

Company Law

KSLU LL.B. — Complete Exam-Ready Study Bundle (All Five Units)

KSLU LL.B. Study Bundle

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> ***Read this first page, then go to your unit.*** *This single file holds the whole subject: how to use the notes, the rules that win marks, and all units of content. Everything is in plain English, every Latin maxim is translated in [brackets], and every topic is built backwards from the real exam questions. The law stated is that of the* ***Companies Act, 2013*** *(with the NCLT and IBC 2016 touchpoints), the Act your paper is set on.*

How to Use These Notes

What this is. A complete, exam-focused bundle covering all five units of KSLU Company Law. Every topic is built from one question: *what will the examiner ask, and how do I score full marks?* High-frequency questions get the most space; the years listed under each question tell you where to spend revision time. The whole subject sits on one idea from Unit I — the company is a **separate legal person** — so read that unit first and everything else falls into place.

Who it is for. The first-time learner (understand before memorising), the revision student (fast high-yield recall), and the last-week crammer (which questions repeat and how to answer them).

What is inside every topic — the same blocks, in the same order:

Block	Its job	The mark it earns
Previous Year Questions	Real questions + years asked	What to prepare and how often it repeats
The Hook	A true story / landmark-case opener	Memorable; a strong opening line
The Concept + Quote	Plain-English teaching + exact section/case	Understanding, and precise authority
In Simple Terms	Plain-English translation	Ensures you *understand*
The Visual (chart)	Maps the topic structure	Recall and structure at a glance
Case Laws	Landmark judgments + ratio	Case names with years are pure marks

Each unit closes with a **Quick Revision & Case Law Table** for the final hour, and Unit V ends with a **Master Case Index** of every landmark case (C-1 to C-16).

These notes **teach** the subject. The **Question Bank** is the companion volume that turns that knowledge into marks — it carries a model answer for every past question, each opening with a ▤ **Answer Outline** (the skeleton to reproduce under time pressure) and, where two questions are easily confused, a ⚠ **Don't Confuse** box.

The 4-step study plan. (1) Read the PYQ box first. (2) Understand, then memorise. (3) Trace the chart from memory. (4) Rehearse the matching answers in the Question Bank.

The 10 Rules That Win Marks

1. **Lead with a definition + roadmap.** Open with the statutory definition (cite the section) and a one-line plan.
2. **Follow the Question Bank's Answer Outline** step by step.
3. **Name the case AND the year** every time — *Salomon (1897)*, *Turquand (1856)*, *Foss v Harbottle (1843)*.
4. **Quote the exact section** where given — s.2(20), s.166, s.271 — a bare number without its text scores less.
5. **Translate every Latin maxim in [brackets]** — *ultra vires* [beyond the powers], *ab initio* [from the beginning].
6. **Use the four IRAC headings** for problems; spot the decoy fact (e.g. "he owns all the shares", "a quorum was present").
7. **Always give a definite verdict** — "the company does NOT cease to exist", "the call is invalid".
8. **Use the chart's structure** to organise the body.
9. **Close with a short, confident conclusion.**
10. **Manage time** so no high-mark question is left unwritten (in the 100-mark paper, Q9 problems carry 20 marks — never skip them).

> ***Disclaimer.*** *A study aid, not a substitute for the bare Companies Act, 2013 and prescribed texts. Cross-check section numbers against the official text at indiacode.nic.in.* *© Medha-Academy.in · KSLU LL.B. · For personal academic use.*

UNIT 1 — Introduction and Concept

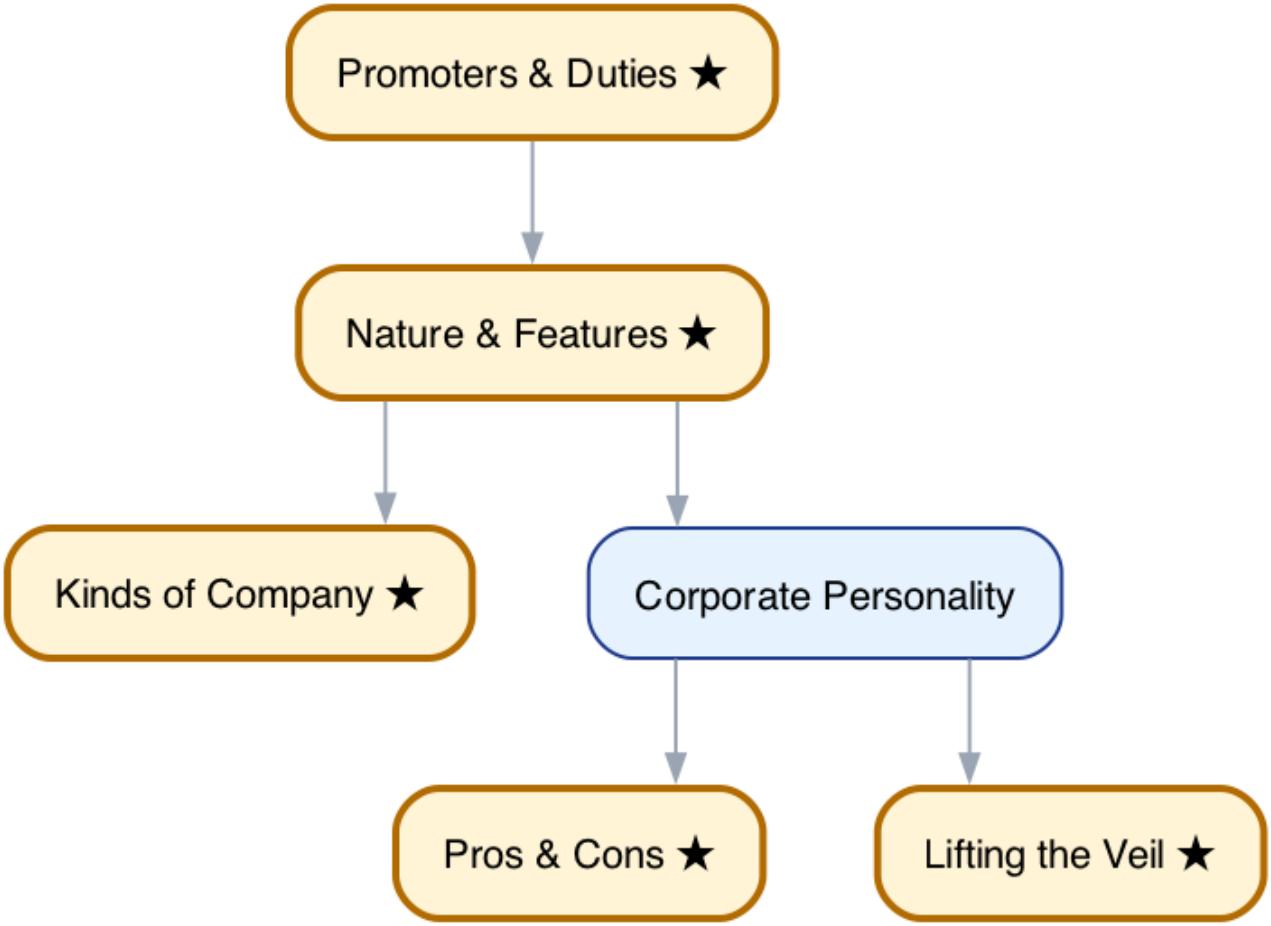
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In this unit.

This unit answers one foundational question: *what is a "company", and why does the law treat it as a legal person completely separate from the human beings who form and own it?* Every rule in the Companies Act, 2013 — on incorporation, directors, shares, borrowings, and winding up — flows from that single idea. You will trace how modern company law evolved, learn the seven core characteristics of an incorporated company, classify companies on three distinct axes, and study the twin pillars of **separate legal personality** and **limited liability** established in *Salomon v A. Salomon & Co. Ltd. (1897)*. You will then weigh the practical advantages and disadvantages of incorporation, examine the exceptional statutory and judicial grounds on which courts **lift the corporate veil** to reach the individuals behind the mask, and conclude with the **promoter** — the fiduciary founder who brings the company into existence.

The Big Picture

The unit in two lines. Unit 1 explains what a registered company is, how separate personality shields members through limited liability, and when courts pierce that shield. Six topics trace who forms the company, what it becomes on registration, and when the law looks behind the mask.



Follow the arrows: promoters form the company, registration gives it nature and kinds, personality creates pros and cons, and abuse triggers veil-lifting.

Hold on to these

- **Registration creates a new person:** Incorporation separates the company from its members — it owns assets, owes debts, and survives the death of all members → 1.1, 1.3.
- **Three classification axes:** Incorporation mode, member liability, and membership/control → 1.2.
- **Veil stays up by default, drops for abuse:** Courts respect separate personality even in a one-man company, but pierce the veil for fraud, tax evasion, enemy control, or agency → 1.3, 1.5.
- **Promoters are fiduciaries:** No secret profit; disclose any interest to an independent Board or shareholders → 1.6.

Tests and distinctions

- **Company vs Partnership:** Separate person with perpetual succession and limited liability vs aggregate of partners with unlimited liability → 1.1, 1.4.

- **Private vs Public:** Private restricts share transfer, caps members at 200, and bars public invitation; Public needs 7+ members, free transfer, and allows public subscription → 1.2.
- **Veil maintained vs lifted:** Full shareholding does not make corporate assets the member's own, unless the company is a cloak for fraud → 1.3, 1.5.

Cases to name

- *Salomon v A. Salomon & Co. Ltd. (1897)* — a registered company is distinct from its members → 1.1, 1.3.
- *Lee v Lee's Air Farming Ltd. (1961)* — a controlling director can be a corporate employee → 1.3.
- *Macaura v Northern Assurance Co. Ltd. (1925)* — a shareholder has no insurable interest in corporate assets → 1.3.
- *Gilford Motor Co. Ltd. v Horne (1933)* — veil lifted when a company is a sham to evade a covenant → 1.5.
- *Tata Engineering & Locomotive Co. Ltd. v State of Bihar (1965)* — members cannot lift their own veil for citizen rights → 1.5.
- *LIC of India v Escorts Ltd. (1986)* — veil lifted only for statutory purposes or fraud → 1.5.
- *Erlanger v New Sombrero Phosphate Co. (1878)* — promoters must disclose profits to an independent Board → 1.6.

Where the marks are

Veil-lifting (1.5) and promoters (1.6) lead the essays, followed by kinds of company (1.2) and pros/cons (1.4). Topics 1.1 and 1.3 drive problems: all-members-die accident, share transfer, *Lee (1961)* pilot claim, *Macaura (1925)* insurance, and tax evasion.

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8. Quick Revision & Case Law Table

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1. Meaning, Nature and Characteristics of a Company

In short: A company is an incorporated association of persons registered under the Companies Act that the law treats as a single artificial legal person distinct from its members. Because its existence flows from registration rather than from the personal lives of its shareholders, it enjoys perpetual succession, separate property, limited liability, and the capacity to contract and litigate in its own name.

Previous Year Questions

- **[16M/10M]** Define ‘Company’. Explain its nature and characteristics. *(Jul 2025 (100), Jan 2025 (80), Nov 2021 (100), Jul 2018 (100), Dec 2014 (100))* ★★★
- **[Short Note]** Difference between Company and partnership firm. *(Sep 2023 (80))* ★
- **[Problem]** During the war / in a train, boat or aeroplane accident, all the members of a private company were killed while in general meeting. Does the company cease to exist? Decide. *(Jan 2026 (80), Jan 2025 (80), Aug 2024 (80), Mar 2024 (100), Sep 2023 (100))* ★★★★★
- **[Problem]** ‘A’, ‘B’ and ‘C’ are the members of a company and hold all the shares of that company. They transferred all their shares to ‘X’, ‘Y’ and ‘Z’. Does the company continue to have the same entity / perpetual succession? Decide. *(Jul 2025 (100), Sep 2023 (80), Nov 2022 (100), Nov 2021 (80))* ★★★

The Hook

In **1897**, a London leather-boot merchant named Aron Salomon turned his prosperous sole proprietorship into a registered company, taking 20,001 shares himself and giving one share each to his wife and five children. When a depression hit and the business failed, unsecured creditors argued that the company was just Mr Salomon wearing a paper mask. The House of Lords unanimously disagreed, establishing the bedrock rule of company law: **registration creates a new person in law**, wholly distinct from the human beings who formed it.

What is a company, and why does the law create it?

Start with the everyday commercial problem. Suppose ten people want to pool money and build a textile mill. If they trade as an ordinary **partnership**, the law sees only the ten individuals. Every partner’s personal house and life savings are exposed to the firm’s business debts, no partner can sell his stake without the others’ consent, and if one partner dies or goes bankrupt, the partnership faces dissolution. Large-scale enterprise cannot survive on such fragile ground.

The law solves this problem by allowing entrepreneurs to create an **artificial legal person** — a **company** — that holds the business assets, incurs the business debts, and continues uninterrupted regardless of what happens to the individual investors.

Etymologically, the word **company** comes from the Latin *com* [with or together] and *panis* [bread], originally referring to an association of persons who took their meals together and discussed business. In legal terms, a company is an **incorporated association** — a voluntary association of persons (or, in a One Person Company, a single person) formed for an economic or lawful purpose and registered under the Companies Act, which the law clothes with independent legal personality.

I. Historical development of company law in England and India

Understanding how the company form evolved explains why modern statutes balance commercial freedom with strict disclosure:

1. **Royal Charters and the Bubble Act (England).** In 16th- and 17th-century England, trading corporations such as the East India Company (1600) were created by Royal Charter or special Act of Parliament. Speculative mania in unincorporated joint-stock schemes led to the *Bubble Act, 1720*, which suppressed unauthorized companies for over a century until its repeal in 1825.
2. **Registration and Limited Liability (1844–1855).** The *Joint Stock Companies Act, 1844* (championed by William Gladstone) first allowed incorporation by simple registration without a royal charter, and the *Limited Liability Act, 1855* added the shield of limited liability. These were consolidated in the landmark *Companies Act, 1862*.
3. **Evolution of Indian Company Legislation.** Indian company law closely tracked English enactments:
    a. **Joint Stock Companies Act, 1850** — first recognised registration of companies in India through the Supreme Courts at Calcutta, Madras, and Bombay.
    b. **Joint Stock Companies Act, 1857** — introduced **limited liability** for companies (initially excluding banking and insurance, which were included in 1860).
    c. **Companies Acts of 1866, 1882, and 1913** — consolidated rules on incorporation, memorandum, prospectus, and winding up.
    d. **Companies Act, 1956** — enacted on the recommendations of the **H.C. Bhabha Committee (1952)**, governing Indian corporate life for nearly six decades with extensive state oversight.
    e. **Companies Act, 2013** — enacted following the **J.J. Irani Committee Report (2005)** to modernize Indian corporate governance, introducing the One Person Company (OPC), Small Company, mandatory Corporate Social Responsibility (s.135), class-action suits (s.245), the National Company Law Tribunal (NCLT), and electronic filing.

II. Essential characteristics of an incorporated company

Under **Section 9** of the Companies Act, 2013, from the date of incorporation mentioned in the certificate of incorporation, the subscribers become a **body corporate** capable of

exercising all the functions of an incorporated company. Eight defining characteristics flow from incorporation:

1. **Separate legal personality.** Once registered, the company has an **independent corporate existence** distinct from its members, directors, and promoters. It is not an agent or trustee for its shareholders (*Salomon v A. Salomon & Co. Ltd. (1897)*).
2. **Limited liability.** In a company limited by shares, a member's financial obligation is strictly limited to the **unpaid face value** of the shares held by him. In a company limited by guarantee, liability is limited to the amount the member undertook to contribute in the event of winding up. Personal assets of members cannot be attached for company debts.
3. **Perpetual succession.** Because a company is an artificial person created by law, its life does not depend on the natural life, sanity, solvency, or continuing membership of its shareholders. Even if every single member dies in a bomb blast or train crash, or transfers all shares to new buyers, the company remains the exact same legal entity. Only a lawful winding-up and dissolution under the Act can end its life.
4. **Separate property.** The company owns, enjoys, and disposes of its property in its own corporate name. Shareholders own only their **shares** (a bundle of rights to dividends, voting, and surplus on winding up); they have no legal or equitable ownership in the company's physical assets (*Bacha F. Guzdar v CIT, Bombay (1955)*).
5. **Transferability of shares.** Under **Section 44**, the shares or debentures of a member are **movable property**, transferable in the manner provided by the company's Articles of Association. In a public company, shares are freely transferable on the market, giving investors liquidity without withdrawing capital from the company.
6. **Capacity to sue and be sued.** A company enforces its legal rights and is sued for its breaches in its own corporate name. Conversely, if a wrong is committed against the company, only the company itself can sue, not individual shareholders (*Foss v Harbottle (1843)*).
7. **Contractual capacity and representative management.** Being an artificial person without a physical body, a company acts through human organs — its **Board of Directors** and authorised officers — within the scope of its Memorandum and Articles.
8. **Common seal (now optional).** Historically, a metallic common seal was the company's official signature. By the *Companies (Amendment) Act, 2015* amending **Sections 9 and 22**, a common seal is now **optional**; if a company has no common seal, documents are authenticated by two directors or by one director and the Company Secretary.

III. Distinction between a Company and a Partnership Firm

Examiners frequently test how an incorporated company differs from a partnership governed by the Indian Partnership Act, 1932:

Basis	Incorporated Company	Partnership Firm
Legal status	A **separate legal person** distinct from its members (s.9).	Not a separate legal person; merely a collective name for the individual partners.
Creation	Created by **registration** under the Companies Act, 2013.	Created by **agreement** between partners; registration is optional.
Liability of members	**Limited** to unpaid share value or guarantee (except in an unlimited company).	**Unlimited**; every partner is jointly and severally liable for all firm debts.
Succession	**Perpetual succession**; death or insolvency of members does not dissolve it.	Dissolved by death, retirement, or insolvency of a partner unless agreed otherwise.
Property	Belongs to the **company** alone; members cannot use or insure it as their own.	Joint property of all partners collectively.
Transfer of interest	Shares in a public company are **freely transferable** (s.44).	A partner cannot transfer his share without the **consent of all partners**.
Mutual agency	A member is **not** an agent of the company or of other members.	Every partner is an **agent** of the firm and of his co-partners.
Minimum / maximum members	Private: **2 to 200**; Public: **minimum 7** (no maximum); OPC: **1**.	Minimum **2**; maximum **50** under s.464 read with Companies Rules, 2014.

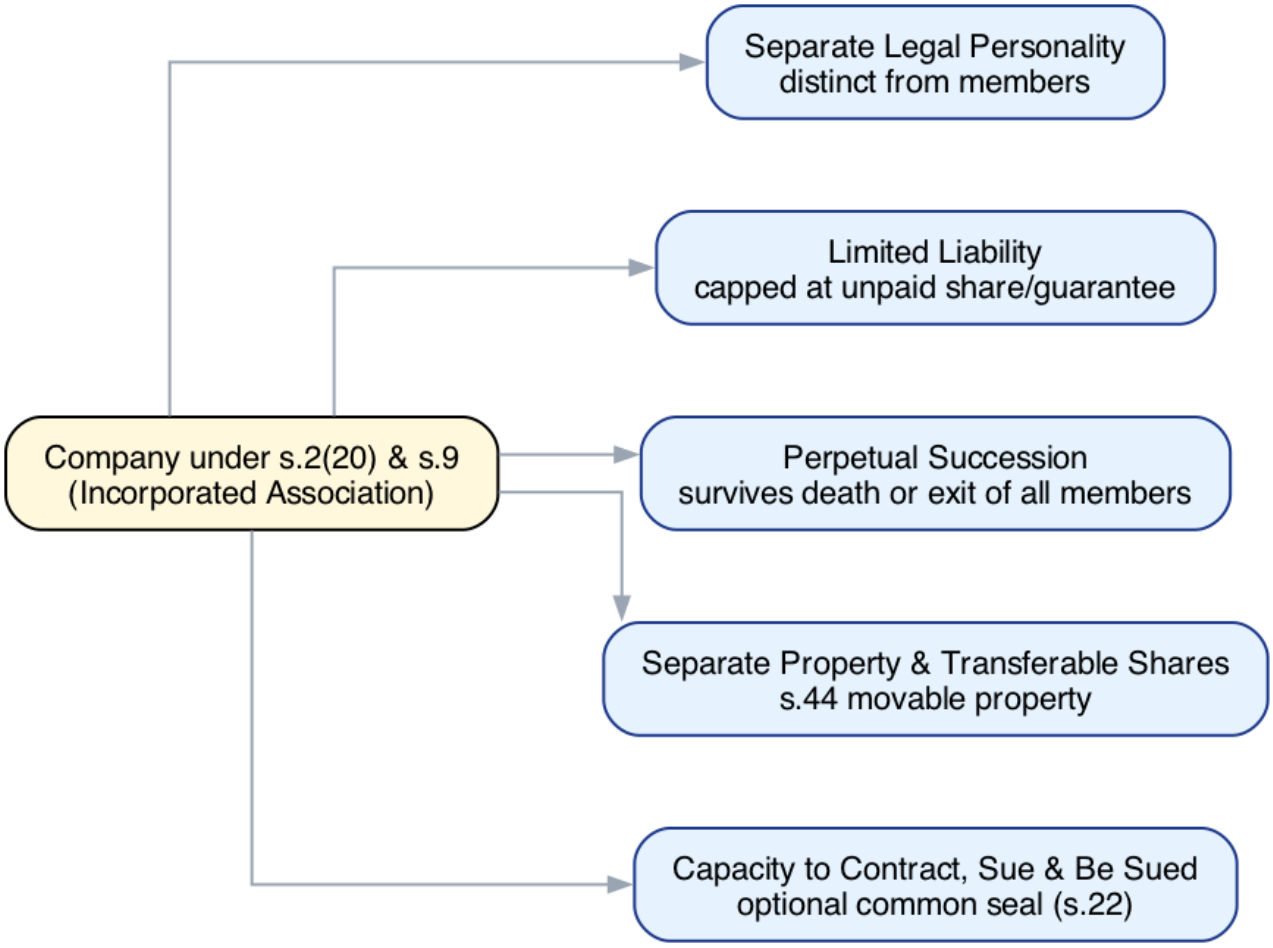
> ***Section 2(20), Companies Act, 2013:*** *"'Company' means a company incorporated under this Act or under any previous company law."*
>
> ***Section 9, Companies Act, 2013:*** *"From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name."*
>
> ***Chief Justice Marshall in * Trustees of Dartmouth College v Woodward (1819)*:** "A corporation is an artificial being, invisible, intangible, and existing only in*

> *contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence."*

In Simple Terms: In law, a "company" is any association formally registered under the Companies Act. The moment the Registrar issues the certificate of incorporation, a new artificial person comes to life under Section 9 — it holds its own property, answers for its own debts, and never dies a natural death.

The Visual

The diagram below shows how the single act of incorporation under Section 9 generates the core legal attributes that separate a company from an unincorporated partnership.



Start at the top node: once an association is incorporated under Sections 2(20) and 9, all five branches attach automatically — independent personality, limited liability, perpetual succession, separate property with transferable shares, and independent capacity to contract and litigate.

> **◈ WORKED EXAMPLE — All members die in a bomb blast or transfer all shares**
>
> **Facts.** (a) During a war, all the members of a private company, while in general meeting, are killed by a bomb blast (or die together in a train/plane crash). (b) In

another company, members A, B, and C hold all the shares and transfer every share to X, Y, and Z. Does either company cease to exist or lose its identity?

Rule. Under **Section 9** of the Companies Act, 2013, an incorporated company is a separate legal person with **perpetual succession**. Its identity and existence are wholly independent of the life, death, or identity of its shareholders (*Re Noel Tedman Holdings Pty Ltd. (1967)*).

Apply. In case (a), the death of all human members does not kill the artificial legal person. By operation of law (transmission of shares), the deceased members' shares vest in their **legal representatives / heirs**, who become entitled to be registered as members and carry on the company. In case (b), the complete replacement of A, B, and C by X, Y, and Z changes only the shareholding, leaving the corporate entity, its property, and its contracts completely unchanged.

Conclusion. Neither company ceases to exist. Both continue as the exact same legal entity by virtue of perpetual succession.

Case Laws

- **[C-1]** ***Salomon v A. Salomon & Co. Ltd. (1897)***
  - **Facts:** Aron Salomon incorporated his boot-manufacturing business into a limited company in which he held 20,001 shares and his wife and five children held one share each, while also taking secured debentures from the company. When the company went into liquidation, the liquidator and unsecured creditors claimed the company was a mere alias or agent for Salomon and sought to make him personally liable.
  - **Held:** The House of Lords held that once a company is legally incorporated, it must be treated like any other independent person with its own rights and liabilities, whatever the motive of its founders or the concentration of its shares.
  - **Why it matters here:** It is the foundational authority establishing that registration creates an independent legal person separate from its members.
- ***Kondoli Tea Co. Ltd., Re (1886)***
  - **Facts:** Eight persons who owned a tea estate transferred it to a company in which they themselves were the only shareholders, and claimed exemption from *ad valorem* [according to value] stamp duty on the ground that the conveyance was merely a transfer from themselves to themselves under another name.
  - **Held:** The Calcutta High Court rejected the claim and held that the company was a separate person and body corporate totally distinct from the individual shareholders, making the transfer a taxable conveyance between two different legal persons.
  - **Why it matters here:** Recognized even eleven years before *Salomon*, this Indian decision proves that shareholders and their company are two distinct persons in law.

- ***Noel Tedman Holdings Pty Ltd., Re (1967)***
  - **Facts:** A husband and wife were the only two shareholders and directors of a private company, and both were killed simultaneously in a road traffic accident.
  - **Held:** The court held that the company did not die with its members; its corporate existence continued intact, and the court enabled the personal representatives of the deceased couple to appoint new directors and transfer the shares.
  - **Why it matters here:** It directly answers the perennial KSLU exam problem where all members of a private company die in an accident or bomb blast.

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2. Kinds of Company

In short: Companies under the Companies Act, 2013 are classified along three independent axes: how they are incorporated, the nature of their members' liability, and how their membership or control is structured. Because these axes overlap, every registered company belongs to one category on each axis at the same time.

> **Previous Year Questions**
>
> - **[16M/10M]** Define 'Company'. Explain the different kinds / types of company. *(Jul 2026 (80), Jul 2025 (100), Jan 2025 (80), Aug 2024 (80), Nov 2022 (100))* ★★★★★
> - **[16M]** Define a "Private Company". How does it differ from a "Public Company"? *(Jul 2017 (100))* ★
> - **[Short Note]** One Person Company / Government company / Holding and subsidiary company. *(Mar 2021 (100), Nov 2020 (100), Dec 2019 (100), Dec 2018 (100), Jul 2017 (100))* ★★★★

The Hook

Before **2013**, a solo Indian entrepreneur who wanted limited liability had to play a polite legal fiction: find a spouse, parent, or friend to hold one token share so the business could register as a two-member private company. The Companies Act, 2013 ended that charade by creating the **One Person Company (OPC)** under Section 2(62) — proving that company law classifies corporate vehicles to match real-world business needs, from a solo founder to a massive state-owned enterprise.

How companies are classified

Think of classifying a company like describing a vehicle by its engine type, body style, and ownership. A single company is simultaneously a **registered** company, **limited by shares**, and a **private** (or **public**) company. Keep the four classification axes distinct in your exam answer:

I. On the basis of mode of incorporation

1. **Chartered companies.** Incorporated under a special Royal Charter granted by the Crown (for example, the Bank of England or the British East India Company, 1600). These no longer exist in modern Indian company law.
2. **Statutory companies (corporations).** Created directly by a special Act of Parliament or a State Legislature to carry out public undertakings of national importance — such as the **Reserve Bank of India (RBI)**, the **Life Insurance Corporation of India (LIC)**, or the **State Bank of India (SBI)**. Their powers and governance flow from their parent statute, though they still enjoy separate corporate personality.
3. **Registered companies.** Formed and registered under the **Companies Act, 2013** (or an earlier Companies Act). Whenever the Act says "company" under Section 2(20), it refers to this category.

II. On the basis of liability of members (Section 3(2))

1. **Company limited by shares — Section 2(22).** The liability of its members is limited by the Memorandum to the **amount, if any, unpaid on the shares** respectively held by them. If a member holds a ₹100 share and has already paid ₹70, he can be called upon to pay at most ₹30 — whether while the company is a going concern or during winding up. Once shares are fully paid up, he owes nothing more.
2. **Company limited by guarantee — Section 2(21).** The liability of its members is limited by the Memorandum to such **fixed guaranteed sum** as the members respectively undertake to contribute to the assets of the company in the event of its being wound up. This guarantee sum is a reserve capital that cannot be called up while the company is running, nor mortgaged as security. Chambers of commerce, sports clubs, and trade associations commonly use this form.
3. **Unlimited company — Section 2(92).** A company not having any limit on the liability of its members. Like partners, members are liable for the full debts of the company if corporate assets fall short at winding up — yet because the company is still a separate legal person, creditors cannot sue members directly and must proceed through the liquidator in winding up.

III. On the basis of number of members and public access

1. **Private company — Section 2(68).** A company having a minimum paid-up share capital as may be prescribed (the mandatory ₹1 lakh minimum was removed by the 2015 Amendment), and which **by its Articles of Association** lays down three mandatory restrictions (while requiring a minimum of **2 members** under s.3(1)(b), **2 directors** under s.149(1), and the suffix **"Private Limited"**):
   a. **Restricts the right to transfer** its shares (if any);
   b. **Limits the number of its members to 200** (except in an OPC), where joint holders of shares are counted as a single member, and present or former employees who were allotted shares while in employment are **excluded** from the count of 200; and

c. **Prohibits any invitation to the public** to subscribe for any securities of the company.

2. **Public company — Section 2(71).** A company which is **not a private company**. Its shares are freely transferable (s.44), there is **no maximum limit** on membership, and it may invite the public to subscribe for its shares or debentures through a prospectus. It requires a minimum of **7 members** (s.3(1)(a)) and **3 directors** (s.149(1)), and ends its name with **"Limited"**. Under the **proviso to Section 2(71)**, a company which is a **subsidiary of a public company** shall be **deemed to be a public company** for the purposes of this Act even where such subsidiary company continues to be a private company in its Articles.
3. **One Person Company (OPC) — Section 2(62).** A company which has **only one person as a member**. Introduced in 2013, an OPC is incorporated as a **private company** (s.3(1)(c)) with at least **1 director**. Only a natural person who is an Indian citizen gives rise to an OPC, and at incorporation the sole member must name a **nominee** in the Memorandum (with that nominee's written consent) who will automatically become the member if the subscriber dies or becomes incapacitated. Its name must bear the words **"(OPC) Private Limited"**.
4. **Small company — Section 2(85).** A private company (other than a holding or subsidiary company, a Section 8 company, or a special-Act company) whose **paid-up share capital** and **turnover** do not exceed prescribed statutory thresholds (currently ₹4 crore paid-up capital and ₹40 crore turnover under the Rules). Small companies enjoy lighter compliance: fewer Board meetings per year, no mandatory cash-flow statement, and lower penalties.

IV. On the basis of control, ownership, or object

1. **Holding and Subsidiary companies — Sections 2(46) and 2(87).** Both remain separate legal entities unless the veil is lifted, and a company (H) is the **holding company** of another company (S, the **subsidiary company**) if H satisfies either of two statutory tests under Section 2(87):
   a. H **controls the composition of the Board of Directors** of S (meaning H can appoint or remove all or a majority of the directors of S); or
   b. H **controls more than one-half (>50%) of the total voting power** of S, either on its own or together with one or more of its subsidiary companies.
2. **Associate company — Section 2(6).** A company in which another company has **significant influence** (control of **at least 20%** of total voting power, or of business decisions under an agreement), but which is not a subsidiary, including a joint venture company.
3. **Government company — Section 2(45).** Any company in which **not less than 51% of the paid-up share capital** is held by the Central Government, or by any State Government(s), or partly by the Central Government and partly by one or more State Governments — and includes a company which is a **subsidiary of a Government**

company. Its annual report and Comptroller and Auditor-General (CAG) audit report are laid before Parliament or the State Legislature (ss.394–395).

4. **Foreign company — Section 2(42).** Any company or body corporate **incorporated outside India** which has a **place of business in India** (whether by itself or through an agent, physically or through electronic mode) and conducts any business activity in India. Sections 379–393 require it to file its charter documents and accounts with the Registrar at New Delhi.
5. **Charitable / Non-profit company — Section 8.** A company formed for promoting commerce, art, science, sports, education, research, social welfare, charity, or environmental protection, which applies all its profits to promoting its objects and **prohibits the payment of any dividend** to its members. By Central Government licence, it may register with limited liability **without** adding "Limited" or "Private Limited" to its name.
6. **Dormant company — Section 455.** A company formed and registered for a future project or to hold an asset or intellectual property and having **no significant accounting transaction**, which applies to the Registrar to obtain "dormant" status to save compliance costs.

V. Public Company vs Private Company

Feature	Private Company (s.2(68))	Public Company (s.2(71))
Minimum members	**2** (or **1** for an OPC)	**7**
Maximum members	**200** (excluding present/past employee-members)	**Unlimited**
Minimum directors	**2** (or **1** for an OPC)	**3**
Transfer of shares	Must be **restricted** by the Articles	**Freely transferable** (s.44)
Public invitation	**Strictly prohibited** from inviting public subscription	**Permitted** to invite the public via a prospectus
Name suffix	Must end with **"Private Limited"**	Must end with **"Limited"**
Quorum at meetings	**2** members personally present (s.103)	**5, 15, or 30** members depending on total membership (s.103)

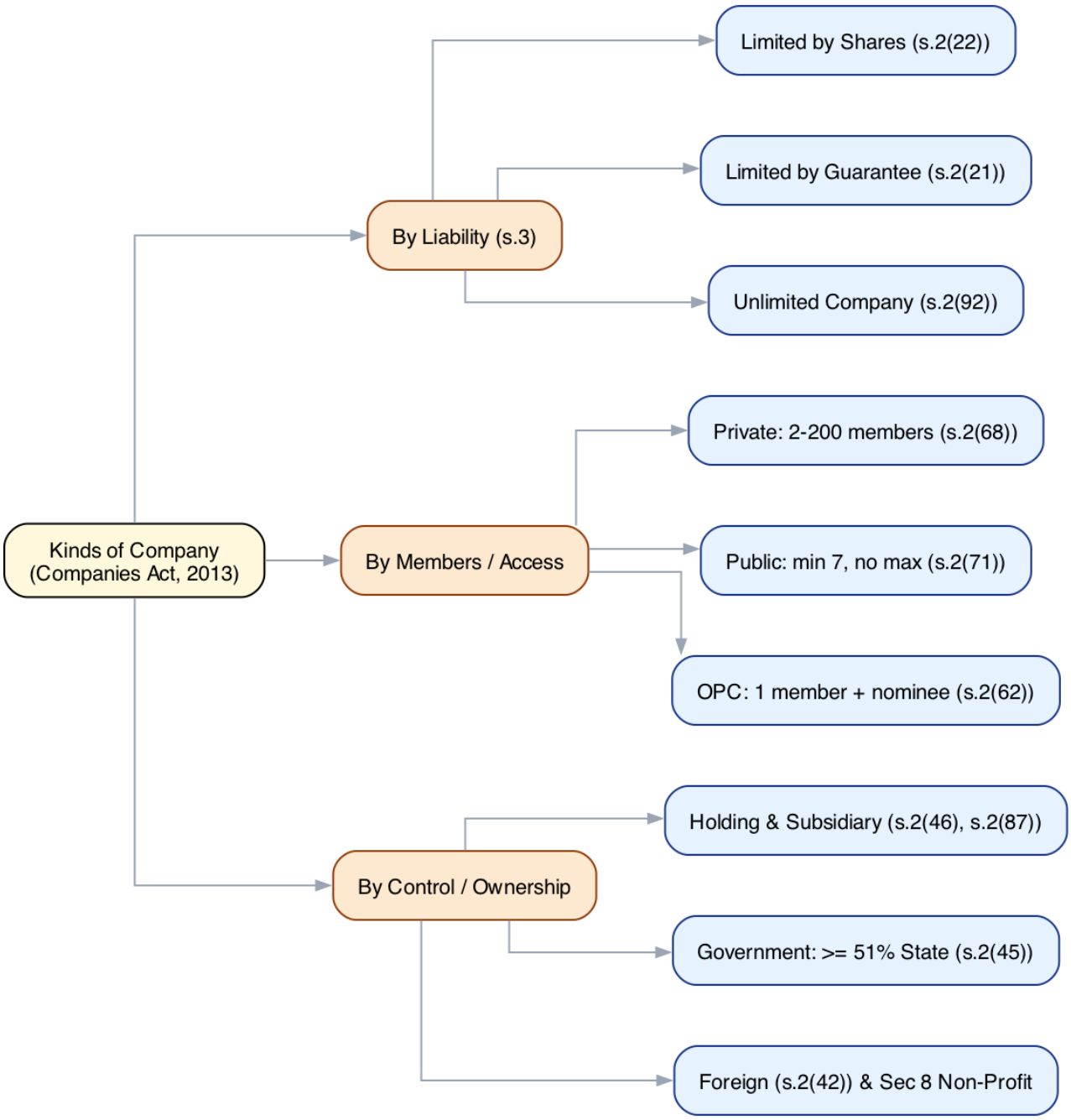
> ***Section 2(68), Companies Act, 2013:*** *"'Private company' means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,— (i) restricts the right to transfer its shares; (ii) except in case of One Person*

> *Company, limits the number of its members to two hundred... and (iii) prohibits any invitation to the public to subscribe for any securities of the company."*
>
> ***Section 2(71), Companies Act, 2013:*** *"'Public company' means a company which — (a) is not a private company; and (b) has a minimum paid-up share capital as may be prescribed: Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles."*
>
> ***Section 2(45), Companies Act, 2013:*** *"'Government company' means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company."*

In Simple Terms: A **private** company is a closed shop — 2 to 200 members, restricted share transfers, and no public fundraising. A **public** company is an open market — at least 7 members, no upper cap, freely tradable shares, and the right to invite public money through a prospectus.

The Visual

The classification tree below groups the major statutory species of companies under the Companies Act, 2013 along their three primary statutory axes.



Read the tree across the three middle nodes: every registered company has a liability rule (left branch), a membership structure (centre branch), and an ownership/control profile (right branch), each tied to its specific definition section in Section 2.

✎ EXAM TIP — Private vs public in one table

The trap. Candidates describe a “private company” in vague everyday language and lose marks by omitting the three mandatory statutory restrictions in Section 2(68) and the exact member/director numbers.

What to write. Always cite **Section 2(68)** and list all three restrictions: (i) restricts share transfer, (ii) limits members to **200** (excluding present/past employee-shareholders, counting joint holders as one), and (iii) prohibits public invitation for securities — plus minimum **2 members / 2 directors** versus **7 members / 3 directors** for a public company (**Section 2(71)**).

Why it scores. The examiner awards full marks when the statutory numbers and the proviso to Section 2(71) (that a private subsidiary of a public company is deemed a public company) are stated accurately.

◈ WORKED EXAMPLE — Counting the 200-member ceiling in a Private Company

Facts. Alpha Pvt. Ltd. has 195 individual shareholders, 10 couples holding shares jointly (20 people in 10 joint accounts), and 25 factory workers who were allotted shares while employed by the company (5 of whom have since retired). Has Alpha Pvt. Ltd. crossed the 200-member ceiling of a private company?

Rule. Under **Section 2(68)(ii)**, a private company must limit its members to **200**, subject to two statutory counting rules: (1) two or more persons holding shares jointly are treated as a **single member**, and (2) persons who are in the employment of the company, and persons who were members while in employment and continued to be members after employment ceased, are **excluded** from the count of 200.

Apply. The 195 individual shareholders count as 195. The 10 joint-holding couples count as **10 members** (not 20). Wait — 195 + 10 = **205 members**! The 20 current employee-shareholders and 5 retired employee-shareholders are excluded (0 added), leaving the statutory count at **205**, which exceeds 200. (Had the individual members been 185, 185 + 10 = 195, within the limit.)

Conclusion. At 205 counted members, Alpha Pvt. Ltd. has breached Section 2(68)(ii) and must either reduce its non-employee members to 200 or convert into a public company.

Case Laws

- ***State Trading Corp. of India Ltd. v CTO (1963)***
  - **Facts:** The State Trading Corporation, a Government company registered under the Indian Companies Act in which the President of India and two secretaries held all the shares, filed a writ petition claiming fundamental rights guaranteed only to “citizens” under Article 19(1)(f) and (g) of the Constitution, and alternatively argued it was a department of the State.

- **Held:** A nine-judge bench of the Supreme Court held that a company registered under the Companies Act is a **juristic person**, not a “citizen” under the Constitution or the Citizenship Act, 1955, and that a Government company remains a legal entity separate from the Government that owns its shares.
- **Why it matters here:** It settles the status of a **Government company (s.2(45))**: even with 100% government shareholding, it is neither a government department nor a natural citizen.

- ***Heavy Engineering Mazdoor Union v State of Bihar (1969)***
  - **Facts:** The Central Government held the entire share capital of Heavy Engineering Corporation Ltd., a Government company registered under the Companies Act, and appointed its directors. Workers argued that the company acted “under the authority of the Central Government” so that the Central Government, not the State of Bihar, was the “appropriate government” for referring an industrial dispute.
  - **Held:** The Supreme Court held that an incorporated Government company has a separate legal existence derived from the Companies Act, not from the Central Government as its agent, so the State Government remained the appropriate authority.
  - **Why it matters here:** It reinforces that Government ownership of shares does not erase the company’s independent corporate personality.

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3. Corporate Personality and Limited Liability

In short: Upon registration, a company becomes an independent legal person completely distinct from the shareholders who own its capital and the directors who manage it. Because the company alone owns its property and owes its debts, a member can contract with the company as an employee or creditor, has no personal ownership over corporate assets, and enjoys limited liability capped at the unpaid value of his shares.

Previous Year Questions

- **[16M/10M]** “Company is having an independent corporate existence.” Discuss / Explain with case laws. *(Jul 2026 (100), Jan 2025 (80), Sep 2023 (80), Nov 2021 (80))* ★★★
- **[Problem]** ‘L’ incorporated a company of which he was the Managing Director. In that capacity he appointed himself as a pilot of the company. While on duty he died in a flying accident. His widow claims compensation against the company. Will she succeed? *(Jul 2026 (80), Mar 2021 (100), Jul 2018 (100))* ★★
- **[Problem]** ‘A’ holds almost all shares except one in a Timber / Paper Company. ‘A’ insured the company’s timber / paper in his own name. The timber / paper having been destroyed by fire, he claims compensation from the insurance company. Will he succeed? *(Aug 2024 (80), Dec 2018 (100))* ★★

The Hook

Mr Macaura owned a timber estate in Ireland. He sold all the timber to a company in which he and his nominees held every single share, and the company also owed him a large unsecured debt. He then insured the timber against fire — but forgot to change the policy from **his own name** to the **company’s name**. Two weeks later, a huge fire burned the timber to ash. When Macaura claimed on the policy, the House of Lords gave him nothing: **the timber belonged solely to the company, not to him**, and a shareholder has no legal or equitable interest in his company’s assets (*Macaura v Northern Assurance Co. Ltd. (1925)*).

The doctrine of separate corporate personality

Corporate personality is the foundational pillar of company law. Picture an invisible legal wall — the **veil of incorporation** — erected the moment the Registrar issues the Certificate of Incorporation under Sections 7 and 9. On one side of the wall stand the human members and directors; on the other side stands **the company**, an autonomous legal person.

The House of Lords crystallized this principle in ***Salomon v A. Salomon & Co. Ltd. (1897)***. Even though Aron Salomon held 20,001 out of 20,007 shares and his family held the other 6 as his nominees, Lord Macnaghten famously declared:

> ***Lord Macnaghten in Salomon v A. Salomon & Co. Ltd. (1897):*** *“The company is at law a different person altogether from the subscribers to the memorandum; and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by the Act.”*

In Simple Terms: Even if one human owns 99.9% of the shares and runs the business single-handedly, the law sees **two completely separate persons**: the human individual and the registered company.

I. Four practical consequences of independent corporate existence

1. **The company's debts are not the members' debts.** Because the company is a distinct person, a shareholder can lend money to his own company, take secured debentures over its assets, and in winding up get paid **ahead** of the company's unsecured trade creditors (*Salomon v A. Salomon & Co. Ltd. (1897)*).
2. **A controlling member can be an employee of his company.** In a partnership, a partner cannot be an employee of his own firm because a man cannot be his own master and servant. In a company, the company is the master and the human is the servant — even if that same human is the sole governing director who signed the employment contract on the company's behalf (*Lee v Lee's Air Farming Ltd. (1961)*).
3. **Shareholders do not own the company's property.** Corporate assets belong solely to the company. A shareholder has neither legal nor equitable title to a single brick of the company's factory, and therefore has **no insurable interest** in company property (*Macaura v Northern Assurance Co. Ltd. (1925)*). Similarly, agricultural income earned by a tea company loses its agricultural character when distributed to shareholders as a corporate dividend (*Bacha F. Guzdar v CIT, Bombay (1955)*).
4. **Even sole shareholders can steal from their own company.** Because the company's money belongs to the company, sole controllers who dishonestly appropriate corporate funds for themselves can be prosecuted for theft or misappropriation (*Attorney-General's Reference (No. 2 of 1982) (1984)*).

II. The principle of limited liability

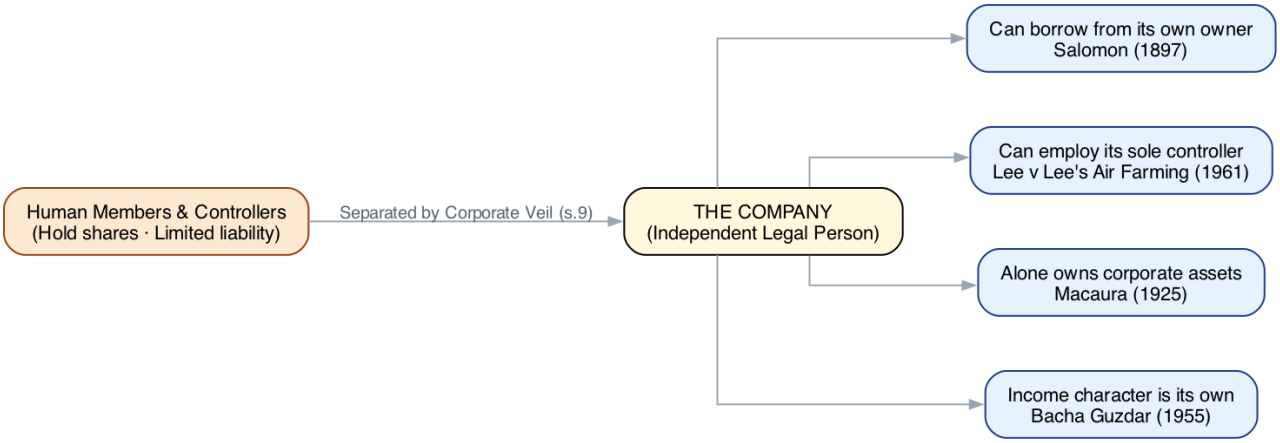
Limited liability is the economic twin of separate corporate personality:

- **Why it exists.** Without limited liability, no small investor would buy ₹5,000 worth of shares in a steel company if a corporate bankruptcy could wipe out his home and pension. By capping the investor's worst-case loss, limited liability enables thousands of strangers to pool vast capital for industrial growth.
- **How it operates.** The company itself has **unlimited** liability for its own debts — it must pay creditors down to its last rupee of corporate assets. What is *limited* is the **member's liability to contribute** to the company:
  1. In a **company limited by shares (s.2(22))**, the member's liability is limited to the **unpaid face value** of his shares. If he bought a ₹10 share and paid ₹10, his further liability is **zero**.
  2. In a **company limited by guarantee (s.2(21))**, the member's liability is limited to the **sum guaranteed** in the Memorandum, payable only upon winding up.
- **Statutory exceptions where liability becomes unlimited.** If a company carries on business in winding up with **intent to defraud creditors (s.339)**, or if its membership falls below the statutory minimum (2 in private, 7 in public) and it carries on business

for more than **six months** while so reduced, every member who is cognisant of that fact becomes **severally liable for the whole of the debts** contracted during that period after six months (**Section 3A**, inserted in 2017).

The Visual

The diagram below illustrates the legal barrier of the corporate veil separating the human members from the corporate entity and the four landmark consequences that flow from that separation.



Follow the vertical arrow from the human members across the corporate veil to the company: because the company is a distinct person in law, it can borrow from its founder (Salomon), employ its managing director as a worker (Lee), hold exclusive title to its property (Macaura), and distribute dividends that are distinct from its underlying business income (Bacha Guzdar).

> **◈ WORKED EXAMPLE — Managing director employs himself as pilot (and the timber-insurance contrast)**
>
> **Facts.** (a) ‘L’ incorporates an aerial top-dressing company holding 2,999 of its 3,000 shares, becomes its governing director, and in that capacity appoints himself as its chief pilot at a salary. While flying on company duty, he dies in a plane crash. His widow claims workmen’s compensation from the company. (b) Conversely, ‘A’ holds all shares except one in a Timber Company, insures the company’s timber in **his own name**, and claims insurance when fire destroys the timber. Decide both.
>
> **Rule.** A company is a legal person separate from its controlling shareholder (*Salomon v A. Salomon & Co. Ltd. (1897)*). Therefore: (1) a company can enter into a valid contract of employment with its controlling director (*Lee v Lee’s Air Farming Ltd. (1961)*); and (2) the company alone owns its property, so a shareholder has **no insurable interest** in corporate assets (*Macaura v Northern Assurance Co. Ltd. (1925)*).
>
> **Apply.** In (a), L and the company were two separate legal persons. Acting as director (agent of the company), L could validly contract with himself in his individual capacity as pilot. He was a “worker” employed by the company. In (b), corporate personality

> works the other way: the timber belonged to the company, not to A, so A's personal insurance policy covered property in which he had no legal or equitable interest.
>
> **Conclusion.** In (a), L's widow **succeeds** in recovering compensation from the company. In (b), A **fails** and cannot recover from the insurance company.

Case Laws

- **[C-1]** ***Salomon v A. Salomon & Co. Ltd. (1897)***
  - **Facts:** Salomon transferred his solvent boot business to a newly incorporated company for £39,000, taking 20,001 shares (while his wife and five children took 1 share each) and £10,000 in debentures secured by a floating charge on the company's assets. When the company later became insolvent, unsecured creditors claimed Salomon and the company were one and the same person, so his debentures should be postponed to their claims.
  - **Held:** The House of Lords held that the company was validly formed under the Act and was an independent legal person completely distinct from Salomon; neither the fact that he held virtually all shares nor that the other six members were his family nominees made the company his agent or sham, and as a secured creditor he was entitled to be paid first.
  - **Why it matters here:** It is the foundational authority for separate corporate personality and limited liability even in a "one-man company".
- **[C-2]** ***Lee v Lee's Air Farming Ltd. (1961)***
  - **Facts:** Geoffrey Lee formed an aerial crop-dusting company holding 2,999 of its 3,000 shares, was named its sole governing director for life in the Articles, and appointed himself chief pilot at a wage recorded in the company books. When he was killed in an aircraft crash while flying for the company, the insurer resisted his widow's claim under the New Zealand Workers' Compensation Act on the ground that Lee could not be both employer and employee.
  - **Held:** The Privy Council held that Lee and the company were two separate legal entities; the magic of corporate personality enabled him to give orders as governing director (agent of the company) and obey them as salaried pilot (servant of the company), so his widow was entitled to compensation.
  - **Why it matters here:** It proves that complete control by one shareholder does not prevent a valid contract of employment between the company and that shareholder.
- **[C-3]** ***Macaura v Northern Assurance Co. Ltd. (1925)***
  - **Facts:** Macaura sold all the timber on his estate to Irish Canadian Sawmills Ltd. in exchange for all 42,000 fully paid shares of the company (held by him and his nominees), and also remained the company's largest creditor. He insured the timber against fire in his own personal name, and two weeks later a fire destroyed the timber.

- **Held:** The House of Lords held that the insurance company was not liable because a shareholder (and unsecured creditor) has no legal or equitable property in the company's assets, and therefore had no **insurable interest** in the timber; only the company itself could insure its property.
- **Why it matters here:** It shows that separate personality is a two-edged sword: it shields the shareholder from debts, but also bars him from treating company assets as his own.

- ***Bacha F. Guzdar v Commissioner of Income Tax, Bombay (1955)***
  - **Facts:** Under the Income Tax Act, 60% of a tea-growing company's income was exempt from tax as "agricultural income". Mrs Bacha Guzdar, a shareholder who received dividends from two tea companies, claimed that 60% of her dividend income should likewise be exempt as agricultural income.
  - **Held:** The Supreme Court rejected her claim, holding that the company is a juristic person distinct from its shareholders; agricultural income belongs to the company that cultivates the land, whereas a shareholder's dividend arises from her contractual right as a member and is non-agricultural income.
  - **Why it matters here:** It is the leading Indian Supreme Court authority affirming that a shareholder has no direct ownership in the company's assets or business income, only a right to participate in profits when declared.

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4. Advantages and Disadvantages of Incorporation

In short: Incorporating a business transforms it into an immortal legal person with limited liability, transferable shares, and access to public capital markets. However, these benefits carry a statutory price: public disclosure of accounts, strict regulatory compliance, higher administrative expense, separation of ownership from management, and the risk that courts may lift the corporate veil when the form is abused.

> **Previous Year Questions**
>
> - **[16M/10M]** What are the advantages / merits of incorporation of a company? Explain. *(Jan 2026 (80), Aug 2024 (80), Sep 2023 (100), Apr 2022 (80), Nov 2021 (100))* ★★★★★
> - **[16M/10M]** What are the disadvantages of an incorporated company? Explain. *(Jul 2025 (100), Jan 2025 (80), Sep 2023 (80), Jul 2017 (100))* ★★★

The Hook

Every founder faces a fork in the road: stay an unincorporated partnership (simple, private, cheap — but one bad business debt can cost you your family home), or incorporate a company under the Companies Act (your personal savings are locked behind a steel shield, and banks and public investors will fund your growth — but you must live in a glass house of public filings, audits, and statutory rules). That trade-off between **the shield of limited liability** and **the cost of public regulation** is the entire subject of this topic.

I. Advantages of incorporation

Notice how every advantage of incorporation is simply one of the legal characteristics from Topic 1 put to commercial work:

1. **Independent legal entity (Section 9).** Unlike a partnership, which has no existence apart from its partners, an incorporated company is a juristic person in its own right (*Salomon v A. Salomon & Co. Ltd. (1897)*). It deals with the world — and even with its own members — as an independent principal.
2. **Limited liability.** This is the single greatest commercial magnet of incorporation. A shareholder in a company limited by shares risks only the face value of his investment; his private house, bank accounts, and personal estate cannot be touched by the company's creditors even if the company collapses with crores in unpaid debt.
3. **Perpetual succession.** A partnership is fragile — the death, lunacy, insolvency, or retirement of a partner disrupts or dissolves the firm. An incorporated company enjoys uninterrupted corporate life across generations. Contracts, licences, and long-term leases continue seamlessly despite total changes in shareholding (*Re Noel Tedman Holdings Pty Ltd. (1967)*).
4. **Transferability of shares (Section 44).** In a partnership, an investor is locked in unless every other partner consents to a transfer. In a public company, shares are movable property freely tradable on a stock exchange, giving the investor instant **liquidity** (he can cash out any day) while the company retains **permanent capital** (its capital fund is never withdrawn).
5. **Separate corporate property.** Because the company's assets belong exclusively to the company (*Bacha F. Guzdar v CIT, Bombay (1955)*), no member can claim a partition of corporate property or walk away with a piece of machinery while the company is a going concern. This protects the integrity of the enterprise for lenders and employees.
6. **Capacity to sue and be sued in its own name.** A company need not join hundreds of fluctuating shareholders on the plaint every time it enforces a contract or recovers a debt; it sues and is sued simply in its registered corporate name.
7. **Mobilisation of large finances and floating charges.** Only a public company has the legal privilege of inviting the general public to subscribe to its **shares and debentures**. Furthermore, banks and financial institutions lend far more readily to an incorporated company because a company can secure loans by creating a **floating**

charge over its shifting stock-in-trade and receivables — a security device unavailable to individuals or partnerships.

8. **Professionalized management.** Because ownership (shareholders) is separated from day-to-day control (Board of Directors), a company can hire specialized, salaried managers and technical experts whom no single trader could afford, combining public capital with managerial talent.

II. Disadvantages of incorporation

The privileges of trading with limited liability carry corresponding burdens and risks:

1. **Lifting of the corporate veil.** The shield of separate personality is not impenetrable. Where the corporate form is misused as a cloak for fraud, evasion of tax or welfare legislation, or improper conduct, courts and statutes **pierce the corporate veil** and impose personal liability directly on the human controllers (*Gilford Motor Co. Ltd. v Horne (1933)*; **Section 339**).
2. **Formality, time, and expense.** Forming a partnership takes a simple deed; incorporating and running a company requires drafting a Memorandum and Articles, paying registration fees, holding statutory Board and general meetings (ss.96, 173), maintaining statutory registers, and hiring Chartered Accountants and Company Secretaries for compulsory audits and annual filings.
3. **Loss of privacy (corporate publicity).** A company must file its Memorandum, Articles, balance sheets, profit-and-loss accounts, charge registers, and annual returns with the **Registrar of Companies (ROC)**. Under **Section 399**, these become public documents that any competitor, creditor, or member of the public can inspect for a nominal fee.
4. **Divorce of ownership from control.** In large companies, thousands of scattered shareholders own the company in theory, but effective control rests with a small group of directors and insiders. Shareholders often become passive spectators, creating the risk of managerial self-dealing, oppression, and mismanagement (remedied only through NCLT petitions under Sections 241–246).
5. **Detailed statutory regulation and penal liability.** Every stage of a company's life — issuing shares, paying dividends, appointing directors, borrowing money, and winding up — is policed by the Companies Act, 2013, SEBI, and the NCLT, with heavy fines and imprisonment for officers in default.
6. **Corporate taxation burden.** Unlike a partnership firm or sole proprietorship, a company is taxed at flat corporate rates as a distinct assessee, and profits distributed to shareholders as dividends are taxed again in the hands of shareholders (removing the advantage for small businesses).
7. **Absence of citizen fundamental rights.** Although a company is a legal "person" entitled to equality under Article 14, it is **not a "citizen"** within the meaning of the Constitution and therefore cannot directly claim citizen-only fundamental rights such as Article 19(1)(g) (*State Trading Corporation of India Ltd. v CTO (1963)*; *TELCO v State of*

Bihar (1965)), unless a shareholder joins the petition to protect his own rights impaired by the state action (*R.C. Cooper v Union of India (1970)*).

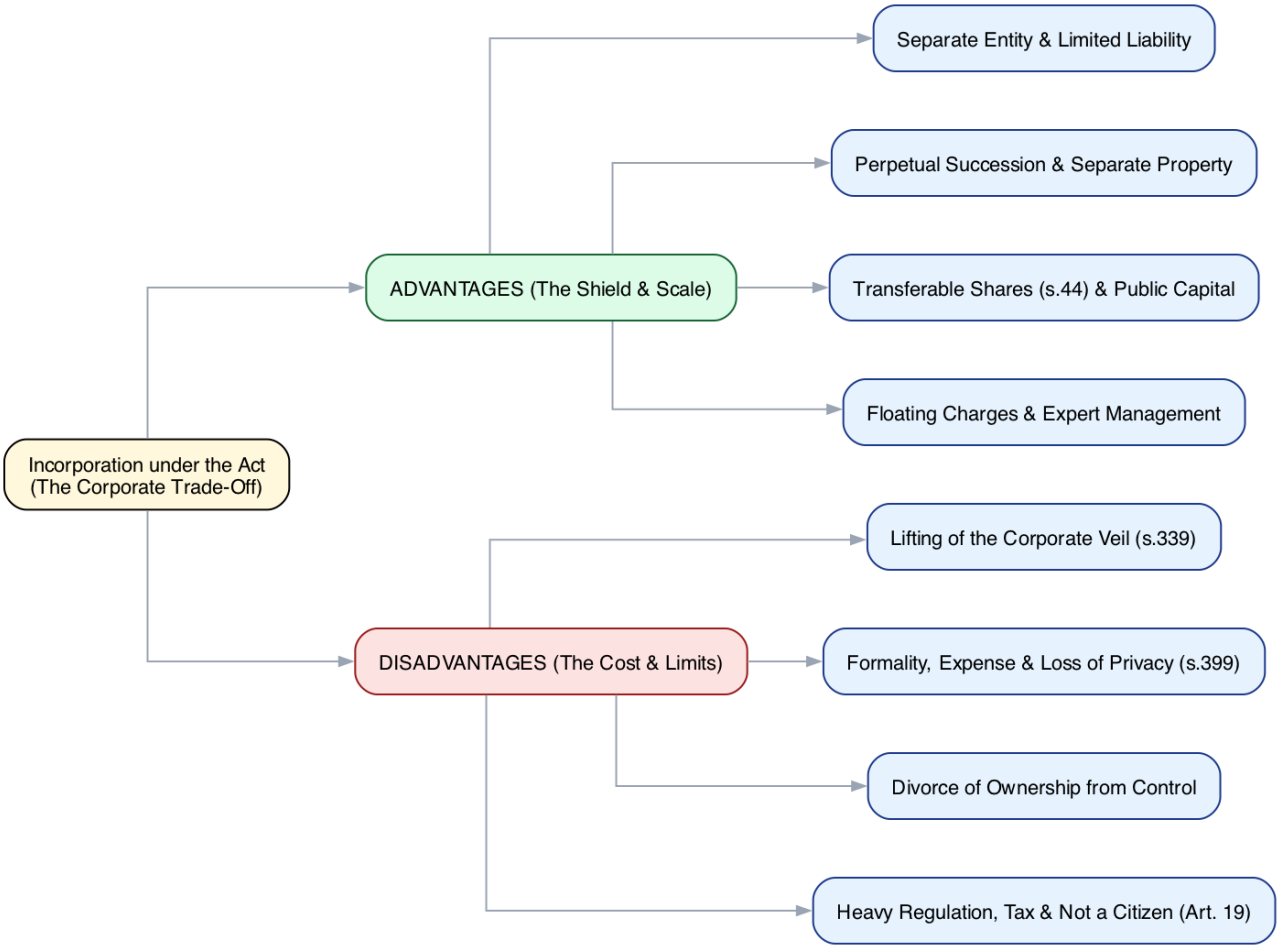
> **▶ KEY POINT**
>
> Every advantage of incorporation is a **characteristic** from Topic 1 seen from the investor's side; every disadvantage is the **price or limit** the law places on that characteristic to protect creditors and the public.

> ***Section 3A, Companies Act, 2013:*** *"If at any time the number of members of a company is reduced, in the case of a public company, below seven, in the case of a private company, below two, and the company carries on business for more than six months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor."*
>
> ***Constitutional Position (Articles 14, 19, and 32 of the Constitution):*** *Under **Article 14**, the State shall not deny to any "person" (including a company) equality before the law; under **Article 19(1)(g)**, only "citizens" have the fundamental right to practise any profession or carry on any occupation, trade, or business; and under **Article 32**, a citizen-shareholder may move the Supreme Court if state action against the company directly impairs his own fundamental rights.*

In Simple Terms: Incorporation buys you a strong shield (limited liability), immortality (perpetual succession), and easy access to public capital — but you pay for it in paperwork, public disclosure of your accounts, strict regulation, and the risk that a court will pull the shield away if you use it to cheat.

The Visual

The balance chart below pairs the seven commercial advantages of incorporation against the seven legal and practical costs that accompany the corporate form.



Compare the two branches side by side: the left (green) branch captures why businesses incorporate — liability protection, continuity, liquidity, and finance — while the right (red) branch captures the regulatory price and legal limits of the corporate form.

◈ WORKED EXAMPLE — Whencorporate personality boomerangs on the founder

Facts. Three partners running a cloth business form a company in which they hold 100% of the shares, and sell their partnership premises to the newly formed company at a price higher than its original cost. When the Income Tax department taxes the profit on the sale, the founders protest: “We only transferred our own building to our own company — no one can make a profit by trading with himself!”

Rule. Incorporation creates a separate legal entity distinct from its shareholders (*Salomon v A. Salomon & Co. Ltd. (1897)*). Founders who choose the advantages of incorporation cannot ask the court to ignore the corporate entity when it produces a tax disadvantage (*CIT v Associated Clothiers Ltd. (1963)*).

Apply. The partnership firm (the three individuals) and the newly registered company are two different legal persons. Selling the premises to the company is a genuine legal transfer from one entity to another, not a transfer from self to self.

> **Conclusion.** The founders' objection fails, and the profit on the sale is taxable — illustrating how separate personality can act as a disadvantage ("work like a boomerang") for the very people who created the company.

Case Laws

- **[C-1]** ***Salomon v A. Salomon & Co. Ltd. (1897)***
  - **Facts:** Aron Salomon incorporated his boot business with himself and six family members as shareholders, taking secured debentures in part payment. When the business failed due to strikes and depression, unsecured creditors sought to hold Salomon personally liable for the company's debts.
  - **Held:** The House of Lords upheld the company's separate existence and Salomon's limited liability, ruling that the motives of shareholders in incorporating to obtain limited liability are wholly lawful.
  - **Why it matters here:** It demonstrates the primary advantage of incorporation — shielding the entrepreneur's personal fortune from honest business failure.
- ***CIT v Associated Clothiers Ltd. (1963)***
  - **Facts:** Assessees formed a new company in which they held all the shares and sold certain business premises to that company at a price exceeding the written-down cost. When the difference was assessed to income tax, they argued that there was no commercial sale because they had merely transferred the property from themselves to themselves.
  - **Held:** The Calcutta High Court rejected the argument and held that the sale was a transfer from one legal entity to a separate corporate entity, not trading with oneself.
  - **Why it matters here:** It illustrates the disadvantage that once founders incorporate, they become legal strangers to their own enterprise and cannot disown the corporate form to avoid tax.
- ***Rustom Cavasjee Cooper v Union of India (1970)***
  - **Facts:** Following the nationalisation of fourteen major commercial banks by statute, R.C. Cooper — a shareholder, director, and depositor in the affected banks — filed a writ petition under Article 32 alleging violation of his fundamental rights under Articles 14, 19(1)(f)/(g), and 31. The Union argued the petition was barred because the banks were companies (not citizens) and only the companies' rights were affected.
  - **Held:** An eleven-judge bench of the Supreme Court held that although a company itself is not a citizen, a shareholder's fundamental rights as a citizen are not lost when he associates to form a company; if state action against the company directly impairs the shareholder's own rights, the court will protect the shareholder.
  - **Why it matters here:** It shows both the constitutional disadvantage of incorporation (a company is not a citizen under Art. 19) and how shareholders

overcome it by joining as petitioners (*Bennett Coleman & Co. v Union of India (1972)*).

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5. Lifting the Corporate Veil

In short: Lifting (or piercing) the corporate veil means disregarding the company's separate legal personality to look directly at the human members or controllers behind it. Although the *Salomon* rule keeps the veil up by default, both the Companies Act, 2013 and the courts lift the veil whenever the corporate form is abused as a mask for fraud, tax evasion, breach of legal duty, enemy control, or sham agency.

> **Previous Year Questions**
>
> - **[16M/10M]** Explain the circumstances in which the Corporate Veil of the company will be lifted by the court (answer with decided cases). *(Jul 2026 (80), Jan 2026 (80), Jul 2025 (100), Jan 2025 (80), Aug 2024 (80))* ★★★★★
> - **[Problem]** 'M' was a wealthy man having huge dividend and income. He formed four private companies and all his income was credited in the accounts of the four companies and he got back his amount as a pretended loan for the purpose of tax evasion. Will the Court order lifting the corporate veil of those four companies? *(Nov 2022 (100), Nov 2021 (80))* ★★
> - **[Problem]** A transferred certain land to B on a condition that B would never sell the land to coloured persons. B sold the land to a company composed exclusively of Negroes. A took action for the annulment of this conveyance on the ground that the property in effect had passed to the coloured persons. Will he succeed? *(Sep 2023 (100), Nov 2022 (100), Mar 2021 (100), Jan 2019 (100), Dec 2016 (100))* ★★★

The Hook

During the First World War in **1916**, a tyre company registered in London sued an English buyer to recover a trade debt. On paper, the plaintiff was a respectable English company incorporated under the English Companies Act. In reality, 24,999 of its 25,000 shares and every single one of its directors belonged to a German parent company resident in Germany, then at war with Britain. The House of Lords tore off the English corporate mask, looked at the German hands pulling the strings, and barred the suit as trading with the enemy (*Daimler Co. Ltd. v Continental Tyre & Rubber Co. Ltd. (1916)*).

What "lifting the corporate veil" means

In Topic 3 we saw that incorporation places a **veil** between the company and its members (*Salomon v A. Salomon & Co. Ltd. (1897)*). Yet a legal fiction invented to promote

commerce cannot be allowed to become an engine of fraud or public mischief. When a court or statute **lifts (or pierces) the corporate veil**, it **disregards the separate corporate personality** and treats the company and the human beings (or parent company) controlling it as one, either to impose personal liability or to ascertain the true character of the transaction.

The situations in which the corporate veil is lifted divide cleanly into **two major heads**: **(I) Statutory Provisions** under the Companies Act, 2013, and **(II) Judicial Grounds** developed by the courts.

I. Statutory provisions for lifting the veil (Companies Act, 2013)

The Act itself strips away the shield of limited liability and holds directors, promoters, or members personally liable in specific defaults:

1. **Reduction of membership below minimum — Section 3A.** If a public company's membership falls below **7** (or a private company's below **2**) and it carries on business for more than **six months** while so reduced, every member who knows of that fact is **severally and personally liable** for all debts contracted by the company after those six months.
2. **Fraudulent incorporation — Section 7(7).** Where a company is proved to have been incorporated by furnishing false information or suppressing material facts, the promoters, first directors, and persons making the declaration are personally liable for fraud under **Section 447**, and the Tribunal (NCLT) may pass orders including **unlimited liability** of the members.
3. **Misdescription of the company's name — Section 12(3) & (8).** If an officer signs or authorises a bill of exchange, hundi, promissory note, or cheque on behalf of the company without mentioning the company's true registered name properly, the officer can be held **personally liable** on the instrument alongside penal fines.
4. **Misstatements in a prospectus — Sections 34 and 35.** Where a prospectus includes any untrue or misleading statement, every director, promoter, and person who authorised its issue is **personally liable to compensate** every investor who sustained loss (s.35) and is criminally liable for fraud (s.34 read with s.447).
5. **Failure to return application money — Section 39(3) & (5).** If the minimum subscription is not received within 30 days and the application money is not refunded within the prescribed time, the company and its **officers in default** become jointly and severally liable to repay the money with **15% per annum interest**.
6. **Investigation of true ownership of shares — Section 216.** The Central Government may appoint inspectors to investigate and report on the membership of any company for the purpose of determining the **true persons** who are financially interested in its success or failure, or who are able to **control or materially influence** its policy.
7. **Fraudulent conduct of business in winding up — Section 339.** If in the course of winding up it appears that any business of the company has been carried on with **intent to defraud creditors** or for any fraudulent purpose, the Tribunal (NCLT) may

declare that any persons who were knowingly parties to carrying on the business in that manner shall be **personally responsible, without any limitation of liability**, for all or any of the debts of the company.

II. Judicial grounds for lifting the corporate veil

Even where no specific section of the Act applies, courts exercise their equitable jurisdiction to pierce the veil in six well-settled categories:

1. **Determination of enemy character.** A company, being artificial, has no mind or loyalty of its own; it is neither friend nor foe. However, during war, a court will lift the veil to examine whether the persons in *de facto* [in fact] control of its affairs are residents of an enemy country. If so, the company assumes **enemy character** and cannot sue to recover money that would enrich the enemy (*Daimler Co. Ltd. v Continental Tyre & Rubber Co. Ltd. (1916)*). By contrast, where no wartime enemy policy is involved, courts refuse to equate a company's racial composition with its members (*People's Pleasure Park Co. v Rohleder (1908)* — selling land to a company whose members were all Black did not breach a private covenant against selling to "coloured persons", because the company itself is a distinct legal person with no race or colour).
2. **Prevention of tax evasion (benefit of revenue).** Courts lift the corporate veil whenever a company is created as a mere conduit or sham with no genuine business, solely to split income or circumvent tax obligations (*Sir Dinshaw Maneckjee Petit, Re (1927)*; *CIT v Sri Meenakshi Mills Ltd. (1967)*; *Juggilal Kamlapat v CIT (1969)*).
3. **Fraud, sham, or improper conduct.** The corporate veil will never be permitted to shield a person who forms a company as a "cloak" or "sham" to evade a pre-existing legal or contractual obligation:
   a. Forming a company to solicit customers in breach of a personal non-compete covenant (*Gilford Motor Co. Ltd. v Horne (1933)*).
   b. Transferring land to a newly bought shell company to defeat a buyer's claim for specific performance of a sale contract (*Jones v Lipman (1962)*).
   c. Using a web of shell companies to defraud flat buyers and disobey court orders (*Delhi Development Authority v Skipper Construction Co. (P) Ltd. (1996)*).
4. **Avoidance of welfare and labour legislation.** Where an employer creates a wholly owned subsidiary and transfers dividend-yielding shares to it solely to artificially depress the parent company's gross profits and reduce the **statutory bonus** payable to workmen under the Payment of Bonus Act, the court pierces the smokescreen and clubs the two companies together (*Workmen Employed in Associated Rubber Industry Ltd. v Associated Rubber Industry Ltd. (1985)*).
5. **Agency, trust, or alter-ego relationship.** Although a holding company and its subsidiary are ordinarily distinct entities, if a subsidiary has no independent brain, capital, or autonomy and operates purely as the puppet, tool, or agent of the parent company (or controlling individual), the court lifts the veil to treat the business as the

principal's (*Smith, Stone & Knight Ltd. v Birmingham Corporation (1939)*; *In re F.G. (Films) Ltd. (1953)*).

6. **Single economic entity and public policy.** In appropriate cases involving compensation or regulatory reality, courts look at a tightly integrated group of parent and subsidiary companies as a **single economic unit** (*DHN Food Distributors Ltd. v Tower Hamlets London Borough Council (1976)*; *New Horizons Ltd. v Union of India (1995)* — looking at the technical experience of the joint-venture shareholders behind a newly formed tendering company).

III. The limits of veil-lifting: *TELCO (1965)* and *LIC v Escorts (1986)*

Indian Supreme Court jurisprudence sets two crucial boundaries on when the veil will **not** be lifted:

- **Shareholders cannot lift their own veil for convenience.** In ***TELCO Ltd. v State of Bihar (1965)*** (*Tata Engineering & Locomotive Co. Ltd. v State of Bihar (1965)*), corporations petitioned under Article 32 asking the Supreme Court to lift their own corporate veil so they could be seen as an association of Indian citizens and claim Article 19(1)(g) fundamental rights (and exemption from inter-state sales tax). The Supreme Court refused: having incorporated to enjoy the benefits of separate personality, members cannot tear down the veil whenever it suits them.
- **Lifting is restricted to fraud or statutory purpose.** In ***LIC of India v Escorts Ltd. (1986)***, thirteen overseas companies in which non-resident Indian industrialist Swraj Paul's family trust held shares invested in Escorts Ltd. under an RBI non-resident portfolio scheme that capped each company's investment at 1%. Escorts asked the court to lift the veil of all thirteen companies and treat them as one individual to hold the 1% ceiling breached. The Supreme Court held that while the veil may be lifted to the extent required by the Foreign Exchange Regulation Act (to verify at least 60% NRI ownership), lifting it further to discover individual shareholders would defeat the national policy of attracting NRI investment.

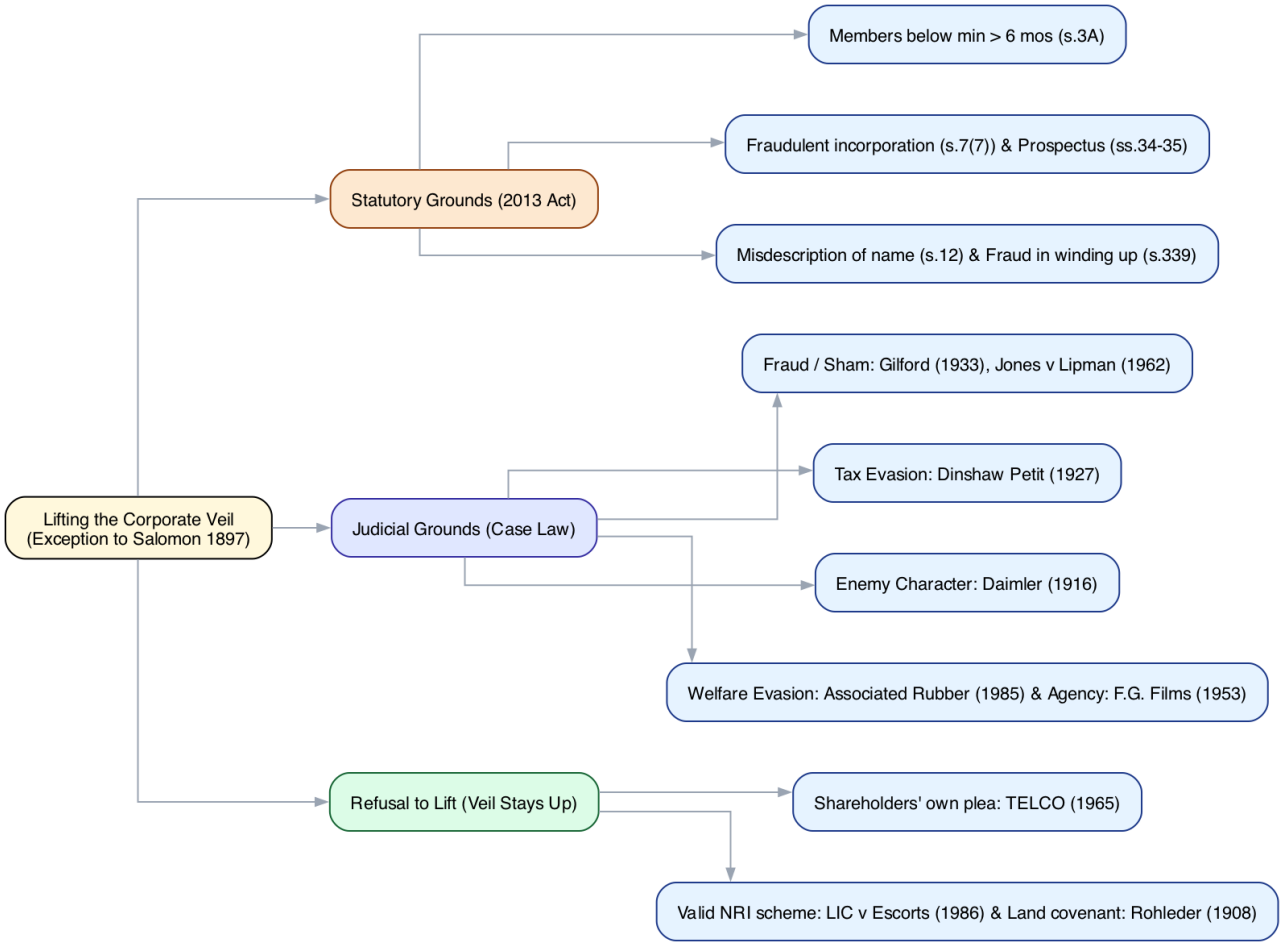
> ***Section 339(1), Companies Act, 2013:*** *"If in the course of the winding up of a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company or any other persons or for any fraudulent purpose, the Tribunal… may, if it thinks it proper so to do, declare that any person, who is or has been a director, manager, or officer of the company or any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Tribunal may direct."*

In Simple Terms: The corporate veil is like a one-way legal shield. As long as a business is honest, the shield stays up. If the controllers use the company as a puppet to cheat creditors, dodge taxes, break a contract, or deprive workers of their bonus, the court pulls

the shield down — but the founders themselves cannot ask the court to remove the shield just because it has become inconvenient for them.

The Visual

The decision map below categorizes the statutory and judicial triggers that cause the court or the Act to pierce the corporate veil, alongside the cases where the court refuses to lift it.



Read the three main branches from left to right: the first branch lists express statutory sections in the 2013 Act; the middle branch groups the classic common-law exceptions (fraud, tax evasion, enemy control, labour-law evasion, agency); and the right branch highlights the exam traps where courts refuse to pierce the veil.

◈ WORKED EXAMPLE — Tax evasion via four sham companies vs the racial land-covenant problem

Facts. Problem 1: ‘M’, a wealthy man with huge dividend and interest income, forms four private companies, transfers blocks of his investments to each, credits his income to their accounts, and takes the money back as “pretended loans” to evade super-tax. **Problem 2:** ‘A’ transfers land to ‘B’ on a condition that ‘B’ shall never sell the land to “coloured persons”. ‘B’ sells the land to a registered company composed exclusively of Black shareholders. ‘A’ sues to annul the sale. Decide both.

Rule. (1) Where companies do no real business and are created solely as a fiscal sham to evade tax, the court lifts the corporate veil (*Sir Dinshaw Maneckjee Petit, Re (1927)*). (2) Where there is no danger to public safety (unlike wartime enemy control in *Daimler Co. Ltd. v Continental Tyre & Rubber Co. Ltd. (1916)*) and no fraud by the covenantor using a sham alter-ego, a corporation is a distinct legal person having neither race nor colour (*People's Pleasure Park Co. v Rohleder (1908)*).

Apply. In Problem 1, the four private companies are mere paper pockets of 'M' himself, carrying on no genuine business and serving only to disguise his taxable income as loans. The court will pierce the veil. In Problem 2, following the classic American authority *People's Pleasure Park Co. v Rohleder (1908)* (which KSLU sets verbatim from the prescribed textbook), the transferee is the **company**, an artificial person separate from its individual shareholders, so the property has passed to the corporation and not to its members individually. *(Note: in a Canadian variant, Connors Bros. Ltd. v Connors (1940), where a covenantor himself controlled a company to breach his own trade covenant, the veil was lifted on the Gilford principle; mention both in your answer for full credit.)*

Conclusion. In Problem 1, the court **will lift the corporate veil** of the four companies and tax the income in M's hands. In Problem 2, under *People's Pleasure Park Co. v Rohleder (1908)*, A's suit to annul the conveyance **fails** because the company is a legal entity separate from its members.

Case Laws

- **[C-4] *Gilford Motor Co. Ltd. v Horne (1933)***
  - **Facts:** Horne was appointed managing director of Gilford Motor Co. under a service agreement containing a valid restrictive covenant that he would not solicit or entice away the company's customers after leaving its employment. After his employment ended, Horne incorporated a small company in his wife's and an employee's names, which immediately began soliciting Gilford's customers.
  - **Held:** The Court of Appeal held that the new company was a "mere cloak or sham" formed as a device to enable Horne to commit breaches of his contractual covenant, lifted the corporate veil, and granted an injunction against both Horne and the company.
  - **Why it matters here:** It is the leading authority for lifting the veil where a company is used as a sham to evade a contractual restraint.
- ***Jones v Lipman (1962)***
  - **Facts:** Lipman contracted to sell a house to the plaintiffs, then changed his mind; to defeat their claim for specific performance, he bought a ready-made shell company controlled entirely by himself and his clerk, and conveyed the house to that company.
  - **Held:** Russell J described the company as "a creature of the first defendant, a device and a sham, a mask which he holds before his face in an attempt to avoid

recognition by the eye of equity," and ordered specific performance against both Lipman and the company.

- **Why it matters here:** It shows that a vendor cannot escape specific performance by transferring the property to a puppet company he controls.

- **[C-5]** ***Daimler Co. Ltd. v Continental Tyre Co. (1916)***
  - **Facts:** Continental Tyre was incorporated in England to sell tyres made in Germany by its German parent company; all its directors and 24,999 of its 25,000 shares were held by German residents. After World War I broke out between Britain and Germany, the company sued Daimler Co. in England to recover a trade debt on bills of exchange.
  - **Held:** The House of Lords lifted the corporate veil and held that although the company was English by registration, it assumed **enemy character** because the persons in *de facto* control of its affairs were enemy residents, and allowing the suit would offend public policy against trading with the enemy.
  - **Why it matters here:** It establishes that the veil will be lifted to determine the true character of a company when national security and public policy are at stake.
- ***Sir Dinshaw Maneckjee Petit, Re (1927)***
  - **Facts:** Sir Dinshaw Petit, a wealthy Bombay baronet earning huge dividend and interest income, formed four private companies, transferred blocks of his shares to them as nominal owners, had the dividends credited to their accounts, and immediately took the money back as interest-free "pretended loans" that were never repaid, thereby splitting his income to avoid super-tax.
  - **Held:** The Bombay High Court lifted the corporate veil, holding that the four companies did no genuine business and were nothing more than the assessee himself, created purely as a sham to evade super-tax.
  - **Why it matters here:** It is the exact factual source of the recurring KSLU application problem on tax evasion through four private companies.
- ***Workmen v Associated Rubber Industry Ltd. (1985)***
  - **Facts:** Associated Rubber Industry Ltd. created a wholly owned subsidiary with no business or assets of its own, transferred its high-yielding shares in another company (INARCO Ltd.) to that subsidiary so the dividends would not appear in the parent company's profit-and-loss account, and thereby reduced the statutory bonus payable to its workmen from 16% to 4%.
  - **Held:** The Supreme Court lifted the corporate veil, ruled that it is the duty of the court to get behind the smokescreen whenever corporate ingenuity is used to evade taxing or **welfare legislation**, and treated the subsidiary's dividend income as part of the parent company's gross profits for bonus calculation.
  - **Why it matters here:** It is the leading Indian authority for piercing the veil to prevent evasion of labour and social-welfare statutes.

- ***Tata Engineering & Locomotive Co. v State of Bihar (1965)***
  - **Facts:** TELCO and other registered companies filed writ petitions under Article 32 challenging sales-tax assessments and asked the Supreme Court to lift their own corporate veil so the court would see the Indian citizens who were their shareholders and grant them fundamental rights under Article 19(1)(g).
  - **Held:** A five-judge Constitution Bench of the Supreme Court refused to lift the veil, holding that a company is a juristic person distinct from its members and cannot claim citizen-only rights under Article 19, nor can shareholders who incorporated for their own advantage ask the court to tear aside the veil when it ceases to suit them.
  - **Why it matters here:** Essential syllabus authority proving that the doctrine of lifting the veil is a weapon for the court to prevent injustice, not a privilege shareholders can invoke at will.
- ***LIC of India v Escorts Ltd. (1986)***
  - **Facts:** Thirteen overseas companies controlled by non-resident Indian industrialist Swraj Paul's family trust each purchased up to 1% of shares in Escorts Ltd. under an RBI non-resident portfolio investment scheme. Escorts refused to register the transfers and asked the court to lift the corporate veil of all thirteen companies to treat them as a single individual breaching the 1% ceiling, and also challenged LIC's requisition of an EGM to remove Escorts' non-executive directors.
  - **Held:** The Supreme Court held that generally the corporate veil may be lifted where a statute permits it or where fraud or improper conduct is intended to be prevented, but under the Foreign Exchange Regulation Act the veil could be lifted only to verify that each company had at least 60% NRI ownership — not to club all thirteen companies together and frustrate the national policy of encouraging NRI investment; further, LIC as a majority shareholder had the ordinary corporate right to requisition an EGM without being subjected to public-law writ review for that commercial act.
  - **Why it matters here:** It is the landmark Indian synthesis of when the corporate veil will (and will not) be lifted in statutory and regulatory contexts.
- ***People's Pleasure Park Co. v Rohleder (1908)***
  - **Facts:** Land in Virginia was conveyed subject to a perpetual restrictive covenant that title should never vest in "a person or persons of African descent or coloured persons." The transferee sold the land to People's Pleasure Park Co., a registered corporation whose shareholders and directors were exclusively Black, to develop an amusement park, and a neighbouring owner sued to annul the conveyance.
  - **Held:** The Supreme Court of Appeals of Virginia refused to lift the corporate veil and dismissed the suit, holding that a corporation is an artificial legal person wholly distinct from its individual shareholders and possesses no racial attribute.
  - **Why it matters here:** It is the exact case behind KSLU's recurring land-covenant problem, contrasted in textbooks with *Daimler (1916)* to show when courts refuse to look behind corporate membership.

- ***DHN Food Distributors Ltd. v Tower Hamlets LBC (1976)***
  - **Facts:** A wholesale grocery business was run by a parent company (DHN), while the warehouse land was registered in the name of one wholly owned subsidiary and the vehicles in another. When the local council compulsorily acquired the land, it refused to pay compensation for "disturbance of business" on the technical plea that the subsidiary owned the land while the parent company owned the business.
  - **Held:** The Court of Appeal (Lord Denning MR) lifted the corporate veil and treated the parent and its wholly owned subsidiaries as a **single economic entity** so that the group could recover full compensation for business disturbance.
  - **Why it matters here:** It illustrates the "group enterprise" or single-economic-unit ground for lifting the corporate veil in the interest of justice.

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6. Promoters — Duties and Liabilities

In short: A promoter is the person who conceives the idea of forming a company, takes the practical steps to incorporate it, and sets it going. Because a promoter moulds the company before it has an independent Board to protect itself, the law places him in a fiduciary relationship — forbidding secret profits, requiring full disclosure to an independent Board or the body of shareholders, and imposing civil and criminal liability for prospectus misstatements and pre-incorporation contracts.

> **Previous Year Questions**
>
> - **[16M/10M]** Who is a promoter? Explain his duties, powers and liabilities (legal position of a promoter under the Companies Act). *(Jul 2026 (100), Jul 2026 (80), Mar 2024 (100), Sep 2023 (80), Nov 2022 (100))* ★★★★★
> - **[Short Note]** Write a note on 'Promoter' / duties and liabilities of promoters. *(Jan 2026 (80), Jan 2025 (80), Aug 2024 (80), Sep 2023 (80), Apr 2022 (80))* ★★★★

The Hook

In **1878**, a syndicate led by Baron Erlanger bought the lease of a Caribbean phosphate island for **£55,000**, formed a new company to mine it, hand-picked five friendly directors (two were abroad, one was Erlanger's own agent, and another was a formal figurehead), and had that puppet Board buy the lease from the syndicate for **£110,000** — doubling their money overnight before offering shares to an unsuspecting public. When the truth came out and the shareholders installed an independent Board, the House of Lords set the sale aside: **promoters stand in a fiduciary position**, and disclosure to a puppet Board they control is no disclosure at all (*Erlanger v New Sombrero Phosphate Co. (1878)*).

I. Who is a promoter?

Before a company can be registered, human hands must conceive the business idea, negotiate preliminary contracts for land or machinery, draft the Memorandum and Articles, select the first directors, and file the incorporation documents. Any person who undertakes these formative steps is a **promoter**.

For over a century, English and Indian courts treated "promoter" as a practical term of business rather than a rigid technical term, guided by Cockburn CJ's famous definition in ***Twycross v Grant (1877)*** ("one who undertakes to form a company with reference to a given project and to set it going, and who takes the necessary steps to accomplish that purpose"). The **Companies Act, 2013** codified the definition for the first time in **Section 2(69)**:

> ***Section 2(69), Companies Act, 2013:*** *"'Promoter' means a person—*
>
> 1. *who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or*
> 2. *who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or*
> 3. *in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act: Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity."*

> ***Chief Justice Cockburn in Twycross v Grant (1877):*** *"A promoter, I apprehend, is one who undertakes to form a company with reference to a given project and to set it going, and who takes the necessary steps to accomplish that purpose."*

In Simple Terms: A promoter is the founder-architect who brings the company into existence or controls its Board from behind the scenes. However, under the proviso to Section 2(69), a lawyer, chartered accountant, company secretary, or valuer who merely drafts documents or gives advice **in a professional capacity** is **not** a promoter.

II. Legal position of a promoter — a fiduciary

What is the exact legal status of a promoter towards the company he is forming?

- **Neither an agent nor a trustee.** A promoter is **not an agent** of the company because the company is not yet in existence to appoint him as principal (*Kelner v Baxter (1866)*). Nor is he strictly a **trustee**, because no trust property is vested in him for an existing beneficiary.
- **A fiduciary from the moment he acts for the company.** Instead, as Lord Cairns LC declared in ***Erlanger v New Sombrero Phosphate Co. (1878)***, a promoter stands in an **undoubted fiduciary position** [a relationship of utmost trust, good faith, and confidence, *uberrimae fidei*]. Having in his hands the creation and moulding of the

company, he has the power of defining how, when, and in what shape the company shall start into existence as a trading corporation.

III. Duties of a promoter

Every duty of a promoter flows directly from his fiduciary status:

1. **Duty not to make any secret profit.** A promoter is not forbidden from selling his own property to the company or making a profit on the transaction — what the law strictly forbids is making an **undisclosed (secret) profit** at the company's expense. He must never take a secret commission, bribe, or hidden mark-up (*Gluckstein v Barnes (1900)*).
2. **Duty of full and fair disclosure.** If a promoter has any personal interest in a transaction with the company, he must make a **complete and candid disclosure** of both the fact of his interest and the exact amount of profit he is making. Half-disclosure that conceals a second layer of profit is a breach (*Gluckstein v Barnes (1900)*).
3. **To whom disclosure must be made.** Because a promoter cannot validly disclose to himself or to a puppet Board of his own nominees, disclosure is legally effective only if made to:
    a. An **independent and competent Board of Directors** capable of exercising an impartial judgment on the company's behalf (*Erlanger v New Sombrero Phosphate Co. (1878)*); or
    b. The **entire body of existing and intended shareholders** through full disclosure in the **Articles of Association and the Prospectus** (*Lagunas Nitrate Co. v Lagunas Syndicate (1899)*; *Salomon v A. Salomon & Co. Ltd. (1897)*).
4. **Duty not to make unfair use of his position.** He must act in utmost good faith (*bona fide*) for the benefit of the company he is bringing into existence and must not saddle it with unconscionable contracts.
5. **Exit offer to dissenters — Sections 13(8) & 27(2).** Where a company alters the objects for which it raised money from the public through a prospectus and still has unutilized funds, the promoters and controlling shareholders must provide an **exit opportunity** to dissenting shareholders in accordance with SEBI regulations.

IV. Liabilities of a promoter

A promoter who breaches his fiduciary or statutory duties faces both equitable remedies by the company and severe statutory liabilities under the Companies Act, 2013:

1. **Liability for non-disclosure / secret profits:**
    a. **Rescission of contract** — The company may rescind (cancel) the contract of purchase, return the property, and recover the full purchase price paid (*Erlanger v New Sombrero Phosphate Co. (1878)*).
    b. **Recovery of secret profit** — Where rescission has become impossible (or the company chooses to keep the property), the company may compel the promoter to **account for and hand over the secret profit** (*Gluckstein v Barnes (1900)*).

c. **Damages for breach of fiduciary duty** — Where property was sold at an inflated price without disclosure and cannot be restored, the company can sue for damages measured by the difference between the price paid and the fair market value (*Leeds & Hanley Theatres of Varieties Ltd., Re (1902)*).

2. **Liability for prospectus misstatements — Sections 34 to 36:**
   a. **Civil liability (s.35)** — A promoter is jointly and severally liable to **compensate every investor** who subscribes for securities on the faith of a prospectus and suffers loss by reason of any untrue statement or misleading omission.
   b. **Criminal liability (s.34 & s.36)** — For untrue statements in a prospectus (s.34) or fraudulently inducing persons to invest money (s.36), the promoter is punishable for **fraud under Section 447** (imprisonment from **6 months to 10 years**, or at least 3 years where public interest is involved, plus a fine of up to **three times** the amount involved).
3. **Personal liability on pre-incorporation contracts.** Because the company does not exist before registration, any contract signed by a promoter on its behalf before incorporation binds the **promoter personally** (*Kelner v Baxter (1866)*), unless after incorporation the company adopts the contract under **Sections 15(h) and 19(e) of the Specific Relief Act, 1963** and enters into a novation.
4. **Liability during incorporation and winding up:**
   a. **Fraud at incorporation (s.7(6)–(7))** — Personal liability under Section 447 if the company was incorporated using false or incorrect particulars.
   b. **Non-cooperation with Company Liquidator (s.284)** — Punishment if a promoter fails to assist the liquidator.
   c. **Public examination on fraud in winding up (s.300)** — Where the liquidator reports that a fraud has been committed by a promoter in the promotion or formation of the company, the Tribunal (NCLT) may order his **public examination** on oath.
   d. **Misfeasance and restoration of property (s.340)** — In winding up, the Tribunal may compel a promoter who has misapplied or retained company money or committed breach of trust to repay or restore the money with interest.

V. Remuneration of a promoter

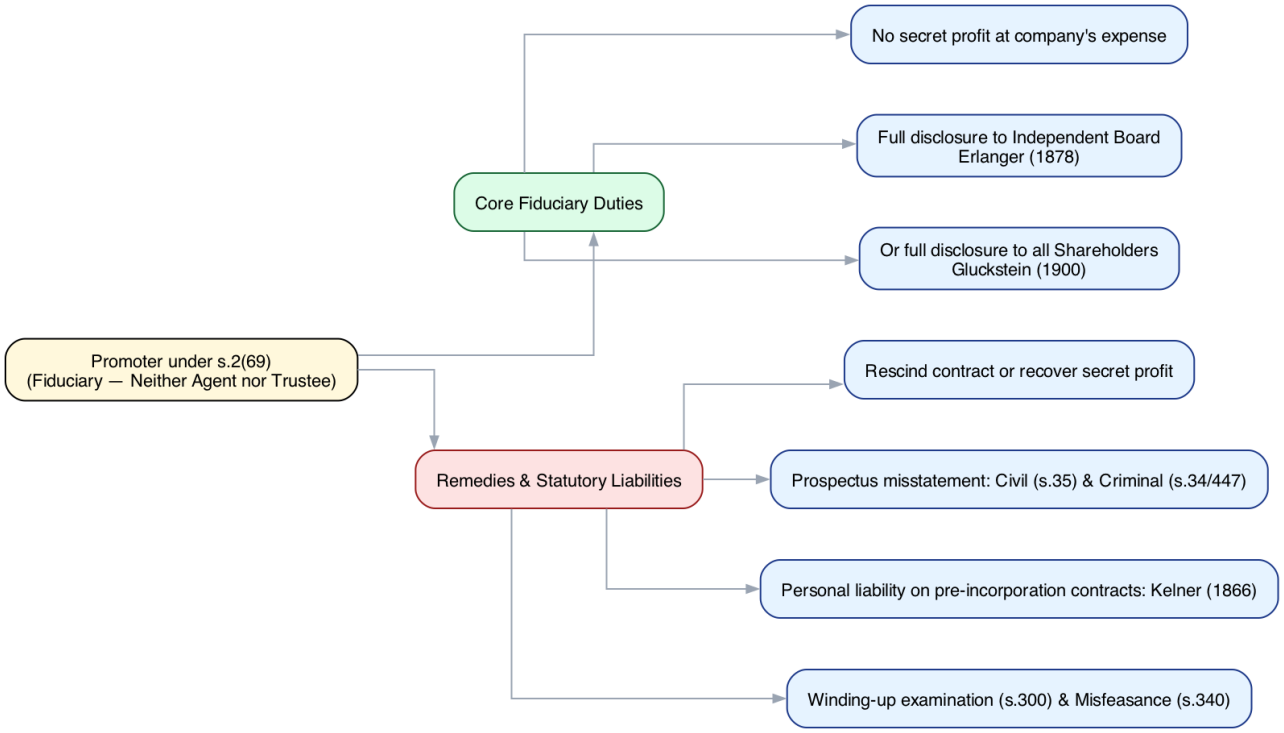
Because a company is not in existence when the promoter performs his pre-incorporation services, a promoter has **no legal right** to claim remuneration or even reimbursement of registration expenses from the company unless there is a valid post-incorporation contract to pay him (*In re English & Colonial Produce Co. Ltd. (1906)*). In practice, once incorporated, a company may remunerate its promoters (provided full disclosure is made in the prospectus) by:

1. Paying a lump sum in cash or reimbursing preliminary expenses;
2. Allotting fully or partly paid-up shares or debentures; or

3. Granting a commission on shares sold or an option to subscribe for future shares at a fixed price.

The Visual

The diagram below maps the fiduciary position of a promoter under Section 2(69), branching into his core disclosure duties and the four tracks of civil and criminal liability for breach.



Trace the two branches from the root: the left branch sets the promoter's fiduciary obligations (no secret profit, full disclosure to an independent Board or the body of members), and the right branch sets out the company's equitable remedies and the statutory penalties under the 2013 Act.

◈ WORKED EXAMPLE — Half-disclosure of a two-layered promoter profit

Facts. Four promoters form a syndicate to buy an exhibition hall ("Olympia") at a liquidator's sale for £140,000 and resell it to a company they are promoting for £180,000. Before completing the purchase, they secretly buy up old mortgages on Olympia at a heavy discount, earning an extra £20,000 when the £140,000 purchase price pays off those mortgages in full. In the company's prospectus, they disclose the £40,000 profit (£180,000 minus £140,000) to the public, and they disclose the extra £20,000 only to the Board of Directors — who are the four promoters themselves. Can the company recover the £20,000?

Rule. A promoter stands in a fiduciary position and cannot retain any profit unless it is **fully disclosed** either to an **independent Board of Directors** (*Erlanger v New Sombrero Phosphate Co. (1878)*) or to the **whole body of intended shareholders**

in the prospectus (*Gluckstein v Barnes (1900)*). Disclosure by promoters solely to themselves sitting as directors is a sham.

Apply. Disclosing the £40,000 profit in the prospectus covered only that first layer; concealing the extra £20,000 mortgage profit from the public while "disclosing" it to a Board composed of the four promoters themselves was no disclosure in law.

Conclusion. Yes — the company can compel the promoters to **account for and hand over the secret profit of £20,000** (*Gluckstein v Barnes (1900)*).

Case Laws

- **[C-6] *Erlanger v New Sombrero Phosphate Co. (1878)***
  - **Facts:** A syndicate headed by Baron Erlanger purchased the lease of Sombrero Island (rich in phosphate) for £55,000, incorporated a company to buy it, and appointed five initial directors — two were abroad, one was Erlanger's own agent, and one was a figurehead. This dependent Board ratified the purchase of the island from Erlanger's nominee for £110,000 without any independent valuation, and shares were sold to the public without disclosing the £55,000 mark-up.
  - **Held:** The House of Lords held that promoters stand in a fiduciary position towards the company they create; if they sell their own property to the company, they must either provide it with an **independent and intelligent Board of Directors** and make full disclosure, or disclose the whole truth to the body of shareholders, failing which the company is entitled to **rescind** the contract and recover the purchase money.
  - **Why it matters here:** It is the foundational authority on the fiduciary position of promoters and the requirement of disclosure to an independent Board.
- ***Gluckstein v Barnes (1900)***
  - **Facts:** Four promoters bought the "Olympia" exhibition premises for £140,000 and sold it to the company they promoted (of which they were the sole first directors) for £180,000. In the prospectus inviting public subscriptions, they disclosed the £40,000 profit, but concealed an additional £20,000 profit they had made by secretly buying up incumbrances on the property at a discount before the sale. When sued by the liquidator, they pleaded they had disclosed the £20,000 to the company's Board (themselves).
  - **Held:** The House of Lords held the promoters jointly and severally liable to hand over the £20,000 secret profit, ruling that disclosure to a Board composed of the fellow-promoters themselves is an absurd farce and that disclosure must be made to the actual intended shareholders.
  - **Why it matters here:** It establishes that partial disclosure is no defence and that promoters cannot absolve themselves by disclosing secret profits to a Board they themselves constitute.

- ***Twycross v Grant (1877)***
  - **Facts:** Grant and others organized the formation of the Lisbon Steam Tramways Company, arranged its contracts with contractors, and issued its prospectus without disclosing certain preliminary contracts between the contractors and the promoters as required by statute. An allottee whose shares proved worthless sued them as "promoters".
  - **Held:** The Court of Appeal held that the defendants were promoters — defining a promoter as one who undertakes to form a company with reference to a given project and to set it going — and held them liable for failing to disclose the contracts in the prospectus.
  - **Why it matters here:** It provides the classic judicial definition of who is a promoter, now supplemented by Section 2(69) of the 2013 Act.
- **[C-7]** ***Kelner v Baxter (1866)***
  - **Facts:** Three promoters acting "on behalf of the proposed Gravesend Royal Alexandra Hotel Company Limited" signed a written contract to buy wine worth £900 from Kelner before the company was registered. The wine was delivered and consumed, and the company was later incorporated and purported to ratify the contract, but collapsed into liquidation before paying.
  - **Held:** The Court of Common Pleas held the three promoters **personally liable** on the contract, ruling that because the company did not exist when the contract was signed, there was no principal in existence who could be bound or who could subsequently ratify the contract.
  - **Why it matters here:** It anchors the promoter's personal liability on pre-incorporation contracts.

Landmark Cases — in Brief

[C-1] Salomon v A. Salomon & Co. Ltd. (1897) — the birth of separate personality

Facts.

Aron Salomon incorporated his solvent leather-boot business under the English Companies Act, 1862, taking 20,001 shares while his wife and five children took 1 share each to fulfill the seven-member requirement. In part payment of the purchase price, he also took £10,000 in debentures secured by a floating charge on the company's assets. When trade depression forced the company into liquidation, its assets were enough to pay Salomon's secured debentures but left nothing for unsecured trade creditors.

Issue.

Was the company a mere sham, alias, or agent of Aron Salomon so as to make him personally liable to indemnify the company against its unsecured debts, or was it an independent legal person?

Held.

The House of Lords unanimously held that once a company is legally incorporated in compliance with the Act, it becomes a **separate legal person** independent of its subscribers, regardless of how large a proportion of shares one member holds. Salomon's debentures were valid and ranked ahead of unsecured creditors, and his personal liability was strictly limited.

Why it matters.

It is the foundation stone of modern company law: incorporation creates a distinct juristic person, and limited liability applies equally to a one-man or family company and a vast public corporation.

[C-2] Lee v Lee's Air Farming Ltd. (1961) — controller as employee of his own company

Facts.

Geoffrey Lee incorporated an aerial top-dressing company in New Zealand, holding 2,999 of its 3,000 shares, and was appointed its sole governing director for life. In that capacity, he employed himself as the company's chief pilot at a fixed salary. While flying on company business, he was killed in an air crash, and his widow claimed statutory workers' compensation from the company.

Issue.

Did Lee's complete control over the company as sole governing director and majority shareholder prevent him from being a "worker" under a contract of service with the company?

Held.

The Privy Council held that Lee and the company were two separate and distinct legal entities. In his capacity as governing director (agent of the company), Lee could validly contract with and give orders to himself in his separate capacity as salaried pilot (employee of the company). His widow was awarded compensation.

Why it matters.

It demonstrates that separate corporate personality allows a single individual to function simultaneously as the controlling organ of the company and as its salaried employee.

[C-3] Macaura v Northern Assurance Co. Ltd. (1925) — shares are not the company's assets

Facts.

Macaura sold all the timber on his estate to a company in return for all 42,000 fully paid shares of the company (held by him and his nominees) and was also its substantial creditor. He insured the timber against fire in his own personal name rather than in the company's name. When a fire destroyed the timber, the insurance company refused to pay.

Issue.

Does a sole shareholder or unsecured creditor of a company have an insurable interest in property belonging to the company?

Held.

The House of Lords held that he does not. The timber belonged exclusively to the **company**, not to its shareholders. A shareholder has a right to share in profits and surplus assets on winding up, but has no legal or equitable interest in any asset owned by the company, so Macaura's personal insurance policy was unenforceable.

Why it matters.

It proves that separate corporate personality works both ways: shareholders cannot claim corporate property as their own when it suits them.

[C-4] Gilford Motor Co. Ltd. v Horne (1933) — lifting the veil for sham evasion of contract

Facts.

Horne, the former managing director of Gilford Motor Co., was bound by a valid post-employment covenant not to solicit the company's customers. Shortly after leaving, he incorporated J.M. Horne & Co. Ltd., in which his wife and an associate were the sole shareholders and directors, and used that company to solicit Gilford's customers.

Issue.

Could the court look behind the separate corporate personality of the new company and restrain both Horne and the company from breaching the covenant?

Held.

The Court of Appeal lifted the corporate veil, holding that the company had been formed as a "mere cloak or sham" to enable Horne to commit breaches of his personal covenant, and issued an injunction against both Horne and the company.

Why it matters.

It is the leading judicial authority establishing that courts will pierce the corporate veil whenever a company is used as a fraudulent mask to evade an existing legal or contractual obligation.

[C-5] Daimler Co. Ltd. v Continental Tyre & Rubber Co. (Great Britain) Ltd. (1916) — lifting the veil for enemy character

Facts.

Continental Tyre was registered in England to sell tyres made in Germany by a German parent company. All its directors and 24,999 of its 25,000 shares were held by German nationals residing in Germany. During the First World War, it sued Daimler Co. in an English court to recover a trade debt.

Issue.

Could the court lift the veil of English registration to examine the nationality of the persons in real control of the company during wartime?

Held.

The House of Lords held that although an artificial company has no personal loyalty of its own, it assumes **enemy character** when its agents or the persons in *de facto* control of its affairs reside in an enemy country or act under enemy instructions. Allowing the action would amount to trading with the enemy, so the suit was barred.

Why it matters.

It establishes that courts will pierce the corporate veil whenever public policy and national security require determining who truly controls the company.

[C-6] Erlanger v New Sombrero Phosphate Co. (1878) — promoter’s fiduciary duty of disclosure

Facts.

A syndicate headed by Baron Erlanger purchased the lease of a phosphate-bearing island for £55,000, incorporated a company, and sold the lease to the company for £110,000 through a Board of five directors hand-picked by Erlanger (only two of whom attended, one being Erlanger’s personal agent). Shares were then sold to the public without disclosing the £55,000 profit.

Issue.

Could the company rescind the purchase contract on the ground that the promoters had breached their fiduciary duty by failing to disclose their profit to an independent Board?

Held.

The House of Lords held that promoters stand in a fiduciary position towards the company they bring into existence. If they sell their own property to the company, they must furnish it with an independent Board of Directors and make full disclosure (or disclose fully to all shareholders), failing which the contract is voidable at the company’s option. Rescission was ordered upon restitution of the island.

Why it matters.

It is the cornerstone case defining the fiduciary obligations of promoters and the remedies of rescission and accounting for secret profits.

Quick Revision & Case Law Table

One-line memory hooks

- **Meaning & characteristics (1.1):** A company (s.2(20), s.9) is a registered artificial person — separate entity, limited liability, perpetual succession, separate property, transferable shares (s.44), sues in its own name, and has an optional common seal (s.22).
- **Kinds of company (1.2):** Classify by incorporation (chartered, statutory, registered), by liability (shares s.2(22), guarantee s.2(21), unlimited s.2(92)), by members (private 2–200 s.2(68), public min 7 s.2(71), OPC 1 member s.2(62), small s.2(85)), and by control (holding/subsidiary s.2(87), government ≥51% s.2(45), foreign s.2(42), charitable s.8).
- **Corporate personality & limited liability (1.3):** Company ≠ members; it can borrow from its founder (*Salomon*), employ its controlling director (*Lee*), and alone owns its assets so members have no insurable interest (*Macaura*).
- **Advantages & disadvantages (1.4):** Incorporation gives limited liability, perpetual succession, public capital, and floating charges — at the cost of veil-lifting, formality, public disclosure (s.399), divorce of ownership from control, and lack of citizen status under Article 19.
- **Lifting the corporate veil (1.5):** Veil stays up by default, but is lifted under statute (ss.3A, 7(7), 12, 34–35, 39, 216, 339) or by courts for enemy character (*Daimler (1916)*), tax evasion (*Dinshaw Petit (1927)*), fraud/sham (*Gilford (1933)*, *Jones v Lipman (1962)*), labour-welfare evasion (*Associated Rubber (1985)*), or agency — never at the shareholders' own convenience (*TELCO (1965)*).
- **Promoters (1.6):** Defined in s.2(69); stands in a fiduciary position (neither agent nor trustee), must make no secret profit and disclose fully to an independent Board (*Erlanger*) or all members (*Gluckstein*), and is personally liable on pre-incorporation contracts (*Kelner*) and prospectus misstatements (ss.34–36).

Master Case List for Unit 1

Case	Topic	One-line ratio
[C-1] *Salomon v A. Salomon & Co. Ltd. (1897)*	1.1, 1.3, 1.4	A registered company is a legal person wholly distinct from its members even in a one-man company.

Case	Topic	One-line ratio
Kondoli Tea Co. Ltd., Re (1886)	1.1	A transfer of property by shareholders to their own company is a conveyance between two distinct legal persons.
Noel Tedman Holdings Pty Ltd., Re (1967)	1.1	Simultaneous death of all members and directors does not end the company's perpetual succession.
State Trading Corporation of India Ltd. v CTO (1963)	1.2, 1.4	A Government company is a juristic person distinct from the State, and a company is not a citizen under Article 19.
Heavy Engineering Mazdoor Union v State of Bihar (1969)	1.2	A Government company incorporated under the Act has an independent existence and is not an agent of the Central Government.
[C-2] *Lee v Lee's Air Farming Ltd. (1961)*	1.3	A controlling shareholder and governing director can also be an employee of the company under a valid contract of service.
[C-3] *Macaura v Northern Assurance Co. Ltd. (1925)*	1.3	A shareholder has no legal or equitable property in corporate assets and therefore no insurable interest in them.
Bacha F. Guzdar v CIT, Bombay (1955)	1.1, 1.3	Corporate assets and agricultural income belong to the company alone; dividends received by shareholders are non-agricultural income.
CIT v Associated Clothiers Ltd. (1963)	1.4	A sale of property by founders to a company wholly owned by them is a taxable sale between two distinct entities.
Rustom Cavasjee Cooper v Union of India (1970)	1.4	While a company is not a citizen, a shareholder can petition under Article 32 if state action against the company impairs his own rights.
[C-4] *Gilford Motor Co. Ltd. v Horne (1933)*	1.5	Veil lifted where a former employee formed a sham company as a cloak to breach a non-solicitation covenant.
Jones v Lipman (1962)	1.5	Veil lifted and specific performance ordered where a vendor conveyed land to his own puppet company to evade a sale contract.

Case	Topic	One-line ratio
[C-5] *Daimler Co. Ltd. v Continental Tyre & Rubber Co. Ltd. (1916)*	1.5	Veil lifted during wartime to examine the enemy nationality of the persons in *de facto* control of the company.
Sir Dinshaw Maneckjee Petit, Re (1927)	1.5	Veil lifted where four private companies with no genuine business were formed solely to split income and evade super-tax.
Workmen v Associated Rubber Industry Ltd. (1985)	1.5	Veil lifted where a wholly owned subsidiary was created to divert dividend income and reduce workmen’s statutory bonus.
Tata Engineering & Locomotive Co. Ltd. v State of Bihar (1965)	1.5	Shareholders who incorporated for their own benefit cannot ask the court to lift their own corporate veil to claim Article 19 rights.
LIC of India v Escorts Ltd. (1986)	1.5	Veil lifted only to the extent required by statute or to prevent fraud, not to defeat foreign-exchange investment schemes.
People’s Pleasure Park Co. v Rohleder (1908)	1.5	Veil not lifted where land was sold to a company composed of Black members, as the corporation itself is a distinct entity with no race.
DHN Food Distributors Ltd. v Tower Hamlets LBC (1976)	1.5	Parent and wholly owned subsidiary companies treated as a single economic entity to award disturbance compensation.
[C-6] *Erlanger v New Sombrero Phosphate Co. (1878)*	1.6	Promoters are fiduciaries who must disclose any personal profit to an independent Board, failing which the company may rescind.
Gluckstein v Barnes (1900)	1.6	Partial disclosure in a prospectus and disclosure to a Board composed of the promoters themselves cannot excuse a secret profit.
Twycross v Grant (1877)	1.6	A promoter is one who undertakes to form a company with reference to a given project and to set it going.

Case	Topic	One-line ratio
[C-7] *Kelner v Baxter (1866)*	1.6	Promoters are personally liable on pre-incorporation contracts because the non-existent company cannot be a principal or ratify.

End of Unit 1.



Company Law

KSLU LL.B. — Question Bank · Model Answers (Essays & Problems) · 100-mark pattern

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> ***Read this first, then go to your unit.*** *This companion to the study notes gives you a full, exam-ready* ***model answer*** *to every long-question theme and every fact-pattern problem asked in past KSLU Company-Law papers — grouped by unit and topic in the same order as the notes. The 8-mark short notes of the 100-mark paper are answered in §B of each unit; 6-mark short notes of the 80-mark paper are in the notes bundle.*
>
> ***Built for the 100-mark paper.*** *KSLU sets an* ***80-mark*** *and a* ***100-mark*** *paper; this bank is the* ***100-mark*** *edition (`Company_Law_Question_Bank_100.pdf`), which most students sit. A theme asked as a 16-mark essay in the 100-paper and as a 10-mark essay in the 80-paper is written* ***once*** *(tagged Pattern: both), so an 80-mark student can use the same answer scaled to the 10-mark budget. The* ***problems (§C) cover every fact-pattern from both patterns*** *— problems repeat, so none is left out.*

How to Use This Question Bank

What this is. A rehearsal book. The study notes teach the concept; this bank shows you how to *write the marks* — a complete answer in the exact shape an examiner rewards.

The 3-step drill. (1) Read the question and try a 2-minute plan from memory.

1. Read the model answer; note the structure, the cases, the verdict. (3) For problems, re-do the IRAC in your own words under time.

Priorities. The ★ rating shows how often a question has been set — from ★★★★★ (twelve times or more) down to ★ (once). Start with the top tiers; the Priority Index below lists every block ranked.

House rules that win marks. Lead with a definition + roadmap; name the case **and** the year; cite the exact section; for problems use the four IRAC headings and always give a definite verdict.

Exam Pattern & Mark Weights

> ***100-mark paper*** *— Q.No. 9 = 20 marks (two problems × 10); answer Q9* ***and any five*** *of Q1–Q8 (16 marks each). Always attempt Q9 (the problems) first.* ***80-mark***

> ***paper*** *— five Units; from each Unit one essay (10) + one short-note/ problem (6) is compulsory. The 6-mark short notes are in the notes bundle.*

Mark slot	What it is	Where it’s drilled
16M (100) / 10M (80)	Long essay	Section A of each unit
Problems (10M/6M)	Fact-pattern, IRAC	Section C of each unit
8M short notes (100)	Short notes, 300–350 words	Section B of each unit
6M short notes (80)	Short explanatory notes	In the **study-notes** bundle

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Priority Index — Questions by Frequency

Every
block in the bank, grouped by how often its question has been set (counted from the *Asked:* lines). Start at the top.

★★★★★ — asked twelve times or more — master these first

Block	Marks	Question
`Q1.2`	16M	What are the advantages / disadvantages of incorporation of a company?
`Q1.4`	16M	Explain the circumstances in which the court can lift the corporate veil. Answer with…
`Q1.5`	16M	Who is a promoter? Explain his duties and liabilities (legal position)
`P1.1`	Prob	All the members of a private company die together in an accident (train / boat / plane /…
`Q2.1`	16M	Explain the clauses / fundamental clauses of the Memorandum of Association (and its…

Block	Marks	Question
Q2.2	16M	Define prospectus. Explain its contents and the remedies for misrepresentation in a…
Q2.3	16M	Explain the doctrine of indoor management (Turquand’s rule) with exceptions
Q3.1	16M	Who is a director? Explain the position, powers and duties of directors
Q3.3	16M	Explain the different kinds of meetings of a company and the requisites of a valid…
Q4.2	16M	Explain the general principles and statutory restrictions on the allotment of shares (and…
Q4.4	16M	What is a debenture? Explain its characteristics and various kinds (and distinguish it…
P4.1	Prob	A minor is registered as a shareholder; on attaining majority he receives dividends; the…
Q5.2	16M	Explain the modes / grounds of winding up of a company and who may apply

★★★★ — asked seven to eleven times

Block	Marks	Question
Q1.1	16M	Define ‘Company’. Explain its kinds / the different types of company

Block	Marks	Question
P2.2	Prob	A company’s registered office is in one State (Mumbai/Hubballi/Chennai); it wishes to…
Q3.4	16M	What is oppression and mismanagement? What remedies are available under the Companies Act?
P3.1	Prob	A person already holds directorship in 15 (or 20) companies and wants to become a…
P3.2	Prob	Certain directors hold a Board meeting but prevent some lawfully-appointed directors from…
P3.5	Prob	The articles provide that a named person shall be a director (or legal advisor) and not…
Q4.1	16M	What is a share? Explain the different kinds of share capital
Q4.3	16M	Explain the rules regarding declaration and payment of dividend
S4.7	8M	Write a short note on: Dividend
P4.3	Prob	A company declares a dividend but does not pay it within thirty days of declaration. A…
Q5.1	16M	State the duties and powers of the Tribunal (NCLT) with respect to reconstruction and…

Block	Marks	Question
`Q5.3`	16M	Discuss the members’ voluntary winding up of a company

★★★ — asked four to six times

Block	Marks	Question
`Q1.3`	16M	“A company has an independent corporate existence.” Explain with case law
`S1.3`	8M	Write a short note on: One Person Company
`P1.2`	Prob	A, B and C hold all the shares of a company and transfer them to X, Y and Z. Does the…
`P1.4`	Prob	A person incorporates a company, appoints himself its pilot/employee, and dies on duty in…
`P1.6`	Prob	A conveys land to B on condition that B never sells it to a certain group. B sells it to…
`Q2.4`	16M	Explain the doctrine of ultra vires with its exceptions
`S2.8`	8M	Write a short note on: Pre-incorporation contracts
`P2.1`	Prob	X is the transferee of a share certificate issued under the company’s seal; the secretary…
`P2.5`	Prob	A, on the promoters’/others’ instructions, prepares the documents, pays the registration…

Block	Marks	Question
`Q3.2`	16M	Explain the procedure for appointment and removal of directors
`Q3.5`	16M	Explain the rule in Foss v Harbottle and its exceptions
`P3.7`	Prob	A company holds its AGM in December 1999, adjourns it to March 2000, and holds the next…
`Q4.5`	16M	What is a floating charge? When will a floating charge crystallise?
`P4.2`	Prob	The directors, by two resolutions, resolve to make a call, but neither resolution fixes…
`P5.1`	Prob	A company suspends its business for more than one year (labour strike / Tsunami /…
`P5.3`	Prob	A subscriber to the memorandum for 200 (or 100) shares ultimately takes only 20 (or 30).…

★★ — asked two or three times

Block	Marks	Question
`S1.1`	8M	Write a short note on: Government company
`P1.3`	Prob	A holds almost all shares of a company and insures the company’s property (timber /…
`P1.5`	Prob	A wealthy man forms four private companies, routes his income through them, and takes it…

Block	Marks	Question
`Q2.5`	16M	Discuss the binding force of the Memorandum and Articles of Association (MOA vs AOA)
`Q2.6`	16M	“A company cannot be sued for pre-incorporation contracts.” Discuss
`Q2.7`	16M	Explain the procedure / stages of incorporation of a company
`S2.1`	8M	Write a short note on: Certificate of incorporation
`S2.5`	8M	Write a short note on: Articles of Association
`S2.6`	8M	Write a short note on: Doctrine of ultra vires
`P2.3`	Prob	A company’s object is to manufacture mechanical spares. It now wants to manufacture and…
`P2.4`	Prob	A company advertises in a newspaper that some shares are “still available for sale” on…
`P2.7`	Prob	A public company is registered and incorporated after complying with all legal…
`S3.4`	8M	Write a short note on: Rule in Foss v Harbottle
`S3.6`	8M	Write a short note on: Corporate Social Responsibility
`P3.4`	Prob	Minority shareholders sue the directors alleging they are responsible for the losses the…

Block	Marks	Question
P3.6	Prob	A director refuses to retire as required by the articles and illegally continues in…
Q4.6	16M	Describe the procedure for transfer of shares and the remedy for refusal to register /…
S4.1	8M	Write a short note on: Share capital / kinds of share capital
S4.3	8M	Write a short note on: Call on shares
S4.8	8M	Write a short note on: Debenture
P4.6	Prob	X applies for shares; the company posts a letter of allotment soon after, but it never…
Q5.4	16M	Explain the appointment, powers and functions of a liquidator (and preferential payments)
S5.4	8M	Write a short note on: Liquidator / Duties of the Official Liquidator
P5.2	Prob	A and B are the only shareholders and directors of a private company; they fall into…

★ — asked once

Block	Marks	Question
S1.2	8M	Write a short note on: Holding and subsidiary company

Block	Marks	Question
S1.4	8M	Write a short note on: Advantages of incorporation of a company
S1.5	8M	Write a short note on: Lifting of corporate veil
S2.2	8M	Write a short note on: Clauses in Memorandum of Association
S2.3	8M	Write a short note on: Name clause
S2.4	8M	Write a short note on: Object clause of Memorandum of Association
S2.7	8M	Write a short note on: Prospectus
P2.6	Prob	A company alters its articles so as to breach its subsisting contract with its Managing…
P2.8	Prob	A chemical manufacturing company distributes ₹5 lakh for charity to scientific…
Q3.6	16M	Write a note on the powers of the Board of Directors and the restrictions on those powers
Q3.7	16M	Write a note on Corporate Social Responsibility (CSR) under the Companies Act
Q3.8	16M	Explain the law relating to the remuneration of directors (managerial remuneration) under…
S3.1	8M	Write a short note on: Statutory meeting
S3.2	8M	Write a short note on: Annual General Meeting

Block	Marks	Question
S3.3	8M	Write a short note on: Special resolution
S3.5	8M	Write a short note on: Central Government’s power to prevent mismanagement
P3.3	Prob	A profitable contract is offered to the company; a director gets a resolution passed that…
Q4.7	16M	Explain the rights and privileges of the shareholders/members of a company
Q4.8	16M	Explain the remedies available to debenture-holders on the company’s default
S4.2	8M	Write a short note on: Preference share capital
S4.4	8M	Write a short note on: Forfeiture of shares
S4.5	8M	Write a short note on: Transfer of shares
S4.6	8M	Write a short note on: Lien on shares
S4.9	8M	Write a short note on: Duties of Debenture Trustees
P4.4	Prob	A company borrows on the security of all its assets, present and future (machinery etc.…
P4.5	Prob	K, a bearer debenture holder of a company, transfers it to R by delivery. The company…

Block	Marks	Question
P4.7	Prob	A company’s articles authorise it only to expel a member. The company wants to deprive...
S5.1	8M	Write a short note on: National Company Law Tribunal (NCLT)
S5.2	8M	Write a short note on: Take-over and acquisition of minority interest
S5.3	8M	Write a short note on: Compulsory winding up of a company

Year Index — Questions by Paper

The 100-mark papers of the last five years (2022–2026), newest first, with the blocks that answer their questions. Use it to rehearse a whole past paper.

Paper	Blocks
Jul 2026 (100)	Q1.3 · Q1.5 · Q2.1 · Q2.2 · Q2.3 · S2.3 · S2.7 · P2.5 · Q3.1 · Q3.3 · P3.7 · Q4.1 · Q4.3 · S4.7 · P4.3 · Q5.2
Jul 2025 (100)	P1.2 · Q2.1 · S2.8 · Q3.1 · Q3.3 · S3.1 · P3.1 · P3.7 · Q4.3 · S4.2 · P4.1 · P4.3
Jan 2025 (100)	Q1.1 · Q1.4 · Q2.1 · S2.8 · P2.7 · Q3.1 · Q3.3 · P3.1 · P3.7 · Q4.3 · Q4.5 · S4.1 · S4.7 · P4.1 · P4.3 · Q5.1
Aug 2024 (100)	Q1.4 · Q1.5 · Q2.1 · Q2.2 · Q2.3 · S2.5 · P2.1 · P2.2 · P2.8 · Q3.3 · Q3.7 · S3.6 · Q4.1 · S4.7 · P4.1 · Q5.2
Mar 2024 (100)	P1.1 · Q2.1 · Q2.3 · P2.1 · P2.2 · Q3.3 · Q4.1 · P4.1 · P4.2
Sep 2023 (100)	Q1.2 · Q1.5 · P1.1 · Q2.2 · S2.6 · P2.1 · P2.5 · Q3.4 · Q3.5 · Q4.2 · S4.8 · P4.3 · Q5.2 · S5.4

Paper	Blocks
Mar 2023 (100)	`Q1.4` · `P1.6` · `Q2.1` · `Q2.2` · `P2.1` · `Q3.3` · `Q3.4` · `Q3.5` · `S3.5` · `Q4.2` · `S4.7` · `P4.1` · `P4.3` · `S5.1`
Nov 2022 (100)	`Q1.1` · `Q1.4` · `P1.1` · `P1.2` · `P1.5` · `P1.6` · `Q2.2` · `S2.4` · `Q3.1` · `Q3.3` · `P3.5` · `Q4.3` · `Q4.4` · `S4.7` · `S4.8` · `Q5.2` · `Q5.3` · `P5.3`
Apr 2022 (100)	`Q1.2` · `Q1.5` · `P1.1` · `P1.2` · `Q2.2` · `Q2.4` · `Q3.1` · `S3.4` · `P3.5` · `Q4.3` · `Q4.4` · `S4.7` · `Q5.2` · `P5.3`

> ***This bank is built for the 100-mark paper.*** *Its* ***essays*** *(§A) are the long questions asked on the KSLU Company-Law sitting (a theme asked as a 16-mark essay in the 100-mark paper and as a 10-mark essay in the 80-mark paper is written once and tagged Pattern: both); its* ***problems*** *(§C) cover* ***every*** *fact-pattern problem from both the 80- and 100-mark papers, because problems recur and are the easiest marks to lose. Every unit, in the notes' topic order. Its* ***short notes*** *(§B) answer every 8-mark short note of the 100-mark paper; the 6-mark short notes of the 80-mark paper are in the study-notes bundle.*

UNIT 1 — Introduction and Concept

A. Essay Questions (16M) — Model Answers

Q1.1 — `[16M]` Define ‘Company’. Explain its kinds / the different types of company.

> *Asked: Jul 2026 (80), Jul 2025 (80), Jan 2025 (80), Jan 2025 (100), Nov 2022 (100) · +6 earlier · Pattern: both · ★★★★ · Notes: Unit 1 → Topic 2 (Kinds of Company)*

> ***ANSWER OUTLINE***
>
> *1. Define company + s.2(20) — a registered artificial person.*
>
> *2. Classify by incorporation, by liability, by members/control.*
>
> *3. Explain each kind with its defining test.*
>
> *4. Salomon (1897) — the separate-person premise.*
>
> *5. Conclusion — the classification map.*

Introduction. A **company** is an incorporated association registered under the Companies Act, 2013, which the law treats as a single **artificial legal person** distinct from its members (s.2(20)). The word comes from the Latin *com* [with] and *panis* [bread] — those who break bread together — but in law its meaning is precise: a body **registered** under the Act, enjoying separate personality, perpetual succession and limited liability. Companies are classified on three cross-cutting bases — incorporation, liability, and membership/control — and a single company can fall under all three at once, so the three schemes must be kept apart.

A. On the basis of incorporation.

1. **Chartered companies** were created by a royal charter — the old East India Company is the classic example. They are of historical interest only, since no charter companies are formed in India today.
2. **Statutory companies** are created by a special Act of the legislature, such as the Reserve Bank of India or the Life Insurance Corporation. They are governed primarily by their own constituent Act, and the Companies Act applies only so far as consistent with it.
3. **Registered companies** are formed by registration under the Companies Act. This is what the word “company” now means in practice, and the rest of the Act is built around it.

B. On the basis of liability.

1. A **company limited by shares** is one where a member's liability is capped at the **amount unpaid on his shares** — once his shares are fully paid, he owes nothing more. This is by far the commonest form because it gives investors a known, limited exposure.
2. A **company limited by guarantee** is one where members promise to contribute a **fixed guaranteed sum** only if the company is wound up. Clubs, trade bodies and not-for-profit organisations use it, since they need a corporate form without raising share capital.
3. An **unlimited company** imposes **unlimited liability** on its members, like partners in a firm. It is rare, and used only where members are willing to stand fully behind the company's debts in exchange for freedom from certain restrictions.

C. On the basis of members and control.

1. A **private company (s.2(68))** restricts the right to transfer its shares, caps its members at **200** (excluding present and past employee-members), and prohibits any invitation to the public to subscribe. It needs a minimum of **2** members and **2** directors and is, in effect, a closed family business.
2. A **public company (s.2(71))** is any company that is **not** private; it may invite the public to buy its shares and its shares are freely transferable. It needs a minimum of **7** members and **3** directors.
3. A **One Person Company (s.2(62))** is a private company with a **single** member who nominates a person to take over on his death. Introduced by the 2013 Act, it lets a solo entrepreneur enjoy limited liability without a second shareholder.
4. A **Government company (s.2(45))** is one in which at least **51%** of the paid-up capital is held by the Central and/or a State Government; it remains a distinct juristic person despite state ownership.
5. **Holding and subsidiary companies (ss.2(46), 2(87))** are a parent-and-child pair — the holding company controls the composition of the Board, or more than half the voting power, of the subsidiary. A **small company** and a **listed company** are further statutory categories defined by capital/turnover and by listing respectively.

D. Why the classification matters.

1. The category fixes the **compliance burden** — the number of members and directors required, whether the public may be invited to subscribe, and the extent of disclosure and audit. A private company escapes much of the machinery a public company must observe, which is why closely-held businesses choose it.
2. The category also fixes the **rights of the members** — free transferability in a public company against restricted transfer in a private one, and the special protections built into an OPC or a government company. Choosing the wrong vehicle can therefore lock up capital or impose needless regulation, so the classification is a practical, not merely academic, exercise.

Leading cases

- ***Salomon v Salomon & Co. Ltd. (1897)*** — a registered company is a person separate from its members, whatever its size or the concentration of its ownership.
- ***State Trading Corporation of India Ltd. v CTO (1963)*** — a government company is a distinct juristic person and is not a "citizen".

Conclusion. The Act's taxonomy lets promoters choose the vehicle that fits their need — a closed **private** company, a capital-raising **public** company, a solo **OPC**, or a state-owned **government** company — but every one of them, the instant it is registered, becomes a separate legal person distinct from those who own it. The classification therefore matters both for compliance (numbers of members, directors, disclosures) and for the rights the members enjoy.

Q1.2 — `[16M]` What are the advantages / disadvantages of incorporation of a company?

> *Asked: Jan 2026 (80), Jan 2025 (80), Mar 2024 (80), Sep 2023 (100), Mar 2023 (80) · +8 earlier · Pattern: both · ★★★★★ · Notes: Unit 1 → Topic 4 (Advantages and Disadvantages of Incorporation)*

> ***▤ ANSWER OUTLINE***
>
> *1. Incorporation = registration creating a separate person (s.9).*
>
> *2. Advantages — each characteristic seen as a benefit.*
>
> *3. Disadvantages — each characteristic seen as a cost.*
>
> *4. Salomon (1897); Macaura (1925).*
>
> *5. Conclusion — the trade-off.*

Introduction. Incorporation is the registration of an association under the Act, on the completion of which — from the date of the certificate — it becomes a **body corporate** with separate legal personality (s.9). Every advantage of incorporation is a characteristic of the company seen as a benefit, and every disadvantage is the cost of that same characteristic.

A. Advantages of incorporation.

1. **Separate legal entity.** The company owns its own assets and owes its own debts, distinct from the members who compose it (***Salomon v Salomon & Co. Ltd. (1897)***). This clean separation is what makes every other advantage possible.
2. **Limited liability.** A member risks only the amount unpaid on his shares; his personal wealth is untouched by the company's debts. This is the single biggest reason people invest in businesses they do not manage.

3. **Perpetual succession.** The company survives the death, insolvency or exit of any member — “members may come and go, but the company goes on” — giving stability to employees, lenders and customers.
4. **Transferable shares.** A shareholder can exit by selling his shares (s.44 makes them movable property) without disturbing the business, which keeps capital liquid.
5. **Capacity and capital-raising.** The company can sue, contract and hold property in its own name, and can raise large capital by issuing shares and debentures to the public and by borrowing on a **floating charge** — routes closed to a partnership. Ownership is also separated from management, letting professionals run the business.

B. Disadvantages of incorporation.

1. **Lifting of the corporate veil.** The shield of separate personality is not absolute; courts and statutes pierce it for fraud, tax evasion, enemy character or sham, exposing the individuals behind it.
2. **Formality and expense.** Incorporation, audits, statutory filings, board and general meetings, and returns to the Registrar all cost time and money that a partnership avoids.
3. **Loss of privacy.** The company’s accounts and key documents are public at the Registrar, so competitors can read them.
4. **Greater regulation.** A dense web of statutory duties, with penalties for default, binds the company and its officers.
5. **Divorce of ownership and control, and taxation.** Shareholders own but do not manage, so management may serve itself (the oppression/mismanagement problem), and the company is taxed as a separate entity, so profits can be taxed twice — once in the company and again as dividend in the member’s hands.

C. The unifying idea.

1. Each advantage is a characteristic of the company viewed as a benefit, and each disadvantage is the cost of that very characteristic. Limited liability is the benefit of separate personality; the risk of veil-lifting is its cost. Perpetual succession gives stability but forces continuing compliance and disclosure. Both the advantages and the disadvantages therefore flow from the same six characteristics of a company.
2. In practice the balance depends on scale — a large business raising public capital gladly bears the regulation for the sake of limited liability and a permanent existence, whereas a very small trader may find the formalities disproportionate and prefer a simpler form. The law offers the One Person Company and the small company precisely to soften the compliance cost for the smallest incorporators.

D. Incorporation set against the partnership alternative.

1. The advantages stand out most sharply when the company is compared with the **partnership** the promoters might otherwise have chosen. A partnership has **no separate personality** — the partners own the assets and are personally, jointly and severally liable for every debt — and it **dissolves** on the death or retirement of a

partner, so it lacks both limited liability and perpetual succession. Incorporation buys precisely what the partnership cannot give: a shield for the members' private wealth and a business that outlives its founders.

2. That the separation is real, and binds the members themselves, was shown in ***Kondoli Tea Co. Ltd., Re (1886)***, where members who had transferred a tea estate to their own company could not treat the transfer as one merely to themselves — the company was a **different person**, and the conveyance took effect as a genuine transfer to another. Thus, the same shield the members gain also fixes them with the consequences of dealing with a separate person; the advantage and the disadvantage are, once again, two faces of a single characteristic.

Leading cases

- ***Salomon v Salomon & Co. Ltd. (1897)*** — limited liability upheld even for a one-man company; the core advantage in action.
- ***Macaura v Northern Assurance Co. (1925)*** — separate personality cuts both ways; the member does not own the company's assets.
- ***Kondoli Tea Co. Ltd., Re (1886)*** — members who transferred property to their own company could not call it a transfer to themselves; the company is a distinct person.

Conclusion. Thus, incorporation confers limited liability, perpetual succession and access to capital, at the cost of formality, publicity, heavier regulation, taxation and the small risk that a court lifts the veil when the form is abused. For most businesses the advantages decisively outweigh the costs, which is why the registered company is the dominant form of commercial organisation.

Q1.3 — `[16M]` "A company has an independent corporate existence." Explain with case law.

> *Asked: Mar 2023 (80), Sep 2023 (80), Mar 2021 (80), Jul 2026 (100) · Pattern: both · ★★★ · Notes: Unit 1 → Topic 3 (Corporate Personality and Limited Liability)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Separate legal personality on incorporation (s.9).*
>
> *2. The consequences — property, debts, contracts, litigation.*
>
> *3. Salomon, Lee, Macaura — the case backbone.*
>
> *4. Limited liability as the pay-off.*
>
> *5. Conclusion — the wall between company and members.*

Introduction. On incorporation a company becomes a **legal person distinct from the members** who compose it (s.9). The corporate veil stands between the company on one

side and its shareholders and directors on the other. This separation is the foundation of company law, and it is established by a line of leading cases.

A. What independent existence means.

1. **The company owns its own property.** Shareholders own *shares*, not the company's assets, so the company's factory, stock and cash belong to it, not to them.
2. **The company owes its own debts.** A member is not personally liable for the company's liabilities; creditors must look to the company's assets, not the members' pockets.
3. **The company can contract — even with its own members.** It can employ its controlling shareholder, buy from and sell to its members, and enter obligations that bind it alone.
4. **The company sues and is sued in its own name.** A wrong done to the company is a wrong to the company, not to the members individually — the seed of the rule in *Foss v Harbottle (1843)*.

B. The case backbone.

1. In ***Salomon v Salomon & Co. Ltd. (1897)*** the House of Lords held that a one-man company was a separate person, so its debts were the company's, not the founder's, and he ranked as a secured creditor ahead of the unsecured creditors.
2. In ***Lee v Lee's Air Farming Ltd. (1961)*** the controlling director was also validly employed as the company's pilot; on his death in a crash his widow recovered workers' compensation, because the company and the man were two different persons.
3. In ***Macaura v Northern Assurance Co. (1925)*** the sole shareholder had **no insurable interest** in the company's timber — the timber belonged to the company, not to him — so he could not claim on a policy in his own name.

C. Limited liability — the practical pay-off. Because the company owes its own debts, the member's exposure is capped at the amount unpaid on his shares. A fully-paid ₹10 share exposes the holder to nothing beyond that ₹10; creditors cannot reach his home or savings. This is what makes independent corporate existence commercially valuable.

D. The limits of the principle.

1. Independent existence is the rule, but it is not absolute. Where the corporate form is abused — for fraud, tax evasion, enemy character or as a mere façade — the court will **lift the veil** and look at the individuals in control, treating the company and its members as one for that limited purpose. This is an exception that keeps the *Salomon* principle honest without repealing it.
2. Even so, the starting point in every problem is that the company is a separate person: the burden lies on the party seeking to pierce the veil to bring the case within a recognised exception. A first-time reader should therefore reason from separation outward, asking only afterwards whether an exception is engaged — never assuming that control of the shares is control of the assets or liability for the debts.

E. The principle binds the members too.

1. Independent existence is not a one-way benefit the members may invoke and then disown. In ***Kondoli Tea Co. Ltd., Re (1886)*** the persons who had transferred a tea estate to a company they themselves owned argued that, since they *were* the company, the transfer was really to themselves; the court rejected this, holding the company a wholly different person, so the conveyance was a genuine transfer to another. The very separation the shareholder relies on for limited liability equally denies him the right to treat the company's acts and property as his own.
2. The source of every consequence set out above is **s.9**: from the date of incorporation the subscribers become a **body corporate**, having perpetual succession and power to acquire, hold and dispose of property in the company's own name. Because the statute vests property and capacity in the company itself, control of the shares is never, by itself, ownership of the assets (*Macaura*) or liability for the debts (*Salomon*) — the wall the section erects stands whichever way a party later wishes it did not.

Leading cases

- ***Salomon v Salomon & Co. Ltd. (1897)*** — the company is a person distinct from its members.
- ***Lee v Lee's Air Farming Ltd. (1961)*** — a controller may also be an employee of his own company.
- ***Kondoli Tea Co. Ltd., Re (1886)*** — the separation binds the members themselves; they cannot treat a transfer to their company as a transfer to themselves.

Conclusion. A company's independent corporate existence is real and is enforced both **for** and **against** the members — the price of limited liability is that the shareholder neither owns the company's assets (*Macaura*) nor answers for its debts (*Salomon*). The wall between the company and its members is the foundation on which the entire subject rests.

Q1.4 — `[16M]` Explain the circumstances in which the court can lift the corporate veil. Answer with decided cases.

> *Asked: Jul 2026 (80), Jan 2026 (80), Jan 2025 (100), Aug 2024 (80), Aug 2024 (100) · +9 earlier · Pattern: both · ★★★★★ · Notes: Unit 1 → Topic 5 (Lifting the Corporate Veil)*

> ***▤ ANSWER OUTLINE***
>
> *1. Veil = separation (Salomon); lifting = ignoring it.*
>
> *2. Statutory grounds (s.339, misdescription).*
>
> *3. Judicial grounds — fraud, tax evasion, enemy character, agency.*
>
> *4. Daimler, Gilford, Dinshaw Petit — the authorities.*

> *5. Conclusion — exception, not repeal, of Salomon.*

Introduction. The **corporate veil** is the separation between a company and its members established in ***Salomon v Salomon & Co. Ltd. (1897)***. **Lifting (or piercing) the veil** means the court **ignores that separation** and looks at the individuals really in control, chiefly to stop them hiding a fraud or evasion behind the company's skirts. It is an **exception** to *Salomon*, not a repeal of it — the veil stays up by default and comes down only for good reason. The grounds fall into two families.

A. Statutory lifting — where the Act itself pierces the veil.

1. **Fraudulent conduct in winding up (s.339).** If the business was carried on with intent to defraud creditors, those knowingly party to it can be made **personally liable without limit** for the debts.
2. **Misdescription of the company's name.** An officer who signs a bill or cheque without the company's correct name is personally liable on it, so the members' shield is removed for that transaction.
3. **Ultra vires acts and mis-statements in a prospectus** attract personal liability of those responsible, again looking behind the corporate form.

B. Judicial lifting — where courts pierce on principle.

1. **Fraud or sham.** Where the company is a mere cloak to evade a legal duty, the court lifts the veil. In ***Gilford Motor Co. v Horne (1933)*** an employee formed a company to break his non-compete covenant; the court restrained both. In ***Jones v Lipman (1962)*** a company was used to escape a contract of sale, and specific performance was ordered against it too.
2. **Tax evasion.** A company formed only to evade tax is a device the court will see through — ***Sir Dinshaw Maneckjee Petit, Re (1927)***, where companies were interposed to split and disguise income, and the same reasoning was applied in ***Juggilal Kamlapat v CIT (1969)*** to defeat an attempt to reduce tax through the corporate form. The revenue is entitled to look at the person really enjoying the income.
3. **Enemy character.** In ***Daimler Co. v Continental Tyre & Rubber Co. (1916)*** an English-registered company whose shares and directors were entirely German was held to take on enemy character in wartime, so its suit was barred as trading with the enemy — a leading illustration that the veil yields where public interest and wartime policy demand.
4. **Agency and single economic entity.** Where a company is really carrying on the controller's business as his **agent**, or where a group of companies is in substance one economic unit, the court may treat them as one (***DHN Food Distributors Ltd. v Tower Hamlets LBC (1976)***), so that the reality of control prevails over the paper structure.
5. **Protection of public policy and the revenue.** More broadly, the court will not allow the corporate form to be used to **defeat justice, evade a legal duty, or cheat the**

revenue; wherever separate personality is turned into an instrument of evasion or fraud, the veil is lifted so far as is needed to reach the wrongdoer, and no further.

C. Application of the doctrine.

1. The starting point is *Salomon* — the company is a separate person — and the veil is lifted only where the facts fall within a recognised statutory or judicial ground. Separate personality is the rule and lifting the veil the exception, so the courts do not pierce the veil merely because a company is small or closely held.
2. The single controlling question is whether the corporate form is being **used to defeat a legal duty or to work a fraud or evasion**; if it is, the veil comes down, and if it is merely a small or one-man company, it does not. The test is applied through the recognised categories: enemy character (*Daimler*), sham or façade (*Gilford*, *Jones*) and tax evasion (*Dinshaw Petit*).

Leading cases

- ***Daimler Co. v Continental Tyre & Rubber Co. (1916)*** — veil lifted to reveal enemy character.
- ***Gilford Motor Co. v Horne (1933)*** — a company formed to evade a covenant is a sham.
- ***Jones v Lipman (1962)*** — a company used to escape a contract of sale is a device; specific performance ordered against it too.
- ***Sir Dinshaw Maneckjee Petit, Re (1927)*** — veil lifted for tax evasion.

Conclusion. The veil stays up by default and comes down only where the corporate form is abused — for fraud, tax evasion, enemy character, or as a mere façade — and never merely because the company is small or one-man, which was *Salomon* itself and where the veil stayed firmly up. Lifting the veil is thus a controlled exception that keeps *Salomon* honest without destroying it.

Q1.5 — `[16M]` Who is a promoter? Explain his duties and liabilities (legal position).

> *Asked: Jul 2026 (80), Jul 2026 (100), Aug 2024 (100), Sep 2023 (80), Sep 2023 (100) · +13 earlier · Pattern: both · ★★★★★ · Notes: Unit 1 → Topic 6 (Promoters — Duties and Liabilities)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Define promoter + s.2(69).*
>
> *2. Fiduciary position — trust, no secret profit.*
>
> *3. Duties — disclosure, account, good faith.*
>
> *4. Liabilities — secret profit, prospectus, pre-incorporation.*

> *5. Erlanger / Gluckstein / Kelner — authorities; conclusion.*

Introduction. A **promoter** is the person who conceives the idea of forming the company and takes the necessary steps to bring it into existence — preparing the memorandum and articles, arranging the capital and the first directors, and getting the company registered. He is the company's midwife; the classic judicial description is that of ***Twycross v Grant (1877)*** — one who "undertakes to form a company with reference to a given project and sets it going." Section **2(69)** now defines a promoter through three limbs — a person (a) **named as such** in the prospectus or annual return, or (b) who has **control over the affairs** of the company, or (c) in accordance with whose **advice, directions or instructions** the Board is accustomed to act — while expressly excluding a person acting **merely in a professional capacity**, such as a solicitor or accountant doing his ordinary job.

A. Legal position — a fiduciary.

1. The promoter stands in a **fiduciary relationship** [a relationship of trust and confidence] toward the company he is forming. He is neither a trustee nor an agent, because the company does not yet exist to appoint him, yet the law imposes trust-like obligations to guard the company he is about to create against being exploited.

B. Duties of a promoter.

1. **No secret profit.** He must not make a profit at the company's expense without disclosure. The historic mischief was promoters quietly selling their own property to the company they were forming at inflated prices, and the law's answer is total honesty.
2. **Full and fair disclosure.** Disclosure of any interest or profit must be made to an **independent Board of directors** or to the **members as a whole** — not to a Board the promoter himself controls (***Gluckstein v Barnes (1900)***).
3. **To account and act in utmost good faith.** Any undisclosed profit is recoverable by the company, and the tainted contract may be **rescinded**; throughout, he must act honestly in the company's interest.

C. Liabilities of a promoter.

1. **For secret profits.** The company may **rescind** the contract or **recover** the undisclosed profit (***Erlanger v New Sombrero Phosphate Co. (1878)***).
2. **For mis-statement in the prospectus.** He is civilly liable to compensate those who suffered loss (ss.34–35) and may face **criminal liability** (s.36) for untrue statements.
3. **For pre-incorporation contracts.** Contracts he makes before incorporation bind **him personally**, because the company was not yet a person to be bound (***Kelner v Baxter (1866)***).
4. **For misfeasance in winding up.** If the company is later wound up, a promoter guilty of **misfeasance or breach of his duty** to the company may be examined and made **personally liable to restore** the company's money or property; his fiduciary obligations therefore follow him even into the company's liquidation.

D. Remuneration. A promoter has **no automatic right** to be paid or reimbursed by the company, which did not exist to promise him anything. He is paid only if the company, once formed, agrees — commonly by a lump sum, a commission, or an option on shares, disclosed in the articles or prospectus.

E. Position summarised.

1. The promoter's relationship to the company is best captured in a single idea: he acts for a person who cannot yet act for itself, so the law demands from him the highest standard of honesty. He is not a trustee in the strict sense and not an agent, but the fiduciary label attaches all the trust-law consequences — an obligation to disclose, an obligation to account, and the company's right to rescind a tainted transaction.
2. Accordingly, a promoter who stands to gain from any dealing with the company he is forming must place the facts fully before an independent Board or the general body of members before the company commits. A secret profit is recoverable by the company however long afterwards it comes to light.

Leading cases

- ***Erlanger v New Sombrero Phosphate Co. (1878)*** — an undisclosed promoter's profit; the company may rescind.
- ***Gluckstein v Barnes (1900)*** — disclosure must be to an independent Board or the members, not to oneself.
- ***Twycross v Grant (1877)*** — the classic description of who is a promoter — one who undertakes to form a company for a project and sets it going.

Conclusion. The promoter is the company's fiduciary midwife: total honesty and full disclosure, or he must surrender the secret profit and answer personally for what he did before the company was born. His position is one of trust precisely because he acts for a company that cannot yet protect itself.

B. Short Notes (8M — Q8) — Model Answers

S1.1 — `[8M]` Write a short note on: Government company.

> *Asked: Dec 2018 (100), Dec 2015 (100) · Pattern: 100-only · ★★ · Notes: Unit 1 → Topic 2 (Kinds of Company)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Definition — s.2(45).*
>
> *2. Features — 51% Government shareholding; subsidiary included.*
>
> *3. Accountability — CAG audit; reports before Legislature (ss.394–395).*

> *4. Separate legal person.*

Introduction

Under **s.2(45)** of the Companies Act, 2013, a **Government company** means any company in which **not less than fifty-one per cent of the paid-up share capital** is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a **subsidiary of such a Government company**. It is a classification based on ownership and control.

A. Features

1. **Government shareholding.** At least 51% of the paid-up share capital must be held by the Central Government, a State Government or both together.
2. **Subsidiaries included.** A subsidiary of a Government company is itself a Government company.
3. **Registered company.** It is incorporated under the Companies Act like any other company, and may be a public or a private company.
4. **Separate legal person.** It is distinct from the Government that holds its shares; its property is its own and it sues and is sued in its own name. It is not a department of the Government.

B. Accountability

1. **Audit.** The accounts of a Government company are subject to audit under the supervision of the **Comptroller and Auditor-General (CAG)**.
2. **Reports before the Legislature.** Its annual report, together with the CAG's audit report, is laid before **both Houses of Parliament** where the Central Government is a member, or before the **State Legislature** where a State Government is a member (**ss. 394–395**).

C. Object

The form allows the State to carry on commercial and industrial undertakings with the flexibility of a company, while public accountability is secured through the CAG audit and parliamentary scrutiny.

Conclusion

Thus, a Government company is a registered company in which the Central or State Government holds at least 51% of the paid-up share capital, including its subsidiary; it remains a separate legal person but is accountable through the CAG audit and the laying of its reports before the Legislature.

S1.2 — [8M] Write a short note on: Holding and subsidiary company.

> *Asked: Dec 2014 (100) · Pattern: 100-only · ★ · Notes: Unit 1 → Topic 2 (Kinds of Company)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Definitions — ss.2(46), 2(87).*
>
> *2. Tests of control — Board composition; more than half voting power.*
>
> *3. Associate company distinguished — s.2(6).*
>
> *4. Separate entities; veil lifted in agency cases; s.2(71) proviso.*

Introduction

The Companies Act, 2013 classifies companies by control. Under **s.2(46)**, a **holding company**, in relation to one or more other companies, means a company of which such companies are subsidiaries. Under **s.2(87)**, a **subsidiary company** is a company in which the holding company exercises control in the manner laid down in the section.

A. Tests of control — s.2(87)

A company (H) is the holding company of another company (S) if H:

1. **controls the composition of the Board of Directors** of S, that is, H can appoint or remove all or a majority of the directors of S; or
2. **exercises or controls more than one-half of the total voting power** of S, either on its own or together with one or more of its subsidiary companies.

Control may be direct or through another subsidiary, so that a subsidiary of a subsidiary is also a subsidiary of the holding company.

B. Associate company distinguished — s.2(6)

An **associate company** is a company in which another company has **significant influence** — control of at least 20% of the total voting power, or of business decisions under an agreement — but which is not its subsidiary. A joint venture company is included.

C. Legal position

1. **Separate legal persons.** A holding company and its subsidiary are distinct legal entities; the property and liabilities of one are not those of the other (*Salomon v A. Salomon & Co. Ltd. (1897)*).
2. **Lifting the veil.** Where a subsidiary has no independent brain, capital or autonomy and operates purely as the agent or puppet of the parent, the court may lift the veil and treat its business as that of the parent (*Smith, Stone & Knight Ltd. v Birmingham Corporation (1939)*). Courts have also treated a tightly integrated group as a single

economic unit in appropriate cases (*DHN Food Distributors Ltd. v Tower Hamlets London Borough Council (1976)*).

3. **Deemed public company.** Under the proviso to **s.2(71)**, a subsidiary of a public company is deemed to be a public company even if its articles describe it as private.
4. **Government company.** A subsidiary of a Government company is itself a Government company (s.2(45)).

Conclusion

Thus, a company is the holding company of another if it controls the composition of its Board or more than half of its total voting power; the two remain separate persons, though the veil may be lifted where the subsidiary is a mere agent of the parent.

S1.3 — `[8M]` Write a short note on: One Person Company.

> *Asked: Mar 2021 (100), Nov 2020 (100), Dec 2019 (100), Dec 2018 (100), Dec 2017 (100) · Pattern: 100-only · ★★★ · Notes: Unit 1 → Topic 2 (Kinds of Company)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Definition — s.2(62); introduced in 2013.*
>
> *2. Incorporated as a private company — s.3(1)(c).*
>
> *3. Nominee — s.4(1)(f); name suffix.*
>
> *4. Advantages; relaxed compliance (no AGM — s.96).*

Introduction

Under **s.2(62)** of the Companies Act, 2013, a **One Person Company (OPC)** means a company which has **only one person as a member**. The OPC was introduced by the 2013 Act. Earlier, a sole entrepreneur seeking limited liability had to find a second person to hold a token share so that the business could be registered as a two-member private company.

A. Features

1. **Single member.** The OPC has only one member, who must be a natural person and a citizen of India.
2. **Private company.** It is incorporated as a **private company** (s.3(1)(c)) and is subject to the restrictions of a private company.
3. **Directors.** It must have at least **one director**.
4. **Name.** Its name must bear the words **“One Person Company”** in brackets below the name, with “Private Limited” (s.12(3)).

5. **Separate legal person and limited liability.** The OPC is distinct from its sole member, who is liable only to the extent of the amount unpaid on his shares.

B. Nominee — s.4(1)(f)

The memorandum of an OPC must state the name of the person who, in the event of the subscriber's death or incapacity to contract, shall become the member of the company. The written consent of the nominee must be filed with the Registrar along with the memorandum and articles at the time of incorporation (s.3(1), first proviso). The nominee clause is thus a seventh clause of the memorandum, peculiar to the OPC, which secures perpetual succession.

C. Relaxed compliance

1. An OPC is **not required to hold an Annual General Meeting** (s.96(1) applies to every company "other than a One Person Company").
2. It is sufficient for an OPC to hold at least one Board meeting in each half of a calendar year (s.173).

D. Advantages

The OPC enables a single individual to combine full control of a business with separate personality, limited liability and perpetual succession, without a second nominal member.

Leading case

- ***Salomon v A. Salomon & Co. Ltd. (1897)*** — a company is a legal person distinct from its members even where one person holds virtually all the shares; the OPC gives statutory form to this principle.

Conclusion

Thus, a One Person Company under s.2(62) is a private company with a single member, a natural person and citizen of India, who must name a nominee in the memorandum; it enjoys separate personality and limited liability with relaxed compliance.

S1.4 — `[8M]` Write a short note on: Advantages of incorporation of a company.

> *Asked: Nov 2021 (100) · Pattern: 100-only · ★ · Notes: Unit 1 → Topic 4 (Advantages and Disadvantages of Incorporation)*

> ***▤ ANSWER OUTLINE***
>
> *1. Independent legal entity — s.9; Salomon.*
>
> *2. Limited liability; perpetual succession.*
>
> *3. Transferable shares (s.44); separate property.*

> *4. Finance, floating charge, professional management.*

Introduction

Incorporation is the registration of an association under the Companies Act, on which, from the date mentioned in the certificate of incorporation, it becomes a **body corporate** with a legal personality distinct from its members (**s.9**). Each advantage of incorporation flows from a characteristic of the company.

A. Advantages

1. **Independent legal entity.** Unlike a partnership, a company is a juristic person in its own right; it deals with the world, and even with its own members, as an independent principal (***Salomon v A. Salomon & Co. Ltd. (1897)***).
2. **Limited liability.** In a company limited by shares, a member's liability is limited to the amount unpaid on his shares; his personal property cannot be reached by the company's creditors.
3. **Perpetual succession.** The death, insolvency or retirement of members does not affect the existence of the company; its contracts, licences and leases continue despite complete changes in shareholding.
4. **Transferability of shares (s.44).** Shares are movable property; in a public company they are freely transferable, giving the investor liquidity while the company retains permanent capital.
5. **Separate corporate property.** The company's assets belong to it alone; no member can claim any part of them (***Bacha F. Guzdar v CIT, Bombay (1955)***; ***Macaura v Northern Assurance Co. Ltd. (1925)***).
6. **Capacity to sue and be sued** in its own name.
7. **Mobilisation of finance.** A public company may invite the public to subscribe for its shares and debentures, and a company may borrow on the security of a **floating charge** over its circulating assets — a device not available to individuals or firms.
8. **Professional management.** Ownership is separated from management, enabling the company to employ skilled managers under the control of a Board of Directors.

B. Price of these advantages

These benefits are accompanied by formality and expense, loss of privacy through public filing, detailed statutory regulation, and the risk that the court may lift the corporate veil where the form is abused.

Leading cases

- ***Salomon v A. Salomon & Co. Ltd. (1897)*** — the company is a person distinct from its members, even a member holding nearly all the shares.
- ***Lee v Lee's Air Farming Ltd. (1961)*** — the controlling shareholder could be an employee of his own company, the two being distinct persons.

Conclusion

Thus, incorporation confers separate legal personality, limited liability, perpetual succession, transferable shares, separate property and access to large finance, each advantage being a characteristic of the corporate form put to commercial use.

S1.5 — `[8M]` Write a short note on: Lifting of corporate veil.

> *Asked: Jul 2018 (100) · Pattern: 100-only · ★ · Notes: Unit 1 → Topic 5 (Lifting the Corporate Veil)*

> ▤ ***ANSWER OUTLINE***
>
> 1. *Meaning — disregarding separate personality.*
> 2. *Statutory grounds — ss.3A, 7(7), 34–35, 339.*
> 3. *Judicial grounds — enemy character, tax evasion, fraud/sham, welfare laws, agency.*
> 4. *Limits — TELCO; LIC v Escorts.*

Introduction

On incorporation a company becomes a legal person distinct from its members, separated from them by the **corporate veil** (*Salomon v A. Salomon & Co. Ltd. (1897)*). **Lifting the corporate veil** means disregarding that separate personality and looking at the persons behind the company, either to impose personal liability or to ascertain the true character of a transaction. It is an exception to the rule of separate personality.

A. Statutory grounds

1. **s.3A** — where membership falls below the statutory minimum and business continues for more than six months, members aware of it are personally liable for debts contracted thereafter.
2. **s.7(7)** — where incorporation was obtained by false information, the Tribunal may order unlimited liability of members.
3. **ss.34–35** — directors and promoters are liable for misstatements in a prospectus.
4. **s.339** — persons knowingly party to fraudulent conduct of business are personally liable, without limitation, for the company's debts in winding up.

B. Judicial grounds

1. **Enemy character** — ***Daimler Co. Ltd. v Continental Tyre & Rubber Co. (1916)***: an English company controlled by German residents was held to have enemy character in wartime.

2. **Tax evasion** — ***Sir Dinshaw Maneckjee Petit, Re (1927)***: companies formed only to split and disguise income were disregarded.
3. **Fraud or sham** — ***Gilford Motor Co. Ltd. v Horne (1933)***: a company formed to evade a non-compete covenant; ***Jones v Lipman (1962)***: land transferred to a company to defeat specific performance.
4. **Avoidance of welfare legislation** — a subsidiary created to reduce bonus payable to workmen was disregarded.
5. **Agency** — a subsidiary acting as the mere agent of its parent.

C. Limits

1. Members cannot lift their own veil for convenience: ***TELCO Ltd. v State of Bihar (1965)*** — companies could not claim citizens' fundamental rights by asking the court to look at their shareholders.
2. Veil-lifting is confined to fraud, improper conduct or a statutory purpose: ***LIC of India v Escorts Ltd. (1986)***.
3. A company is not disregarded merely because it is small or controlled by one person.

Conclusion

Thus, the corporate veil is lifted, by statute or by the courts, only where the corporate form is used for fraud, evasion of a legal duty, enemy trading or similar abuse; otherwise the separate personality of the company is upheld.

C. Problems — Model Answers (IRAC)

P1.1 — `[Prob]` All the members of a private company die together in an accident (train / boat / plane / bomb in a general meeting). Does the company cease to exist? Decide.

> *Asked: Jan 2026 (80), Jan 2025 (80), Aug 2024 (80), Mar 2024 (80), Mar 2024 (100) · +7 earlier · Pattern: both · ★★★★★ · Notes: Unit 1 → Topic 1 (Meaning, Nature and Characteristics)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Issue — does simultaneous death of all members end the company?*
>
> *2. Rule — perpetual succession; separate personality (Salomon).*
>
> *3. Apply — shares pass to heirs; company survives.*
>
> *4. Verdict — company does NOT cease.*

Issue.

Does a company cease to exist when all its members die together in a single accident?

Rule.

1. A company enjoys **perpetual succession** — its existence is independent of its members, so the death of members does not affect the company itself; members may come and go while the company continues.
2. Being a **separate legal person** (***Salomon v Salomon & Co. Ltd. (1897)***), the company's life is legally unconnected to the natural lives of the human beings who hold its shares.

Application.

1. **Contrary argument** — "all the human members are gone, so nothing is left of the company." But the members are **not** the company; they merely hold its shares, and their death does not dissolve the separate person that is the company.
2. On the members' death their **shares transmit** by operation of law to their legal representatives, who may be registered as members. The company's property, contracts and personality remain wholly untouched by the tragedy.

Conclusion.

The company does **not** cease to exist. Its shares vest in the deceased members' legal heirs, and the company continues in law — unlike a partnership, which would dissolve on the death of its partners.

P1.2 — `[Prob]` A, B and C hold all the shares of a company and transfer them to X, Y and Z. Does the company remain the same entity / retain perpetual succession? Decide.

> *Asked: Jul 2025 (100), Sep 2023 (80), Mar 2023 (80), Nov 2022 (100), Apr 2022 (100) · +1 earlier · Pattern: both · ★★★ · Notes: Unit 1 → Topic 1 (Meaning, Nature and Characteristics)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Issue — does a total change of membership change the company?*
>
> *2. Rule — separate personality + perpetual succession.*
>
> *3. Apply — new members, same company.*
>
> *4. Verdict — same entity.*

Issue.

When every share changes hands, does the company become a different entity, or does it retain its perpetual succession?

Rule.

1. A company is a **person distinct from its members** (***Salomon v Salomon & Co. Ltd. (1897)***); the identity of the members is legally irrelevant to the company's existence.
2. **Perpetual succession** means that members may come and go — by death, transfer or insolvency — while the company itself continues unchanged as the same legal person.

Application.

1. **Contrary argument** — "the old owners are entirely replaced, so it must now be a new company." Ownership of shares is not ownership of the company, and a complete change of shareholders is only a change of the register.
2. The transfer merely substitutes X, Y and Z for A, B and C on the **register of members**. The company's assets, contracts, name and legal personality are all unaffected by the change.

Conclusion.

The company remains the **same entity** with unbroken **perpetual succession**; only its membership has changed, and its separate legal existence continues exactly as before.

P1.3 — `[Prob]` A holds almost all shares of a company and insures the company's property (timber / paper) in his own name. It is destroyed by fire. Can he recover / does he succeed? Decide.

> *Asked: Jul 2018 (100), Dec 2018 (100), Aug 2024 (80) · Pattern: both · ★★ · Notes: Unit 1 → Topic 3 (Corporate Personality and Limited Liability)*

> ***▤ ANSWER OUTLINE***
>
> *1. Issue — insurable interest of a sole shareholder in company assets.*
>
> *2. Rule — separate personality; Macaura.*
>
> *3. Apply — asset is the company's; no insurable interest.*
>
> *4. Verdict — cannot recover.*

Issue.

Does a sole or near-sole shareholder have an insurable interest in the company's property, so that he can recover under a policy taken in his own name?

Rule.

1. The company is a **separate legal person** that owns its own property; a shareholder owns **shares**, not the company's assets.

2. A shareholder therefore has **no insurable interest** in the company's property, and a policy in his own name insures nothing (***Macaura v Northern Assurance Co. (1925)***).

Application.

1. **Contrary argument** — "he owns nearly all the shares, so he effectively owns the property." Owning shares is not owning the assets; the timber/paper belonged to the company, a different person.
2. A insured his **own** interest, but he had none in property vested in the company, so on the fire there was no insured interest to indemnify.

Conclusion.

A **cannot recover** the loss. To be protected he should have insured the property in the **company's** name; the claim in his own name must fail for want of an insurable interest, a direct consequence of the separate legal personality that also gave him limited liability.

P1.4 — `[Prob]` A person incorporates a company, appoints himself its pilot/employee, and dies on duty in a crash. His widow claims employees' compensation from the company. Will she succeed?

> *Asked: Nov 2021 (100), Jul 2018 (100), Dec 2018 (100), Jul 2026 (80) · Pattern: both · ★★★ · Notes: Unit 1 → Topic 3 (Corporate Personality and Limited Liability)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Issue — can the controller also be an employee of his company?*
>
> *2. Rule — separate personality; Lee v Lee's Air Farming.*
>
> *3. Apply — company and man are different persons; valid employment.*
>
> *4. Verdict — widow succeeds.*

Issue.

Can a person who controls a company simultaneously be its employee, so that his widow may claim employees' compensation from the company on his death?

Rule.

1. A company is a **separate legal person** and can **contract with, and employ, its own controlling member** — the two are different persons in law.
2. In ***Lee v Lee's Air Farming Ltd. (1961)*** the sole governing director was also validly employed as the company's pilot; on his death his widow recovered workers' compensation from the company.

Application.

1. **Contrary argument** — “he was really the company himself, so he cannot be his own employer or employee.” The company is distinct from the man, so a genuine employer-employee relationship between two persons can exist.
2. The appointment created a real contract of employment; he died in the course of that employment, which is exactly the situation the compensation law covers.

Conclusion.

The widow **will succeed** — the company, being a separate person, was his employer, and the claim for employees’ compensation lies against the company. The fact that the deceased controlled the company does not merge the two persons; the employment contract between them was genuine and enforceable.

P1.5 — `[Prob]` A wealthy man forms four private companies, routes his income through them, and takes it back as a pretended “loan” to evade tax. Will the court lift the corporate veil of the four companies?

> *Asked: Nov 2022 (100), Mar 2021 (80), Nov 2021 (80) · Pattern: both · ★★ · Notes: Unit 1 → Topic 5 (Lifting the Corporate Veil)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Issue — veil-lifting for tax evasion.*
>
> *2. Rule — sham company; Dinshaw Petit.*
>
> *3. Apply — companies are devices to disguise income.*
>
> *4. Verdict — veil lifted.*

Issue.

Will the court pierce the veil of companies formed only to evade tax by disguising the individual’s income as loans?

Rule.

1. A company used as a **mere device to evade tax** is a sham, and the court will **lift the veil** and treat the income as that of the individual really enjoying it.
2. This is the principle of ***Sir Dinshaw Maneckjee Petit, Re (1927)***, where companies were interposed only to split and disguise income and the veil was lifted for tax evasion.

Application.

1. **Contrary argument** — “each company is a separate person, so its receipts are its own income.” Separate personality cannot be used as a shield for a tax fraud.

2. The four companies carry on **no real business**; they exist only to relabel the man's income as loans back to himself, so the corporate form is being abused for an improper purpose.

Conclusion.

The court **will lift the veil** of the four companies and treat the income as the individual's, taxing it in his hands; the companies' separate personality gives him no protection against the revenue.

P1.6 — `[Prob]` A conveys land to B on condition that B never sells it to a certain group. B sells it to a company composed exclusively of that group. A sues to annul the sale as the property has "passed to" the group. Will he succeed?

> *Asked: Mar 2023 (100), Nov 2022 (100), Nov 2021 (100), Mar 2021 (100), Jan 2019 (100) · +1 earlier · Pattern: 100-only · ★★★ · Notes: Unit 1 → Topic 5 (Lifting the Corporate Veil)*

> ▤ ***ANSWER OUTLINE***
>
> 1. *Issue — is a sale to a company whose members all belong to the group a sale to the group?*
> 2. *Rule — separate personality (Salomon); a company has no race or colour (People's Pleasure Park Co. v Rohleder (1908)).*
> 3. *Apply — the purchaser is the company, a distinct person; no enemy-character or statutory ground applies.*
> 4. *Verdict — the covenant is not broken; A fails.*

Issue.

Is a sale of the land to a company whose members all belong to the prohibited group a breach of the covenant, so that the court should lift the veil and annul the conveyance?

Rule.

1. On incorporation a company becomes a legal person distinct from its members (s.9; ***Salomon v A. Salomon & Co. Ltd. (1897)***). Property conveyed to the company belongs to the company, not to its members.
2. The veil is lifted only on recognised statutory or judicial grounds — enemy character in wartime, fraud or sham to evade an existing obligation of the person behind the company, tax evasion, avoidance of welfare legislation, or agency (***Daimler Co. Ltd. v Continental Tyre & Rubber Co. (1916)***; ***Gilford Motor Co. Ltd. v Horne (1933)***).

3. In ***People's Pleasure Park Co. v Rohleder (1908)***, land subject to a covenant against sale to "coloured persons" was sold to a company all of whose members were Black; the court held that the covenant was not broken, because the company is a distinct legal person and has no race or colour.

Application.

1. **Contrary argument** — "the company is composed exclusively of the prohibited group, so the land has in effect passed to that group." The purchaser in law is the company, a separate person; the members do not own the company's property (***Macaura v Northern Assurance Co. Ltd. (1925)***).
2. None of the grounds for lifting the veil is present. There is no war and no question of enemy character; the company was not formed by B or its members to evade an obligation owed by them, since the covenant bound B and not the purchasers; and no statute requires the members to be identified.
3. The facts are those of *People's Pleasure Park Co. v Rohleder (1908)*, where the same argument was rejected.

Conclusion.

A **will not succeed**. The land was sold to the company, a legal person distinct from its members and having no race or colour; the covenant is therefore not broken, the veil will not be lifted, and the conveyance cannot be annulled.
