or appoints the official liquidator or provisional liquidator, then the official letter has to be submitted containing following matters and details in the form of statement of affairs of the company to the official liquidator.

(1) Inclusive of assets, cash amount, amount credited in bank.

(2) If there are negotiable securities, they are also to be mentioned.

(3) Assets and liabilities of the company.

(4) The names, addresses, profession, debt without security will have to be shown separately. In the case of secured debts, the details of securities, price of securities and the date of issuance are to be mentioned.

(5) Details of the dues to be received by the company name, addresses and their profession. The amount which can be recovered.

(6) Any other details, which are demanded or if official liquidator demands it.

The directors of the company have to provide above statement of affairs giving the condition of the company to the official liquidator. Directors of the company or manager or secretary or any chief officer has to submit the statement of affairs with his signature.

This statement of affairs is to be submitted to the official liquidator within 21 days of appointment of provisional liquidator or official liquidator and if the court gives permission of more time due to any special reason, then within three months of the specified date.

As the official liquidator receives the statement of affairs regarding the condition of the company, then the official liquidator, based on the statement of affairs, submits the primary report to the tribunal.

**QUE-9 Discuss in brief about the Report of Liquidator**

**ANS:**

After the directors of the company submit the statement of affairs of the company to the official liquidator, then the official liquidator has to submit primary report to the court showing following details within 6 months of the order of liquidation or if the additional time limit is provided by the tribunal :

1. Company's official, issued and paid up share capital.

2. Estimated amount of the company's assets and liabilities.

3. The details of the assets should be provided under different heads like-

(1) Cash and securities which can be transacted.

(2) Company's debts and securities.

(3) Moveable and immovable assets owned by the company.

(4) Remaining installments.

(5) Due amount from the contributory.

4. If the business of the company has failed, then the reasons of failure.

5. Additional report regarding the incorporation of company, procedure of the business is to be submitted.

In the additional report details of company's incorporation and formation will be provided and at the time of incorporation and formation of the company whether any cheating was done or not, whether any officer cheated the company after company's formation, if such proper reason is found by the liquidator, he can submit it in the additional report. He can mention all the above details in the additional report.

**QUE-10 Write short note on: Committee of Inspection**

**ANS**.

* **Appointment and Composition of Committee**

The NCLT may, at the time of making an order for the winding up of a company or at any time thereafter, direct that there shall be appointed a committee of inspection to act with the liquidator. The liquidator shall than within 2 months from the date of such direction convene a meeting of the creditors of the company for the purpose of determining the membership of the committee.

Within 14 days of the creditors meeting, the liquidator shall call a meeting of the contributories to consider the decision of the creditors with respect to the membership of the committee. The contributories may accept the decision of the creditors with or without modification or reject it. If the contributories do not accept the decision of the creditors, the liquidator shall apply to the NCLT for directions as to what shall be composition of the committee and who shall be its members.

* **Constitution and Proceeding of the Committee**

The committee of inspection shall not have more than 12 members. The members shall be creditors and contributories of the company, in such proportions as may be agreed on by the meetings of creditors and contributories. In case of difference of opinion between creditors and contributories, the proportion shall be determined by the NCLT.

The committee of inspection shall have the right to inspect the accounts of the liquidator at all reasonable times, It shall meet at appointed times. The liquidator or any member of the committee may also call its meetings as and when he thinks necessary. The quorum of its meeting shall be 1/3rd of the total number of members or 2 whichever is higher. It may act by a majority of its members present at a meeting, but it shall not act unless a quorum is present.

A member of the committee may resign by notice in writing signed by him and delivered to the liquidator. If a member is adjusted insolvent or compounds or arrange with his creditors, or is absent from 5 consecutive meetings of the committee without leave of absence, his office shall become vacant.

* **Removal of Member of Committee**

A member of the committee may be removed at a meeting of creditor if he represents creditors, or at a meeting of contributories if he represents contributories, by an ordinary resolution. 7 days notice shall be given of the meeting, stating the object of the meeting. The vacancy shall be filled at the meeting of the creditors or contributories, as the case may be. On a vacancy occurring in the committee, the liquidator shall forthwith summon a meeting of creditors or of contributors, as the case may require, to fill the vacancy. The meeting may, by resolution, re-appoint the same, or appoint another, creditors or contributory to fill the vacancy. The liquidator may, in his discretion, apply to the NCLT that the vacancy need not be filled and the NCLT may pass an order accordingly. The continuing members of the committee, if not less than 2, may act not withstanding any vacancy in the committee.

**UNIT-4**

**Case Study On Company Law**

**QUE-1 Salomon V/S Salomon**

**(Separate legal entity, Lifting or Piercing the corporate veil)**

**ANS:**

**1.00 Introduction**

Company occupies the status of artificial legal person. It means it possess legal character for undergoing various contracts and documents Unlike human beings, a company also has personality. The difference between human personality and personality of the company is that, it has got legal personality. Let us now discuss in detail about the corporate personality of the company.

**2.00 Corporate Personality of Company**

If we say that “company is creation of law" then it would not be wrong. It is because, the company form of organization comes into existence by law, it is operated as per the laws and it can be closed permanently by law. Its personality is artificial, intangible and invisible. It occupies the status of artificial legal person. It can undergo contract through its common seal. It occupies several rights and benefits granted by the law. Unlike human beings, it also possesses wealth on its own name. Such wealth is distinct from the wealth of its representatives members. Moreover, unlike human beings, it also incurs debt. A company is also known as body corporate. Body corporate means a person, or group of persons forming association legally to run certain type of business or provide certain types of services. Such an association of individuals be recognized by the law and it must be operated under the authority of law. The existence of body corporate must be long lasting independent from the existence of its member. The company can have limited and unlimited liability.

**3.00 Doctrine of Corporate Veil**

Corporate veil is a legal distinction. Such a distinction is made by the law in order to maintain separate identity/personality of the company apart from its representatives/members. In short the personality of the company is totally different from that of its members. It is a line drawn by the law in order to safeguard the legal character of the company. Because of separate entity of the company, the shareholders are allowed to enter into a contract with a company. The company cannot be held liable for the acts of its shareholder. Moreover, the shareholders of the company cannot claim the property of the company for repayment of their personal debt. The shareholders of the company can make competition with the company.

But under several special circumstances the personality of the company is not treated a separate one. The ignoring of separate legal entity of the company by law is known as doctrine of corporate veil. In certain special circumstances, the personality of the company and its shareholders/members is treated same and not distinct They said doctrine can be understood more precisely in case of Salomon versus Salomon.

**4.00 Facts of the case: Salomon versus Salomon**

The Salomon Company Ltd., was formed by Mr. Salomon. His wife, daughter and four sons were its subscribers cum members. The said company took over the shoe business of another company named Salomon, for pounds 39,000. The consideration was not given in cash. It was given as under:

20,000 shares of one pound each, 10,000 debentures, and remaining amount in cash.

As debentures were given in consideration, a charge was created over the assets of the company. Mr. Salomon and his two sons were directors of the company. Later on the company went Into liquidation because of general depression. At the time of liquidation, the assets of the company amounted to pounds 6,000. At that time, fully secured creditors of the company amounted to pounds 10,000 and partly secured creditors amounted to pounds 7,000, At that time, Mr. Salomon claimed the assets of the company for paying to creditors. On the other hand, the creditors of the company demanded that they should be paid out of the personal property of Mr. Salomon. The logic behind their demand was that Mr. Salomon and the said company is same person. Over the aforesaid litigation, the lower court gave the judgement that incorporation of company was a fraud. The said judgement of the lower court was discarded by the House of Lords. House of Lords made following observations.

The company incorporated by law bears separate legal identity i.e. distinct from its members. The identity of the company is distinct and remains distinct though its entire share may be practically owned and controlled by single person. Thus, it is not permissible to consider relevant the enquiry whether the directors belonged to the same family.

In India, the doctrine of corporate veil is lifted when public interest litigation is made against the company or it's Board of Directors.

**QUE-2Ashbury Railway Carriage & Iron V/S Riche (Doctrine of Ultra Vires)**

**ANS.**

**1.00 Object Clause**

The third compulsory clause in the memorandum sets out the objects for which the company has been formed. Under section 4(1)(c) of the Companies Act, 2013, all companies must state in their memorandum the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.

The objects clause is of great importance because it determines the purpose and the capacity of the company. It indicates the purpose for which the company has been set up and its actual capability, besides its sphere of activities. It states affirmatively the ambit and extent of powers of the company and, stated negatively, that nothing should be done beyond that ambit and that no attempt shall be made to use the company for any other purpose than that which is specified. The purpose of the objects clause is to enable the persons dealing with the company to know its permitted range of activities. The acts beyond this ambit are ultra vires and hence void. Even the entire body of shareholders cannot ratify such acts.

**2.00 Doctrine of Ultra Vires**

It is ultra vires for a company to act beyond the limits of its memorandum. Any attempted departure will be invalid and cannot be validated even if assented to by all the shareholders of the company. Ultra vires means an act or transaction of a company, which though it may not be illegal, is beyond the company's powers by reason of not being within the objects of the memorandum of association. The memorandum is, so to speak, the limit beyond which a company cannot travel. [Ashbury Railway Carriage and Iron Company v. Riche, (1875) LR 7 HL 653].

The Memorandum of Association is the 'Lakshman Rekha' for a company. An act beyond the objects mentioned in the memorandum is ultra vires and void and cannot be ratified.

In the case of a company whatever is not stated in the memorandum as the objects or powers is prohibited by the doctrine of ultra vires. As a result, an act which is ultra vires is void, and does not bind the company. Neither the company nor the contracting party can sue on it. Also, as stated earlier, the company cannot make it valid, even if member assents to it.

The general rule is that an act which is ultra vires the company is incapable of ratification. An act which is intra vires the company but outside the 'authority of the directors may be ratified by the company in proper form.

The rule is meant to protect shareholders and the creditors of the company. If the act is ultra vires (beyond the powers of) the directors only, the shareholders can ratify it. If it is ultra vires the articles of association, the company can alter its articles in the proper way.

**3.00 Case Law**

The memorandum of the company in the said case defined its objects thus: "The objects for which the company is established are to make and sell, or lend or hire, railway plants............to carry on the business of mechanical engineers and general contractors...........".

The company entered into a contract with M/s. Riche, a firm of railway contractors to finance the construction of a railway line in Belgium. On subsequent repudiation of this contract by the company on the ground of its being ultra vires. Riche brought a case for damages on the ground of breach of contract, as according to him the words "general contractors" in the objects clause gave power to the company to enter into such a contract and, therefore, it was within the powers of the company. More so, because the contract was ratified by a majority of shareholders.

The House of Lords held that the contract was ultra vires the company and, therefore, null and void. The term "general contractor" was interpreted to indicate as the making generally of such contracts as are connected with the business of mechanical engineers. The Court held that if every shareholder of the company had been in the room and had said, "That is a contract which we desire to make, which we authorise the directors to make", still it would be ultra vires. The shareholders cannot ratify such a contract, as the contract was ultra vires the objects clause, which by Act of Parliament, they were prohibited from doing.

However, later on, the House of Lords held in other cases that the doctrine of ultra vires should be applied reasonably and unless it is expressly prohibited, a company may do an act which is necessary for or incidental to the attainment of its objects. Section 13(l)(d) of the Companies Act, 1956 [Corresponds to section 4(l)(c) of the Companies Act, 2013] provides that the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof be stated in the memorandum. However, even when the matters considered necessary in furtherance of the objects are not stated, they would be allowed by the principle of reasonable construction of the memorandum.

**QUE-3 Royal British Bank V/S Turquand (Doctrine of Indoor Management)**

**ANS.**

**1.00 Principle of Indoor Management**

While the doctrine of "constructive notice" seeks to protect the company against the outsiders, the principle of indoor management operates to protect the outsiders against the company.

According to this doctrine, as laid down in Royal British Bank v. Turquand, (1856) 119 E.R. 886, persons dealing with a company having satisfied themselves that the proposed transaction is not in its nature inconsistent with the memorandum and articles, are not bound to inquire the regularity of any internal proceedings. In other words, while persons contracting with a company are presumed to know the provisions of the contents of the memorandum and articles, they are entitled to assume that the provisions of the articles have been observed by the officers of the company. It is no part of the duty of an outsider to see that the company carries out its own internal regulations.

**2.00 Cash Law**

In Royal British Bank v. Turquand, the directors of a banking company were authorised by the articles to borrow on bonds such sums of money as should from time to time, by resolution of the company in general meeting, be authorised to borrow. The directors gave a bond to Turquand without the authority of any such resolution. It was held that Turquand could sue the company on the strength of the bond, as he was entitled to assume that the necessary resolution had been passed. Lord Hatherly observed: "Outsiders are bound to know the external position of the company, but are not bound to know its indoor management".

**3.00 Exceptions to the Doctrine of Indoor Management**

Exceptions to the Doctrine of Indoor Management are as under:

**Exceptions to the Doctrine of Indoor Management**

(1) Knowledge of irregularity

(2) Negligence

(3) Forgery

(4) Act outside the scope of apparent authority'

**(1) Knowledge of irregularity**

Where a person dealing with a company has actual or constructive notice of the irregularity as regards management, he cannot claim the benefit under the rule of indoor management. He may in some cases, be himself apart of the internal procedure. The rule is based on common sense and any other rule would "encourage ignorance and condone dereliction of duty."

*T.R. Pratt (Bombay) Ltd. v. E.D. S&s sons & Co. Ltd.,A.LR. (1936).* Company A lent money to Company B on a mortgage if its assets. The procedure laid down in the Articles for such transactions was not complied with. The directors of the 2 companies were the same. Held, the lender had notice of the irregularity and hence the mortgage was not binding.

**(2) Negligence**

Where a person dealing with a company could discover the irregularity if he had made proper inquires, he cannot claim the benefit of the rule of indoor management. The protection of the rule is also not available where the circumstance surrounding the contract are so suspicious as to invite inquiry, and the outsider dealing with the company does not make proper inquiry. If, for example, an officer of a company purports to act outside the scope of his apparent authority, suspicion should arise and the outsider should make proper inquiry before entering into a contract with the company.

*A.L. Underwood v. Bank of Liverpool, (1924).*The sole director and the principal shareholders of a company paid into his own account cheques drawn in favor of the company. Held, the bank was liable as it ought to have made proper inquiry before crediting the account of the director.

**(3) Forgery**

Where an instrument purporting to be executed on behalf of the company is a forgery. The rule of Turquand's case does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery. A company can never be held bound for forgeries committed by its officer.

*Rubel v. Great Fingall Consolidated Co., (1906).* The secretary of a company issued a share certificate under the company's seal with his own signature and the signature of a director forged by him. Held, the share certificate was not binding on the company. The person who advanced money on the strength of this certificate was not entitled to be registered as holder of the share.

**(4) Act outside the scope of apparent authority**

If an officer of a company enters into a contract with a third party and if the act of the officer is beyond the scope of his authority, the company is not bound. In such a case, the plaintiff cannot claim the protection of the rule of indoor management simply because under the Articles the power to do the act could have been delegated to him. The plaintiff can sue the company only if the power to act has in fact been delegated to the officer with whom he entered into the contract

*Kreditbank Cassel v. Schenkers Ltd., (1927).*A branch manager of a company drew and endorsed bills of exchange on behalf of the manager of a company in favor of a payee to whom he was personally indebted. He had no authority from the company to do so. Held, the company was not bound. But if the officer of a company acts fraudulent act, under his apparent authority on behalf of the company, then the company will be held liable for the act of fraud committed by the officer.

**(5)** Again, the doctrine of indoor management does not apply where the question is in regard to the very existence of an agency.

**(6)**This Doctrine is also not applicable where a pre-condition is required to be fulfilled before company itself can exercise a particular power.

In the end, it is worthwhile to mention that section 6 of the Companies Act, 2013 gives overriding force and effect to the provisions of the Act, notwithstanding anything to the contrary contained in the memorandum or articles of a company or in any agreement executed by it or for that matter in any resolution of the company in general meeting or of its board of directors. A provision contained in the memorandum, articles, agreement or resolution to the extent to which it is repugnant to the provisions of the Act, will be regarded as void.

A corporation, organization or other entity set up to provide a legal shield for the person actually controlling the operation.

**QUE-4 Peek V/S Gurney (Mis - statement in the prospectus)**

**ANS.**

**1.00 Liability for Untrue Statement in Prospectus :**

It is now clear that a prospectus must be complete and perfect in details or in other words nothing should be omitted and nothing must be untrue in a prospectus.

Where an untrue statement occurs in a prospectus, there may arise (i) civil liability (ii) criminal liability. Every person who is a director of the company at the time of the issue of the prospectus, every promoter of company and every person, including an expert who has authorized the issue of a prospectus, shall be liable. Since the liability of these persons is to the allot the of securities, we may discuss this matter under the heading remedies for mis-statements in a prospectus.

It is essential to know as to what constitutes an untrue statement. To protect the interests of prospective investors in the securities of a company, the law prescribes a wider meaning to this term. Whether a statement is untrue or not is to be judged by the context in which it appears and the totality of impression it would create. A statement included in a prospectus shall be deemed to be untrue, if the statement is misleading in the form and context in which it is included.

Further, where any inclusion or omission of any matter in a prospectus is likely to mislead, the prospectus shall be deemed, in respect of such omission, to be a prospectus in which an untrue statement is included.

The expression "Included" with reference to a prospectus means included in the prospectus itself or contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith. Even if every word included in the prospectus is true, the suppression of material facts may cause the prospectus to be fraudulent

**2.00 Liabilities regarding frauds or misleading statements:**

In order to make frauds various types of misleading statements or words are excessively used in prospectus. These words or statements have dual meaning. When investor invests in a company whose prospectus possesses misleading words or statements then such person has to prove the facts and can claim damages. By proving the guilt of the company, he is in a position to terminate contracts with the company without any contractual obligation on him.

The promoters, directors, etc of a company are liable to the shareholders regarding frauds and misleading statements in prospectus. These liabilities are of two types. These are as under

(1) Criminal liability

(2) Civil liability

**(1) Criminal Liability**

According to Section 34 of the Companies Act, 2013, where a prospectus, issued, circulated or distributed includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorizes the issue of such prospectus shall be liable under section 447. Section 447 provides that any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.

However, where the fraud in question involves public interest, the term of' imprisonment shall not be less than three years

However, where a person who has authorised the issue of prospectus proves, either that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary may be relieved from the criminal liability.

**(2) Civil Liability**

(1) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who-

(a) is a director of the company at the time of the issue of the prospectus;

(b) has authorised himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time;

(c) is a promoter of the company;

(d) has authorised the issue of the prospectus; and

(e) is an expert referred to in sub-section (5) of section 26, shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage.

(2) No person shall be liable under sub- section (I), if he proves-

(a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it, was issued without his authority or consent; or

(b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent,

(3) Not withstanding anything contained in this section, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in subsection {1} shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

**3.00 Case Law:**

In Peek v. Gurney (1873) 43 L.J. Ch. 19, a deceitful prospectus was issued by the directors on behalf of the company. Peek received a copy of it but did not take any shares originally in the company. The allotment of shares to applicants was completed, and several months afterwards he bought 2,000 shares on the stock exchange. His action against the directors for deceit was rejected. It was observed by the Court that the office of a prospectus is to invite persons to become allottees, and allotment having been completed, such office is exhausted and liability to allottees does not follow the shares into the hands of subsequent transferees.

**QUE-5 Re Peel's Case (Certificate of incorporation is conclusion evidence of legality)**

**ANS:**

**1.00 Issue of Certificate of Incorporation by Registrar:**

Section 7(2) states that the Registrar on the basis of documents and information filed under sub-section (1) of section 7, shall register all the documents and information referred to in that sub- section in the register and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.

From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name, (Section 9), The subscribers would become the members of the company.

**2.00 Conclusive Evidence:**

A Certificate of Incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of the Act have been complied with in respect of registration and matters precedent and incidental thereto, and that the association is a company authorised to be registered and duly registered under the Act. The Certificate of Incorporation is conclusive evidence that everything is in order as regards registration and that the company has come into existence from the earliest moment of the day of incorporation stated therein with rights and liabilities of a natural person, competent to enter into contracts The validity of the registration cannot be questioned after the issue of the certificate.

The Memorandum of Association of a company was signed by two adults and by a guardian of the other 5 subscribers, who were minors. The Registrar, however, registered the company and issued under his hand a Certificate of Incorporation, It was contended that this Certificate of Incorporation should be declared void. Lord Macnaughtea said: "Their Lordships will assume that the conditions of registration prescribed by the Indian Companies Act were not duly complied with; that there were no seven subscribers to the Memorandum and that the Registrar ought not to have granted the certificate. But the certificate is conclusive for all purpose. Thus, the certificate prevents anyone from alleging that the company does not exist".

It is for the purpose of incorporation only that the certificate was made conclusive by the legislature and the certificate cannot legalise the illegal object contained in the Memorandum. Where the object of a company is unlawful, it has been held that the certificate of registration is not conclusive for this purpose.

**3.00 Case Law :**

Provisions of Company are completely regulated in relation to company registration. This is famous as "Re Peel's Case".

**QUE-6Badri Prasad V/S Nagarmal (Conversion of Pvt. Co. into Public Co. By holding of more than 25% shares of Pvt. Co.)**

**ANS.**

**1.00 Case Law:**

As We are of the opinion that the preliminary objection must succeed, it is necessary to state the facts only in so far as they have a bearing on it. When cloth control came into force in Rewa State, the cloth dealers of Budhar a town in that State, formed themselves into an Association to collect the quota of cloth to be allotted to them and sell it on profit wholesale and retail. The, Association at Budhar consisted of 25 members who made contributions to the initial capital of the association which was one lac of rupees. No formal Articles of Association were written; nor was it registered. The Association functioned through a President and a pioneer worker; they kept accounts and distributed the profits.

Respondent no. 1, Nagar Mal, was the President of the said Association from January 1946 to June 26,1946. Before that, Seth Badri Prasad, one of the plaintiffs appellants before us, was the President. Nagar Mal ceased to be President after June 26,1946, and Seth Badri Prasad again became President. *The* Association worked till February 1948 ; then cloth was decontrolled and the work of the Association came to an end. On June 25, 1949, thirteen members of the Association out of the twenty-five brought a suit, and in the plaint they alleged that respondent no. 1, who was President of the Association, from January 1946 to June 1946, had given an account of income and expenditure for the months of January. February and March, 1946, but had given no accounts for the months of April, May and June, 1946. They, therefore rayed.

1. That defendant no. 1 (Nagar mal) be ordered to give the accounts of cloth Association Budhar from the beginning of month April to June 1946
2. That he be ordered to pay the amount which is found due to the plaintiffs on account of being done, alongwith interest at the rate of 12% per month and
3. That the interest for the period of suit and till the realisation of the dues be allowed.

**QUE-7 Mohiri Bibi V/S Dharamadas Ghose (Minor cannot became member of the company)**

**ANS.**

**1.00 Minor cannot became member of the company**

A minor is not competent to become the menu --of a company because an agreement with minor is absolutely void. If the directors, in ignorance of the fact of minority, allot shares to a minor and enter his name in the register of members, the company can repudiate the allotment The minor may also repudiate the allotment any time during his minority. In either case, the company must return the money received on the shares to the minor. If the allotment is not repudiated by either party and the minor's name appears in the register of members, he is not liable to pay any call during his minority. On attaining majority, if he does not want to continue as a member, he must repudiate his liability on the shares. If he does not do so, he will become liable as a member on the ground of estoppel.

**2.00 Case Law:**

The plaintiff Dharmadas Ghose was a minor, he mortgaged his property in favour of the defendant, Brahmo Dutt, who was a money lender, to secure a loan of Rs. 20,000. During the time of transactions, the attorney of the defendant was aware of the fact that the plaintiff was incompetent to make any contract as he was a minor. Out of the total amount, Dharmadas paid only Rs. 8,000 and refused to make payment of the rest of the amount. Dharmadas commenced an action against Brahmo Dutt, with his mother, stating that during the time of contract he was minor and a minor cannot enter into any contract so the contract is void hence, he cannot be made liable to pay anything. The Court granted relief to the plaintiff. An Appeal was filed but the same was dismissed by the Appellate Court. After this appeal, Brahmo Dutt died. An appeal was filed in the Calcutta High Court by his executors.

**3.00 Held:**

No agreement can become contract if the parties to the contract are not competent to contract, as it is a void contract. The Privy Council stated that Dharmadas was a minor at the time of agreement and this fact was folly known by the attorney, the law of estoppels was not applicable to the present case. Minor agreement being void, Section 64 was not applicable to the case and therefore the minor could not be asked to pay back the loan amount.

"By the judgment of this case, we find that the law of estoppels does not apply to a minor, a minor is allowed to plead minority as a defense to avoid liability under an agreement even if during the time of an agreement he misrepresents his age.