UNIT – 1

# Introduction and Concept of Company

History • Nature • Kinds • Corporate Personality • Limited Liability • Lifting of Veil • Promoters

Company Law – Course I

SYNOPSIS

# Unit Overview

This unit introduces the concept of a company, its historical development, essential characteristics, different kinds of companies, the doctrine of corporate personality, limited liability, circumstances in which the corporate veil can be lifted, and the position, duties and liabilities of promoters.

LEARNING OBJECTIVES

# What You Will Learn

### 01 History

Trace the historical development of company law

### 02 Nature

Explain the essential characteristics of a company

### 03 Kinds

Classify different kinds of companies

### 04 Personality

Understand separate legal entity and limited liability

### 05 Veil

Identify grounds for lifting the corporate veil

### 06 Promoters

State duties and liabilities of promoters

HISTORY

# Historical Development of Company Law

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|---|---|
| **Early Origins** | Joint stock companies emerged in England in the 17th–18th centuries |
| **Bubble Act 1720** | Restricted formation of joint stock companies |
| **Companies Act 1862** | Modern company law framework began to take shape in England |
| **India** | Indian Companies Act 1913, then 1956, now Companies Act 2013 |
| **2013 Act** | Comprehensive reform focusing on governance, transparency and investor protection |

MEANING

# Meaning and Definition of Company

*A company is an artificial person created by law, having a separate legal entity, perpetual succession and a common seal, with limited liability of its members.*

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| **Section 2(20)** | Company means a company incorporated under this Act or under any previous company law |
| **Artificial Person** | Exists only in the contemplation of law |
| **Voluntary Association** | Formed by persons for a common lawful purpose |

CHARACTERISTICS

# Nature and Characteristics of a Company

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| **Separate Legal Entity** | Company is distinct from its members (Salomon v. Salomon) |
| **Limited Liability** | Liability of members is limited to the unpaid amount on shares |
| **Perpetual Succession** | Death or insolvency of members does not affect the company |
| **Common Seal** | Official signature of the company (now optional under 2013 Act) |
| **Transferable Shares** | Shares of public company are freely transferable |
| **Capacity to Sue** | Can sue and be sued in its own name |

KINDS 1

# Kinds of Companies – On the basis of Incorporation

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|---|---|
| **Chartered Company** | Incorporated by a Royal Charter (historical) |
| **Statutory Company** | Created by a special Act of the legislature (e.g., RBI, LIC) |
| **Registered Company** | Incorporated under the Companies Act |

KINDS 2

# Kinds of Companies – On the basis of Liability

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|---|---|
| **Limited by Shares** | Liability limited to unpaid amount on shares |
| **Limited by Guarantee** | Liability limited to the amount undertaken to contribute in winding up |
| **Unlimited Company** | Members have unlimited liability |

KINDS 3

# Kinds of Companies – On the basis of Number of Members

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|---|---|
| **Private Company** | Minimum 2, maximum 200 members; restricts transfer of shares |
| **Public Company** | Minimum 7 members; no maximum; freely transferable shares |
| **One Person Company (OPC)** | Only one member; introduced by Companies Act 2013 |

KINDS 4

# Other Important Classifications

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| **Holding & Subsidiary** | Based on control of composition of Board or shareholding |
| **Government Company** | Not less than 51% paid-up share capital held by Government |
| **Foreign Company** | Incorporated outside India but has place of business in India |
| **Listed / Unlisted** | Whether securities are listed on a recognised stock exchange |
| **Small Company** | Defined under Section 2(85) with limits on capital and turnover |

# Corporate Personality – Separate Legal Entity

*The company is a legal person distinct from its members. This principle was firmly established in Salomon v. A. Salomon & Co. Ltd. (1897).*

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| **Salomon Case** | House of Lords held that a company is a separate person even if one person holds almost all shares |
| **Consequences** | Company can own property, enter contracts, sue and be sued independently |
| **Members** | Members are not agents or partners of the company |

# Limited Liability

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| **Meaning** | Liability of a shareholder is limited to the amount unpaid on the shares held by him |
| **Advantage** | Encourages investment by limiting personal risk |
| **Exception** | In unlimited companies, liability is unlimited |
| **Guarantee Company** | Liability limited to the guarantee amount |

# Lifting of Corporate Veil – Meaning

*Lifting or piercing the corporate veil means disregarding the separate legal entity of the company and looking at the persons who are in control.*

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| **Purpose** | To prevent misuse of the corporate form for fraud, improper conduct or to evade obligations |
| **Judicial & Statutory** | Can be done by courts or under specific provisions of the Act |

# Grounds for Lifting the Corporate Veil

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| **Fraud or Improper Conduct** | When company is used as a cloak for fraud |
| **Enemy Character** | In times of war to determine enemy character |
| **Tax Evasion** | Where company is formed to evade tax |
| **Agency or Trust** | Where company is acting as agent or trustee of the members |
| **Statutory Provisions** | Under various sections of Companies Act and other laws |
| **Public Interest / Justice** | When it is necessary to do justice |

PROMOTERS 1

# Promoters – Meaning and Position

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|---|---|
| **Meaning** | Person who undertakes to form a company and takes necessary steps for its incorporation |
| **Position** | Not an agent or trustee of the company before incorporation; stands in a fiduciary position |
| **Section 2(69)** | Defines promoter for the purposes of the Act |

PROMOTERS 2

# Duties and Liabilities of Promoters

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| **Fiduciary Duty** | Must act in good faith and not make secret profits |
| **Disclosure** | Must disclose any interest in transactions with the company |
| **Liability for Misstatements** | Liable for untrue statements in prospectus |
| **Remedies** | Company can rescind contract or recover secret profit |
| **Criminal Liability** | Possible under certain provisions for fraud |

LANDMARK

# Landmark Cases

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| **Salomon v. Salomon** | Established separate legal entity of company |
| **Gilford Motor Co. v. Horne** | Veil lifted where company used to evade covenant |
| **Jones v. Lipman** | Veil lifted to enforce specific performance |
| **Lee v. Lee’s Air Farming** | Person can be both controller and employee of the company |

SUMMARY POINTS

# Must-Remember Points

- A company is an artificial person with separate legal entity, limited liability and perpetual succession.
- Salomon v. Salomon is the foundation of corporate personality.
- Companies are classified by incorporation, liability, number of members and other criteria.
- Corporate veil can be lifted in cases of fraud, tax evasion, enemy character, etc.
- Promoters stand in a fiduciary position and must not make secret profits.
- Understanding these concepts is essential for the rest of Company Law.