

ALL DISTINGUISH BETWEEN (16 Marks)

PRE-INCORPORATION CONTRACTS	PROVISIONAL CONTRACTS
A contract entered into by the promoters on behalf of a proposed company i.e. before incorporation of a company	Any contract made by a company before the date at which it is entitled to commence business
A Pre-Incorporation contract is governed by Specific Relief Act, 1963.	A Provisional Contract is governed by Companies Act, 2013.
The term Pre-Incorporation Contract is relevant for public as well as private company	The term Provisional Contract is not relevant for Private Company
The term Pre-Incorporation Contract is relevant for every company, even though it has no share capital	The term Provisional Contract is not relevant for a company not having share capital.
A Pre-Incorporation contract is not binding unless the company adopts the contract.	A provisional contract becomes binding on the company when it obtains the certificate of commencement.

MOA	AOA
Fundamental Document (charter)	Subordinate Document (internal)
Memorandum prevails over Articles	Articles cannot override Memorandum
Memorandum cannot be amended retrospectively	Articles can be amended retrospectively
Every company must have its own memorandum	A public company limited by shares may adopt Table A and in such a case it need not have its own articles.
Memorandum has 6 clauses	The Act has not prescribed any contents of articles.
Alteration is difficult and lengthy procedures with lots of approvals	Alteration is relatively easy and do not require much approvals.
Any act done beyond Memorandum is Ultra Vires i.e Void	Any act done beyond Articles can be ratified retrospectively by amending articles.

DEBENTURE	SHARES
Debenture holders are the creditors of the company	Shareholders are the owners of the company
Debenture holders have no voting right	Shareholders have voting rights and hence control the total affairs of the company
Debenture interest is paid at a predetermined fixed rate. It is payable whether there is any profit or not.	Dividend on shares is payable at a variable rate which is mainly affected by the profitability of the company.
Interest on debentures is a charge on the profits of the company and hence deductible as an expense under income tax	Dividends is the appropriation of the profits of the company hence are not deductible as an expense under income tax
In balance sheet, debentures are shown under secured loans	In balance sheet, shares are shown under share capital
Debenture can be converted into shares as per the terms of issue.	Shares cannot be converted into debentures under any circumstances

Debentures cannot be forfeited for non payment of calls money	Shares can be forfeited for non payment of allotment and call money
At the time of liquidation, debenture holders are paid off before the shareholders	At the time of liquidation, shareholders are paid at the last after debenture holders, creditors, etc
Debenture can be issued at a discount, no such restriction in companies act, 2013	Shares cannot be issued at a discount as per companies act, 2013
Maximum Underwriting commission on Debentures can be 2.5% of Issue price as per companies Act, 2013 or As authorised by Articles whichever is less.	Maximum Underwriting commission on Shares can be 5% of Issue price as per Companies Act, 2013 or As authorised by Articles whichever is less.

TRANSFER OF SHARES	TRANSMISSION OF SHARES
<ul style="list-style-type: none"> • Transfer takes place by a voluntary act of the transferor. 	<ul style="list-style-type: none"> • Transmission is the result of the operation of law i. e. death or insolvency.
<ul style="list-style-type: none"> • Transfer deed is required. 	<ul style="list-style-type: none"> • No instrument of transfer is required.
<ul style="list-style-type: none"> • Transfer is a normal course of transferring property. 	<ul style="list-style-type: none"> • Transmission takes place on death or insolvency of a shareholder.
<ul style="list-style-type: none"> • Generally made for some consideration. 	<ul style="list-style-type: none"> • No consideration payable.
<ul style="list-style-type: none"> • Stamp duty is payable by a member. 	<ul style="list-style-type: none"> • No stamp duty is payable.

Basis	LLP	Partnership
Distinctive	LLP is a separate legal entity and therefore, can be sued or it can sue others	A partnership firm is not distinct from the several persons who compose it.
Liability	Partners have Limited Liability	Partner of a firm would have unlimited liability.
Dissolution	The retirement or death of a partner would not dissolve the LLP	The death or retirement of a partner would dissolve the partnership firm.
Firm's Property	Property belongs to the LLP and not to the individuals comprising it	The property of the firm is the property of the individuals comprising it.
Legality	LLP is formed by an incorporation document and an LLP agreement, thus, giving it a legality	A partnership can be formed either orally or by a deed of agreement whether registered or not.
Max No. of Partners	No upper limit has been laid down by the Act	A registered or unregistered partnership cannot have more than 50 partners.
Perpetual Succession	The death or insolvency of a shareholder or all of them does not effect the life of the LLP	The death or insolvency of a partner dissolves the firm, unless otherwise provided.
Capacity	A partner of LLP in his separate capacity as a legal person can do business with the LLP since the LLP is a separate legal entity by itself	An individual partner would not be able to conduct business transaction with the partnership firm of which he is a partner.

BASIS	LLP	COMPANY
Incorporation Process	Incorporation Process is reduced into a simple procedure of filling of the prescribed information in the	As compared to LLP, Incorporation process is complex.

	Incorporation document and statement in Form No. 2.	
Agreement	In case of LLP, a limited liability partnership agreement (LLPA) is prepared.	In case of a Company, articles of association of a company are prepared.
Memorandum	The memorandum of a LLP is not required to name the state in which it is required to be incorporated.	The memorandum of a company is required to name the state in which it is required to be incorporated.
Change in Registered office	The detail procedure involved in changing the registered office from the state of incorporation to another state is not required to be followed in case of a LLP.	The detail procedure is required to be followed in case of a company.
Meeting	There is no such stipulation for meeting of partners.	Meeting of partners either periodically or compulsory as stipulated for directors and shareholders' meetings in the Companies Act.
Management & Ownership	There is no separation between management of the company and the ownership since all the partners, unlike all the directors, can take part in the day to day affairs of the LLP.	There is a separation between management of the company and the ownership.
Authority	In an LLP, each partner has the authority to do so unless expressly prohibited by the partnership terms.	In case of a company no individual director can conduct the business of the company.
Remuneration	There are no provisions in the LLP Act for remuneration payable to designated partners.	The Companies Act contemplates regulating the remuneration payable to directors.
Borrowing Powers	Unlike in the case of companies, there are no restrictions on the borrowing powers.	There are restrictions on borrowing powers in case of a company.
Maintenance of accounts	The LLP can choose to maintain the accounts on cash basis/accrual basis.	Whereas under the Companies Act, accrual method is compulsory.

BASIS	WINDING – UP	DISSOLUTION
Basic distinction	Winding up is the 1 st stage in the process whereby assets are realized, liabilities are paid off and the surplus, if any, distributed among its members.	Dissolution is the final stage whereby the existence of the company is withdrawn by the law.
Appointment of liquidator	The liquidator appointed by the company or the Court carries out the winding up proceedings.	The order for dissolution can be passed by the Court only.
Representation by the liquidator	The liquidator can represent the company in the process of winding up. This can be done till the order of dissolution is passed by the Court.	Once the Court passes dissolution orders the liquidator can no longer represent the company.
Debts to be proven by the creditors	Creditors can prove their debts in the winding up of a Company.	Creditors cannot prove their claim on the dissolution of the company.

BASIS	MEMBER'S WINDING – UP	CREDITOR'S WINDING – UP
Basic distinction	A member's voluntary winding up results where, before convening the	A creditor's voluntary winding up is one where no such declaration is filed.

	general meeting of the company at which the resolution of winding up is to be passed, the majority of the directors file with the Registrar a statutory declaration of solvency.	
Participation in liquidation	In a member's voluntary winding up, the creditors do not participate directly in the control of the liquidation, as the company is deemed to be solvent.	In a creditors' voluntary winding up, the company is deemed to be insolvent and, therefore, the control of liquidation remains in the hands of the creditors.
Appointment of Liquidator	There is no meeting of creditors in a members' voluntary winding up and the liquidator is appointed by the company.	In a creditors' voluntary winding up, meetings of creditors have to be called at the beginning and subsequently the liquidator is appointed by the creditors.
Power of liquidator	In a members' voluntary winding up the liquidator can exercise some of his powers with the sanction of a special resolution of the company;	In a creditors' voluntary winding up, creditors can do so with the sanction of the Court.

BASIS	PRIVATE COMPANY	PUBLIC COMPANY
Minimum number of members	The minimum number of person required to form a public company is seven	Minimum number of person required in a private company is only two.
Maximum number of members	There is no limit on the maximum number of member of a public company	Private company cannot have more than fifty members excluding past and present employees.
Commencement of Business	A public company shall not commence its business immediately unless it has been granted the certificate of commencement of business.	A private company can commence its business as soon as it is incorporated.
Invitation to public	A public company by issuing a prospectus may invite public to subscribe to its shares	A private company cannot extend such invitation to the public.
Transferability of shares	There is no restriction on the transfer of share	A private company by its articles must restrict the right of members to transfer the share.
Number of Directors	A public company must have at least three directors	A private company may have two directors.
Statutory Meeting	A public company must hold a statutory meeting and file with the register a statutory report.	In a private company there are no such obligations.
Managerial Remuneration	Total managerial remuneration in the case of public company cannot exceed 11% of net profits, but in the case of inadequacy of profit a minimum of Rs. 50, 000 can be paid.	These restrictions do not apply to a private company.
Name	A public company has to use only the word 'Limited' at the end of its name.	A private company has to use words 'private limited' at the end of its name

BASIS	PRIVATE COMPANY	OPC
Board of directors	Minimum number of Directors required in a private company is two.	Minimum number of Directors required in a private company is One.
Number of persons required for Incorporation	To incorporate a private company minimum 2 persons are required.	To incorporate a OPC minimum 1 person is required.
Shareholding	In a private company minimum number of members is two, so entire shareholding cannot held by single person.	The 100% of share capital of OPC is held by single person.
NRI or Foreign nationals	Private company can be started & managed by NRI's foreign nationals.	Only Indian citizen or Indian national are allowed to start OPC.
Conversion limitation	No such limitation or compulsion of conversion.	OPC must be mandatorily converted into private Company: <ul style="list-style-type: none"> • If annual Sales turnover exceeds Rs 2 Crore; or • Paid up capital exceeds Rs 50 Lakhs.
Name Clause	Name of Private Company must end with the words "Private Limited"	Words "OPC" must be written in Brackets below the name of OPC.

BASIS	PRIVATE COMPANY	PRODUCER COMPANY
Number of persons required for Incorporation	The private company can be formed by two members.	Producer company can be formed by minimum 10 members.
Name	A private company has to use words 'private limited' at the end of its name	A producer company has to use words "Producer Company Limited" at the end of its name.
Minimum number of directors	Minimum number of Directors required in a private company is only two.	Minimum number of Directors required in a producer company is only Five.
Tenure of directors	The tenure of directors is not fixed by law	The tenure of directors is minimum period of 1 year & maximum 5 years.
1st AGM	The first AGM is required to be held within 18 months from the date of incorporation.	The first AGM is required to be held within 90 days from the date of incorporation.
Notice of the meeting	Notice of the meeting should be given not less than 21 days from the date of meeting.	Notice of the meeting should be given not less than 14 days from the date of meeting.
Share Capital	The share capital of private company may be consists of equity, preference or any "other class".	The share capital of producer company consists of equity shares only.

BOARD MEETING	GENERAL MEETING
Notice Must be sent at least 7 days before the date of meeting	Notice Must be sent at least 21 days before the date of meeting
Quorum is 1/3 rd Directors or 2 whichever is higher	It depends on the number of members of the company. Public Company : 5 and Private Company: 2.

Board Meeting is for Directors	General Meeting is for members of company
Minimum 4 Board Meetings in a years should be held	AGM: 1 EGM: no such Limit on number of meetings
1 st Board meeting should be held within 30 days of incorporation	1 st AGM shall be held within 9 months of incorporation
Gap between two board meeting should not be more than 120 days	Gap between two board meeting should not be more than 15 months
Board meetings can be attended by director through video conferencing	Members cannot attend general meetings through video conferencing

EXECUTIVE DIRECTOR	INDEPENDENT DIRECTOR
This is an employee of company	This is not an employee of company
ESOPs can be granted to such director	ESOPs cannot be granted to such director
They are liable to retire by rotation	They are not liable to retire by rotation
They are appointed for one year and can be reappointed	They can be appointed for 5 years at a time and can serve 2 consecutive terms.
They cannot become chairman of various committees of board	Chairman of committees of board has to be independent director
They can have monetary relationship with the company	They cannot have any monetary relationship with the company
No Need to hold a separate meeting of executive directors only	At least one meeting must be held of Independent directors only
No minimum number of executive directors required to be appointed	Listed: 1/3 rd of total director must be independent directors Unlisted: at least 2 directors should be independent directors
Every Company is required to appoint executive directors	Only companies fulfilling certain parameters are required to appoint independent directors

BASIS	COMPANY	PARTNERSHIP
Registration	A company cannot come into existence unless it is registered.	In a partnership firm registration is not compulsory.
Minimum no of members	The minimum number in a public company is seven and in case of a private companies two.	Partnership the minimum number of partners is two.
Maximum no of members	The maximum limit of members in case of a private company is fifty but in case of public company there is no maximum limit.	The maximum limit of partners under partnership is 20, while in case of banking business it is ten.
Liability	In case of joint stock company the liability of shareholders is limited (except in case of unlimited companies) to the extent of face value of shares or to the extent of guarantee.	In case of partnership the liability of partners is unlimited.
Management	The affairs of a company are managed by its directors. Its members have no right to take part in the day to day management	Every partner of a firm has a right to participate in the management of the business unless the partnership deed provides otherwise.

Legal Status	A company has a separate legal status distinct from its shareholders.	A partnership firm has no legal existence distinct from its partners.
Insolvency/ Death	Insolvency or death of a shareholder does not affect the existence of a company.	A partnership ceases to exist if any partner retires, dies or is declared insolvent.

BASIS	HUF	COMPANY
Registration	Not compulsory under any law	Compulsory under Company Laws
Membership	By virtue of birth	By virtue of contract
Authority to create debt	Retains with Karta only	Company itself has authority to create debt through its Directors subject to the provisions if MOA & AOA.
Management	Management lies in the hands of Karta	Management lies in the hands of Board of Directors
Liability	Karta's Liability is unlimited	Members liability is limited to the extent of unpaid amount on shares
Governing Law	HUF is governed by Hindu Law	Company is governed by Companies Act, 2013

BASIS	EQUITY SHARES	PREFERENCE SHARES
Meaning	Equity shares are the ordinary shares of the company representing the part ownership of the shareholder in the company.	Preference shares are the shares that carry preferential rights on the matters of payment of dividend and repayment of capital.
Payment of dividend	The dividend is paid after the payment of all liabilities.	Priority in payment of dividend over equity shareholders.
Repayment of capital	In the event of winding up of the company, equity shares are repaid at the end.	In the event of winding up of the company, preference shares are repaid before equity shares.
Rate of dividend	Fluctuating. Depends upon distributable profits	Fixed Rate of dividend
Redemption	Equity Shares are always irredeemable. They are payable only at the time of liquidation	Preference shares are always redeemable. Maximum tenor cannot exceed 20 years.
Voting rights	Equity shares carry voting rights.	Normally, preference shares do not carry voting rights. However, in special circumstances, they get voting rights.
Convertibility	Equity shares can never be converted.	Preference shares can be converted into equity shares.
Accumulation of dividend	Dividend cannot be accumulated in any case	Dividend gets accumulated if not paid.

AGM	EGM
First AGM should be held within 9 months of incorporation	No such stipulation
AGM has to be held at least once in a year	No such stipulation
Ordinary business can be conducted in AGM	Ordinary business cannot be conducted in

only	EGM. Only special business can be conducted in EGM
Can be held on any day except National Holiday	Can be held on any day including National Holiday
Can be held during business hours only	Can be held at any time during the day
If AGM is not held, company and officer be liable to penalty of upto Rs. 1,00,000 and Rs. 5,000 per day	No such penalty prescribed under the law
AGM cannot be held on requisition by members	EGM can be held on requisition by members

ESOP	SWEAT EQUITY SHARES
ESOPs are given in the nature of Incentive and retention plan these can be issued to employees and officers. ESOPs cannot be issued to Promoter or person belonging to the promoter group.	Sweat Equity Shares are issued as consideration for creation or transfer of IPRs to the company or as other value addition these can be issued to employees, Officers and Directors of the Company.
These options can be issued with conversion right at a pre-determined price. The issue price can be less than the intrinsic value of the shares.	These shares can be issued at discounted price or free for know-how and services to the company.
The consideration has to be paid in cash.	The consideration can be partly cash and partly IPRs/value addition or fully non-cash consideration.
These are generally issued based on a scheme to be formulated by the company stipulating the eligibility criteria such as number of years of services, employee grade etc.	These are mainly intended to be issued to build up equity for directors or promoters with technical capability but with meager financial resources.
Lock-In period is not specified for the ESOP.	These Shares have compulsory Lock-In Period of 3 years.
No Pricing guidelines are defined.	Pricing Guidelines are defined for Sweat Equity Shares.
There is no separate register required to be maintained.	A separate register of Sweat Equity Share issued has to be maintained.
Sweat Equity shares cannot be issued by Unlisted Public Company more than 15% without the approval of Central Government.	There is no such restriction on ESOP.

INTERIM DIVIDEND	FINAL DIVIDEND
This dividend is paid before the finalization of accounts of the year	This dividend is paid after the finalisation of account of the year
This dividend is declared by Board of Directors	This dividend is recommended by BOD but approved by Shareholders in General meeting
Can be revoked with the consent of all the shareholders	Cannot be revoked in any circumstances
Not defined under companies act	Defined under companies act
Rate of interim dividend is always less than the rate of final dividend	Rate of final dividend is always higher than interim dividend

POINTS		INFORMATIONAL SERVICES	APPROVAL SERVICES
Meanings	Informational service cover those forms, which are to be filed with ROC for informational purposes, in compliance with the provisions of the Companies Act, 2013.		MCA, Regional Directors & ROCs are empowered to accord approval, or to give any direction in relation to the certain matters. Such services are known as approval services.
Example	Forms relating to following informational services are required to be filed: (a) Consent and withdrawal of consent of persons charged as officers in default (b) Voluntary Reporting of Corporate Social Responsibility (CSR) (c) Resolutions and agreements (d) Notice of address of place where books of account are kept (e) Information in relation to any offer of scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company (f) Order received from Court or Tribunal		ROC approval is required in following cases: (a) Extension of time period for holding AGM (b) Holding AGM at place other than registered address (c) Declaring of company as defunct (d) Extension of the period of annual accounts (e) Amalgamation of companies (f) Compounding of offences

BASIS		MOTION	RESOLUTION
Meaning		Motion is a proposal submitted for a discussion and a decision adopted by means of a resolution. A motion becomes a resolution only after the requisite majority of members have adopted it.	A resolution is the formal expression of the decision of the meeting when a motion has been duly voted and passed by the requisite majority.
Official decision		Every motion is not the official decision of the company	A resolution once adopted and recorded in the minutes becomes the official decision of the company.
Significance in meeting		In case of company meetings, only such motions are proposed as are covered by the agenda. However, certain motions may arise out of the discussion and the standing orders of various bodies allow such motions to be discussed at the meeting without proper notice in writing.	A resolution relates to only such matters that are covered in notice of the meeting. No resolution can be passed in respect of matters which are not covered in notice of the meeting.

BASIS		RESERVE CAPITAL	CAPITAL RESERVE
Meaning		Reserve capital is that part of the uncalled capital of a company which the limited company has decided by special resolution not to call except in the event and for the purpose of the company being wound up.	Capital reserves are created out of capital profit. Capital reserve may be statutory capital reserve or non statutory capital reserve.

Mandatory	Creation of reserve capital is not mandatory.	Creation of capital reserve is mandatory in certain cases.
Balance Sheet disclosure	There is no need to disclose reserve capital in balance sheet.	Capital reserves are disclosed in balance sheet under the head "Reserve & Surplus"
Writing off losses	Reserve capital cannot be used to write-off capital losses.	Capital reserve can be used to write off capital losses.

BASIS	MORTGAGE	CHARGE
Mode of creation	A mortgage is created by Acts of the parties	A charge may be created through Act of parties or by operation of Law
Registration	A Mortgage requires registration under TOPA, 1882	A charge by operation of Law does not require registration but Charge created by act of parties requires registration
Term	A Mortgage is for a fixed term	A Charge may be in perpetuity
Effect	A Mortgage is a transfer of an interest in specific immovable property	A charge only gives a right to receive payment out of a particular property

SMALL COMPANY VS. INACTIVE COMPANY:

Small Company:

- (i) Paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; **AND**
- (ii) Turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees

Inactive Company:

“inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;