

Corporate Veil: corporate veil refers to a legal concept whereby the company is identified separately from the members of company.

lifting up of Corporate Veil: it means looking behind the company as a legal person.  
→ where the courts ignore the company & concern themselves directly with the member or manager, the corporate veil may be said to have been lifted. Following are the cases where corporate veil will be lifted:

1. To determine the character of the company
2. To protect Revenue / Tax.
3. To avoid legal obligation.
4. Formation of subsidiaries to act as an agent
5. company formed for fraud or defeat law.

Doctrine of ultra Vires: beyond the powers.  
→ it applicable only to acts done in excess of the legal powers of the doers.

case Law: Ashbury Railway Carriage & Iron Company Limited vs Riche

Act → # ultra vires  
moA

Act → Director → Powers - Beyond ← company → (Ratified)

Act → AoA → AoA chng  
Beyond SR in AM 75%

On the basis of control:

↳ Holding Company ↳ Associate Company  
↳ Subsidiary company

Holding Co: sec 2(46): A co. in relation to one or more other companies are subsidiary companies

Subsidiary co: sec 2(87): means a company in which holding co. either control the composition of BOD or control more than 1/2 of the total voting power either own or with subsidiary.

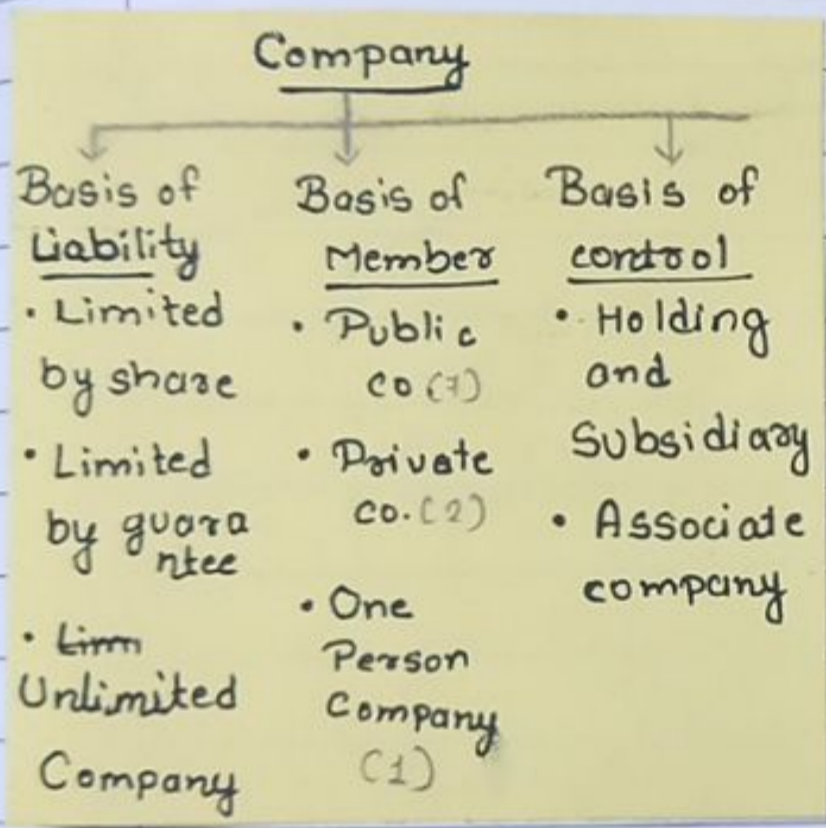
Associate co: sec 2(6): means a co. in which another company significant influence & include  
Joint venture ① 20% more upto 50% VP ② - Joint agreement  
- Net asset arrange

Basis of Liability   
 { lim. by share   
 { lim by guarantee   
 { Unlimited company

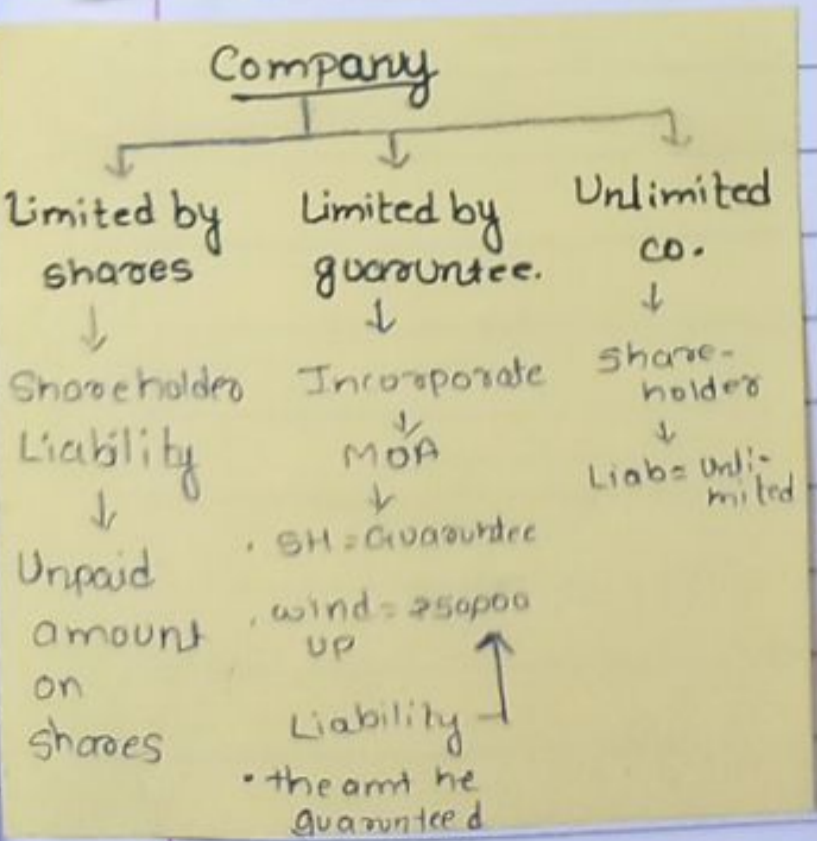
Company limited by share: Section 2(22)   
 → liability of members of co. is limited by its MOA to the amount.

Company limited by guarantee: Sec 2(21)   
 → Incorp. ⇒ MOA ⇒ SH = guarantee ⇒ liability   
 windup = ₹50,000 theamt. he guaranteed

Company having unlimited liability: Sec 2(43)   
 → company not having any limit of liab. of its members



Difference.	Pvt	Pub.	OPC
minimum SH	2	7	1
maximum SH	200	Unlimited	1
minimum Directors	15	15	15
Transferability of shares	Restricted	Freely Transferable	Restricted



Associate Company   
 → means a company in which another company

Significant Influence & Including Joint Venture

↓

20% or more VP   
 But upto 50% VP

↓

- Joint Agreement
- right to net asset of arrangement

• Holding Company :

A co. in relation to one or more other companies are subsidiary companies

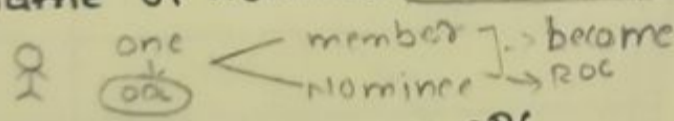
• Subsidiary Company :

means a co. in which holding company either control the composition of BOD or control more than 1/2 of the total voting powers either own or with subsidiary

• One Person Company

- 1 member.
- Private Co. in nature.
- Encourages entrepreneurship
- Limited Liability
- Separate legal entity
- Nominee (a natural person), An Indian citizen or otherwise 120 days during immediate preceding financial year
- Not a minor.

Features of OPC

- Only one member
- minimum paid up cap = No limit
- MOA ⇒ indicate the name of one nominee
- Nominee give written consent may withdraw his consent at any time.
- Member may change the name of nominee. Notice to company
- 
- Not more than one OPC.

~~Doctrine of~~ OPC

OPC = 120 Preceding Financial year

LLP = One designated partner must stayed in india for atleast 120 days in preceding 12 months

## Rules Regarding consideration:

1. consideration must move at the desire of the promisor.
2. may move from promisee or any other person.
3. Executed- and executory consideration.
4. consideration may be past, present or future
5. consideration need not be adequate
6. Performance of what one is legally bound to performance
7. consideration must be real not illusory
8. must not be unlawful, immoral or opposed to public policy.

consideration: when at the desire of the promisor, the promisee or any other person has done or obtained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise."

### Section 2(d)

consideration = Promise / Performance that parties exchange with each other

## Document of Title

- In the ordinary course of busi.
- the possession or control of goods **OR**
- is for authorising or purporting to authorize, either by endorsement or by Delivery.
- includes bill of lading, dock-warrant, warehouse keeper's certificate, railway receipt etc
- Document showing title merely shows that person named in document is its owner. e.g. share cert.
- It doesn't allow to transf. ownership.

## Condition and Warranty

Stipulation with Reference to Goods

condition	warranty
→ Essential to main purpose of the contract.	→ collateral to main purpose of contract.
→ Breach, Repudiation	→ Breach - claim for damage
→ A breach of condition may be treated as breach of warranty.	→ A breach of warranty cannot be treated as a breach of condition

### SOQA Unit - 1 Delivery section 2(2)

- Delivery means voluntary transfer of possession from one person to another.
- it could occur also when the goods transfer to a person other than seller.
- Actual Delivery: Physically given into possession of buyer.
- Constructive Delivery: transfer of goods is done w/o change in possession or custody of goods  
→ Delivery by attornment or acknowledgement
- Symbolic Delivery: It involves the delivery of thing in token of a transfer of some other thing. e.g. key of car

### A Contract of Sale may be made in of the following modes

- it is made by an offer to buy or sell goods for a price and acceptance of such offer.
- immediate payment, but delivery in future date.
- Agreed that the delivery or payment or both are to be made at some future date.
- There may be immediate delivery of goods
- Immediate delivery & immediate payment of Price
- Agreed that the delivery or payment both are to be made in installments.

### Subject Matter of contract of Sale

- existing or future goods section 6:
  - By acquiring existing goods.
  - own or possessed by the seller in future.
  - the contract is made upon some contingency.
- Goods perishing before contract of sale: Sec 7:
  - contract is VOID, when the contract was made perished or become so damaged as no longer to answer their description contract.
- Goods perishing before sale but after agreement to sale Sec 8:
  - the goods w/o any fault on the part of seller or buyer perish or damage. it is avoided or become VOID.
  - If FG. specific, destruction of good will SI & contract VOID.

w/o: without  
SI: supervening  
impossibility  
FG: future goods

# Goods

Perishable

without Notice

Profit

LOSS

↓  
enjoy

↓  
buyer

अन्या  
अन्या

Non-Perishable

w/o

Notice

Profit

loss

↓  
buyer  
अन्या

↓  
buyer  
अन्या

Profit  
enjoy

Loss  
buyer

recover

## Unit-2 SQA. | Condition & Warranty.

• condition: section 12 (2) A condition is a stipulation essential to the main purpose of the contract, breach of which gives rise to right to treat the contract repudiated. e.g. mileage of car.

• warranty: Section 12 (3): A warranty is stipulation collateral to the main purpose of the contract. breach of which gives rise to a claim for damage but Not to a right to reject the goods e.g. horn of car.

### Express and Implied Conditions.

• conditions which are implied in a contract of sale of goods unless the circumstances of contract shows a different intension.

1. condition as to title: section 14 (a):

2. Sale by description section 15

3. condition as to quality or fitness: section 16 (1):

4. condition as to merchantability section 16 (2)

5. Sale by sample. section 17

6. Sale by sample as well as description section 18:

7. condition as to wholesomeness

### When condition to be treated as warranty

• when voluntary waiver of a condition:

↳ Buyer waives performance of the condition

↳ Buyer decides to treat breach of condition as breach of warranty.

• Compulsory waiver:

↳ where contract is non-severable

↳ fulfilment of condition or warranty excused by law.

## Unit 2: Implied warranty

1. warranty as to undisturbed possession <sup>sec 14 (b)</sup>  
→ buyer shall have & enjoy quite possession  
→ buyer is true owner shouldn't be disturbed.
2. warranty as to non-existence of encumbrance <sup>sec 14 (c)</sup>  
→ goods shall be free from any charge in favour of any 3rd party not declared or known to the buyer before enter into contract.
3. warranty as to quality or fitness by usage or trade:  
→ quality or fitness for a particular purpose may be annexed or attached by usage of trade.

### 4. Disclosure of dangerous nature of goods

- seller must warn the buyer duly about the dangerous nature of the good if any
- In case of breach of warranty, the seller will be liable for damages

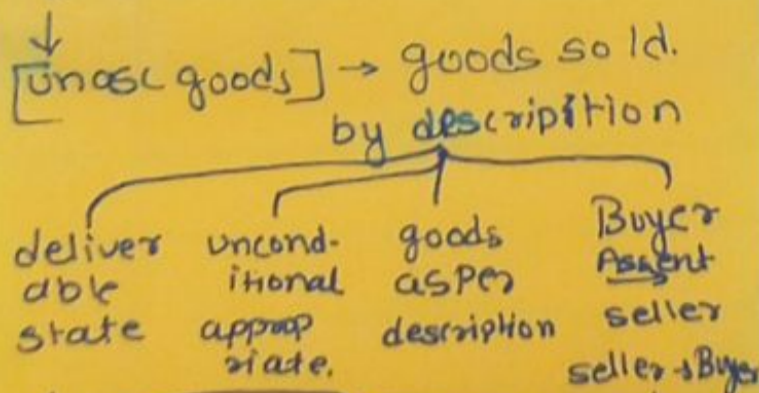
## Unit - 2. Caveat Emptor

- let the buyer be aware.
- 1. Buyer should make proper selection of goods.
- 2. If goods turn out to be defective seller can not be held liable.
- 3. Seller is not bound to disclose defects in the goods
- 4. Buyer should satisfy himself before buying

### Buyer's Duty:

- It is the duty of buyer to satisfy himself before buying the goods that they are being bought for.
- If it turn out defective, & if he depends on his own skill & judgement seller will not responsible.

contract of sale.



Buyer's ownership

seller → carrier → Buyer

right of disposal



## Exception of Caveat Emptor.

### 1. Fitness as to quality or use:

Sec 16(1): when buyer known to seller his purpose & he relies on seller's judgement & goods are of a description, it is duty of seller to supply goods fit for purpose.

### 2. Goods sold by description:

Sec 16: when goods sold by description, goods match description.

### 3. Goods by merchantable quality:

Sec 16(2): goods shall be merchantable quality by buyer → examine → Not reveal by OE.

### 4. Sale by Sample: section 17:

→ this rule is not apply when bulk should not match with sample.

### 5. Sale by sample & description

→ This rule not apply when goods not match with sample & description.

### 6. Trade Usage: sec 16(3):

→ this rule not applies when quality or fitness for a particular purpose may be annexed by usage of trade.

### 7. Seller actively conceals a defect or is guilty of fraud:

→ when seller making misrepresentation or fraud & buyer relies on it, the fraud couldn't be discovered by reasonable examination this rule is not apply.

## Unit - 3 Nemo dat quod non Habet

→ mean: None can transfer anything which he himself does not have.

→ If the seller is not owner then the buyer will also not become the owner.

→ There are some exceptions of this rule.

## Unit - 3. Exception of Nemo dat quod non habet.

### 1. Sale by merchantile Agent: sec 27:

Agent ⇒ good title ⇒ goods in possession ⇒ consent of owner ⇒ in ordinary course of business

### 2. Sale by one of the joint owner: sec 28:

one of several joint owner ⇒ permission of co-owner ⇒ possession of good ⇒ buyer buys in good faith ⇒ and has not noticed. seller has no authority.

### Sale by a person in possession under voidable contract: sec 29:

seller obtain goods ⇒ voidable contract ⇒ sell the goods ⇒ buyer will get good title

### Exceptions of MDO&NH.

- 4. Sale by one who has already sold the goods but continues in possession thereof: sec 30(1):  
 → even after selling goods → seller sells the goods in good faith ⇒ when he had possession of goods
- 5. Sale by buyer obtaining possession before the property in the goods has vested in him: sec 30(2)  
 → buyer obtain possession before passing of property he ⇒ sell goods, pledge or dispose ⇒ toward 3<sup>rd</sup> party.
- 6. Effect of Estoppel:  
 → when owner is estopped by conduct of denying the seller's authority to sell, the transferee will get good title.

### 7. Sale by unpaid seller: sec 584(3):

unpaid seller → exercised right of lien or stoppage in transit & resell goods ⇒ buyer get goods

### 8. Sale by under the Provision of other Acts:

- sale by official Receiver or Liquidator of co.
- purchase of goods from finder of goods
- A sale by Pawnee. can convey good title.