



VIT[®]

Vellore Institute of Technology
(Deemed to be University under section 3 of UGC Act, 1956)

Legal Aspects of Business

Dr. J Bhavani, Faculty,
Business School
Vellore Institute of Technology

Recapitulate

The companies Act, 2013

Characteristics of a Company

- Incorporated Association
- Artificial Legal Person
- Separate Legal Entity
- Perpetual Succession
- Limited Liability
- Common seal
- Transferability of shares
- Capacity to sue and be sued
- Separate Property

The Companies Act, 2013

Lifting of Corporate Veil

A company is a legal person distinct from its members. This principle may be referred to as 'the veil of incorporation'. The effect of this principle is that there is a veil between the company and its members i.e., the company has a corporate personality which is distinct from its members.

But over a period, the **abuses** of this corporate personality became superficial. Thus it became necessary for the **court to break through or lift the corporate veil** or crack the shell of corporate personality and look at the **persons behind the company who are the real beneficiaries** of the corporate fiction.

The Companies Act, 2013

Exceptions: Corporate Veil

1. Protection of Revenue
2. Prevention of fraud and improper conduct
3. Where the company is a sham/cloak
4. Company avoiding legal obligations
5. Company acting as agent or trustee of the shareholders
6. Avoidance of welfare legislation
7. Protecting public policy

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Corporate entity of a company where it is used for tax evasion. **Example:** D, an assessee, who was receiving huge dividend and interest income, transferred his investments to 4 private companies.

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Incorporation has been used for some fraudulent purpose like defrauding creditors or defeating or circumventing law **Example:** L agreed to sell a certain land to J. He subsequently changed his mind and to avoid the specific performance, he sold to the company which was formed specific for this purpose.

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Court may lift is a mere cloak or sham.

Example: Horne, a former employee of a company, was subject to a covenant not to solicit its customer. He formed a company to carry on a business. An injunction was granted against him and the company not to carry on the business.

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Incorporated company is being made to avoid legal obligations. **Example:** Tax evasion, Corporate Social Responsibilities, etc.

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Company is acting as agent for its shareholders. **Example:** Sometimes members pretended to be a creditors

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Avoidance of Tax

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Invariably lift the corporate veil to protect and prevent transactions contrary to public policy

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Statutory Exceptions: Corporate Veil

1. Number of members below statutory minimum
2. Failure to refund application money
3. Misdescription of company's name
4. Fraudulent trading
5. Holding and subsidiary companies

Review Questions

1. A company is a legal person distinct from its members individually and collectively. **True or False**
2. In the eyes of the law, the holding company and its subsidiaries are separate legal entities. **True or False**
3. An incorporated company can be made to avoid legal obligations. **True or False**

Answer

1. A company is a legal person distinct from its members individually and collectively.

Answer: True

2. In the eyes of the law, the holding company and its subsidiaries are separate legal entities.

Answer: True

3. An incorporated company can be made to avoid legal obligations.

Answer: False