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CHAPTER

INTRODUCTION

1. COMPANY

Meaning	<ul style="list-style-type: none">◆ Company is an Association of Persons formed for the purpose to achieve some common objects.◆ The word 'Company' is derived from the Latin word (Com = with or together; panis = bread), and it originally referred to an association of persons who took their meals together.
Definition of Company - Section 2(20)	<ul style="list-style-type: none">◆ Company means company formed and registered under this Act (2013) or any other previous Companies Act.

2. NATURE AND CHARACTERISTICS OF COMPANY

◆ Company has following characteristics:	
Incorporated Association	<ul style="list-style-type: none">◆ A company must be incorporated or registered under the Companies Act.◆ Minimum number required for the purpose is 7 in case of a public company and 2 in case of a private company.
Artificial Person	<ul style="list-style-type: none">◆ A company is created with the sanction of law and is not a human being.◆ Therefore, it is called artificial; since it is clothed with certain rights and obligations, it is called a person.
Separate Legal Entity	<ul style="list-style-type: none">◆ Unlike partnership, company is distinct from the persons who constitute it.◆ On registration, the association of persons becomes body corporate by the name contained in the Memorandum.◆ 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.

	<p>Salomon vs. Salomon & Co. Ltd.</p> <ul style="list-style-type: none"> ◆ Salomon carried on business as a leather merchant. ◆ He sold his business; for a sum of £30,000 to a company formed by him along with his wife, daughter and four sons. ◆ The purchase consideration was satisfied by allotment of 20,000 shares of £1 each and issue of debentures worth £10,000 secured by floating charge on the company's assets in favour of Mr. Salomon. ◆ All the other shareholders subscribed for one share of £1 each. Mr. Salomon was also the Managing Director of the company. ◆ The company almost immediately ran into difficulties and eventually became insolvent and winding up commenced. ◆ At the time of winding up, the total assets of the company amounted to £6,050; its liabilities were £10,000 secured by the debentures issued to Mr. Salomon and £8,000 owing to unsecured trade creditors. ◆ The unsecured sundry creditors claimed the whole of the company's assets, viz., £6,050 on the ground that the company was a mere alias or agent for Salomon. ◆ It was held that contention of the trade creditors could not be maintained, because the company being in law a person quite distinct from its members could not be regarded as an agent or trustee for Salomon. ◆ In addition, the company's assets must be applied in payment of the debentures as a secured creditor is entitled to payment out of the assets on which his debt is secured in priority to unsecured creditors. <p>Lee vs. Lee Air Farming Limited</p> <ul style="list-style-type: none"> ◆ In Lee vs. Lee Air Farming Limited, a company was formed for manufacturing of aerial top-dressing. ◆ Lee, a qualified pilot, held all but one of the shares in the company and by the Articles was appointed director of the company and chief pilot. ◆ Lee was killed while piloting the company's aircraft and his widow claimed compensation for his death under the Workmen Compensation Act. ◆ The insurance company opposed the claim on the ground that Lee was not a 'worker' as the same person could not be employer and the employee. ◆ It was held that there was a valid contract of service between Lee and the company, and Lee was, therefore, a worker. Mrs. Lee is entitled to get compensation.
<p>Limited Liability</p>	<ul style="list-style-type: none"> ◆ The company being a separate person, its members are not as such liable for its debts. ◆ In the case of a company limited by shares, the liability of member is limited to the unpaid value of shares held by them. Thus, if the shares are fully paid up, their liability will be nil. ◆ However, a company may be formed with unlimited liability of members. In case of unlimited liability, companies' members shall continue to be liable until each paise has been paid off. ◆ In case of company limited by guarantee, the liability of each member shall be determined by the guarantee amount, i.e., he shall be liable to contribute up to the amount guaranteed by him. ◆ However, in case of a guarantee company having share capital, the liability shall be limited to the aggregate of the amount remaining unpaid on the shares held by a member and the amount guaranteed by him.

Transferability of Shares	<ul style="list-style-type: none"> ◆ Since business is separate from its members in a company form of organization, it facilitates the transfer of members' interest. ◆ The shares of a company are transferable in the manner provided in the Articles of the company. ◆ However, in a private company, certain restrictions have to be placed on such transfer of shares but the right to transfer is not taken away absolutely. 	
Perpetual Existence	<ul style="list-style-type: none"> ◆ 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. 	
Separate Property	<ul style="list-style-type: none"> ◆ Company is legal person. ◆ It holds and owns property in its own name. ◆ The property of company is not the property of shareholders. ◆ It was held in case of <i>Macaure vs. Northern Assurance Co. Ltd.</i>, that even where a shareholder held almost entire share capital, he did not even have an insurable interest in the property of the company. 	
	<p style="text-align: center;">Macaure vs. Northern Assurance Co. Ltd.</p> <ul style="list-style-type: none"> ◆ 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 company was destroyed in fire and he claimed compensation. ◆ The insurance company contented that the company was not property of an individual and refused to compensate. ◆ The Court has held that the property of company is not property of individual and insurance company was not liable. 	
Common Seal	What is common seal?	<ul style="list-style-type: none"> ◆ A company is an artificial person. Therefore, it has to work through its directors, officers and other employees. ◆ However, it can be held bound by only those documents, which bear its signature. ◆ Common seal is the official signature of a company.
	Documents requiring common seal	<ul style="list-style-type: none"> ◆ Now, common seal has been made optional. ◆ Following documents require common seal, if company has common seal: <ul style="list-style-type: none"> ■ Power of Attorney ■ Share Certificate ■ Share warrant. ◆ Generally, documents which require authentication by a company and contract entered into by company should be signed by any Key Managerial Personnel (KMP) or any officer authorized by board in this behalf.- Section 21
	Provisions for use of common seal	<ul style="list-style-type: none"> ◆ Authority to use common seal can be given only by board meeting. The person affixing common seal must sign the instrument. ◆ The common seal should be kept in custody of authorized person.

	Importance of common seal	<ul style="list-style-type: none"> ◆ If any deed or contract is signed by director or authorized person on behalf of the company under seal it binds the company. ◆ The other party can rely on document and consider the document as authentic.
Can Sue and be Sued by Other	◆ Company may sue or be sued in its own name.	

3. COMPARISON OF COMPANY AND OTHER FORMS OF BUSINESS

Company vs. HUF	Company	HUF
	Any person can become member of company.	HUF consists family members only.
	Company is managed by its Board of Directors.	Karta manages business of HUF.
	A person cannot become member of company by birth.	A person becomes member of HUF by birth.
	Registration of company is compulsory.	Registration of HUF is not compulsory.
Company vs. Partnership	Company	Partnership Firm
	Company is an artificial legal person.	Partnership is not a legal person.
	Company has perpetual succession.	Partnership firm does not have perpetual succession.
	Registration of company is compulsory. Company is registered as per provisions of the Companies Act, 2013.	Registration of firm is option. It is guided by Indian Contract Act, 1872 and Partnership Act, 1932.
	Liability of members of company is limited by shares or by guarantee.	Liability of members is unlimited in a partnership firm.
	A member is not an agent of company or of other members.	Partner is an agent of firm and other partners.
	Member cannot bind company by his act.	Partner can bind firm by his act.
	Ordinary members cannot take part in management of a company. Only director can take part in management.	Partners can take part in management of a firm.
	Shares of a private limited company can be transferred easily.	Partner can transfer his share but the assignee does not become a partner. He is only entitled to share of profits.
	Company is separate legal entity.	Partnership is not separate legal entity.
	A single member cannot wind up a company.	A partnership may be dissolved by any partner at any time.

Company vs. LLP	Company	LLP
	Compulsory registration of company is required with the ROC.	Compulsory registration of LLP is required.
	Name of a public company to end with the word “limited” and a private company with the words ‘private limited’.	Name to end with ‘LLP’ Limited Liability Partnership.
	Liability of shareholder is limited to the extent of the un-paid capital.	Liability of partner is limited to the extent of contribution.
	Quarterly Board meeting and Annual general meeting are mandatory.	No such meeting is required.
	Audit of accounts is compulsory, irrespective of share capital and turnover.	Audit of accounts required, if the contribution is above Rs. 25 lakhs or if annual turnover is above Rs. 40 lakhs.
Company vs. Corporation	Company	Corporation
	A company which is created and registered under the Companies Act, 2013 or previous acts is known as a Company.	The company which is formed and registered in or outside India is known as a Corporation. Corporation does not include co-operative society registered under Co-operative societies Act.
	Company is defined under section 20 of Companies Act, 2013.	Corporation is defined under section 2(11) of Companies Act, 2013.
	Company is registered In India.	Corporation may be registered in or outside India.
Every company is included within meaning of corporation.	Every corporation may or may not be company.	

4. CITIZENSHIP AND NATIONALITY OF COMPANY

Concept of Citizenship	<ul style="list-style-type: none"> ◆ Citizenship is available to natural person as per the provisions of Citizenship Act, 1955. ◆ Company is not a citizen either under Citizenship Act, 1955 or under Constitution of India. ◆ All fundamental rights which are available to natural person are not available to company. Company cannot be granted visa. It does not have voting right in election.
Nationality	<ul style="list-style-type: none"> ◆ Company is not citizen but it has nationality, domicile and residential status. ◆ Domicile of company is the place of its registration.

5. LIFTING OF CORPORATE VEIL

What is Corporate Veil?	<ul style="list-style-type: none"> ◆ Company is separate legal entity from its shareholders and directors. ◆ As a result shareholders or directors cannot be held responsible for any default or offence committed by company. This is popularly known as corporate veil.
When can the Corporate Veil be Lifted?	<ul style="list-style-type: none"> ◆ Corporate veil can be lifted : <ul style="list-style-type: none"> ◆ As per Companies Act ◆ As per judicial precedent