

CHAPTER 2	FORMATION OF A COMPANY	Syllabus: Steps in formation of a Company, Promotion Stage, Meaning of Promoter, Position of Promoter and Functions of Promoter, Incorporation Stage – Meaning, Contents, Forms of Memorandum of Association & Articles of Association and its alteration, Distinction between Memorandum of Association and Articles of Association, Doctrines of constructive notice and Indoor management, Certificate of Incorporation, Subscription Stage – Meaning & contents of Prospectus, Types, Misstatement in prospectus and its consequences.
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Group – A

❖ Answer the following questions

(1 mark each)

1. In how many days did the company have its registered office after incorporation
 - a) 10
 - b) 20
 - c) 30**
 - d) 40
2. _____ are the contracts entered into by promoters on behalf of a prospectus company.
 - a) Provisional contracts
 - b) Pre-Incorporation contracts
 - c) Preliminary contracts
 - d) Both a) & b)**
3. When there is a untrue statement in a prospectus who can sue
 - a) Subscribed in primary market**
 - b) Subscribed in secondary market
 - c) Rights issue
 - d) None of the above
4. Definition of prospectus was given under which sec.
 - a) 2 (30)
 - b) 2 (32)
 - c) 2 (34)
 - d) 2 (36)**
5. Which of the following are not required to issue prospectus?
 - a) Private company
 - b) Incase of right issue
 - c) Sweat equity issue
 - d) All the above**
6. _____ prospectus were issued in order to test the market before finalizing issue size/ price.
 - (a) Deemed (b) Shelf **(c) Red herring** (d) None of the above
7. Within how many days prospectus or statement in lieu of prospectus should file with ROC _____
 - a) 30**
 - b) 40
 - c) 20
 - d) 50

8. The doctrine of indoor management is an _____ to the doctrine of constructive notice
- Exception
 - Extension**
 - Alternative
 - None of the above
9. The doctrine of _____ does not apply to acts void ab initio.
- Ultra virus
 - Intra virus
 - constructive notice
 - Indoor management**
10. A company can change its name at its own discretion by passing _____
- Ordinary resolution
 - Special resolution**
 - Boards resolution
 - None of the above
11. Any change in the address of the registered office must be communicated to the registrar within:
- 15 days
 - 30 days
 - 1 Month**
 - 12 months
12. An act ultra virus the directors can be rectified if it is not ultra vires
- the articles
 - the memorandum
 - Company Act**
 - None of the above
13. The lending of funds ultra vires, the company has no rights
- under the company's Act**
 - contract Act
 - under equity
 - None of the above
14. If anybody wants to file a case against the company they should file at what place _____
- Company
 - Registered Office**
 - BOD
 - Books of accounts
15. Which of the following need not have Memorandum of Association (MOA)
- Public company
 - Private company
 - Government company
 - Statutory Corporation.**
16. A company can change its name by passing
- Ordinary resolution
 - Special resolution
 - Either by special resolution or by ordinary resolution**
 - None of the above
17. Alteration of articles must be done only by passing
- Special resolution**
 - Ordinary resolution

18. Ultra vires means
a) **Beyond the power**
b) with in the power
c) Both
d) None of the above
19. In case of red-herring prospectus the refund is made with an interest @ _____
(a) 12
(b) 13
(c) 15**
(d) 16
20. The doctrine of _____ does not apply to acts void ab initio.
(a) Ultra virus
(b) Intra virus
(c) constructive notice
(d) Indoor management**

Group – B

❖ **Answer the following questions**

(1 mark each)

21. In the process of conversion of a private company into a public company which prospectus must be issued
a) Deemed prospectus
b) Shelf prospectus
c) **Statement in lieu of prospectus**
d) None of the above
22. Company should file a prospectus in case of conversion of private company into a public company with in _____ from the date of resolution
a) **30 days**
b) 45 days
c) 60 days
d) none of these
23. If the name of the company is identical with or similar to an existing company then which resolution should be passed to change name
a) **Ordinary resolution**
b) Special Resolution
24. When there is a untrue statement in a prospectus who can sue
a) **Subscribed in primary market**
b) Subscribed in secondary market
c) Rights issue
d) None of the above
25. Which one of the following has a right to claim compensation for any loss due to misstatement in prospectus
a) **Purchasing shares in Primary Market**
b) Secondary Market

- c) Subscribers to memo.
- d) All the above

26. For several reasons, it is important to be able to determine whether or not a person is a promoter. Which ONE of the following reasons is not a valid reason?

- a) Promoters owe fiduciary duties to the unformed company.
- b) Promoters are subject to certain provisions contained in the Companies Act 2006.
- c) Promoters may be liable for acts entered into on behalf of the unformed company.
- d) **Promoters who sign their name on behalf of an unformed company can face criminal liability if the company is not subsequently fully incorporated.**

27. As a promoter is in a fiduciary relationship with the unformed company, he is never permitted to make a profit out of the company's promotion. True or false?

- a) True
- b) **False**

28. What principle was established by the House of Lords in the case of *Erlanger v New Sombrero Phosphate Co* (1878)?

- a) **A promoter who makes a profit out of his promotion of the company will only be permitted to keep that profit if he discloses this fact to persons regarded as independent.**
- b) A promoter who makes a profit out of his promotion of the company will not be permitted to keep that profit if the company never comes into existence.
- c) A promoter who makes a profit out of his promotion of the company will only be permitted to keep that profit if he discloses this fact to the company's members once the company is incorporated.
- d) A promoter who makes a profit out of his promotion of the company will only be permitted to keep that profit if he discloses this fact to the Registrar of Companies.

29. Andrew is a promoter of a company. Before the company is fully incorporated, he enters into a contract on its behalf with a third party. Under the common law, would a valid contract exist and, if so, who would be the parties to the contract?

- a) No contract would exist.

- b) A contract would exist and it would be between the unformed company and the third party.
- c) **A contract would exist and it would be between Andrew and the third party.**
- d) A contract would exist and it would be between Andrew and the company.

30. What does the Companies Act 2006, s 51(1) state?

- a) **Where a promoter of a company purports to enter into a contract on behalf of that company, a valid contract will exist between the promoter and the third party that both parties can enforce.**
- b) Where a promoter of a company purports to enter into a contract on behalf of that company, no contract will exist.
- c) A company that is in the process of being incorporated has full contractual capacity, providing that the process of incorporation is completed within a reasonable time.
- d) A company can assume the obligations contained in a pre-incorporation contract.

ANSWER KEY

Q.No.	1	2	3	4	5	6	7	8	9	10
Answer	C	D	A	D	D	C	A	B	D	B
Q.No.	11	12	13	14	15	16	17	18	19	20
Answer	C	C	A	B	D	C	A	A	C	D
Q.No.	21	22	23	24	25	26	27	28	29	30
Answer	C	A	A	A	A	D	B	A	C	A