

Corporate law handout- A must for EXAMS

Dear Friends,

Please find below corporate law handout especially prepared for the CS Inter/ CS Executive/ CA Inter/ CA PE-II/ CA PCC/ CA IPCC students.

This handout deal with various Company Law exam oriented topics like Quorum, Proxy, Dividend, AGM and Charge Etc. in detail and along with deep interpretation of Law.

An effort has been made to explain the provisions in detail with the help of chart and dummy situations wherever required. I am really hopeful that this handout proves useful to you all in order to effectively deal with practical problems in Exam. Looking forward for your feedback and encouragement to prepare more handouts like this one.

This handout is also very useful for CA Final and CS Final students in order to strengthen their fundamental understanding about the topics covered by the handout.

All the Best & Regards

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COMPANY LAW

- CS Inter / Executive
- CA PE II / PCC

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Sec-166 "ANNUAL GENERAL MEETING" 1.

Rules or the principles of extensions for holding AGM.

- 1) The extension can be granted only by R.O.C. not by DCA or CLB.
- 2) Extension will be granted only for special reasons*.
- 3) The application for the extension shall be filed within or before the expiry of more stringent time limit.
- 4) Extension is granted only for Original A.G.M. and not for the adjourned meeting.

* Instances of sufficient cause/reason:-

- (i) Seizure of Account book by Police $\Rightarrow$ Yes ✓
- (ii) Non compliance of statutory Audit Report $\Rightarrow$ No x
- (iii) Non preparation of accounts^{*1} $\Rightarrow$ No x
- (iv) Natural calamity $\Rightarrow$ ✓

*1 ~~Case~~ Non-preparation of Accounts

DCA Clarification:- DCA has clarified that AGM shall be convened and all the business shall be transacted as per the Agenda in the AGM except the adoption of Accounts. Then the AGM shall be adjourned and the adoption of accounts shall be done at the adjourned AGM. But such adjourned AGM shall also be convened within the more stringent time limit norms otherwise fine v/s 210.

More stringent time limit:- Sec-166 read with Sec-210.

Question - Answer on Sec-166 (AGM)

(2)

Qus:-1 Can two AGM's be convened on a single day?Ans:-1 Yes, Reason being this is not prohibit anywhere in Companies Act, 1956. The AGM of last year can be convened on the same day, when the AGM of current year is proposed to be convened.

★ Single notice is sufficient of the above 2 AGMs.

Qus:-2 Is it necessary to hold AGM if the Company ceased to continue its business?Ans:-2 Yes. As it is statutory requirement u/s 166, 210 till the winding up of the company.Case:- Madan Gopal day Vs. State of West Bengal.Qus:-3 If the notice of AGM issued by the C.S. or M.D. without the authority of Board, whether the AGM is valid or invalid?Ans:-3 If the board of directors ratify the notice before the AGM is held, then the AGM shall be valid otherwise not.Qus:-4 Can we convened ^{Adjourned} AGM on a public holiday?Ans:-4 Yes, (if adjourned for want of quorum, then very much possible.

8th August

No quorum present (X)

Adjourned to the next week u/s 174(4)

15th August

→ Quite Possible because
Adjourned AGM ~~be~~ may be held on a public holiday.

Adjourned AGM on a Public holiday Continues..... (3)

Original AGM on Monday

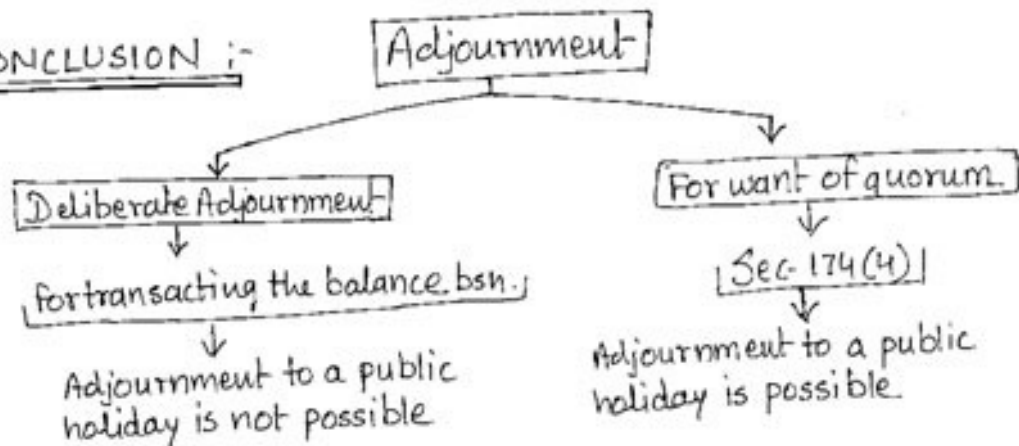
6 business transacted
↓
2 Remains

Voluntary Adjournment to coming Sunday?

- Law is silent
- Point is yet to be tested in Law.
- No DCA Clarification.

★ → Since Law is silent it seems that such Adj. AGM can be convened on a public holiday. However as a good corporate Governance practice and going by the essence of Section-166(2), it should not be convened.

CONCLUSION :-



Comparative Table for Annual General Meeting

	<u>Working Day</u>	<u>Public Holiday</u>
① Statutory Gen. Meeting	✓	✓
② Adjourned S.G.M.	✓	✓
③ Annual General Meeting	✓	X
④ Adjourned AGM.	✓	✓ (if adj. for want of quorum)
⑤ Extraordinary Gen. Meeting	✓	✓
⑥ Adjourned E.G.M.	✓	✓



Regulation 53(3) of Table A :- When a meeting is adjourned for 30 days or more, Notice of Adjourned Meeting shall be given as in case of original meeting.

Sec-174 Quorum for General Meeting

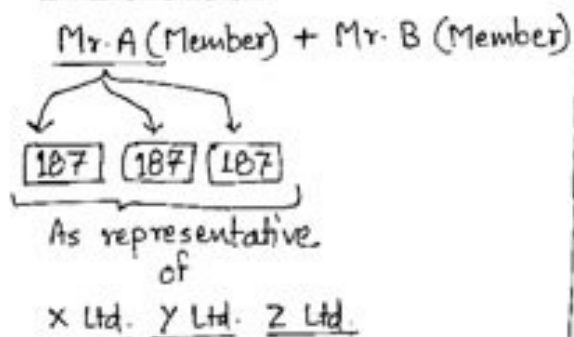
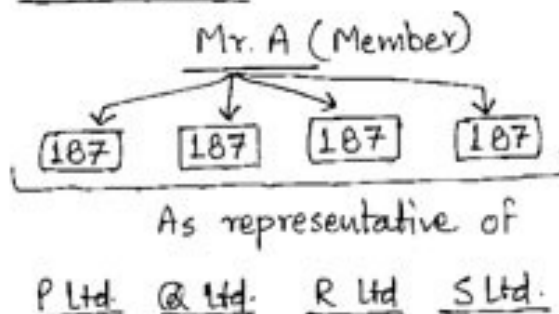
(5)

Rules for quorum

- 1) Only the members personally present are counted for the purpose of quorum. (Except Sec 167, 186) → one man quorum
 - 2) Only Equity shareholder count for quorum.
 → DCA has clarified that in General the equity shareholders are counted in quorum but the pref. shareholders may be counted in the quorum, if there is any business in the Agenda affecting the Preference shareholders.
 - 3) The number of members may get reduced below 5 but subsequently shall not get reduced below 2.
 - 4) Joint shareholders are counted as one for quorum.
 - 5) **Section-187** ⇒ The representative of body corporate appointed through the board resolution is counted as member personally present.
 - 6) **Sec-187A** ⇒ The representative of the president or the governor are counted as member personally present in the General Meeting for the purpose of quorum.
- Ques:- Can the representatives mentioned above, appoint a proxy to vote on their behalf.
- Ans:- Yes, As per section-187(2), it is possible.
 By interpreting Section-187(2) we may say that for the purpose of appointment of proxy, such representatives of Governor or President shall be considered as member of Co.
- 7) If a person is present in the meeting, as a member himself and also as a representative of two body corporates u/s 187, then he will be counted as 3 member personally present.

{ Section-174 Quorum }
and
{ Section-176 Proxy }

(6)

Situation:-1Qus:- Whether quorum is present?Ans:- Yes, for both Public + Private Co. quorum is present.Situation:-2Qus:- Whether quorum is present?Ans:-Situation:-3

In a public company having 7 members, 4 members died in an air crash + their shares were transmitted to 3 surviving members.

Qus:- What will be the position of quorum in this company?Ans:- If all 3 members personally present then sufficient quorum.One Man Quorum.

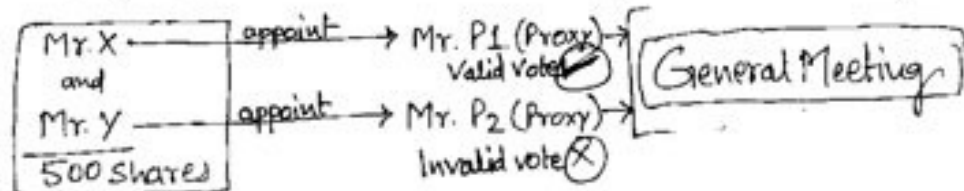
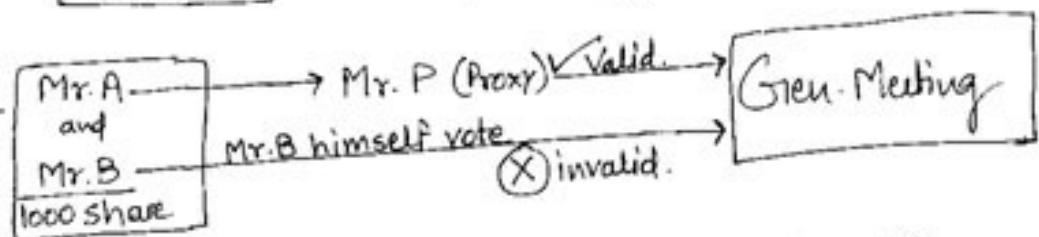
- ① Sec-167 — A.G.M. by C.L.B. (CG)
- ② Sec-186 — E.G.M. by C.L.B. (Tribunal)
- ③ Sec-106 — Class Meetings (where one person constitute the entire class)

Sec-176 Proxy.

(7)

→ Any one joint shareholder can sign the proxy form and it is not required that the proxy form should be signed by the all joint holders.

→ According to Rammiya "In case of joint members all must sign the proxy form, unless Articles enables one joint holder to sign."

Situation:-1Situation:-2

☆ If Table 'A' adopted then answer is Mr. P (P's vote is valid)

Regulation-57 of Table "A" :- "In case of joint holders, the vote of senior who tenders a vote, whether in person or proxy, shall be accepted to the exclusion of the votes of other joint holders."

* for this purpose, seniority shall be determined by the order in which the names stand in the register of members.

Revocation OF ProxyExpress Revocation

By Sending the revocation letter to Co.

Such letter shall reach the chairman before proxy participate in the poll.

Earlier Vote of Proxy Valid

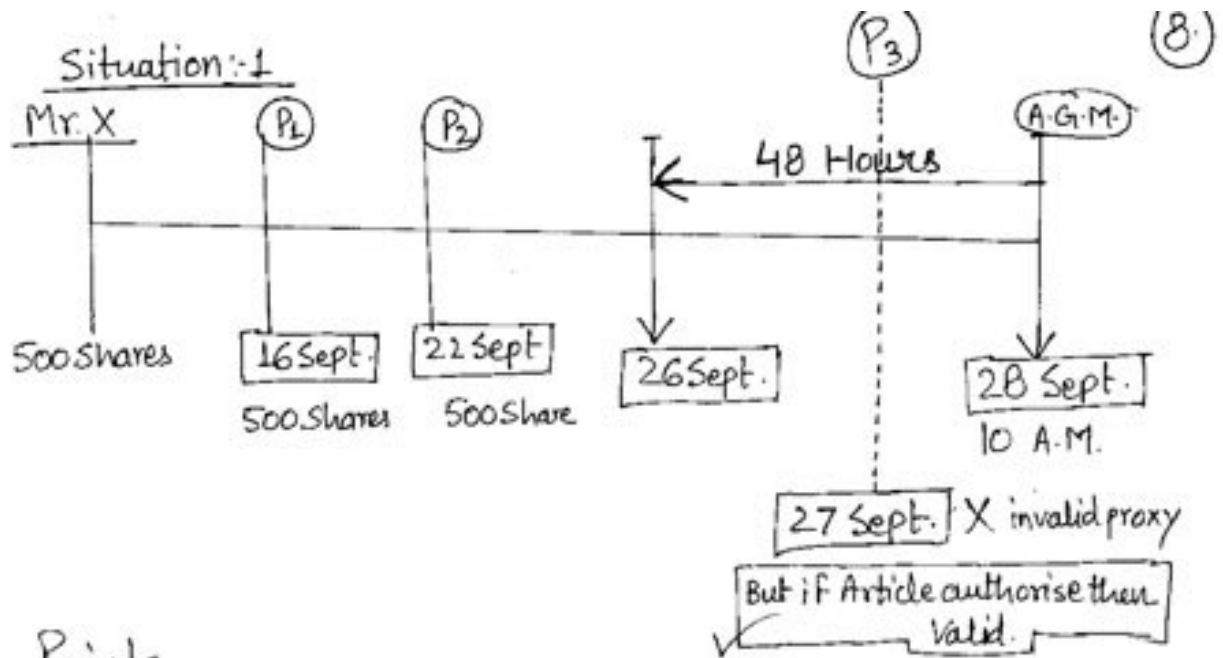
Example :- Suppose letter receive before item No. 8, 9, 10 and Proxy has given his votes for item 1 to 7 then the vote 1 to 7 shall be valid

Automatic Revocation

① If the member himself reaches the Gen. Meeting & participate in the poll before the proxy.

② If another valid proxy form is submitted to the company.

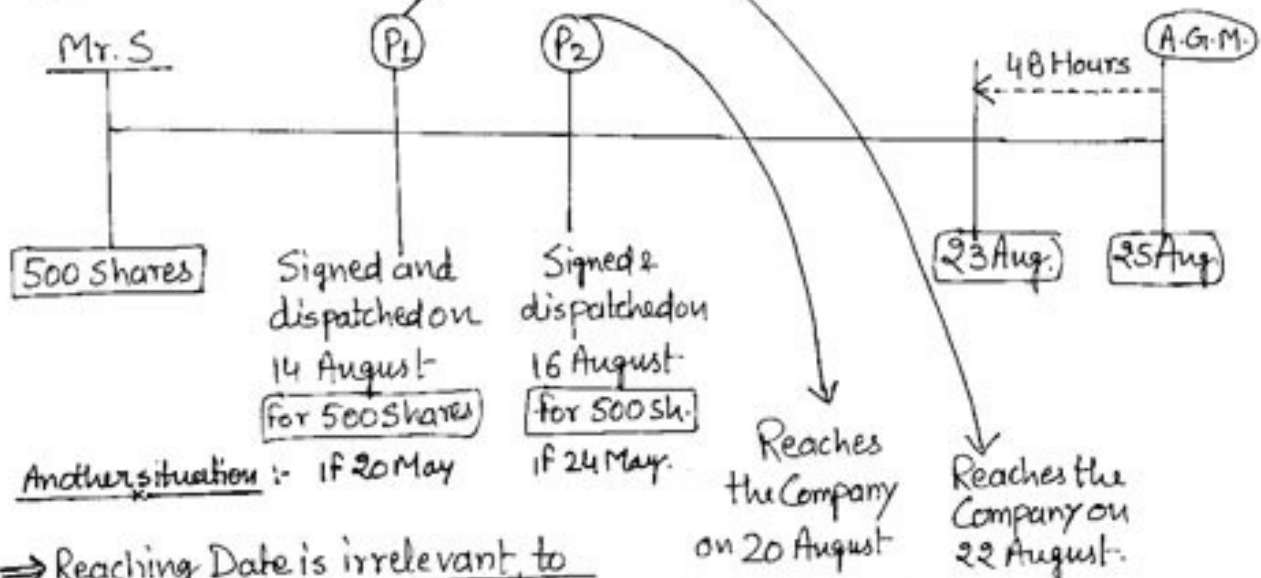
③ Death or insanity of the member.



Points

- ① Proxy appointed for original Meeting is also valid for General Meeting which is adjourned)
- ② The proxy can be appointed for an adjourned meeting though himself attended the original General Meeting.

Situation:-2



Another situation:- If 20 May

⇒ Reaching Date is irrelevant, to the extent calculating 48 hours, Signature date is relevant.

* If P₂ reaches on 24 August then P₁ would be valid proxy.

(9)

Section-179 Demand for Poll"Who can demand Poll"In case of Co.(s) having Share CapitalPublic Co.

① Any member or Members present in person or proxy holding at least $\frac{1}{10}$ voting Power with respect to the resolution.

OR

② Any member present in person or by proxy holding a paid up Capi. of $\geq 50,000$

Example:-

① In General Meeting
 Person Present = 10
 [Out of them] = 4 Proxies
 [1 Member / 1 Proxy Can demand]

Private Co.

① If the members personally present in the GM ≤ 7 then any member present in person or by proxy can demand Poll. (see Example: ①)

② If the members personally present are > 7 , then any 2 members present in Person or by Proxy may demand Poll. (See Example: ②)

② Person Present = 10
 [Out of them] = 2 Proxies

[2 Members / 2 Proxies]
 1 Member + 1 Proxy
 Can demand Poll

In Case Co.(s) not having Share CapitalPublic Co. + Private Co.

Any member present in person or by proxy holding $\frac{1}{10}$ or more voting Power w.r.t. the resolution, may demand Poll.

③ Member Present = 10
 1 of them hold a Proxy also

[2 Members /
 Such (1 Member + 1 Proxy)
 Can demand Poll]

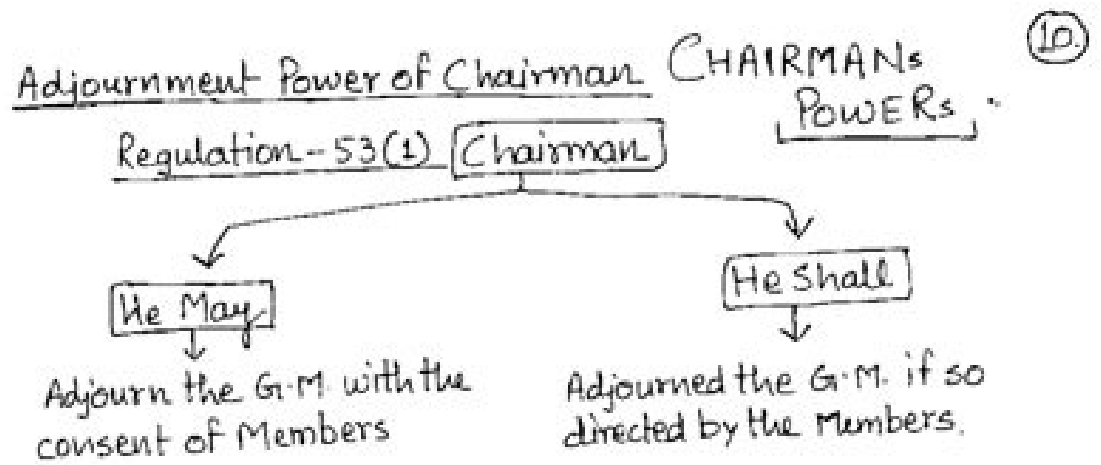
Ques: 1 Can Chairman of General Meeting asked/Order for a poll straight away without ordering the show of hands.

Ans: 1 (No) he can not do so.

Ques: 2 Can the chairman order for Poll straight away without first ordering the show of hands, if demand for Poll received u/s 179.

Ans: 2 (Yes), if demanded.

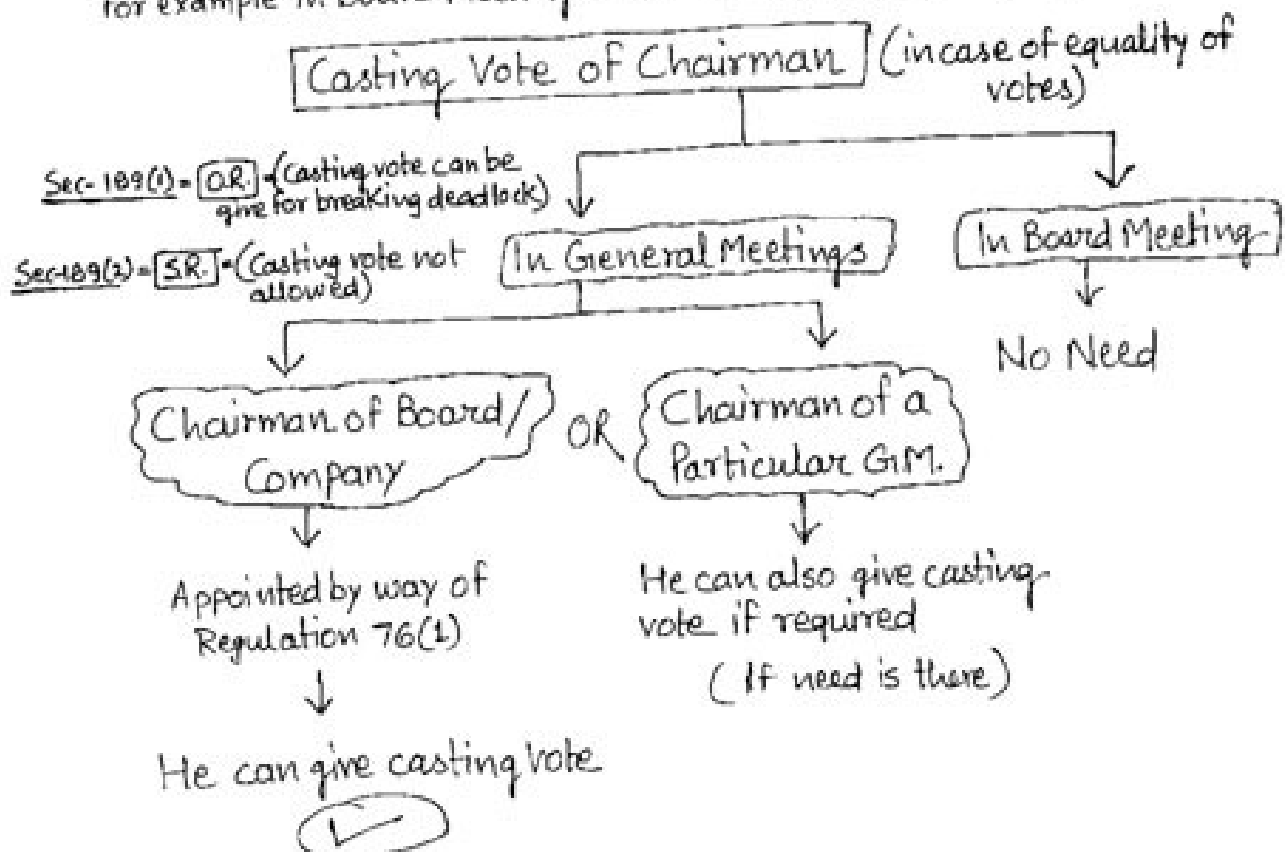
- ☆ Polling results are challengeable but show of hands cannot be challenged if entered in the Minute book.
- ☆ Keep the polling papers safe till they checked or inspected.
- ☆ As soon as the poll is demanded the result of show of hands is nullified.



Note:- In case of violence in the Meeting $\Rightarrow$ The chairman has the inherent power to adjourned/or to order the adjournment.

CASTING VOTE

for example in Board Meeting $\Rightarrow$ 4-4 (votes equally split)

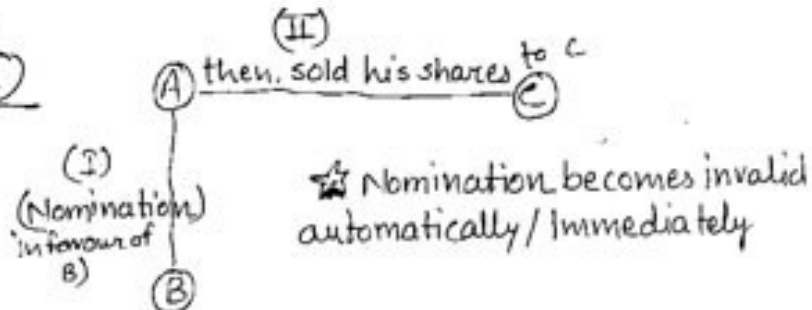
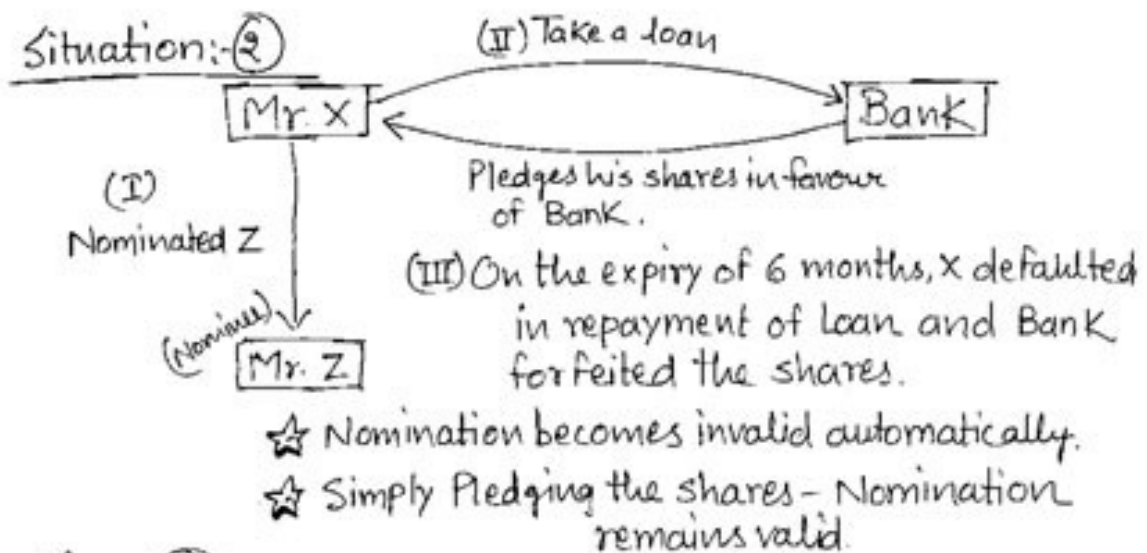
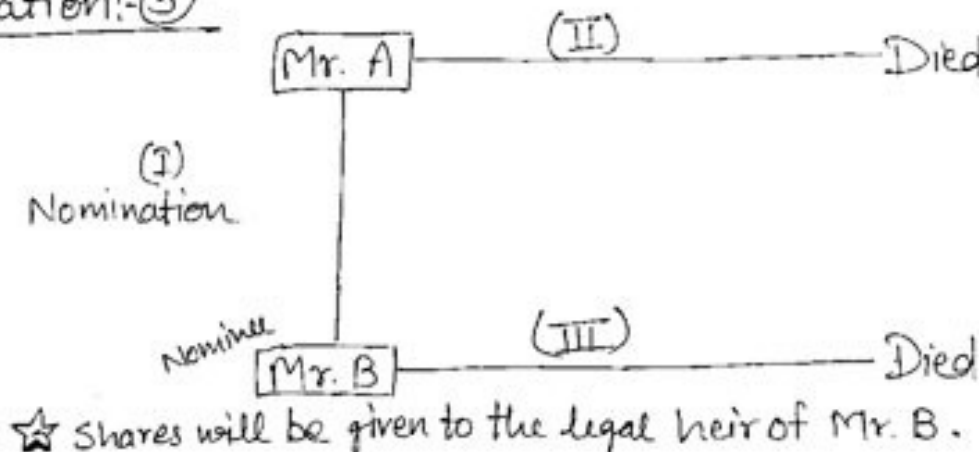


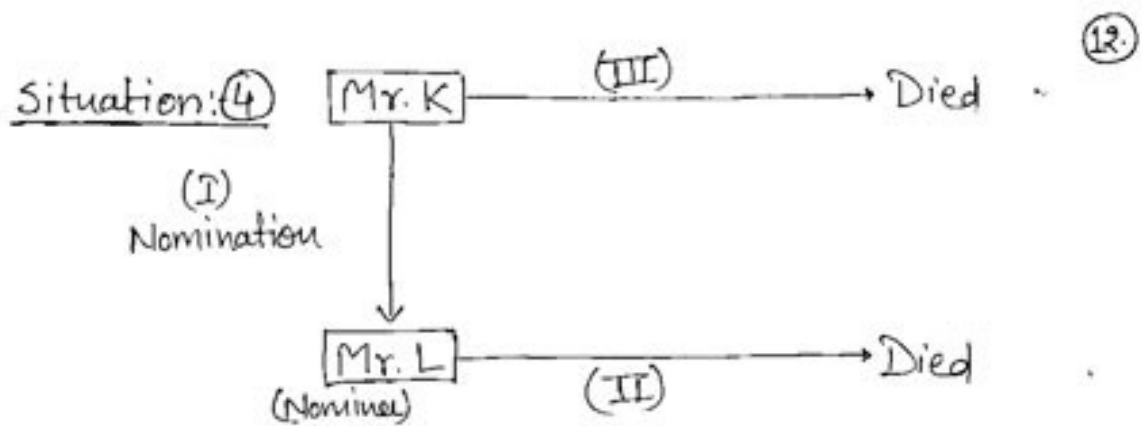
Regulation - 76(1) :- The board may elect a Chairman of its meeting and determine the period for which he is to hold office.

Sec- 109 A Nomination of Shares

(11)

- Question:- Where the nomination is made by the joint shareholders but one of them passed away. Whether the surviving shareholders has the right to cancel the nomination and make a new nomination.
- Answer:- Yes.

Situation:- (1)Situation:- (2)Situation:- (3)



☆ Since in this situation Nominee Mr. L died before Mr. K, Nomination stands cancelled and shares will be given to legal heirs of Mr. K.

Ques:- If both Mr. K or Mr. L died on the same day, who will be entitled to the shares.

Ans:- Shares will be given to legal heirs of Mr. K.

Certain important points w.r.to Transfer of share.

- 1) A public company cannot refuse to transfer the shares in favour of a person [who is company's own employee] on the suspicion that when such person attended the G.M., he will cause nuisance.
- 2) Director of a Company cannot refuse to register the transfer on the ground that proposed transferee has made attempts in the past to windup the company.
- 3) Directors of a company cannot refuse to register the transfer of shares in favour of proposed transferee on the ground that he is a business rival.
- 4) Directors of a company cannot refuse to register the transfer of shares without communicating the grounds of refusal.

Transfer of Shares

(13)

Some important points :-1) Rejected Transfer deed returned to the transferee :-

The CLB has pointed out that the Co. on not registering the transfer should have returned the documents to the party who lodged them (The transferee) and not the transferor as the transferor loses his right in the shares as soon as he executes the transfer in blank.

2) Priority among transferees :-

Where a shareholder has fraudulently sold his shares to two different transferees, the first purchaser will, on the ground of time alone, be entitled to the shares in priority to the second.

Ex. A person — assigned property & shares — to creditors.

Creditor failed to register shares in his name — but give notice of assignment to Co. Later on Assignor (A Person) sold them — to someone else. Held — Assignee's claim — prior in time — So he is entitled to shares.

3) Pledging of Shares :-

Shares of a company can be a subject matter of a valid pledge. As per Sec. 2(7) of Sale of Goods Act, 1930, the definition of Goods includes stocks and shares. So in this way

4) Transposition of name :-

In case of joint share holders, one or more of them may require the Co. to alter or rearrange the serial order of their names in the register of member of Co. In this process there will be need for effecting consequential changes, in the share certificate issued to them. The request of transposition may be duly considered & approved by the board. Since no transfer of any interest in the shares taken place, the question of insisting on filing tran. deed not arise.

⇒ There is no need of execution of tran. deed for the transposition of name if the request for change in the order of names was made in writing.

Transfer of Share Continues.....

(14)

Qus:1 Transferor or transferee execute the share tran. deed and deposited the same with the company along with the share certificate — The transfer is pending — meanwhile the company amended the articles to insert a new ground of refusal. Now can the company refuse the above transfer of shares on this new ground.

Ans:1 (No) (Amendment will have the prospective effect)

Qus:2 Where the share transfer committee is delegated the power to register the transfer of share, then whether such committee has the inherent power to refuse the transfer?

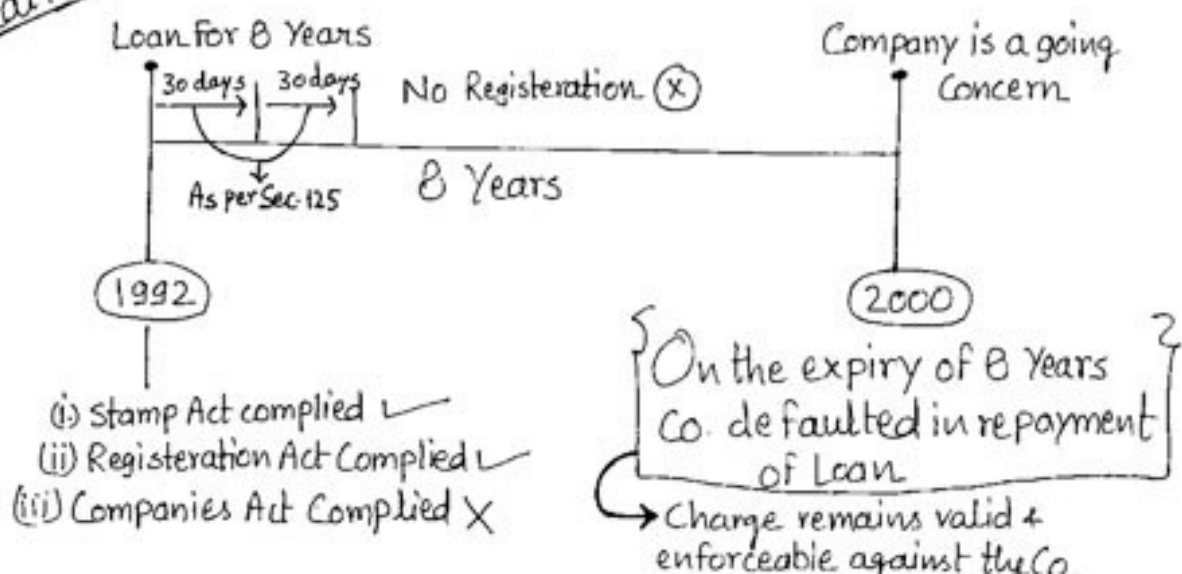
Ans:2 (No) No inherent power available to committee above.

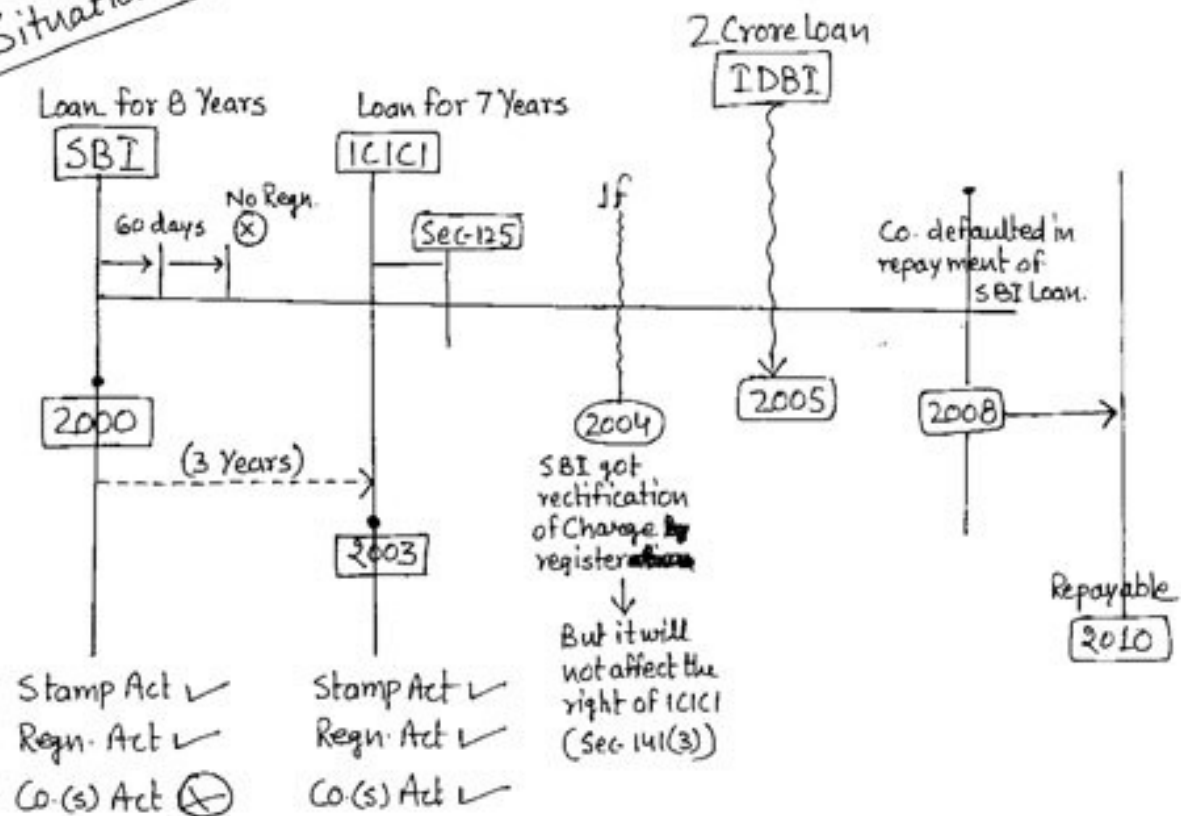
REGISTRATION OF CHARGES

Consequences of non-registration of charge :-

- ① ⇒ Charge becomes void ~~against~~ against Liquidator & other creditors.
- ② ⇒ Charge remains valid against the Company till the Company is a going concern, i.e. (it remains enforceable against the Co.)

Situation: 1

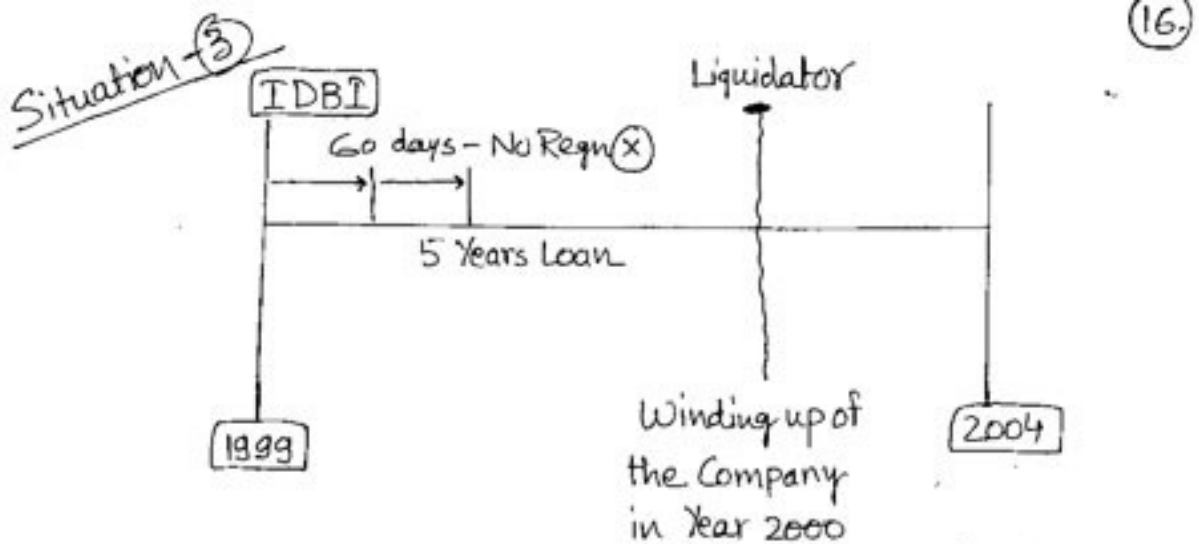


Situation (2)

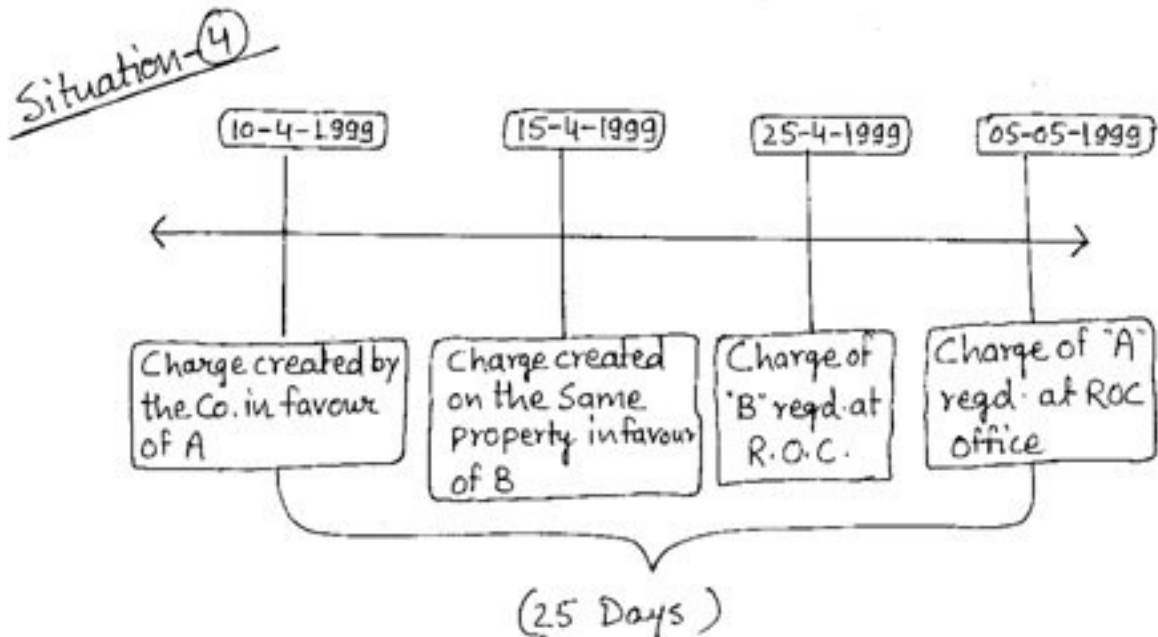
* Charge of ICICI gets the priority over the charge created in favour of SBI.

Conclusion:-

Even though the SBI has obtained the rectification of charge Register from CLB in 2004, still the charge in favour of SBI will remain void against ICICI but it shall hold good against IDBI (Sec-141(3)).



⇒ The charge is void against Liquidator and therefore the Liquidator will treat the IDBI as unsecured creditors.



Ques:- Who will get the priority?

Ans:- There are 2 different views regarding priority in such situation.

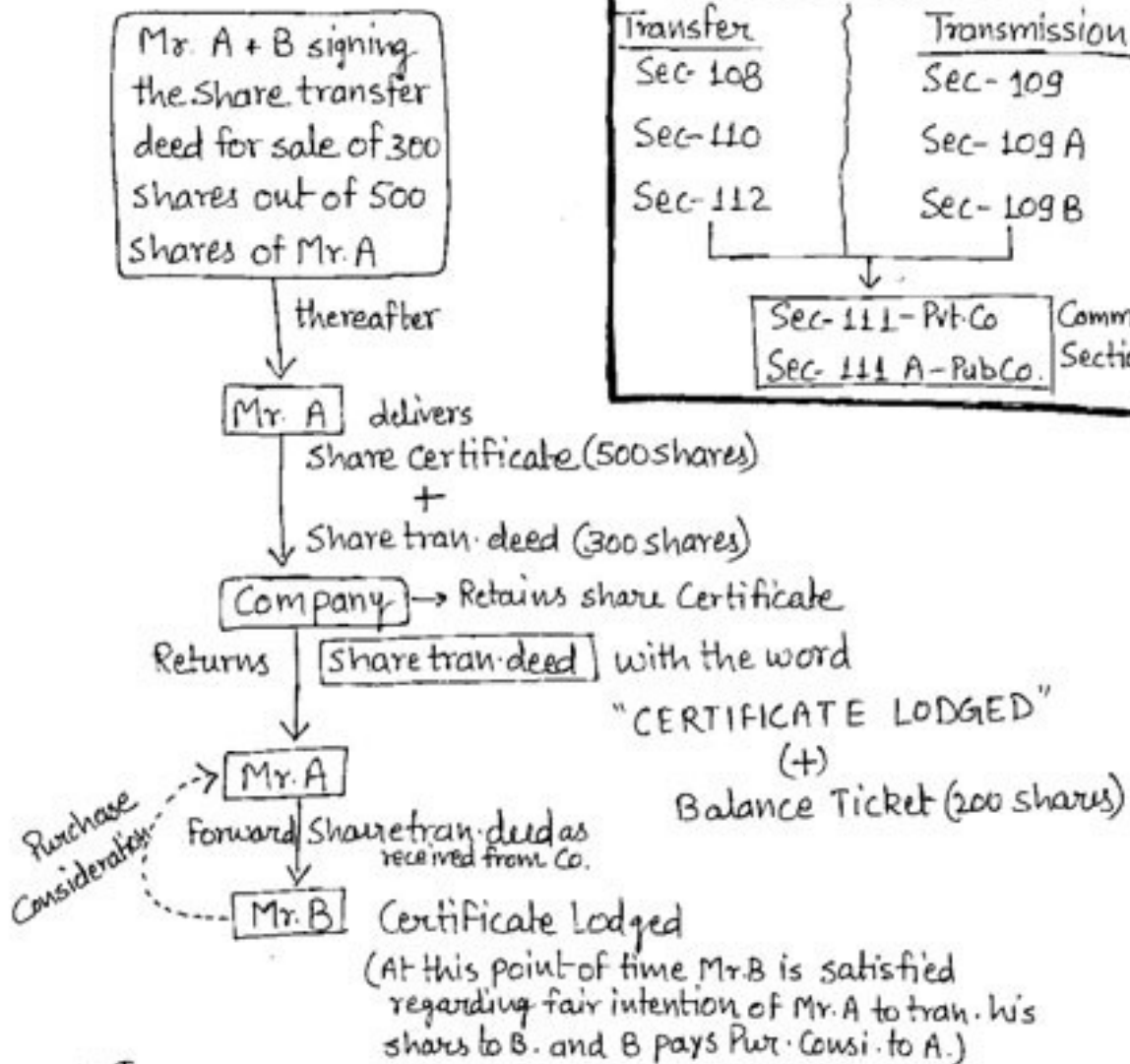
1) First View (I) ⇒ "A" should be given priority once for all.

2) Second View (II) ⇒ "B" shall be given the priority over "A" during 25-4-99 to 04-05-99. But "A" shall be given the priority from 5-5-99 onwards.

More appropriate View is Second view as it carries the intention of Law.

Sec-112 Certification of Transfer

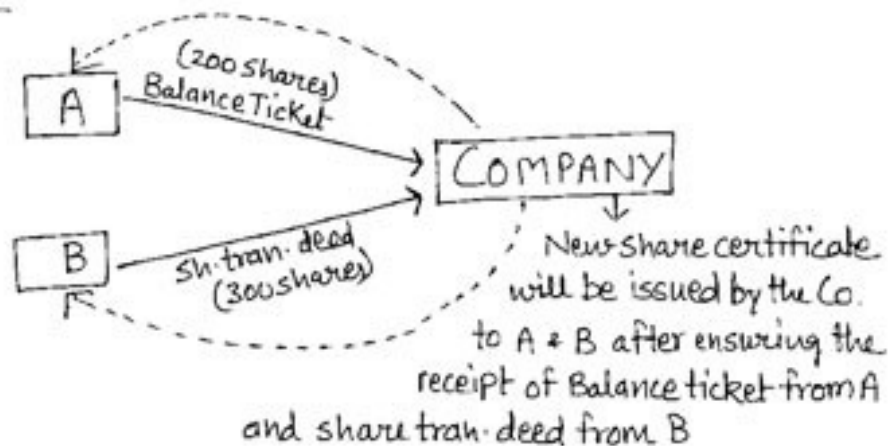
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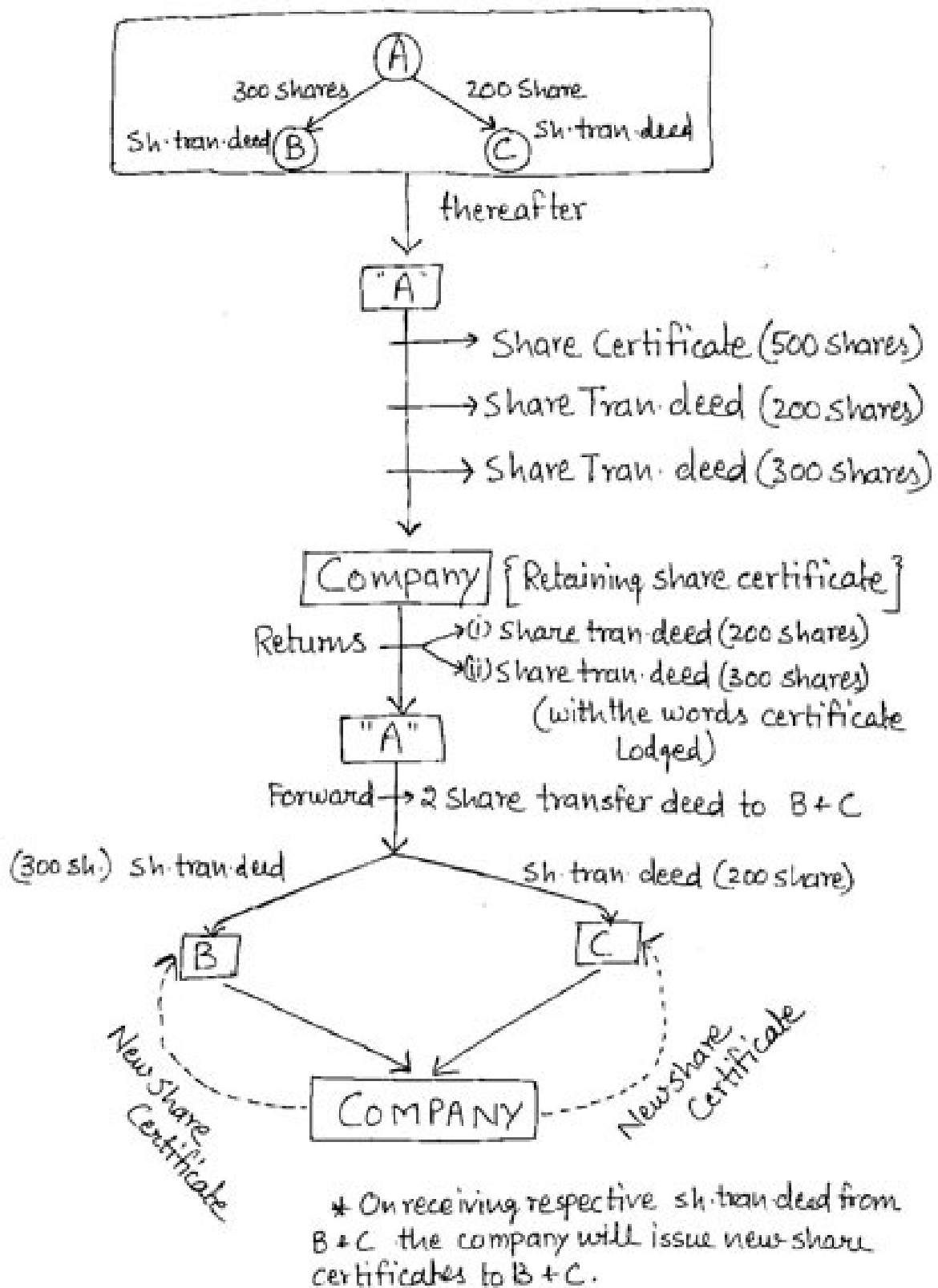
Situation-1Section scheme at a GlanceTransfer of Shares

Transfer	Transmission
Sec-108	Sec-109
Sec-110	Sec-109 A
Sec-112	Sec-109 B

Sec-111 - Pvt. Co
Sec-111 A - Pub. Co.

Common Sections

Now :-

Sec-111 Certification of Transfer. (18)Situation-2

Distinction between Interim + Final Dividend

(19)

Interim Dividend

- ① Declared by Board of Directors and also recommended by them.
- ② Declared on the basis of Performance P&L a/c (After providing Dep for full year)
- ③ Once declared, it can be revoked thereafter.
- ④ It can not be considered as a debt due from Co. to its shareholders.
- ⑤ Once declared, it is not required to be posted to shareholders within 30 days of declaration.

Final Dividend

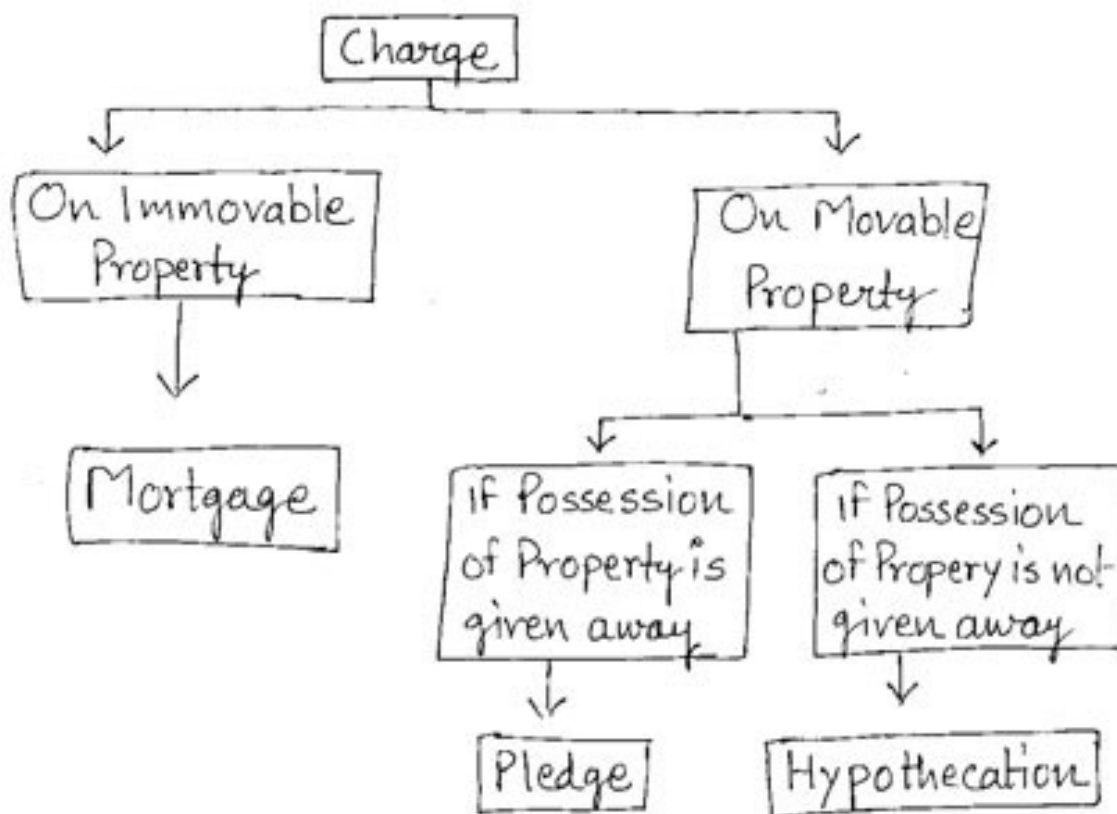
- ① Recommended by Board of Dir. and declared by SHs in AGM.
- ② Declared on the basis of final P&L a/c as audited.
- ③ Once declared in the AGM it cannot be revoked thereafter.
- ④ It is considered as a debt due from the company to its shareholder.
- ⑤ Once declared, it shall be posted to shareholders within 30 days of declaration.

Important Notes:-

- ☆ D.C.A. has clarified that the interim dividend can be revoked by the Company or by Board of Directors within 5 days before the amount of Dividend i.e. amount of interim dividend is deposited in a separate bank account u/s 205(1B).
- ☆ Last 3 distinction between interim + final div. are no longer maintainable after commencement of Co. (Amendment) Act, 2000 which inserts Sec-205 (1A), (1B) + (1C) regarding Interim div.
- ⇒ These sections put interim dividend at par with final dividend i.e. now interim dividend is a debt cannot be revoked

What is charge or Mortgage

(20)

Distinction between fixed and Floating Charge

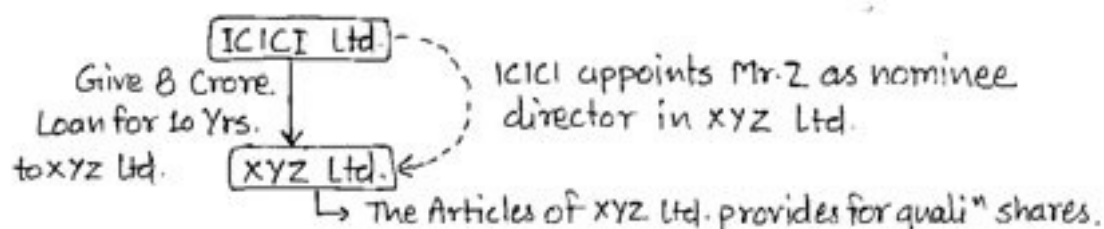
- | | |
|--|--|
| 1) Fixed Charge is created on the specific property | 1) Floating charge is created on the class of property. |
| 2) In case of fixed charge property is existing & determinable | 2) In case of floating charge property may be:-
(i) Existing or determinable and
(ii) Future and indeterminate |
| 3) Fixed Charge is identifiable w.r.t. property. | 3) Floating charge is not identifiable w.r.t. the property. |
| 4) Fixed charge clutches the property. | 4) Floating charge floats over the property. |

Sec-49 :- Investment in the name of Co. (21)

Sec-49(1) :- Investments should be held by the company in its own name.

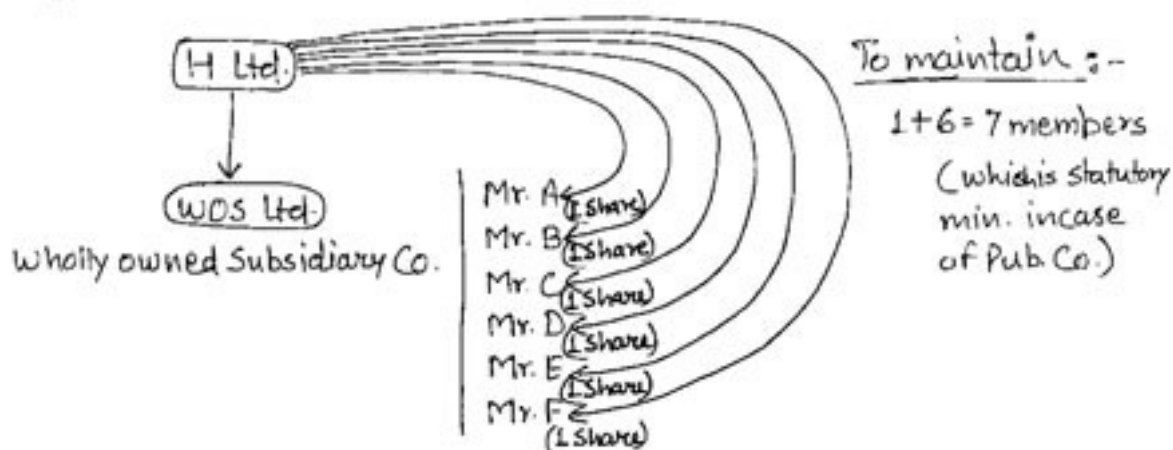
Sec-49(2), (3), (4) :- Create exceptions i.e. A Company can hold its investments in other person's name.

Exception : 1 :- Sec-49(2) $\Rightarrow$ Qualification shares



Interpretation :- Section-49(2) says ICICI can purchase the shares in the name of its nominee director. Because here ICICI is deputing Mr. Z in XYZ Ltd. as nominee director.

Exceptions: 2 :- Sec-49(3)



Interpretation :- Here if H Ltd. pays on behalf of A, B, C, D, E, F the value of there 1 share then it is fine. As the same payment is to maintain min 7 members in case of Pub. Co.

Exception : 3 :- Sec. - 49(4)

Investment Company can make the investment in the name of other Companies/ Persons.

Companies (Passing of Resolution by Postal Ballot) Rules, 2001

The Business which have been specified by Central Govt. to be conducted only through Postal Ballot are following:-

- 1) Alteration in the object clause of Memorandum.
- 2) Alteration of Articles in relation to insertion of provisions defining private Company.
- 3) Buy back of own share by the company under Sec-77A (1).
- 4) Issue of shares with differential voting rights as to voting or dividend or otherwise under Sec-86(a)(ii).
- 5) Change in the place of Regd. office outside local limits of any city, town or village as specified in Sec-146(2).
- 6) Sale of whole or substantially the whole of undertaking of a company as specified in Section-293(1)(a).
- 7) Giving loans or extending guarantee or providing security in excess of the limits prescribed in Sec-372A(1).
- 8) Election of a director under proviso to Sec-252(1) of the Companies Act, 1956. (Small Shareholder's director.)
- 9) Variation in the rights attached to a class of shares or debentures or other Securities as specified in section-106.