

1. INTRODUCTION TO COMPANY

ANALYSIS OF PREVIOUS EXAMINATIONS FOR THEORY QUESTIONS

| No. | M-09 | N-09 | M-10 | N-10 | M-11 | N-11 | M-12 | N-12 | M-13 | N-13 | M-14 | N-14 | M-15 | N-15 | M-16 | N-16 | M-17 | N-17 | M-18 (O) | M-18 (N) | N-18 (O) | N-18 (N) |
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| 2. | - | - | - | - | 5 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| 4. | - | - | - | - | - | - | 1 | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - |

Q.No.1. What is a Company? Discuss the applicability of the provisions of Companies act, 2013. (Or) Define the term 'Company' as per Companies Act 2013 and also applicability of provisions of that Act. (C)

1. MEANING:

- Company is an Association of Persons formed for the purpose to achieve some common objectives.
- The word 'company' is derived from the Latin word (Com=with or together, panis=bread), and it simply refers to an association of persons who took their meals together.

2. AS DEFINED BY JUSTICE LINDLEY:

- A company is an association of persons, who contribute money or money's worth to a common stock, and employ it in some common trade or business, and who share the profit or loss (as the case may be) arising therefrom.
- The common stock so contributed is denoted in money and is called capital of company.
- The persons who contribute towards the capital are called members of the company.
- The proportion of capital to which each member is entitled is called his share.
- Shares are always transferable although the right to transfer is often more or less restricted.

3. DEFINITION OF COMPANY AS PER COMPANIES ACT 2013: As per Sec.2 (20) "Company" means a Company incorporated under Companies Act 2013 or any other previous company law¹.

Note: Not every Association of Persons is a company. Only those associations which are registered under Companies Act, 2013 or any other previous company law are treated as Companies.

4. APPLICABILITY OF COMPANIES ACT 2013:

- The provisions of Companies Act, 2013 extends to the whole of India (INCLUDING Jammu and Kashmir).
- The Companies act, 2013, came into existence w.e.f. from 30th August, 2013.
- The provisions of the Act shall apply to –
 - Companies incorporated under this Act or under any previous company law;
 - Insurance companies, except if the provisions are inconsistent with the Insurance Act, 1938 or the Insurance Regulatory And Development Authority Act (IRDA), 1999;
 - Banking companies, except if the provisions are inconsistent with the Banking Regulation Act, 1949;

¹ Previous Company Law means any of the Laws specified below –

- Acts relating to companies in force before the Indian Companies act, 1866,
- The Indian Companies act, 1866,
- The Indian Companies act, 1882,
- The Indian Companies act, 1913,
- The companies act, 1956

- iv) Electricity companies, except if the provisions are inconsistent with the Electricity Act, 2003;
- v) Such other body corporates as may be notified by the CG².

Example: ITC Ltd. was incorporated on 24.08.1910 under the Indian Companies Act, 1882. Companies Act 2013 will even apply to Companies incorporated under earlier Companies Act and hence Companies Act 2013 will apply to ITC Ltd. also.

NOTE: This question is not covered in ICAI Study Material under New Syllabus. But without knowing this concept students can't understand further concepts. Hence, we have included the same.

Q.No.2. Explain the features/ Characteristics of a company? (Or) Explain the effect of registration of a company (A) (OLD PM, M11 - 5M)

CHARACTERISTICS OF COMPANY:

1. **Separate legal entity:**

- a) Once incorporated a Company becomes a separate legal entity.
- b) In the eyes of law, a company is a legal person and it different from that of its members.
- c) Since company is a separate person, it has its own rights and obligations.

2. **Artificial person:**

- a) A Company comes into existence by Operation of Law.
- b) Thus a Company is an artificial person but not fictitious.
- c) It can act only through some human agency, viz., members and directors.
- d) The Directors³ are responsible for the management and administration of the affairs of the company on all matters⁴.

3. **Limited liability:**

- a) The liability of Company is that of its own and not that of its Members.
- b) **Company limited by shares:** Liability of members is limited to the unpaid value of shares held by them.
- c) **Company limited by Guarantee without share capital:** Liability of members is limited to the amount guaranteed by them.
- d) **Company limited by Guarantee having share capital:** Liability of members is limited to the aggregate of the –
 - i) Unpaid value of shares held by them.
 - ii) Amount guaranteed by them

4. **Perpetual succession:**

- a) The term perpetual succession means continued existence. A company has a perpetual succession.
- b) Thus death, insolvency, or retirement of its members does not affect the existence of the company.
- c) As the shares of a company are transferable, members may change during the life time of the company. Life of the company does not depend upon the life of its members.

5. **Common seal:**

- a) A company being an artificial person, cannot sign a document as a natural person can do. The common seal is a substitute for a signature.

² Food Corporation of India (FCI), National Highway Authority of India (NHAI) etc.

³ Directors are agents of the Company but not the agents of the members of the company.

⁴ **Exception:** But Directors are not responsible for those acts which are authorized by the members at General Meeting in accordance with various provisions of the Companies act, 2013.

- b) Common seal is the official signature of a company. The Company's name is engraved on the seal.
- c) Common seal affixed on any document⁵, binds the company on the document.
- d) Common seal has been made optional under Companies Amendment Act, 2015

6. Capacity to sue and to be sued: A Company is a legal person with an independent existence. Thus, a company can sue others and be sued in its own name. The creditors can only sue the company for their debts and cannot proceed against the shareholders of the company.

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SIMILAR QUESTIONS:

1. **The company is an artificial person in the eyes of law but not a citizen of the country. (Or) A company is a legal person but not a citizen. (OLD PM)**
- A. Yes. Company is not a Citizen. The citizenship Act confers citizenship only to natural persons but company is an artificial person.
2. **Can a limited company become a partner in a partnership firm.**
- A. As per Section 4 of the Indian Partnership Act, 1932, Partnership is a relation between persons. A company being an artificial person falls within the definition of a person capable of contracting. Therefore, a company can become a partner in a partnership firm.
3. **Company form of business organization is not a popular form of business organization. Is it correct?**
- A. **Statement is false:** Company form of organization is a popular form of business organization due to its advantages like separate legal entity, limited liability, perpetual succession, Flexibility, and autonomy.

(IMMEDIATELY REFER PRACTICAL QUESTIONS SELF PRACTICE 5, 6)

Q.No.3. Explain the concept of "Separate Legal Entity" of the Company? (C)

1. *In the eyes of Law, A company is regarded as a separate entity and distinct from its members.*
2. *The effect of such separation is that:*
 - a) *Member of a company cannot be held liable for the acts of the company even if he holds virtually the entire share capital. Company shall meet its liabilities and obligations from its own resources. (Salomon vs. Salomon company & Co. Ltd)*
 - b) *Any of the members of the Company can enter into contracts with the company in the same manner as with any other individual. (Lee VS. Lee Air Farming Ltd)*
 - c) *The company's money and property belong to the company, and not to the shareholders. (Macaure Vs. Northern Assurance Co. Ltd)*

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SIMILAR QUESTIONS:

1. **A company is a legal person separate from its members. Explain? (OLD PM)**
- A. Refer Point 1 and 2 in the above Answer.
2. **A shareholder who holds 99% of the share capital of a company can be held liable for the acts of the company. Comment.**

⁵ Common seal is required to be affixed only on specified documents like share certificates, share warrants, power of attorney, etc. as specified in AOA.

- A. Unlike Partnership, Company is different from the persons who constitute it. On registration, the association of persons becomes body corporate by the name contained in the MOA. In the famous case of SALOMON Vs. SALOMON & CO LTD. it was held that a company is at law a different person from its promoters, directors, and members. Shareholder cannot be held liable for act of the company even though he is holding majority or all shares of company.

(IMMEDIATELY REFER PRACTICAL QUESTIONS FOR SELF PRACTICE 1, 2, 3)

Q.No.4. What is meant by 'Lifting the Corporate Veil'? Under what circumstances can it be lifted? (A) (OLD PM)

MEANING OF CORPORATE VEIL:

- A Company is formed by the members and managed by its Board of Directors.
- On incorporation, law gives separate legal entity to the company.
- Thus, a fiction is created by law by which the rights, duties, functions and property of a company is differentiated from the rights, duties, functions and property of members, directors of the company.
- This fiction of Law is called Corporate veil.

EFFECT OF CORPORATE VEIL:

- As a result of corporate veil, shareholders or directors cannot be held responsible for any default or offence committed by the company. This is popularly known as corporate veil.
- The advantages of incorporation can be enjoyed only by those who honestly use this corporate veil, for the collective benefit of the company as well as its members.

MEANING OF LIFTING OF CORPORATE VEIL:

- Lifting of Corporate veil means ignoring the separate legal entity of the company
- It means disregarding the corporate personality and looking behind the company to identify the real persons who control the company.

COURTS MAY LIFT THE CORPORATE VEIL IN THE FOLLOWING CASES:

1. Protection of Revenue:

If the company is incorporated to evade tax or to prevent tax obligation then courts may lift the veil and look at the realities. (Sir Din Shaw Maneckjee Petit Vs. CIT)

2. Prevention of fraud or improper conduct:

- If a company is incorporated to commit some fraud or improper conduct then court may lift the veil and look at the realities.
- Thus, where a company is incorporated just to hide the identity of the person committing such fraud then court may disregard the corporate personality. (Jones vs. Lipman)

3. Determining the enemy character of the Company:

- When trade is conducted with enemy country then test of control is adopted.
- At the times of war, court may lift the veil to check whether a company is controlled by an alien enemy. (Daimler Co. Ltd. vs. Continental Tyre & Rubber Co. Ltd)

4. **Protecting public policy:** Courts may lift the corporate veil or disregard the corporate personality of a company to protect the public policy and prevent transactions contrary to public policy.

5. **Where the Company is a Sham:** Courts may also lift the veil of a company where a company is a mere cloak or sham (Gilford Motor Co. vs. Horne)

6. **Avoidance of Welfare legislation:** Courts may lift the corporate veil if the machinery of incorporation is used to avoid welfare legislation.

(Workmen of Associated Rubber Industry Ltd vs. Associated Rubber Industry Ltd)

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SIMILAR QUESTIONS:

1. An agreement with an alien friend is valid but an agreement with an alien enemy is void
 - A. Correct. Refer above Point 3 in the above answer. (M12 - 1M)
2. The concept of legal personality of a company is of absolute nature - Comment. (M14 - 1M)
 - A. Incorrect.
 - A company is treated as distinct and different from the members who formed it.
 - That means a company is not the agent or trustee of the subscribers.
 - However, legal personality is disregarded at the time of lifting of Corporate Veil.

GENERAL DISCUSSION ON COMPANY FORM OF ORGANISATION



(IMMEDIATELY REFER PRACTICAL QUESTION CRD 1,2 SELF PRACTICE 4, 7)

QUESTIONS FOR ACADEMIC INTEREST ONLY

Q.No.5. Explain the concept of common seal? (B)

a) **MEANING:**

1. A company is an artificial person. Therefore, it has to work through its directors, officers and other employees.
2. However, it can be held liable by only those documents, which contain its signature.
3. Common seal is the official signature of the company.

b) **DOCUMENTS REQUIRING COMMON SEAL:**

1. Now Common seal has been made optional
2. Following documents require Common seal, if company has Common seal:
 - Power of attorney
 - Share certificate
 - Share warrant.
3. Generally, documents which require authentication by a company and contract entered into by company should be signed by any key managerial person (KMP) or by any officer authorized by Board in this behalf (Sec.21)

c) **KEY MANAGERIAL PERSONNEL, IN RELATION TO A COMPANY, MEANS -**

1. the Chief Executive Officer or the Managing Director or the manager; or
2. The company secretary; or
3. The whole-time director; or
4. The Chief Financial Officer.

d) **PROVISIONS FOR USE OF COMMON SEAL:**

1. Authority to use common seal can be given only by Board meeting. The person affixing common seal must sign the instrument.
2. The common seal should be kept in custody of authorized persons.

e) **IMPORTANCE OF COMMON SEAL:**

1. If any deed or contract is signed by director or authorized persons on behalf of the company under seal, it binds the company.
2. The other party can rely on documents and consider the documents as authentic.

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Q.No.6. Explain the Concept of Perpetual Succession as per Companies Act, 2013. (B) (OLD PM)

1. Perpetual succession means continued existence of an entity until it is wound up by following a due process of law.
2. Members may come and go but the company will go on forever (until dissolved). It continues to exist even if all its members are dead.
3. A company is an artificial legal person with a perpetual existence.
4. It never dies and its existence doesn't depend upon the life of its members.
5. A Company is not in any manner affected by insolvency, mental disorder or retirement of any or all of its members.
6. A Company is created by a process of law and it can be put to an end only by a process of law.

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SIMILAR QUESTION:

1. In an Annual General Meeting of Amar Pvt. Ltd., all the shareholders were killed in a bomb blast. State, whether the company is still in existence. If so, how?
- A. A Company being an artificial person cannot be incapacitated by illness and it does not have an allotted span of life. The death, insolvency or retirement of its members leaves the company unaffected. Members may come and go but the company can go on forever. Company is still in existence.

(IMMEDIATELY REFER PRACTICAL QUESTION CRD 3)

Q.No.7. Explain the term "Body Corporate" (Or) Corporation. (C)

BODY CORPORATE OR CORPORATION [SEC. 2(11)]: Includes a company incorporated outside India, but does not include –

- a) A co-operative society registered under any law relating to co-operative societies, and
- b) Any other body corporate (not being a company as defined in this Act), which the CG may, by notification, specify in this behalf.

Body corporate or corporation having the following characteristics:

- It is incorporated under some statute for the time being in force.
- It has a perpetual succession.
- It has a common seal.
- It has a separate legal entity.
- It has the capacity to sue and own property in its own name, and similarly it can be sued in its own name.

Note:

- Thus, the term *Body Corporate* is wider than the term *'Company'*. Every incorporated company is a *Body corporate*. But, every *Body corporate* need not be a company, because there are many *Body corporates* that are not incorporated as companies, E.g. LIC of India.
- Society formed and registered under *Societies Registration Act, 1860* is not a "*Body Corporate*", even though some of the features of a society are similar to that of a company.

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PRACTICAL QUESTIONS FOR CLASSROOM DISCUSSION

Q.No.1. F, an assessee, was a wealthy man earning huge income by way of dividend and interest. He formed 3 private companies and agreed with each to hold a block of investment as an agent for them. The dividend and interest income received by the companies was handed back to F as a pretended loan. This way, F divided his income into three parts in a bid to reduce his tax liability. Decide, for what purpose the three companies were established? Whether the legal personality of all the 3 companies may be disregarded or not? (OLD PM, RTP N16)

Case law: *Dinshaw Maneckji Petit Vs CIT (Juggilal vs. Commissioner of IT.*

Provisions and analysis: The House of Lords in *Salomon Vs Salomon & Co. Ltd* laid down that a company is a company distinct and separate from its members and therefore, has an independent separate legal existence from its members who have constituted the company. But under certain circumstances, the corporate veil may be lifted by the courts. It means looking behind the corporate Veil and disregarding the corporate entity. Where a company is incorporated and formed by certain persons only for the purpose of tax evasion, the courts have discretion to disregard the corporate entity in the matter of tax evasion.

The three companies in the given case were formed by assessee purely and simply as a means of avoiding tax and the companies are nothing more than the assessee himself. The whole idea of Mr. F was simply to split his income into three parts with a view to evade tax.

No other business was done by company, but was created simply as a legal entity to receive the dividend and interest and handover them to assessee as a pretending loan.

Conclusion: The legal personality of three companies will be disregarded because the companies are formed to avoid tax liability.

Q.No.2. Some of the s of M/s Get Rich Quick Ltd. have complained that the company was formed by the promoters only to defraud the creditors and circumvent the compliance of legal provisions of the Companies Act, 2013. In this context they seek your advice as to the meaning of corporate veil and when the promoters can be made personally liable for the debts of the company. (OLD PM, MTP M15, M16)

Corporate veil: After incorporation, the company is treated as a different person from the shareholders.

Therefore, shareholders cannot be held liable for the acts (i.e., transactions) of the company even though the shareholders control the entire share capital of the company.

This is popularly known as Corporate Veil and in certain circumstances the courts are empowered to lift or pierce the corporate veil by ignoring the company and directly examine the promoters and others who have managed the affairs of the company after its incorporation.

Thus, when the corporate veil is lifted by the courts, (i.e., the courts have disregarded the company as a separate legal entity); the promoters can be made personally liable for the debts of the company. In the following circumstances, corporate veil can be lifted by the courts and promoters can be held personally liable for the debts of the company.

- a) Trading with enemy country.
- b) Evasion of taxes.
- c) Forming a subsidiary company to act as its agent.
- d) The benefit of limited liability is destroyed by reducing the number of members below 7 in the case of public company & 2 in case of private company for more than 6 months.
- e) Device of incorporation is adopted to defraud creditors or to avoid legal obligations.

Q.No.3. ABC Pvt. Ltd. is a Private Company having five members only. All the members of the company were going by car to Mumbai in relation to some business. An accident took place and all of them died. Answer with reasons, under the Companies Act, 2013 whether existence of the company has also come to the end? (OLD PM)

Provisions: A company is a stable form of business organization. Since a company has a separate legal entity, change or death of some or even all members does not effect the continuity of a company. Its life does not depend upon the death, insolvency or retirement of shareholder or directors. The provision for transferability or transmission of shares helps to preserve the perpetual existence of a company. Law creates it and law alone can dissolve it. Members may come and go but company can go on forever.

Analysis: In the present case, ABC Pvt. Ltd. does not cease to exist even by the death of all its shareholders. The legal process will be for the successors of the deceased shareholders to get the shares registered in their names by way of the process which is called "transmission of shares". The company will cease to exist only when it is wound up by a due process of law.

Conclusion: Therefore, even with the death of all members (i.e. 5), ABC (Pvt.) Ltd. does not cease to exist.

TRUE OR FALSE STATEMENTS- FOR CLASSROOM DISCUSSION

1. If the members composing the company die or dissociate themselves, the company also gets extinct (F).
2. A company can own property, have a Banking Account, raise Loans, incur liabilities, and enter into contracts, whereas its members cannot contract with the company, acquire rights against it or incur liability to it (T).
3. The concept of legal personality of a company is of absolute nature (T).
4. For determining the legality or otherwise of the object on an incorporated company, can the motive which actuated the founders of the company to form the Association be looked into (T).
5. Company is a legal person but not a citizen (T).
6. Companies registered under section 8 are also known as licensed companies (T).
7. A private company must have a minimum of two Directors, while a public limited company must have atleast three directors (T).
8. In a private Company, Deferred shares are also called as Founder's shares (T).
9. For the company's debts, its creditors can sue the company's members (F).

PRACTICAL QUESTIONS FOR STUDENT SELF PRACTICE

Q.No.1. S & Co. was formed with S, his wife, daughter and four sons as its subscribers and the only members. The company took over the shoe business of S for Rs. 30,000 giving him, as consideration 20,000 shares of Rs. 1 each and debentures worth Rs. 10,000 with a charge on the company's assets. All members, except S purchased one share each. S and his two sons constituted the Board of Directors of the company. Due to general trade depression, the company went into liquidation. The assets of the company amounted to 76000 where as its creditors amounted to 17000. Rs.10000 due to S (secured by the charge on company's assets) and 7000 due to unsecured creditors. S claims the assets of the company as his debt secured by the charge over them. On the other hand, the unsecured creditors are contending that they should be paid in priority over S as the company and S is one and the same person. Who is entitled to assets?

Provision: Applicable section 9

Hint and Reason: Company is separate legal entity from its directors and members. Secured creditor is entitled to money first and remaining refers Case law **Salomon Vs. Salomon & Co. Ltd** at the end.

Q.No.2. A company was promoted to carry on the business of crop-spraying from the air. X, one of its promoters, held bulk of its shares and was its managing director. Subsequently, the company entered into a service agreement with him and engaged him, as its chief pilot also. While flying one of the aircrafts of the company, in the course of business, he died in air-crash. His wife has claimed compensation under the provisions of the workmen's compensation Act. The claim is being resisted by the solicitor of the company who contends that X and the company were one and the same person and a person cannot employ himself, no compensation is payable. Decide.

Provision: Applicable section 9

Hint and Reason: Company and X are not one and same person. Company is separate legal entity. Refer case law of **LEE VS. LEE AIR FARMING LTD** at the end

Q.No.3. M holds all the shares (except one) in a timber concern and is also its substantial creditor. He gets company's timber insured in his own name. Unfortunately the timber is destroyed by fire and M claims the reimbursement of loss from the insurance company. Is the insurance company is liable to M?

Provision: Applicable section 9

Hint and Reason: Insurance Company is not liable. Refer case law of **Macaure vs. Northern Assurance Co. Ltd.**

Q.No.4. L agreed to sell his land to J but decides afterwards not to carry out the agreement. To avoid the possibility of an order of specific performance to enforce the sale, he works out a plan on the basis of the principle of separate legal entity of a company. As per the plan he forms a company with himself and a clerk of his solicitor as its only shareholders and directors. He transfers the land to the company and offers nominal damages to J who refused to accept it and seeks your advice in the matter. Advise him.

Provision: Applicable section 9

Hint and Reason: J may be advised to apply to the court under lifting of corporate veil. Refer case law of **Jones Vs. Lipmann** at the end.

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Q.No.5. Common seal of a company will have to be affixed on all letters and documents of the company. Comment.

Provision: Applicable section 9

Hint and Reason: It is incorrect. Provision of common seal has become optional. It means, if the company has common seal, it has to be affixed. If company has no common seal, there is no point of affixing it on letters and documents.

Q.No.6. Two companies are incorporated with the same set of shareholders. Are the same or distinct under the Companies Act, 2013? Discuss.

Provision: Applicable section 9

Hint and Reason: No. Company is separate legal entity. If all the shareholders of both companies are same, they cannot be treated as same person.

Q.No.7. Rani is a wealthy lady enjoying large dividend and interested income. She has formed three private companies and agreed with each of them to hold a block of investment as an agent for it, income received was credited in the accounts of the company, but the company handed back the amount to reduce her tax liability. Discuss the legality of the purpose for which the three companies.

Provision: Applicable section 9

Hint and Reason: Rani will be held liable. The court may ignore corporate entity of a company where it is used for tax evasion. In the given case, Rani has formed three companies for tax evasion and therefore principle of separate legal entity shall not be applicable.

TRUE OR FALSE STATEMENTS- FOR SELF PRACTICE

1. Every Body corporate is a company (F).
2. Every company is a Body Corporate (T).
3. Every Association of persons is a company (F).
4. Companies Act, 2013 extends to whole of India excluding Jammu and Kashmir (F).
5. Companies Act, 2013 always applies Insurance, Banking and Electricity companies (F).
6. Company has a citizenship but not nationality (F).
7. Company is the agent of the shareholders (F).
8. Directors are the agent of shareholders (F).
9. In order to use the common seal, shareholders authorization is required to be obtained (F).

CASE LAWS – FOR STUDENT'S SELF STUDY

SALOMON VS SALOMON & CO. LTD. - SEPARATE LEGAL ENTITY

Mr. Saloman was carrying a shoe manufacturing business as sole proprietor. He sold his business for £ 38,872 to a company formed by him along with his wife, a daughter and four sons.

Purchase consideration paid by the company:

| | |
|---|----------|
| Fully paid up shares of £ 1 issued to salomon family | £ 20,000 |
| Secured debentures issued to Salomon (Secured by a floating charge on company's assets) | £ 10,000 |
| Cash | £ 8,782 |

- One share each of £ 1 was issued to Salomon's wife, his daughter and his four sons and remaining shares to Mr. Salomon.
- Mr. Salomon was the Managing Director of the company and two of his sons were the other Directors of the company.
- The Company almost immediately ran into difficulties and eventually became insolvent and the winding up commenced.
- AT the time of winding up

| | |
|--------------------------------------|----------|
| Total Assets: | £ 6,050 |
| Total Liabilities: | |
| Secured Debentures (Held by Salomon) | £ 10,000 |
| Unsecured trade creditors | £ 8,000 |

Claim: The Unsecured creditors claimed the whole of company's assets on ground that salomon was carrying on business in the name of Salomon & Co. Ltd and the company was a mere agent of Salomon.

Decision of the Court: The Court held that Salomon & Co. Ltd. a real company fulfilling all legal requirements. A Company is a legal person distinct from its members and could not be regarded as the agent or trustee of Mr. Salomon. Also the company's assets must be applied in payment of secured debentures as a secured creditor is entitled to payment out of assets on which his debt is secured in priority to unsecured creditors.

LEE VS. LEE AIR FARMING LTD- SEPARATE LEGAL ENTITY

Facts of the case: 'L' had 2999 shares out of 3000 shares in the Company. Further, he was the Managing Director and chief pilot on some salary. He died in an air crash while working for the Company. His wife claimed compensation under workmen's compensation act. The Insurance company opposed the claim stating that Lee was not the worker as the same person could not be employer and employee.

Judgment: The Court held that Lee was a separate person from the company he has formed. Thus, there was a valid contract of service between Lee and the company. As Lee was died in the course of his employment, his wife was entitled to the compensation.

Macaure vs. Northern Assurance Co. Ltd- SEPARATE LEGAL ENTITY

Facts of the case:

Macaure was the shareholder of a timber company. He was also a substantial creditor. He insured the company's timber considering his interest as shareholder and creditor in his own name. Timber of a company was destroyed in fire and claimed compensation. The insurance company contented that the company was not property of an individual and refused to compensate.

Judgment: The court has held that the property of company is not property of individual and the insurance company was not liable.

Sir Din Shaw Maneckjee Petit Vs CIT- LIFTING OF CORPORATE VEIL

1. One person was receiving huge dividend and interest income on some investments and had to pay huge tax on that.
2. He formed 4 private companies and transferred whole of his investments to these 4 companies.
3. The dividend and interest received by these companies were within the exempted limits of tax.
4. Except these investments no other business was run by these companies and had no other assets.
5. The income received in the form of interest and dividend was transferred to that person in the form of loan and was never returned.
6. It was held that these companies were created only to evade taxes and therefore court ignored the separate legal entity status of the company and whole of interest and dividend incomes earned by the company was treated as the income of that person

Jones Vs. Lipman – LIFTING OF CORPORATE VEIL

1. L agree to sell a certain land to J for \$5250. He subsequently changed his mind.
2. To avoid the specific performance of the contract, he sold it to company which was formed especially for the purpose.
3. The company had L and a clerk of his solicitors as the only members.
4. J brought an action for the specific performance against L and company.
5. The court looked to the reality of the situation, ignored the transfer, and ordered that the company should transfer the land to J

GILFORD MOTOR CO. LTD. VS. HORNE – LIFTING OF CORPORATE VEIL

1. An employee entered into a contract with his employer not to solicit the customers of the company after leaving the employment.
2. After leaving the employment Horne (an employee) created a company and started soliciting the customers of the employer.
3. It was held that this company was created to avoid the legal obligation arising out of contract.
4. Therefore that employee and company created by him was treated as one and thus the veil between the company and the person was lifted.

DAIMLER CO. LTD VS. CONTINENTAL TYRE & RUBBER CO. LTD – LIFTING OF CORPORATE VEIL

1. Company incorporated in England by a German company, which held majority of shares, for the purpose of selling German made tyres in England. Holders of remaining shares and all directors were Germans.
2. During First World War, the English Company started recovering its debts.
3. The Court held that the payment of debt to English company would amount to trading with an enemy and the company was not allowed to proceed with.

SUMMARY

1. Company Law in India has been modeled on the English Company Law.
2. Every Company is an Association of Persons but every Association of Persons is not a Company.
3. Companies Act, 2013 applies to Insurance Companies, Banking Companies and Electricity Companies also.
4. Company is treated as a different entity from members.
5. Company has perpetual succession and Nationality. Company is not a Citizen.
6. Separate Legal entity means, members are not responsible for the liabilities of the Company, Members can contract with the Company and Members are not the owners of company's property.
7. Perpetual Succession means that existence of the company is not affected by the existence or incapacity of the members.
8. Company may have a common seal, which can be used as the official signature of the company.
9. In exceptional circumstances, courts will lift the corporate veil and may hold persons controlling the affairs of the company as liable.
10. Corporate veil is lifted, when the company is incorporated for the purpose of tax evasion, defrauding the creditors, and any other fraudulent purpose

TEST YOUR KNOWLEDGE

1. All Companies are Body Corporates, but all Body corporates are not Companies. Explain.
2. Can a company become a partner in the Partnership firm?

3. Two companies are incorporated with the same set of shareholders. Are the 2 companies same or distinct under the companies Act, 2013? Discuss.
4. The entire assets of a company are acquired by another company. Will it constitute taking over the management of the company? Why?
5. Mahesh is a creditor of an unlimited company. The company was wound-up. Mahesh, therefore, wants to sue the members of the company to recover the dues, advice Mahesh regarding the remedy available to him.
6. Members may come and go but the company will go on forever. Comment
7. The state trading corporation of India is incorporated as a private company under the Companies Act, 2013. All the shares are held by the President of India and two secretaries in their official capacities. Is the Corporation a citizen of India?

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To **MASTER MINDS**, Guntur

THE END

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