

**LIST OF IMPORTANT CASE LAWS UNDER COMPANIES ACT, 2013
FOR CA FINAL SYLLABUS**

S. No.	Case Law Summary
1.	Whether a person is a director or not is determined by the nature of his office, functions he performs in his capacity as director and duties discharged by him [<i>Re, Forest of Dean Coal Mining Company</i>]
2.	The word ' his ' used u/s 166 of Companies Act, 2013 implies that assignment is possible only during the lifetime of director and after death, the office no more belongs to him [<i>Oriental Metal Pressing Pvt. Limited v BK Thakoor</i>]
3.	Directors cannot continue in office after the last day on which AGM should have been held [<i>B R Kundra v Motion Pictures Association</i>]
4.	If no AGM held, ADD to vacate office on the last day on which AGM ought to be held [<i>Ananthlakshmi Ammal v Indian Trade & Investments Ltd.</i>]
5.	If limit under AOA about maximum number of directors to be increased, SR required [<i>Ram Kissendas Dhanuka v Satya Charan</i>]
6.	Even a single member holding only one share is eligible to give special notice for removing the directors by the shareholders [<i>Karnataka Bank v A B Datar</i>]
7.	Verbal resignation can also be made unless AOA requires otherwise BUT where AOA requires written resignation but GM accepted it even if orally made, its valid [<i>Latchford Premier Cinema Ltd. v Ennion and Paterson</i>]
8.	Casual vacancy in office of directors is filled as per articles. If articles silent then board may fill by passing a resolution, but only in a board meeting (not by passing a circulation). It is their discretionary power, i.e. board may function even when vacancy remain unfulfilled [<i>Bengal Luxmi Cotton Mills Ltd., In re 1965(Cal.)</i>]
9.	In <i>S. Varadrajan v Udhayam Leasing & Investments (P) Limited</i> , it was held that: • Right to receive notice of removal is Director's statutory right. • Resolution to remove passed without serving notice is invalid
10.	Guarantee Commission is not a Managerial Remuneration under Companies Act [<i>Suessen Textile Bearings Ltd. vs. UOI</i>]
11.	<i>Bell v Lever Bros.</i> : • Refund of compensation cannot be claimed: 1. if after his removal, it is discovered that director was in fact guilty; AND 2. that he could have been removed without compensation
12.	Salary advance to director/relative of director is exempt u/s 185 of 2013 Act, so long as the advance is reasonable and an outcome of contract of employment, it is not covered [<i>M R Electronics Components Limited & Others v Assistant ROC</i>]
13.	Loan u/s 185 of 2013 Act means: 1. An advance of money; 2. Given on understanding; 3. That it shall be paid back [<i>Dr. Fredie Ardeshir Mehta v UOI</i>] <i>Loan in general is Financial Assistance (it may or may not carry interest)</i>
14.	Disclosure u/s 184 of 2013 Act is not required if interest is already known [<i>A Sivasalem v Assistant ROC</i>]
15.	Disclosure made at the beginning of the next financial year shall be deemed to be sufficient in terms of Section 184 of 2013 Act [<i>ICICI v Parasrampuriah Synthetics Ltd.</i>]
16.	Contract entered into while directors are interested in violation of section 184 of 2013 Act, not void/unenforceable but voidable at the option of BOD but not at the option of other party [<i>Movitax Ltd. v Bulfiled</i>]
17.	OPP include selling & buying agents receiving commission and/or salary [<i>Arkay Wires (P) Ltd. Case</i>]
18.	Lump-sum payment of gratuity, leave encashment, etc. will not be covered in 'monthly' remuneration [<i>Ravindar Kumar Sanghal v Auto Lamps</i>]
19.	The notice of every Board meeting shall be given in writing to every director:– (a) If outside India – at his usual address in India [exemption – a director usually staying abroad. [<i>Dr. Kamal Kumar Dutta V. Ruby General Hospital Ltd</i>]]
20.	<i>Re, Portuguese Consolidated Copper Mines Ltd</i> , it was held that right to receive notice can't be waived
21.	In <i>A.L.A.R Arunachalam Chettair Firm v Kaleeswarar Mills Limited</i> , it was held that Notice of BM not required if: 1. BOD passes resolution at BM fixing day, time & place for all future BMs; and 2. A copy of such resolution sent to every director; or 3. AOA fixes day, time & place for all future BMs
22.	Omission to give Notice – Consequences [<i>Parmeshwari Prasad Gupta v UOI</i>]: 1. BM shall be void even if single director is not given notice; 2. If BM at (1) is void, resolutions passed thereat also void; 3. Accidental/Deliberate omission immaterial; 4. BM not void if: • Absentee director do not complain of want of notice; • The director to whom notice is not given, attends BM

23.	AOA can increase but cannot reduce Quorum [<i>Re, Sir Hormusji Wadia and Co. Ltd.</i>]
24.	Quorum is required throughout BM, presence of quorum only at BM commencement not enough. BM without quorum is void [<i>Firestone Tyres & Rubber Company v Synthetic & Chemicals Ltd.</i>]
25.	Supreme Court of India has decided in the Matter of <i>Kerala State Electricity Board v Hindustan Construction Co. Limited</i> [2009] 91 SCL 183 (SC) inter alia decide that: • Confirmation of minutes of BM or any committee meeting does not require confirmation in subsequent meeting; • Non confirmation of minutes does not have any effect on the decision taken at the earlier meeting; • When minutes of a meeting are placed before the next meeting the only thing that can be done is to see whether the decision taken at the earlier meeting has been properly recorded or not; • Once a decision is duly taken it can only be changed by a substantive resolution properly adopted for such change
26.	Inspection by Directors, Members etc. [Section 128 of 2013 Act] • Inspection during business hours; • Inspection not allowed for malafide purposes; • Agent may be appointed; • Company may object person chosen as agent [<i>N V Vakharia vs. Supreme General Film Exchange Co. Limited</i>]
27.	Reduction of Share Capital: if forms of scheme of arrangement, the requirements of Companies Act as regards reduction of share capital are not applicable [<i>Asian Investments Limited, Re</i>]
28.	Court not concerned about the commercial merits & demerits of amalgamation scheme [<i>Cetex Petrochemical case</i>]
29.	Order sanctioning amalgamation is an instrument under Stamp Act. Stamp duty, thus, payable on conveyance of property [<i>LiTaka Pharmaceuticals Limited, Bombay HC</i>]
30.	The fact that “transferor” and “transferee” have different business is not a ground for refusing sanction to their amalgamation [<i>EITA India Ltd.</i>]
31.	If “transferee” is a private company, simply because its membership would increase by more than 50 after amalgamation, its conversion into public limited not a pre-condition. It can be done later [<i>Winfield Agro Services Pvt. Limited</i>]
32.	If interest of creditors of merging companies not affected, Court may not order their meeting [<i>Ambalal Sarabai Enterprises Limited</i>]
33.	Likelihood of monopoly will not be a reason to affect the sanction of scheme by the Court [<i>Reliance Petroleum Limited, re</i>]
34.	In <i>Nokes vs. Doucaster Amalgamated Collieries Ltd.</i> , it was held that the workers are not furniture and their services cannot be transferred without their consent.
35.	So long as interests of employees are protected, there is no need to include them in scheme [<i>HLL v TOMCO</i>]
36.	Examination of scope for better scheme than what is presented is not a part of Court duty [<i>Blue Star Limited case</i>]
37.	Employees can raise objection if scheme affects them prejudicially [<i>KEC International Limited case</i>]
38.	Courts in general do not intervene where valuation of shares made by experts (such as Chartered Accountants) [<i>M G Investment & Industrial Co. Ltd. v New Shorrock Spg. & Mfg. Co. Ltd.</i>]. It may intervene if there is unfairness or demonstrated that amount offered for shares is inadequate. Onus of proof for above lies on dissenting shareholders
39.	Principle emerged from <i>Foss v Harbottle</i> : 1. A company has a separate legal identity capable of suing in its own name; 2. A company is regulated like a democracy. The affairs of the company are conducted by the majority of members; 3. The resolution passed by the majority of members is binding on the company and consequently on the minority; 4. The Courts do not usually intervene in the matters of internal management of the company
40.	Allotment of further shares without offering to other members on pro-rata basis plus BM held against section 174 plus member who was not offered shares removed from directorships is oppression [<i>Bhagirath Agarwala v Tara Properties (P) Limited</i>]
41.	The conduct of the company must indicate a continuous wrong. Also, the acts constituting oppression must continue till the date of making the application. Lack of probity (i.e. uprightness or honesty) or fair dealings must be shown (<i>Shanti Prasad Jain v Kalinga Tubes Ltd.</i>)
42.	Allotment of shares by which existing majority is reduced to minority or vice versa amounts to oppression if it is proved that the idea was to benefit one group to the detriment of other [<i>Piercy v Mill(s) & Co.</i>]
43.	Mere illegal, invalid or irregular transactions undertaken in the name of the company donot constitute a ground for invoking section 241 unless it is proved that they are oppressive to any shareholder or prejudicial to the interest of the company or to the public interest (<i>Sheth Mohanlal Ganpatram vs. Shri Sayaji Jubilee Cotton and Jute Mill Company Limited</i>)
44.	Continuous losses in the company, by itself, cannot regarded as oppressive (<i>Ashok Betelnut Co. P. Limited vs. M. K. Chandrakanth</i>)
45.	Failure to declare dividends or payment of low dividends do not amount to oppression (<i>Thomas Vettom V.J. vs. Kuttanad Rubber Co. Ltd.</i>)
46.	Failure to transfer the shares for 6 years for non-receipt of RBI approval is not oppression as company has not infringed any rights of member [<i>Rajiv Mehta v Group 4 Securities Hindustan (P) Ltd.</i>]
47.	Violation of the conditions of the memorandum amounts to mismanagement. [<i>S.M Ramakrishnarao v Bangalore Race club</i>]

	<i>Ltd.]</i>
48.	Prejudices to the interest of the company due to internal disputes are mismanagement. <i>Suresh Kumar Sangi v Supreme Motors Ltd.</i>
49.	The applicant must be member at the time of making application for prevention of oppression and mismanagement. If after making application, applicant's name is struck off, application is not affected. In case of Joint Application, either both should sign OR Other's consent should be attached. Subsequent withdrawal of consent does not affect the application (<i>Rajahmundri Electric Supply Corporation v Nageshwara Rao</i>)
50.	Majority can also claim relief from oppression on it by minority: NCLT intervenes if the majority proves that there are sufficient grounds to constitute oppression on the majority (<i>Re, Sindri Iron Foundry Pvt. Ltd.</i>)
51.	<i>Tata Iron and Steel Co. v Micro Forge (India) Ltd.;</i> - Ratio of Case Law: - Winding up - a last resort; - Court should consider its impact and consequences - Winding up may not be justified in following cases: - Profitability/Reserves/Soundness of Co. beyond question; - High Sales/Turnover but temporary cash crisis; - Believed that Co. can come out of crisis; - Inability to debt payment due to economic and market conditions
52.	The mere fact that the Company's liabilities are in excess of its assets could not be a ground for putting the company into liquidation. The test would be that the company should be commercially solvent i.e., the company ought to be in a position to meet its liabilities as and when they arose [<i>Registrar of Companies Punjab vs. Ajanta Lucky Scheme and Investment Co. Private Ltd.</i>]
53.	In the absence of rectification of the register, contributory liability is absolute u/s 429 of 1956 Act [<i>Mohd. Akbar v Official Liquidator</i>]
54.	In respect of unpaid calls, members of company in liquidation are liable even though: - The calls were made before liquidation; AND - The suit for their (i.e. unpaid calls) realisation had become time barred [<i>Pokhar Mal v Flour & Oil Mills Co. Ltd.</i>]
55.	Legal Representatives would not be liable for any sum beyond the value of the estate of the deceased in their hands (<i>Official Liquidator v Parthasarthy Sinha</i>)
56.	Balance sheet is an acknowledgement of debt owed by the company [<i>Tirumalai Iyengar vs. Official Liquidator</i>]
57.	A Co. is said to have a place of business in India if: - It has specified/identifiable place at which it carries on business; AND - There is some concrete connection (no occasional connection) b/w such place & business of the Co. [<i>Deverall v Grant Advertising Inc.</i>]
58.	For the purposes of section 452 of 2013 Act, company's property also include a property which is in Co.'s possession either by rent/lease/other legal mode [<i>Kannankadi Gopal Krishna Nair v Prakash Chander Juneja</i>]
59.	Property obtained during employment but wrongfully withheld even after cessation of employment, complaint u/s 452 of 2013 Act can be filed [<i>Baldev Krishna Sahi vs. Shipping Corporation of India Limited</i>]
60.	No relief u/s 463 of 2013 Act can be claimed if default is made under 'any other' Act (i.e. other than Companies Act) [<i>Rabindra Chamarla v ROC</i>]
61.	An unlisted public company or a private limited company can issue bonus shares even out of its revaluation reserve [<i>SC in Bhagwati Developers vs. Peerless General Finance & Investment Company (2005)</i>]
62.	There is no conflict of jurisdiction of NCLT for petition for prevention of oppression and mismanagement vis-à-vis petition for Winding up of the Co. [<i>A. K. Puri vs. Devi Dass Gopal Kishan</i>]
63.	There is no prohibition to file a composite application for prevention of oppression and mismanagement and winding up by the same persons as in capacity of member and creditor respectively [<i>MMTC Limited vs. Indo French Biotech Enterprise Limited</i>]