

Company Law

(According to B.Com Professional Course)

EXCELLENT CAREER SOLUTION (PES)

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Unit-1

➤ Chapter-1 : **Nature of Company**

- Definition
- Characteristics
- Corporate Veil
- Difference between Company & Partnership firm

➤ Chapter-2 : **Kinds of Companies**

Classification on the basis of:

- Incorporation
- Liability
- Number of members
- Control
- Ownership

➤ Chapter-3 : **Formation of Company**

- Steps involved in the formation & incorporation of a company.

Chapter- 1

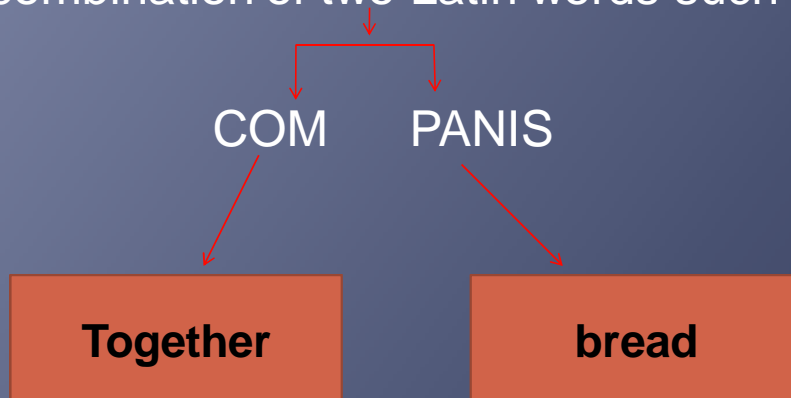
Nature of Company

Meaning: The word '**Company**' is very much in use. Generally it means a **group of people or organization of people for a particular purpose.**

Broadly speaking company connotes the idea, a member may transfer his interest in the association without the consent of other members. Such association have **perpetual succession** and **common seal**. It is thus regarded as a **legal person separate and distinct from its member.**

Meaning of Company

- The word company is derived from the combination of two Latin words such as



Thus, the term **company** refers to an association of persons who took their meal together.

Or

A Company means a group of persons associated to achieve some common objective.

Definition:

According to **Section-3** of **Indian Company's Act 1956**,

"A Company is a **company formed and registered under this act** or an existing company."

But this definition is not complete and satisfactory, because it doesn't define company completely.

Justice Marshal defines company as follow:

"Company is a person artificial invisible intangible and existing only in the eyes of law."

According to **Justice Lindley**,

"A Company is an **association of many persons who contribute money** or money's worth to a **common stock** and employ it **for a common purpose**."

Professor Haney defined Company as:

"A company is an **artificial person** created by law, having –

- ⊙ ***separate identity***
- ⊙ ***perpetual succession***."

Justice James defined it in a very simple manner as:

"A company is an association of persons united for a **common object**."

Justice Buckley considers company:

- The **members** in the Company **in form of union** are in very **much numbers** that it cannot be called firm or partnership.
- The **consent of other members is not necessary** for the **transfer of profit**.

According to **Sec. 2(20)** of the **Companies Act, 2013**

'Company' means a company incorporated

- ⦿ Under this Act; or
- ⦿ Under any previous company law.

Characteristic/ Features of Company:

CHARACTERISTICS OR FEATURES OF A COMPANY

Voluntary Association

The Company is formed and incorporated by a contract voluntarily. There are no boundations about membership of a company

Seprate Legal Entity

Means Independent personality, The entity of a company is different from its members. So the rights & duties of company are different from the persons by whom the company is formed.

Perpetual Succession

The permanent existence of a company doesn't end by the withdrawal of membership by any member, death of member, or in the bankruptcy of the member.

Limited Liability

The liability of members of a company is limited to the shares bought by them. It means the liability of shareholders is only to pay the value of shares.

Common Seal

Though the company is an Artificial personality but all the works of company are done on the basis of common seal.

Transferability of shares

Acc. to Section-82 of Company's Act 1956, Shareholder can sell their shares. However, in a private company, certain restrictions are placed on the right to transfer the share

Capacity to sue

A Company can sue and can be sued in its corporate name. If a company exploits someone's rights, a filed can be suit against the company and if a person exploits company's rights, then company can file a suit against person.

Separate Property

Since a company is a legal entity distinct from its members, it is capable of owning, enjoying and disposing of property in its own name. Members are not the owner or joint owners of its property.

Artificial Person

A Company is created with the sanction of law and is not itself a human being, it is therefore, called artificial, and since it is clothed with certain rights and obligations, it is called a person.

Company versus Partnership

Basis of Difference	Company	Partnership
Act Regulations	Company is governed by the provisions of the Companies Act, 1956.	A Partnership firm is governed by the provisions of the Indian Partnership Act, 1932.
Registration	Registration is mandatory in case of company.	Registration is not mandatory or A partnership firm may or may not be registered.
Mode of Creation	The mode of creation of Company is through registration by statute.	The mode of creation of partnership firm is through agreement.
Maximum no. of members	The maximum number of members is as: For Private Company: 50 For Public Company: no limit.	The maximum number of members should be as: For banking sector: 10 Any other business: 20
Minimum no. of members	The minimum number of members should be vary as below: For private company: 2 For public company: 7	The number of members should be 2 in case of partnership firm.
Legal Status	A Company has separate legal entity from its members.	A firm does not enjoy separate legal entity as firm and partners are not separate.

Liability	The liability of the members of company is limited by their shares .	Each partner is personally liable for all the debts of the firm. It means partners has unlimited liability .
Control and Management	The Board of Directors elected by the shareholders are entitled to control and manage.	All the partners are entitled to participate or manage the business.
Transfer of shares	Shares are freely transferable in case of public company but in case of private company , shareholder may transfer his shares, subject to the provisions contained in AOA.	The consent of all the partners is necessary while transferring any share. A share cannot be transferred without the consent of all the partners .
Legal Formalities	It requires lots of legal formalities such as Registration, Audit, Statutory books, publications etc.	It may not require legal formalities such as Registration which is not compulsory, Audit or Publications etc.
Financial Resources	A company can raise large financial resources .	A partnership firm can raise limited resources .
Distribution of Profits	Profits are distributed when the dividends declares to share it .	Profits are distributed as per the partnership deed .
Winding-up	It cannot be wound up at the will of members (like death, insanity etc.) and also require legal formalities .	A partnership firm can be wound up at the will of partner (at death, insanity or desire to quit etc.) and without legal formalities .

Corporate Veil

A Legal concept that separates the personality of a corporate from the personalities of its shareholders and protects them from being personally liable for the company's debts and other obligations.

It means

"the company's liabilities are the legal responsibility of the company and the members will not be liable for the company's debts".

But where a **court determines** that a **company's business was not conducted in accordance with the provisions of corporate legislation** (or that it was just a facade for illegal activities) it may hold the **shareholders personally liable for the company's debt & obligations** under the legal concept of lifting the corporate veil.

Doctrine of Lifting the Corporate Veil

- › When a Company registered under the act, all the dealings with the company will be in the name of company, and the members will be disregarded.
- › This shows that there is a veil drawn between the company and its members.
- › This **veil is partition or curtain between the Company & its members.**
- › Following this principle the Courts in most cases have refused to go behind the curtain & see who are the real persons composing the company.
- › **But sometimes the necessity of the situation may compel the authorities to disregard the corporate legal entity & look to individual members who are in fact the real beneficial owners of all corporate property.**

- **The Court will Lift the veil where it is essential to secure justice, in public interest or for the benefit of revenue. But it must be keep in mind that a separate legal entity is still a general rule.**

It is clear that **no member of company** can **get under advantage of the 'Veil'**. If it is tried to take under advantage from company's separate legal personality, the court can held responsible to the person responsible for the acts finishing corporate character of company.

In other words, it can be said that **"when, the legal personality of a company is used to safeguard from the acts of forgery, then it becomes necessary to remove the veil of corporation or legal personality of company it is called 'Doctrine of lifting the veil.'**"

This doctrine is the **solution to remove the difficulties arises in following situations:**

Decrease in members: Section 45 of this Act provides that **if there are less than 7 members** in a public company **and 2 members** in a private company **and company continues business despite of it after six months, then the members are held responsible for it.**

Misuse of Company's Name: Where there is a contract by a company but the **name of company is not properly used then the members of company will be held responsible.**

Unlimited liability of Directors: Generally, the liability of directors is limited to the limit of shares bought by them but **if directors accept unlimited liabilities then the directors will be responsible limitlessly** under section 322.

False Details in prospectus: If false details are published in prospectus of a company, then the **directors and the persons who have published** such details will be **held responsible** for it.

Prevent of Fradulous Acts of Administrator: Section 542 provides that if it is known that the **business was run to deceive other persons** then the court can held **responsible to the members** of the company **removing veil of legal personality to stop the fraud.**