How to Use This Guide

Read each unit in the order given in the syllabus, but revise the topics marked by the previous question papers first. Company law examinations often recycle the same conceptual clusters: incorporation and promoters, corporate personality and its limits, prospectus and misstatement, directors and governance, minority protection, winding up and the functioning of institutional bodies such as NCLT and NCLAT.

Question-paper trend snapshot

From the 2024 and 2025 papers, the high-yield themes are: origin and development of company law in India; advantages of incorporation; registration and incorporation; promoters and prospectus; minority rights and Foss v. Harbottle; directors and their powers/duties; corporate governance and CSR; official liquidator and winding up; constructive notice versus indoor management; shares, debentures and DEMAT; and the role of NCLT/NCLAT.

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Unit I — Origin and Development of Company Law in India; Meaning, Features and Kinds of Companies; Advantages and Disadvantages of Incorporation

Exam focus

The 2024 paper asked the origin and development of company law in India and the advantages of incorporation. The 2025 paper asked for short notes on doctrine of ultra vires and company secretary, both of which become easier if the student first understands why incorporation creates a separate legal framework.

1. Origin and Development of Company Law in India

Modern company law in India grew out of colonial commercial regulation and later evolved into a comprehensive statute-based corporate governance system. The early legislative lineage is usually traced to the Joint Stock Companies Act, 1850, followed by enactments inspired by English company legislation. Over time, the law moved from mere registration of joint stock enterprises to a fuller framework governing incorporation, management, capital raising, minority protection, investigation, reconstruction and winding up.

The Companies Act, 1956 became the principal post-Constitution code and remained the dominant statute for decades. It was eventually replaced by the Companies Act, 2013, which substantially modernised corporate law by emphasising disclosure, investor protection, board accountability, independent directors, class actions, corporate social responsibility, enhanced audit oversight, and a specialised adjudicatory structure centred on the National Company Law Tribunal. Certain later developments, especially insolvency resolution and voluntary liquidation, were further shifted to the Insolvency and Bankruptcy Code, 2016, showing that modern corporate regulation in India now functions through a network of statutes rather than through the Companies Act alone.

Broad phases a law student should remember

- Colonial phase: registration-focused legislation influenced by English joint stock company law.
- Companies Act, 1913 phase: more developed corporate regulation during the colonial period.
- Companies Act, 1956 phase: the first comprehensive post-independence corporate code.
- Companies Act, 2013 phase: governance, disclosure, investor protection, CSR, tribunalisation and stronger compliance architecture.
- Post-IBC phase: insolvency and voluntary liquidation increasingly governed by the Insolvency and Bankruptcy Code, 2016 and IBBI regulations.

For examinations, it is useful to present this development not merely as a chronology but as a movement from registration of business associations to regulation of corporate power. The 2013 Act is not just a replacement statute; it reflects a policy choice that companies are important economic institutions whose decisions affect investors, creditors, employees, markets and the public at large.

2. Meaning of a Company

Section 2(20) of the Companies Act, 2013 defines a “company” as a company incorporated under this Act or under any previous company law. This definition is deliberately formal. A company is not defined by size, by business activity, or by whether it is family-controlled; it is defined by the fact of incorporation under law.

A company is therefore an artificial legal person, recognised by law as distinct from the individuals who form it, invest in it or manage it. It can own property, enter contracts, sue and be sued, hold assets and incur liabilities in its own name. This separate personality is the foundation of modern company law.

Salomon v. A. Salomon & Co. Ltd. (1897 AC 22 (HL))

Facts: Aron Salomon had carried on a boot manufacturing business as a sole trader. He then incorporated a company and transferred the business to it. The company satisfied the statutory minimum shareholder requirement, but in substance Salomon and his family controlled almost the entire undertaking. When the company later went into liquidation, unsecured creditors argued that the company was merely Salomon’s agent or alias and that he should therefore be personally liable for its debts.

Issues: Whether a duly incorporated company loses its separate legal personality merely because one person substantially controls it and benefits from it.

Held: The House of Lords held that once the statutory requirements of incorporation are complied with, the company is a separate legal person distinct from its shareholders. Motive, control, or practical dominance by one person does not destroy corporate personality. This case remains the classic foundation of separate corporate existence and limited liability.

3. Essential Features of a Company

Core features

- Separate legal entity: the company is distinct from members and directors.
- Perpetual succession: death, insolvency or transfer of shares by members does not end the company.
- Limited liability: in a company limited by shares, shareholder liability ordinarily extends only to the unpaid amount on shares.
- Transferability of shares: especially in public companies, subject to statutory and articles-based limitations.
- Common seal: no longer mandatory as an essential attribute under the 2013 Act, but historically significant as the company’s formal authentication mechanism.
- Separate property: company property belongs to the company, not to the shareholders collectively.
- Capacity to sue and be sued: litigation is ordinarily in the corporate name.
- Centralised management: members own, but the board manages.

4. Kinds of Companies

The classification of companies is one of the most examined areas because it combines definitions with policy differences. A student should know classification by liability, by membership, by control and by purpose.

Comparison: common statutory kinds of companies

Basis	Category	Key idea / statutory hook
By membership	One Person Company	Section 2(62); a private company with only one member, designed for small-scale single ownership with corporate form.
By membership	Private company	Section 2(68); restricts transfer of shares, limits number of members, and prohibits public invitation to subscribe.
By membership	Public company	Section 2(71); can access public capital subject to law and may have freely transferable shares.
By liability	Company limited by shares	Member liability limited to unpaid amount on shares.
By liability	Company limited by guarantee	Members undertake to contribute a stated amount on winding up.
By liability	Unlimited company	No statutory cap on member liability.
By control	Holding company	Section 2(46); company that controls composition of board or exercises requisite voting control over another company.
By control	Subsidiary company	Section 2(87); company controlled by a holding company.
By purpose	Section 8 company	Section 8; charitable or not-for-profit objects such as commerce, art, science, education, social welfare, religion, charity, environmental protection.
By ownership	Government company	Section 2(45); not less than 51% of paid-up share capital held by government(s).
By market status	Listed / unlisted company	Listed companies are subject to stock exchange and SEBI norms in addition to the Companies Act.

In answer writing, do not merely reproduce definitions. Explain why the law treats these categories differently. For example, private companies enjoy greater flexibility because the law assumes a closer-knit ownership structure; public companies face stricter disclosure because they access public capital; and Section 8 companies receive special treatment because profit distribution is not their primary object.

5. Advantages and Disadvantages of Incorporation

Comparison: advantages and disadvantages of incorporation

Advantages	Disadvantages / limits
Separate legal personality allows the business to hold property and incur liabilities independently of its members.	Corporate form can be used to obscure responsibility, requiring courts to lift the veil in appropriate cases.

Advantages	Disadvantages / limits
Limited liability encourages investment and entrepreneurial risk-taking.	Compliance burden is heavier than sole proprietorship or ordinary partnership.
Perpetual succession gives continuity to enterprise and contracts.	Decision-making may become formal, slow and document-heavy.
Transferability of interest enables liquidity and capital mobility.	Separation of ownership and management can create agency problems.
Large capital can be raised more easily, especially in public companies.	Minority shareholders may be vulnerable to majority control unless protected.
Professional management becomes possible through the board structure.	In listed and large companies, regulatory breaches can trigger civil, criminal and market penalties.

A very good answer explains that incorporation is both an enabling and a disciplining device. The law gives the company an independent economic identity, but in return it subjects that entity to rules of disclosure, governance, filing, audit, shareholder rights and public accountability.

Unit II — Formation of Company; Promoters; Prospectus; Memorandum and Articles; Corporate Doctrines

Exam focus

The 2024 paper asked registration and incorporation of a company, prospectus, and protection of minority rights. The 2025 paper asked position of promoter, misstatement in prospectus, and constructive notice versus indoor management. This unit is therefore one of the highest-yield portions of the syllabus.

1. Formation of Company: Registration and Incorporation

The statutory foundation is Chapter II of the Companies Act, 2013, especially sections 3 to 12. Section 3 lays down who may form a company. Sections 4 and 5 govern the memorandum and articles. Section 7 deals with incorporation, section 9 recognises the effect of registration, section 10A concerns commencement of business in specified cases, section 12 governs the registered office, and sections 13 to 18 deal with alteration of constitutional matters such as name, objects and conversion.

In practical terms, formation means converting a business idea into a legal corporation through statutory filing, scrutiny by the Registrar and issue of the certificate of incorporation. Once the company is incorporated, it acquires legal personality. Therefore, incorporation is not a mere clerical step; it is the legal birth of the company.

A law student should know the incorporation sequence conceptually

- Choice of form: private, public, OPC, Section 8 company, guarantee company, etc.
- Name reservation under the applicable rules and MCA filing system.
- Drafting of memorandum and articles.
- Preparation of declarations, subscriber details, registered office details and identity/address proofs.
- Filing with the Registrar under section 7.
- Issuance of certificate of incorporation by the Registrar.
- Where section 10A applies, filing of declaration for commencement of business after subscription money is received.

The certificate of incorporation has traditionally been treated as conclusive evidence of incorporation. That principle protects commercial certainty: once the company is on the register, outsiders should not be exposed to endless challenges about procedural irregularities in its birth. However, fraudulent incorporation can still trigger penal and remedial consequences under section 7(7).

2. Promoters: Meaning, Duties and Liability

The Act does not leave the notion of “promoter” to vague theory. Section 2(69) defines promoter broadly to include a person named as such in the prospectus or annual return, a person who has control over the affairs of the company, or one on whose advice, directions or instructions the Board is accustomed to act, subject to exclusions such as those acting merely in a professional capacity.

A promoter occupies a position of trust and confidence in relation to the company that is being brought into existence. Although the company does not yet fully exist at the earliest stage, the promoter stands in a fiduciary position because he shapes the company's birth, negotiates foundational transactions and can easily make secret profits unless the law intervenes. A promoter must therefore make full disclosure of any personal interest, secret profit or conflict in transactions arranged for the company.

Erlanger v. New Sombrero Phosphate Co. (1878 3 App Cas 1218)

Facts: A syndicate led by Erlanger purchased a phosphate island and soon formed a company to which the property was resold at a substantial profit. The board that approved the transaction was not truly independent because it had effectively been arranged by the promoters. The material profit made by the promoters was not fairly disclosed to an independent body representing the company.

Issues: Whether promoters who sell property to a company they have formed can retain undisclosed profits when the approval was not given by an informed and independent decision-maker.

Held: The House of Lords held that promoters stand in a fiduciary position and must make full disclosure of material facts and profits. Because the company had not received informed approval through an independent board or body of shareholders, the company was entitled to rescind the transaction. The case is a classic authority on promoter fiduciary obligations.

Gluckstein v. Barnes (1900 AC 240)

Facts: Promoters acquired property and later sold it to a company, but failed to fully reveal the real extent of their gain, including profits arising through a discount arrangement connected with debentures and purchase structure.

Issues: Whether promoters can split a gain into different transactional components and disclose only part of it while retaining the rest.

Held: The House of Lords held that promoters must disclose the whole of their profit and cannot evade fiduciary responsibility by fragmenting the transaction. The company was entitled to recover the undisclosed portion. The case powerfully demonstrates that promoter accountability is substantive, not cosmetic.

Promoter liabilities a student should remember

- Liability to account for secret profits.
- Liability for breach of fiduciary duty.
- Potential civil and criminal liability if misstatements in the prospectus are attributable to the promoter.
- Personal liability on pre-incorporation contracts unless there is a fresh post-incorporation contract or statutory enforceability conditions are satisfied.

3. Pre-incorporation Contracts

A pre-incorporation contract is a contract entered into before the company comes into existence, usually by promoters for the purpose of the projected company. At common law, the company could not be bound by such a contract because a non-existent principal cannot authorise or ratify an agent's act. Thus, before statutory modification, promoters who contracted for a proposed company risked personal liability.

Kelner v. Baxter (1866 LR 2 CP 174)

Facts: Promoters of a hotel company, before incorporation, entered into a contract to purchase wine for the intended company. After the company was incorporated, it consumed the wine but later went into liquidation before payment. The supplier sued the promoters personally.

Issues: Whether the later incorporation of the company could retrospectively make the contract the company's contract and release the promoters.

Held: The court held that the company, not being in existence when the contract was made, could not have been the contracting principal. The promoters who signed remained personally liable. The company could not ratify a pre-incorporation contract in the strict common law sense because ratification presupposes an existing principal.

Indian law softens the common law position through the Specific Relief Act, 1963. Sections 15(h) and 19(e) recognise, in effect, that where the contract is for the purposes of the company, is warranted by the terms of incorporation, and the company accepts it after incorporation and communicates such acceptance, specific performance may be granted by or against the company. The student should therefore state both the common law rule and the Indian statutory exception. → In India company is amenable to specific relief on pre-incorporation contracts

Weavers Mills Ltd. v. Balkis Ammal (AIR 1969 Mad 462)

Facts: Property had been acquired at the promoter stage for the benefit of the company to be formed. After incorporation, the company accepted the arrangement and the dispute reached the Madras High Court on the enforceability of such pre-incorporation obligations in the Indian statutory context.

Issues: Whether Indian law continues the strict common law rule absolutely, or whether statutory provisions permit enforcement once the company accepts the arrangement after incorporation.

Held: The court recognised that the Specific Relief Act creates an important departure from the rigid common law position. If the pre-incorporation contract is warranted by the terms of incorporation and the company accepts and communicates acceptance after incorporation, the contract can be specifically enforced. The case is regularly cited in Indian company law for the modern position on pre-incorporation contracts. → case law on pre incorporation contracts are binding on company (not promoters) by specific relief Act sec 15(h) & 19(e)

4. Prospectus: Meaning, Contents, Misstatement, Liability and Remedies

A prospectus is a disclosure document used when a company invites the public to subscribe for its securities. Section 2(70) defines "prospectus" broadly. Chapter III of the Act, especially sections 23 to 41, governs public offers, deemed prospectus, shelf prospectus, red herring prospectus, contents and expert consent, and liability for untrue statements. Public issue regulation is also shaped by SEBI law for listed or proposed-to-be-listed securities.

The legal idea behind the prospectus is simple: when the company seeks money from the public, it must disclose the material information that a rational investor needs. Company law therefore treats the prospectus as an instrument of investor protection and market fairness, not just marketing.

Key provisions a student should cite

- Section 23: public offer and private placement framework.
- Section 25: deemed prospectus.
- Section 26: matters to be stated in prospectus.
- Section 31: shelf prospectus.
- Section 32: red herring prospectus. (RHP)

(1) sec 2(1) → abridged prospectus

Four types of prospectus

- Section 34: criminal liability for untrue statement in prospectus.
- Section 35: civil liability for misstatements.
- Section 36: punishment for fraudulently inducing persons to invest money.
- Section 39: allotment of securities by company.

The contents of a prospectus are statutorily driven and regulated; broad themes include the company's business, capital structure, financial information, objects of the issue, risk factors, management details, litigation, material contracts and expert reports where applicable. A student should always connect "contents" with the larger policy of informed investment decision-making.

Derry v. Peek (1889 14 App Cas 337)

Facts: A company prospectus suggested that it had the right to use steam power in operating tramcars, though such use was actually subject to Board of Trade consent. Investors subscribed and later sued after the venture failed, alleging fraud in the prospectus.

Issues: What amounts to fraudulent misrepresentation in the context of statements made to induce investment.

Held: The House of Lords held that fraud requires proof that the false representation was made knowingly, without belief in its truth, or recklessly as to truth. Mere negligence is not fraud. Though the case is often taught in tort and misrepresentation, it remains central to company law because it explains the mental element behind fraudulent prospectus liability.

Under the Indian statutory framework, section 35 imposes civil liability for untrue statements in the prospectus on specified persons, while section 34 addresses criminal liability. Remedies may include damages, rescission in suitable cases, and statutory action against those responsible. The student should distinguish carefully between common law deceit and statutory liability: the Act can provide remedies even where the exact requirements of common law fraud are not satisfied.

5. Memorandum of Association and Articles of Association

The memorandum and articles are the constitutional documents of the company. Section 4 deals with the memorandum; section 5 deals with the articles; section 6 provides that the Act overrides the memorandum and articles where there is inconsistency; and section 10 gives them binding force as between the company and its members in the manner prescribed by law.

Comparison: Memorandum of Association and Articles of Association

Point	Memorandum of Association (MOA)	Articles of Association (AOA)
Nature	Charter or fundamental constitutional document	Internal rule-book for management and governance
Primary focus	External scope and foundational constitution: name, registered office state, objects, liability, capital and subscriber details	Internal administration: meetings, shares, calls, transfer procedures, director powers, voting and management rules
Governing section	Section 4	Section 5

Point	Memorandum of Association (MOA)	Articles of Association (AOA)
Relationship with outsiders	Helps define corporate capacity and public identity	Primarily governs internal management but outsiders may be affected where they contract with the company
Alteration	Usually more controlled and sometimes requires central approval or special procedure depending on clause altered	Alterable by special resolution, subject to the Act and memorandum
Hierarchy	Subordinate to the Act but superior to the articles	Subordinate to both the Act and the memorandum

A high-quality answer on MOA and AOA should also explain their public character. Because these documents are filed with the Registrar, third parties are deemed to have constructive notice of their contents, though the law later developed the doctrine of indoor management to prevent unfairness to outsiders.

6. Alteration of Memorandum and Articles

The memorandum is not rigidly frozen. Section 13 permits alteration of the memorandum, including change of name, registered office and objects, subject to procedure. Sections 14 and 18 deal with alteration of articles and conversion of company class in appropriate cases. Section 61 addresses alteration of share capital, which is related though conceptually distinct. A student should remember that not every alteration is equally easy: changing a name is one thing; changing objects or shifting the registered office across State boundaries can involve additional procedure and oversight.

Articles are generally more flexible than the memorandum because they deal with internal management. However, neither memorandum nor articles can override the Act, and alterations cannot be used to perpetrate fraud on the minority, to escape statutory obligation, or to compel members in ways the law forbids.

7. Binding Force of Memorandum and Articles

Section 10 states, in substance, that the memorandum and articles bind the company and its members as if each had signed them. This creates a statutory contract between the company and members, and among members in their capacity as members. However, that contract does not automatically create contractual rights in outsiders merely because a provision in the articles appears beneficial to them.

Hickman v. Kent or Romney Marsh Sheep-Breeders' Association (1915 1 Ch 881)

Facts: The articles contained an arbitration-type clause governing disputes between the association and its members. A member brought proceedings contrary to that mechanism and the issue arose whether the articles created an enforceable contractual framework between the member and the company.

Issues: Whether articles constitute a binding contract and, if so, in what capacity rights are enforceable.

Held: The court recognised that the articles bind the company and the members in their capacity as members. The decision is often cited for the proposition that the statutory contract created by the constitution is limited in scope: rights must be membership rights, not merely outsider rights.

8. Doctrine of Ultra Vires

The doctrine of ultra vires historically meant that a company could not validly undertake acts beyond the objects stated in its memorandum. The doctrine served a protective function: shareholders' capital was to be used only for authorised objects, and creditors could assess the corporate sphere from public documents. Though modern drafting and statutory changes have softened some practical harshness, the doctrine remains doctrinally important and still appears in examinations.

Ashbury Railway Carriage & Iron Co. Ltd. v. Riche (1875 LR 7 HL 653)

Facts: The company's objects related to making and dealing in railway plant, acting as mechanical engineers and carrying on connected activities. The directors entered into a contract to finance or construct a railway project in Belgium through another arrangement. When the company later repudiated the contract, the other party claimed it was within the broad language of the objects clause, especially the phrase "general contractors".

Issues: Whether a company can be bound by a contract falling outside the true scope of its objects clause, and whether shareholder assent can validate such an act.

Held: The House of Lords held the contract ultra vires and void. The phrase "general contractors" had to be read in context and did not authorise a free-standing railway construction venture of the kind undertaken. Because the act was beyond the company's objects, even unanimous shareholder consent could not ratify it. The case became the classic statement of the ultra vires doctrine.

Under the 2013 Act, the memorandum still states objects, and acts contrary to the constitution can generate internal and regulatory consequences. The exam answer should state the modern significance carefully: the harsh common law invalidity doctrine has lost some of its former commercial centrality, but the underlying idea that the company must act within its lawful constitution and statutory powers remains important.

9. Doctrine of Constructive Notice

Because the memorandum and articles are public documents filed with the Registrar, outsiders dealing with the company are presumed to know their contents. This presumption is called the doctrine of constructive notice. Its practical consequence is that a person cannot claim ignorance of public constitutional limitations such as a requirement that a deed be signed in a particular manner under the articles.

Kotla Venkataswamy v. Ram Murthy (AIR 1934 Mad 579)

Facts: A mortgage deed was executed on behalf of the company in a manner inconsistent with the articles, which required signatures by specific officers. The outsider sought to enforce the instrument despite the non-compliance visible from the company's constitutional arrangement.

Issues: Whether an outsider can enforce a transaction that is facially inconsistent with the public constitutional documents of the company.

Held: The court held that the outsider was deemed to know the articles and therefore could not enforce a document executed in a manner plainly contrary to them. The case is a standard illustration of constructive notice and its hardship to outsiders.

10. Doctrine of Indoor Management

The doctrine of indoor management, also called the rule in Royal British Bank v. Turquand, developed as an equitable counterweight to constructive notice. Outsiders are presumed to know the public documents, but they are not expected to investigate whether every internal step, resolution or quorum requirement has in fact been complied with. Thus, if a transaction appears to be within the company's external authority, an outsider may generally assume that internal formalities have been properly observed.

Royal British Bank v. Turquand (1856 6 E & B 327)

Facts: The articles empowered the directors to borrow on bond provided they were authorised by a resolution of the company in general meeting. A bond was issued to Turquand, but the necessary internal resolution had not in fact been passed. The company argued that the borrowing was invalid for want of internal authority.

Issues: Whether an outsider lending to a company must verify internal compliance with every procedural condition mentioned in the articles.

Held: The court held that the outsider was entitled to assume that the internal resolution had been duly passed. So long as the transaction was of a kind that the company could undertake externally, failure of internal management could not be used to defeat the outsider's claim. This became the classic indoor management rule.

Lakshmi Ratan Cotton Mills Co. Ltd. v. J.K. Jute Mills Co. Ltd. (AIR 1957 All 311)

Facts: The dispute involved a company officer who appeared to act with authority in commercial dealings. The company later resisted liability by pointing to internal irregularities and lack of proper authority.

Issues: How far outsiders dealing in good faith may rely on apparent authority and indoor management assumptions.

Held: The Allahabad High Court applied the equitable principle behind Turquand's rule and protected an outsider acting in good faith. The case is frequently cited in Indian law to reinforce that outsiders are not required to inspect the company's internal mechanics in minute detail.

Important exceptions to indoor management

- Knowledge of irregularity: if the outsider actually knows the internal defect, the rule will not help.
- Suspicion of irregularity: if circumstances are so suspicious that inquiry was obviously called for, protection may fail.
- Forgery: the doctrine does not validate forged documents because forgery is a nullity, not a mere internal irregularity.
- Acts beyond apparent authority: if the act is wholly outside the authority that the company could externally confer, indoor management does not rescue it.

11. Doctrine of Lifting the Corporate Veil

Although separate corporate personality is the norm, courts may in exceptional situations look behind the company's distinct identity. Veil lifting is not a general licence to ignore incorporation; it is a controlled judicial response where the corporate form is being misused to evade law, perpetrate fraud, defeat public interest or conceal the real actors in a transaction.

Gilford Motor Co. Ltd. v. Horne (1933 Ch 935)

Facts: A former employee bound by a restrictive covenant formed a company through which he solicited customers in a way he could not lawfully do personally. The company served as the instrument through which the covenant was evaded.

Issues: Whether the court may disregard the company where it is used as a mere device to circumvent an existing legal obligation.

Held: The court treated the company as a cloak or sham created to enable Horne to breach his covenant. An injunction was granted. The case is a leading example of veil lifting to prevent evasion of legal duty.

Jones v. Lipman (1962 1 WLR 832)

Facts: Lipman had contracted to sell land but later attempted to avoid specific performance by transferring the property to a company under his control. The company existed essentially to obstruct enforcement of the original bargain.

Issues: Whether a company used to defeat a pre-existing contractual obligation should be treated as distinct for all purposes.

Held: The court held that the company was a mask which Lipman held before his face in an attempt to avoid justice. Specific performance was ordered. The case demonstrates that veil lifting is often triggered where the company is used as a vehicle for fraud or evasion.

In Indian law, veil lifting also appears in revenue, labour, welfare, fraud and group-control contexts. However, the starting point always remains respect for corporate personality; veil lifting is the exception, not the rule.

Unit III — Shares, DEMAT, Transfer, Buy-back, Debentures, Charges and Insider Trading

Exam focus

The 2024 paper asked types of shares. The 2025 paper asked kinds of debentures and DEMAT in the short-note section. This unit rewards precise statutory writing: quote the relevant sections and then explain the commercial logic behind them.

1. Shares: Definition, Nature and Types

Section 2(84) defines "share" as a share in the share capital of a company and includes stock. Sections 43 to 47 are the statutory starting point for kinds of share capital, the nature of shares and voting rights. Section 44 expressly states that the shares or debentures and any other interest of any member in a company shall be movable property, transferable in the manner provided by the articles.

A share is not merely a paper certificate. It is a bundle of rights and obligations: the right to dividend when declared, the right to vote where applicable, the right to participate in surplus on winding up subject to priority rules, and the obligation to pay unpaid amounts on the share. Thus, when answering "what is a share," combine the statutory definition with the idea of membership interest.

Comparison: principal kinds of share capital under the Companies Act, 2013

Type	Statutory basis	Key characteristics
Equity share capital with voting rights	Section 43(a)	Ordinary ownership interest carrying voting rights; residual claim on profits and assets.
Equity share capital with differential rights	Section 43(a)(ii), subject to rules	Different rights as to dividend, voting or otherwise, if statutory conditions are satisfied.
Preference share capital	Section 43(b)	Preferential right as to dividend and repayment of capital on winding up; generally limited voting except in specified circumstances.

A student should also know related concepts: share certificate (section 46), voting rights (section 47), variation of shareholder rights (section 48), issue of sweat equity shares (section 54), issue and redemption of preference shares (section 55), further issue of share capital (section 62), bonus shares (section 63), and reduction of share capital (section 66).

2. Dematerialised Shares (DEMAT)

Dematerialisation means conversion of physical share certificates into electronic form held through a depository system. While the Companies Act, 2013 recognises dematerialised holding and, for specified classes of securities and companies, mandates securities to be held or transferred in demat form under section 29, the working legal architecture substantially comes from the Depositories Act, 1996 and SEBI regulations.

Under the depository system, the depository is recorded as the registered owner for limited purposes, while the beneficial owner retains the actual economic and voting interests. Dematerialisation reduces forgery, loss, theft, bad delivery, and delays associated with physical transfer instruments. It also enables faster settlement and clearer audit trails.

Core points to mention in an exam answer on DEMAT

- Section 29 of the Companies Act, 2013 connects the Companies Act to dematerialised issue and holding for prescribed classes.
- The Depositories Act, 1996 provides the legal architecture for dematerialisation, beneficial ownership and electronic transfer.
- Demat reduces paperwork, transfer risk, fake certificates and time in settlement.
- Rematerialisation is the reverse process of converting electronic holdings back into physical certificates, where permitted.
- For listed securities, demat is the norm, not the exception.

3. Allotment of Shares and Statutory Restrictions

Allotment means the company's appropriation of shares to a particular applicant. The topic must be studied with sections 23, 39, 40 and 42, and with SEBI regulations where public issue or listing is involved. Valid allotment presupposes a proper offer, a valid application, competent authority to allot, and compliance with statutory conditions. An irregular allotment may be voidable or may trigger penalties depending on the nature of the defect.

Important statutory restrictions include the need to receive the minimum subscription and application money where applicable, restrictions on issue at discount under section 53, special regulation of private placement under section 42, and the rule that securities are to be allotted only after compliance with prescribed disclosure and filing obligations. A student should distinguish between issue, allotment, listing and transfer; these are related but not identical stages.

4. Transfer and Transmission of Shares

Comparison: transfer and transmission of shares

Point	Transfer	Transmission
Nature	Voluntary act of the shareholder	Operation of law due to death, insolvency or succession
Instrument	Usually requires execution of a transfer instrument or demat instruction, subject to legal regime	No voluntary transfer instrument from the deceased/insolvent holder
Consideration	Usually present	Not based on sale consideration
Stamp duty	May arise depending on transaction mode and law	Generally not treated like a transfer for sale

Point	Transfer	Transmission
Company role	Registers transferee subject to articles and law; refusal in certain cases may be appealable under sections 58–59	Registers legal representative or successor on proof of entitlement
Main statutory section	Section 56	Section 56

Section 56 governs transfer and transmission of securities. Sections 58 and 59 provide for refusal of registration and rectification of the register. In public companies, free transferability is a major characteristic, though not an absolute one outside statutory regulation. In private companies, transfer restrictions are common and form part of the private company model itself.

5. Buy-back of Shares

Buy-back is governed mainly by sections 68, 69 and 70. It allows a company to repurchase its own shares or specified securities out of free reserves, securities premium account, or proceeds of the issue of other specified securities, subject to statutory ceilings and procedural safeguards. The policy is to allow legitimate capital restructuring while preventing prejudice to creditors and artificial market manipulation.

Key safeguards in buy-back

- Authorisation in articles and approval by board or shareholders as required.
- Numerical and financial limits on buy-back size.
- Post buy-back debt-equity safeguards.
- Only fully paid-up shares/securities can ordinarily be bought back.
- Extinguishment and physical destruction / cancellation requirements as per law.
- Section 70 prohibits buy-back in specified situations, including certain defaults.

6. Debentures: Meaning, Kinds and Remedies of Debenture Holders

Section 2(30) defines “debenture” to include debenture stock, bonds and any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not. Debenture holders are creditors, not owners. This is the most important conceptual difference between shares and debentures.

Comparison: shares and debentures

Point	Shares	Debentures
Legal position	Ownership interest	Debt instrument
Holder status	Member/shareholder	Creditor
Return	Dividend, generally variable and dependent on declaration	Interest, usually fixed and contractual

Point	Shares	Debentures
Voting	Usually yes in equity	Ordinarily no shareholder voting rights merely by being debenture holder
Priority on winding up	Residual after creditors and preference rights	Paid before shareholders, subject to security and ranking
Security	Not a debt security	May be secured or unsecured

Section 71 of the Act governs debentures. It addresses issue of debentures, voting rights, creation of debenture redemption reserve in applicable cases, debenture trustees, and remedies in case of default. Kinds of debentures commonly discussed in textbooks include secured and unsecured debentures, redeemable and irredeemable/historically perpetual forms, registered and bearer debentures, and convertible and non-convertible debentures.

Comparison: fixed charge and floating charge

Point	Fixed charge	Floating charge
Subject matter	Specific, identifiable asset or class of assets	Class of circulating assets changing in the ordinary course of business
Control	Company cannot ordinarily deal with charged asset freely without consent	Company may deal with assets in ordinary business until crystallisation
Commercial use	Land, plant, machinery, major fixed assets	Stock-in-trade, receivables and circulating capital
Crystallisation	Already attached to defined property	Crystallises on specified events such as default, winding up or appointment of receiver

Charges are now governed by sections 77 to 87. Registration of charges is important because it protects the security interest against third parties and the liquidator. Remedies of debenture holders may include enforcement of security, appointment of debenture trustee, action for interest and principal, and application to the Tribunal where statutory conditions are met.

7. Concept of Insider Trading

Insider trading is not principally governed by the Companies Act, 2013. For Indian law students, the core regulatory regime is the SEBI (Prohibition of Insider Trading) Regulations, 2015, read with the SEBI Act, 1992. However, the topic appears in company law because it concerns fiduciary abuse, misuse of unpublished price sensitive information and integrity of the corporate securities market.

The essential idea is that persons who possess unpublished price sensitive information by reason of position, access or relationship must not trade on that informational advantage or unlawfully communicate it. Corporate law intersects here through directors' duties, governance systems, disclosures, codes of conduct and compliance architecture inside listed

companies.

N. Narayanan v. Adjudicating Officer, SEBI ((2013) 12 SCC 152)

Facts: The case arose out of serious accounting irregularities and misleading financial disclosures connected with a listed company. The proceedings examined the responsibilities of senior managerial persons and the broader obligation to maintain market integrity and protect investors.

Issues: Whether directors and senior officers of listed companies can evade accountability by claiming ignorance when the market has been misled through corporate misconduct affecting investor confidence.

Held: The Supreme Court emphasised that directors and insiders of listed companies occupy positions of trust and that market integrity is a matter of public importance. The decision is often cited for the strong investor-protection orientation of Indian securities law and for the need for responsible corporate governance in listed entities.

Unit IV — Management of Company; Corporate Governance; CSR; Directors; KMPs; Meetings and Voting

Exam focus

The 2025 paper asked corporate governance and accountability, position of official liquidator, and powers and duties of directors. The 2024 paper asked appointment and disqualification of directors. This unit should therefore be studied both as doctrine and as answer-writing material.

1. Management of Company: Board-centred structure

The company is owned by members but managed through organs created by law and the constitution. The board of directors is the central management body. This separation between ownership and management is one of the defining structural ideas of company law. It allows capital to be pooled from many investors while business decisions are taken by a manageable body.

Sections 149 to 172 contain the main law on directors, while sections 173 to 195 govern board meetings and certain governance-related matters. Corporate management is not left to pure private contract; it is shaped by mandatory standards, filing duties, disclosure rules, conflict-of-interest regulation and fiduciary principles.

2. Corporate Governance and Corporate Social Responsibility (CSR)

Corporate governance refers to the framework of rules, institutions, processes and values through which corporate power is directed and controlled. It includes board composition, audit oversight, accountability, disclosure, risk control, protection of minority shareholders, and checks on managerial abuse. In India, governance norms arise from the Companies Act, 2013, the SEBI listing framework for listed companies, accounting standards, audit law and judicial doctrines.

A good examination answer should explain that governance is not merely about compliance. It is about legitimacy of corporate decision-making. Transparent governance reduces agency costs, improves investor trust, assists creditors, and supports sustainable enterprise. The 2013 Act reflects this through provisions on independent directors, board committees, related party controls, disclosures and duties of directors.

Corporate Social Responsibility under section 135 is one of the distinctive features of the 2013 Act. Companies satisfying the prescribed threshold of net worth, turnover or net profit must constitute a CSR committee (subject to current exemptions and composition variations), formulate a CSR policy, spend the prescribed amount on permitted activities, and make prescribed disclosures. Schedule VII gives the broad subjects for CSR activities, such as education, gender equality, environmental sustainability, healthcare and other socially beneficial purposes.

Key provisions often cited for governance-related answers

- Section 134: board's report and responsibility statement.
- Section 135: CSR.
- Section 166: duties of directors.
- Section 177: audit committee.
- Section 178: nomination and remuneration committee and stakeholder relationship committee.
- Section 184: disclosure of director's interest.
- Section 188: related party transactions.
- Section 203: key managerial personnel.

3. Directors: Types, Position and Role

A director is defined in section 2(34) as a director appointed to the Board of a company. The board is the collective organ through which the company acts in management matters. Directors are not, in a simplistic sense, exactly trustees of company property, nor are they ordinary agents in every respect. Their legal position is mixed: they are fiduciaries, managerial decision-makers and agents of the company when acting within authority.

Common kinds of directors a student should know

- First directors.
- Additional directors (section 161).
- Alternate directors (section 161).
- Nominee directors (section 161).
- Independent directors (section 149).
- Managing director and whole-time director (sections 2(54), 2(94), 196).
- Woman director, where required under law/rules.
- Small shareholders' director in specified cases.

https://youtu.be/krMtpSbWJnU

4. Qualification, Disqualification, Appointment and Removal of Directors

The Act does not prescribe heavy proprietary qualifications as a general rule, but appointment is structured by statutory requirements. Sections 149 and 152 are central. Section 152 requires, among other things, that every director be assigned a Director Identification Number under section 153. The board composition rules differ depending on whether the company is private, public, listed or falls into prescribed classes.

Disqualification is chiefly governed by section 164. Grounds include unsoundness of mind declared by a competent court, undischarged insolvency, conviction for certain offences, non-payment of calls on shares, and disqualification arising from persistent filing or repayment defaults by companies in which the person is a director. Vacation of office is separately dealt with in section 167.

Removal is governed by section 169, subject to special notice and opportunity of hearing. The removal power reflects the principle of shareholder control over the board, but it operates within statutory procedure and cannot be used in disregard of mandatory protections.

5. Powers of Directors and Restrictions on Board Power

Section 179 states the general power of the Board to exercise all such powers and do all such acts and things as the company is authorised to exercise and do, subject to the Act, memorandum, articles and regulations. This provision captures the board's centrality in management. Certain powers, however, must be exercised by resolutions passed at board meetings, and some major actions require shareholder approval under section 180.

Illustrative powers and restrictions

- Board powers over management, borrowing, investment, lending and contract approval under section 179.
- Restrictions under section 180 in relation to disposal of undertakings, borrowing beyond certain limits and related major decisions requiring shareholder approval.
- Conflict-of-interest and self-dealing controls under sections 184, 185, 186 and 188.
- Board committees under sections 177 and 178 create additional internal governance checks.

6. Duties of Directors; Civil and Criminal Liability

Section 166 is the statutory heart of directors' duties. Directors must act in accordance with the articles, in good faith to promote the objects of the company for the benefit of members as a whole and in the best interests of the company, its employees, shareholders, community and environment. They must exercise duties with due and reasonable care, skill and diligence, exercise independent judgment, avoid situations of direct or indirect conflict, not achieve or attempt to achieve undue gain, and not assign office improperly.

The significance of section 166 lies in its fusion of classical fiduciary standards with a modern stakeholder-aware corporate ethic. The section does not abolish judge-made principles; rather, it expresses them in statutory form. Breach may lead to restitution, damages, disgorgement of gain, regulatory action and, where the statute specifically provides, criminal consequences.

Official Liquidator, Supreme Bank Ltd. v. P. A. Tendolkar (AIR 1973 SC 1104)

Facts: After the winding up of a bank, proceedings were brought concerning the responsibility of the managing director and other directors for losses and misconduct. The question was not simply whether a director had signed a specific document, but whether directors could be answerable for failure to exercise the degree of vigilance expected from their office.

Issues: To what extent directors may be held liable in misfeasance-type proceedings when the company's affairs have been conducted improperly and loss has resulted.

Held: The Supreme Court held that a director cannot take shelter behind a passive role if the circumstances required supervision, vigilance and responsible oversight. Liability depends on the facts, including role, knowledge and neglect, but directorship is not a ceremonial office. The case remains important for understanding standards of responsibility in liquidation and misfeasance contexts.

7. Other Key Managerial Personnel (KMPs)

Section 2(51) defines key managerial personnel to include the Chief Executive Officer or managing director or manager, company secretary, whole-time director, Chief Financial Officer, and such other officer as may be prescribed. Section 203 requires certain classes of companies to appoint whole-time key managerial personnel.

The company secretary is especially important in exam writing because the 2025 paper asked it as a short note. The company secretary is not merely an administrative clerk; in modern corporate law the role includes compliance management, board process support, maintenance of statutory registers and records, certification, liaison with regulators, and governance advisory functions. In large companies the position is central to lawful corporate functioning.

8. Meetings: Kinds, Essential Elements and Voting

Meetings are the formal decision-making forums of the company and its organs. They must be studied under two heads: meetings of members and meetings of the board. For members' meetings, sections 96 to 121 are essential. For board meetings, sections 173 to 175 are foundational.

Comparison: common kinds of meetings

Meeting type	Main statutory basis	Core purpose
Annual General Meeting (AGM)	Section 96	Regular yearly meeting of members for statutory business and other corporate matters.
Extraordinary General Meeting (EGM)	Section 100	Meeting of members for urgent/special business that cannot await the AGM.
Board Meeting	Section 173	Management decision-making by the Board of Directors.
Class meeting	Section 48 / constitutional arrangements	Meeting of a class of shareholders when class rights are affected.

Essential elements of a valid meeting

- Proper authority to convene.
- Proper notice under sections 101 and related provisions.
- Agenda and explanatory statement where required under section 102.
- Quorum under section 103 for members' meetings, and section 174 for board meetings.
- Competent chairman.
- Opportunity for deliberation and voting.
- Proper minutes under section 118.

Voting may take place by show of hands, poll, electronic means or postal ballot depending on the statutory setting. Sections 107 to 110 and section 108 are especially relevant. A good answer should also note the distinction between ordinary resolutions and special resolutions under section 114.

Unit V — Protection of Minority Rights; Rule in Foss v. Harbottle; Oppression and Mismanagement

Exam focus

Both question papers show the practical importance of minority protection. The 2024 paper directly asked protection of minority rights. The 2025 paper asked the majority rule and its exceptions, and also asked prevention of oppression and mismanagement as a short note.

1. Majority Rule and the Rule in Foss v. Harbottle

Company law generally follows the principle of internal democracy: the will of the majority ordinarily prevails in matters capable of ratification by the company. This principle supports business certainty and prevents courts from becoming routine supervisors of internal corporate management. The classic statement is the rule in Foss v. Harbottle. Two connected propositions are usually taught: first, the proper plaintiff in respect of a wrong done to the company is the company itself; second, where the alleged wrong is capable of confirmation by the majority, courts ordinarily will not interfere at the instance of individual shareholders.

Foss v. Harbottle ((1843) 2 Hare 461)

Facts: Minority shareholders alleged that directors and others had misapplied company property and caused loss to the company. Instead of the company suing in its own name, two shareholders brought the action seeking to compel the wrongdoers to make good the losses. The defendants contended that the suit was not maintainable in that form.

Issues: Whether minority shareholders may sue for a wrong done to the company when the company itself has not authorised proceedings and the complained-of acts are capable of being addressed internally.

Held: The court refused the action and laid down what later became known as the rule in Foss v. Harbottle: where the wrong is to the company, the company is the proper plaintiff, and courts generally do not interfere in matters of internal management that the majority can lawfully ratify. The decision protects corporate autonomy but also necessitated later exceptions to prevent abuse.

The rule is not anti-minority in principle; it is pro-corporate personality and pro-majoritarian management. But because majority rule can itself become an instrument of abuse, company law developed exceptions and later statutory remedies.

2. Exceptions to Foss v. Harbottle

The classic exceptions

- Ultra vires or illegal acts: acts beyond the company's powers or illegal cannot be validated by majority vote.
- Fraud on the minority: where wrongdoers control the company and prevent it from suing, derivative-type relief may be justified.
- Acts requiring special majority but passed by ordinary majority: procedural illegality affecting fundamental corporate rights can be challenged.
- Violation of personal membership rights: where an individual shareholder's own right is infringed, that shareholder may sue personally.

Cook v. Deeks (1916 1 AC 554)

Facts: Directors of a company diverted to themselves a lucrative railway construction contract that ought to have been available to the company. They then used their voting control to secure a shareholder resolution declaring that the company had no interest in the contract.

Issues: Whether directors who have appropriated a corporate opportunity can use majority voting control to sanitise their breach and defeat the company's claim.

Held: The Privy Council held that the directors could not, by using votes obtained through their own control, ratify a breach amounting to a fraud on the minority. The resolution was ineffective. The case is a classic example of the "fraud on the minority" exception.

Edwards v. Halliwell ([1950] 2 All ER 1064)

Facts: Union members challenged an increase in contributions that had not been adopted through the special majority required by the governing constitution. The broader principle later influenced company law discussions on personal rights and procedural rights.

Issues: Whether an individual member can sue where a personal right or a constitutionally protected voting procedure has been violated.

Held: The court recognised that not all disputes are barred by majority-rule logic. Where a personal right is infringed or a special procedural requirement is ignored, an individual action may lie. The case is frequently referred to while explaining exceptions to Foss v. Harbottle.

3. Statutory Protection of Minority Rights under the Companies Act, 2013

The modern statutory home of minority protection lies mainly in sections 241 to 246. These provisions replaced the older sections 397 and 398 of the 1956 Act. Section 241 allows eligible members to apply to the Tribunal where the company's affairs are conducted in a manner prejudicial to public interest, prejudicial or oppressive to any member or members, or prejudicial to the interests of the company. Section 244 prescribes eligibility thresholds, though the Tribunal may waive them in appropriate cases. Section 242 empowers the Tribunal to make wide remedial orders.

Section 245, dealing with class action, is also very important conceptually. It allows members or depositors in prescribed numbers to seek relief where the management or conduct of the company's affairs is prejudicial to their interests. Although the syllabus separately emphasises oppression and mismanagement, an excellent answer can mention class action as part of the broader shift from purely judge-made minority protection to statutory remedial architecture.

4. Oppression and Mismanagement

Oppression and mismanagement are related but distinct concepts. "Oppression" usually refers to burdensome, harsh and wrongful conduct that lacks probity and unfairly prejudices members in their capacity as members. "Mismanagement" concerns conduct of affairs in a manner prejudicial to the company, public interest, or sound corporate administration, even where the classic ingredients of oppression are not all present.

Comparison: oppression and mismanagement

Point	Oppression	Mismanagement
Basic idea	Harsh, burdensome, wrongful conduct against members, usually minority members	Conduct of affairs prejudicial to company, public interest or proper corporate functioning
Focus	Unfair prejudice in the enjoyment of membership rights and corporate participation	Improper administration, diversion, deadlock, asset abuse, reckless affairs, governance breakdown
Section	Section 241 read with section 242	Section 241 read with section 242
Relief	Wide remedial power including regulation of affairs, purchase of shares, removal of directors, setting aside transactions	Same wide powers tailored to restore healthy management and protect the company

Shanti Prasad Jain v. Kalinga Tubes Ltd. (AIR 1965 SC 1535)

Facts: A dispute arose among groups of shareholders regarding control and management of the company. Allegations of oppression were made on the basis of changes in the board and management structure and the impact of majority actions on the complaining members.

Issues: What kind of conduct amounts to oppression within company law, and whether every instance of majority dominance qualifies.

Held: The Supreme Court explained that oppression involves conduct that is burdensome, harsh and wrongful and that the analysis must focus on the cumulative pattern of conduct, not isolated dissatisfactions. The case remains foundational for understanding the threshold of oppression.

Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd. ((1981) 3 SCC 333)

Facts: A long-running conflict existed between Indian shareholders and the foreign holding group concerning rights issues, control and the balance of interests within the company. The dispute involved allotment decisions and allegations that management had acted unfairly toward one shareholder group.

Issues: Whether technically lawful acts can still amount to oppression, and how the court should balance strict legal rights against equitable fairness in closely contested corporate control situations.

Held: The Supreme Court stressed that conduct must be judged in a practical and equitable manner. Not every illegality is oppression and not every exercise of majority power is abusive. Yet the court is not powerless to mould relief so as to do substantial justice. The case is especially important for its nuanced treatment of oppression as a concept grounded in fairness and corporate realities.

Dale & Carrington Investment (P) Ltd. v. P.K. Prathapan ((2005) 1 SCC 212)

Facts: The dispute involved illegal allotment of shares, manipulation of records and misuse of control within a closely held company. The effect of the allotment was to alter the balance of power and diminish the complainant's position.

Issues: Whether an allotment of shares made for an improper purpose, especially to gain or consolidate control, amounts to oppression and whether the wrongdoer may then be rewarded in crafting relief.

Held: The Supreme Court held that directors must exercise the power to allot shares for a proper purpose and not to create or perpetuate control unfairly. The Court disapproved a remedial approach that would allow the oppressor to purchase the oppressed shareholder's stake on favourable terms. The case is very important on both oppression and proper-purpose doctrine.

Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd. ((2021) 9 SCC 449)

Facts: The removal of Cyrus Mistry as Executive Chairman of Tata Sons led to wide allegations of oppression, mismanagement, abuse of articles and unfair prejudice in relation to group governance, board control and strategic decisions. The NCLT rejected the oppression petition, while the NCLAT granted substantial relief, leading to Supreme Court scrutiny.

Issues: How far board and majority decisions in a large company can be characterised as oppressive, and what limits exist on Tribunal intervention in disputes about corporate control and commercial judgment.

Held: The Supreme Court restored the NCLT decision and held that every removal from office or every disagreement about governance philosophy does not amount to oppression. The judgment emphasises the need to distinguish between lack of confidence in management and legally actionable oppression, while also clarifying the limits of judicial/tribunal interference in corporate commercial decisions.

Section 242 gives the Tribunal extremely wide power to craft relief: regulation of the conduct of affairs, purchase of shares, restriction on share transfer or allotment, termination or modification of agreements, removal of directors, recovery of undue gains, and other orders considered just and equitable. This remedial flexibility is crucial. Company law does not merely declare that oppression is wrong; it gives the Tribunal tools to reconstruct the corporate relationship.

Unit VI — Winding Up, Liquidator, Amalgamation, Takeover and Mergers

Exam focus

The 2024 paper asked grounds for compulsory winding up and duties of liquidator. The 2025 paper asked the official liquidator in the process of winding up. This is therefore another heavily examinable unit.

1. Meaning of Winding Up

Winding up is the legal process by which the life of the company is brought to an end, its assets are collected and realised, liabilities are settled according to law, and any surplus is distributed in the appropriate order. Dissolution is the final extinction of corporate existence; winding up is the process leading to that end.

Under the present legal framework, the Companies Act, 2013 continues to govern winding up by the Tribunal, especially through sections 270 onwards after amendment. However, because of the Insolvency and Bankruptcy Code, 2016, the insolvency-related ground of inability to pay debts was moved away from the Companies Act, and voluntary liquidation of corporate persons is now substantially governed by section 59 of the IBC and the IBBI (Voluntary Liquidation Process) Regulations. A careful modern answer should explicitly say so.

2. Voluntary Winding Up / Voluntary Liquidation — the current position

Textbooks and old syllabi often use the expression “voluntary winding up.” Under the original scheme of the 2013 Act, there was a self-contained voluntary winding up framework. After the IBC reforms, that terrain has materially shifted. Today, voluntary liquidation of corporate persons is primarily dealt with by section 59 of the Insolvency and Bankruptcy Code, 2016 and the relevant IBBI regulations.

Therefore, when a student encounters “voluntary winding up” in the syllabus, the best answer is: historically it belonged to company law; currently it is substantially addressed through the IBC regime. In an examination, that answer shows both doctrinal clarity and awareness of statutory change.

3. Winding up by Tribunal: grounds

Section 271, as presently structured after amendment, is the key provision. The Tribunal may order winding up where, among other things, the company has by special resolution resolved that it be wound up by the Tribunal; the company has acted against the interests of the sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality; the affairs have been conducted fraudulently or for fraudulent or unlawful purpose; persons concerned in formation or management have been guilty of fraud, misfeasance or misconduct; the company has defaulted in filing financial statements or annual returns for the prescribed continuous period; or the Tribunal is of opinion that it is just and equitable that the company should be wound up.

The old “inability to pay debts” ground, once central to winding up law, is no longer the ground under the present Companies Act route because the IBC now addresses insolvency resolution and liquidation in that context. This is one of the most important “current law” clarifications in the entire subject.

4. Appointment, Powers and Duties of Liquidator

The liquidator is the officer charged with taking control of the company in liquidation, preserving and realising assets, examining claims, distributing proceeds according to law, and assisting the court or tribunal in bringing the process to a legally proper close. Under the 2013 Act framework, the Tribunal may appoint a Company Liquidator or provisional liquidator depending on the stage and circumstances. In older company law language, “Official Liquidator” often referred to the liquidator attached to the court/central government structure; exam answers may use the term but should focus on function and legal responsibility.

Core functions of the liquidator

- Take custody and control of the company’s property, books and records.
- Prepare reports and statements as required by the Tribunal and statute.
- Invite, examine and settle claims of creditors and contributories.
- Realise assets and recover property or dues owed to the company.
- Investigate suspect transactions and possible misfeasance by officers.
- Distribute realised assets according to statutory priorities.
- Apply for dissolution once the liquidation process is complete.

National Textile Workers’ Union v. P. R. Ramakrishnan ((1983) 1 SCC 228)

Facts: The question arose in the context of winding up proceedings whether workmen, whose livelihoods would be directly affected by the closure of the company through a winding up order, could be heard in the proceedings.

Issues: Whether winding up is purely a contest between the company and creditors/contributories, or whether broader stakeholder interests, especially those of workers, deserve procedural recognition.

Held: The Supreme Court held that workmen have a right to appear and be heard in winding up proceedings because the order vitally affects them. The case is significant because it transforms winding up from a narrow property-distribution exercise into a socially consequential legal proceeding.

5. Amalgamation, Merger and Takeover

These terms are related but not identical. A merger or amalgamation usually involves combination of corporate undertakings pursuant to a scheme approved under the Act and sanctioned by the Tribunal. A takeover refers more specifically, especially in listed-company regulation, to acquisition of control or substantial shares, often triggering open-offer obligations under SEBI takeover law.

Comparison: merger, amalgamation and takeover

Concept	Basic meaning	Main legal setting
Merger	Combination of two entities into one integrated business structure, often by absorption or combination	Sections 230–232 of the Companies Act, 2013; Tribunal-sanctioned schemes
Amalgamation	A form of combination where one company merges into another or two combine into a new entity	Sections 230–232; accounting and tax consequences may also matter
Takeover	Acquisition of substantial shares, voting rights or control over a company	For listed companies, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

Under the Companies Act, 2013, sections 230 to 232 are central for compromises, arrangements and amalgamations. The Tribunal examines statutory compliance, fairness of class meetings, disclosure, valuation, absence of illegality and whether the scheme is fair, just and reasonable. The court/tribunal does not ordinarily substitute its commercial wisdom for that of the stakeholders if the process is lawful and the scheme is fair in class terms.

Miheer H. Mafatlal v. Mafatlal Industries Ltd. ((1997) 1 SCC 579)

Facts: A scheme of amalgamation within the Mafatlal group was challenged on grounds relating to valuation, fairness and class interest. The dispute required the Supreme Court to clarify the proper judicial approach when a scheme approved by statutory majorities comes before the court for sanction.

Issues: What is the scope of judicial scrutiny over a scheme of amalgamation or arrangement approved by the required statutory majority.

Held: The Supreme Court held that the court does not sit as an appellate authority over the commercial wisdom of shareholders and creditors. Its role is supervisory: to see whether statutory procedure has been followed, classes were fairly represented, the scheme is not illegal or against public policy, and the arrangement is fair and reasonable from a prudent business perspective. This is the leading Indian authority on judicial review of schemes.

Hindustan Lever Employees' Union v. Hindustan Lever Ltd. ((1995) Supp (1) SCC 499)

Facts: The merger of TOMCO with Hindustan Lever was challenged, including by employees concerned about the impact of the scheme on their rights and interests. The court had to balance business restructuring with fairness and legality.

Issues: Whether a merger approved in accordance with law should be blocked merely because certain stakeholders disagree with commercial valuation or anticipate adverse consequences, absent proof of illegality or unfairness in the legal sense.

Held: The Supreme Court upheld the merger, reinforcing the principle that once statutory procedure is followed and the scheme is fair, the court will not lightly interfere with commercial decisions embodied in a lawful arrangement. The case is often read with Miheer H. Mafatlal as part of the Indian jurisprudence on schemes and mergers.

For listed companies, takeovers are heavily regulated by the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. A student need not reproduce the entire regulation set in a company law answer, but should note the core idea: when acquisition crosses prescribed control or shareholding thresholds, an open offer to public shareholders is generally triggered to protect exit rights and fairness.

Unit VII — NCLT, NCLAT, SFIO, Regional Directors and ROC: Functions and Powers

Exam focus

The 2024 paper directly asked the functions of the NCLT and where appeals lie. The 2025 paper repeated NCLT as a long question and also asked a short note on composition of NCLT in the 2024 paper. This unit should be studied institution-wise and section-wise.

1. National Company Law Tribunal (NCLT)

The National Company Law Tribunal is constituted under section 408 of the Companies Act, 2013. It is the principal adjudicatory body for a very large range of company law matters, including oppression and mismanagement, rectification of register, reduction of share capital, schemes of arrangement and amalgamation, reopening of accounts in specified cases, conversion and revival questions in some contexts, winding up by Tribunal, and many matters now also connected with insolvency under the IBC where NCLT functions as the adjudicating authority.

Section 424 is very important conceptually: NCLT is not bound by the strict procedure of the Code of Civil Procedure but is guided by the principles of natural justice and has power to regulate its own procedure subject to the Act and rules. This helps explain why company law disputes are channelled to a specialised tribunal rather than ordinary civil courts.

What a student should know about NCLT

- Constituted under section 408.
- Benches constituted under section 419.
- Guided by natural justice; not strictly bound by CPC — section 424.
- Has civil-court-like powers for certain procedural purposes under section 424(2).
- Exercises extensive jurisdiction over company law disputes and certain insolvency matters.

2. National Company Law Appellate Tribunal (NCLAT)

NCLAT is constituted under section 410 of the Companies Act, 2013. Its principal role is to hear appeals against orders of the NCLT. Under section 421, any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal within the prescribed time, subject to condonation rules. Under section 423, an appeal on questions of law lies from NCLAT to the Supreme Court.

The official NCLAT institutional description also shows that NCLAT's role has expanded beyond company appeals to matters assigned by later statutes and amendments, including insolvency, competition law appeals in the transferred structure, and NFRA-related appellate functions in the statutory framework. But for company law examination purposes, always start with sections 410, 421 and 423.

3. Serious Fraud Investigation Office (SFIO)

The Serious Fraud Investigation Office is established under section 211 of the Companies Act, 2013. Section 212 deals with investigation into the affairs of a company by SFIO where

the Central Government assigns the case. SFIO is a specialised multi-disciplinary investigative body designed for complex corporate frauds requiring coordinated expertise in law, accountancy, auditing, forensic review, capital markets and investigation.

Once SFIO investigation is ordered in appropriate cases, other investigating agencies ordinarily stand displaced in relation to the offences covered by the order, subject to statutory coordination. The body's importance lies in the recognition that serious corporate fraud cannot be adequately handled through routine inspection alone.

4. Regional Directors (RDs)

Regional Directors are senior officers under the Ministry of Corporate Affairs who exercise delegated statutory and administrative powers under the Companies Act and the rules. They function as an intermediate supervisory and quasi-administrative tier between the Central Government and field-level registries. In company law practice, certain approvals, compounding matters, shifting of registered office between States in the relevant statutory framework, and appeals or supervisory functions may involve the Regional Director depending on the provision and rules in force.

Because the statute disperses functions across delegated provisions and rules, a student answer should describe the RD as a central-government delegate with regional supervisory and decision-making authority in specified corporate matters, rather than as a free-standing tribunal.

5. Registrar of Companies (ROC)

The Registrar of Companies is the statutory registry authority with whom companies are registered and with whom numerous returns, resolutions, charges and disclosures are filed. In practical company law, the ROC is the face of the corporate registry system. It examines incorporation filings, maintains the company register, receives annual returns and financial statements, records charges, monitors compliance, issues notices and can trigger inspection-related or strike-off related processes in appropriate cases.

A student should connect ROC functions with multiple provisions, such as section 7 (incorporation filings), section 12 (registered office), section 92 (annual return), section 117 (filing of resolutions), sections 77 to 87 (registration of charges), sections 206 to 208 (inspection and inquiry), and section 248 (removal of name of company from register in appropriate circumstances).

6. Appellate structure and practical hierarchy

Comparison: institutional hierarchy

Body	Main role	Appeal / supervision
ROC	Registry, filing, scrutiny, compliance interface, notices and administrative action in many areas	Appeals/remedies depend on the specific provision; some matters go to RD, Tribunal or Central Government structure

Body	Main role	Appeal / supervision
Regional Director	Delegated central-government powers and regional supervisory decisions in specified matters	Further remedy depends on the enabling provision
NCLT	Primary adjudicatory tribunal for company law disputes under the Act	Appeal to NCLAT under section 421
NCLAT	Appellate tribunal over NCLT orders	Appeal to Supreme Court on question of law under section 423
SFIO	Specialised fraud investigation body	Investigation-based body, not an appellate forum

High-yield Answer-writing Grids

The following grids are included because your uploaded question papers repeatedly test doctrinal comparison and structured explanation. These are useful for revision and for writing 10-mark and 20-mark answers quickly but with depth.

Quick grid: private company and public company

Point	Private company	Public company
Statutory definition	Section 2(68)	Section 2(71)
Transferability	Restricted by articles	Generally free, subject to law
Public invitation	Cannot invite public to subscribe	Can access public capital subject to statutory and SEBI framework
Compliance intensity	Comparatively lighter in several areas	Heavier disclosure and governance burden
Typical structure	Closely held or family/promoter controlled	Broader investor base possible

Quick grid: ordinary resolution and special resolution

Point	Ordinary resolution	Special resolution
Section	Section 114(1)	Section 114(2)
Voting threshold	Simple majority of votes cast	Votes in favour not less than three times votes against
Use	Routine matters unless the Act requires higher threshold	Important constitutional/structural matters such as alteration of articles and many major decisions

Quick grid: member, shareholder, creditor and debenture holder

Status	Legal relationship with company	Core rights
Member/shareholder	Owner in the corporate sense; membership rights arise under statute and constitution	Voting, dividend, inspection in some contexts, participation in surplus after creditors
Creditor	Person to whom company owes a debt	Repayment and enforcement rights against company assets or payment obligations
Debenture holder	Creditor by virtue of debt instrument	Interest, repayment, security enforcement where applicable; not general membership rights merely by holding debentures

Suggested structure for long answers

A reliable examination structure

- Begin with definition or statutory context.
- State the relevant sections precisely.
- Explain the rationale or policy behind the provision/doctrine.
- Add one or two leading cases with properly narrated facts, issues and held.
- Where the law has changed, mention the current position explicitly.
- End with a short analytical conclusion instead of abruptly stopping.

Select Statutory and Institutional Reference Map

This guide is written as a study document, not as a bare digest. Still, the following reference map helps you locate the governing legal framework quickly.

Primary statutory anchors

- Companies Act, 2013: sections 2, 3–22, 23–42, 43–72, 77–87, 92, 96–121, 134–135, 149–203, 206–212, 230–246, 270 onwards, 408–424 and related provisions.
- Depositories Act, 1996: core framework for dematerialisation and beneficial ownership.
- SEBI (Prohibition of Insider Trading) Regulations, 2015: principal regime for insider trading.
- SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011: principal regime for listed-company takeovers and open offers.
- Insolvency and Bankruptcy Code, 2016, section 59 and IBBI voluntary liquidation regulations: current law on voluntary liquidation of corporate persons.

Conclusion

Company law is not merely the law of incorporation. It is the law of organised economic power. A law student studying this subject should move from definitions to structure, from

structure to doctrine, and from doctrine to remedy. The Companies Act, 2013 does not simply tell companies how to register. It allocates authority, disciplines management, protects capital, structures disclosure, empowers minority remedies, regulates reconstruction and liquidation, and creates specialised institutions for adjudication and investigation.

The best way to master the paper is to study each topic as part of one integrated narrative: incorporation creates separate personality; separate personality requires constitutional limits; capital raising requires disclosure; management requires directors' duties; majority rule requires minority protection; failure of business requires winding up and institutional oversight. Once these links are understood, even long descriptive answers become easier to write with coherence and depth.

End of guide.