Expected Marks → 6 Marks

Only theroitical Questions will be asked

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# Indian Regulatory Framework.

# What is Law.

- Law is set of Obligation and duties, Imposed by Government
  - For Securing Welfare
  - For Providing Justice to society

## Enforcing the Law

**Ministry**

1. Ministry of Finance
2. Ministry of Corporate Affairs
3. Ministry of Home Affairs
4. Ministry of Law and Justice

**Regulatory Bodies**

- SEBI
- RBI
- IBBI

## Ministry of Finance

- MoF is within Government of India, Concerned with Economy of India, serving with Treasuary of India.

# Also known as Vitta Mantralya.

- It is Concerned with
  - Financial Legislations
  - Financial Institutions
  - Capital Market
  - Union Budget
  - Central and State Finance
  - Taxation



Which Finance Minister Presented how Many Budgets

- Shri Morarji Desai → 10
- Shri P. Chitambaram → 9
- Shri Pranab Mukharjee → 8
- Shri Yashwant Sinha → 8
- Dr. Man mohan Singh → 6

## Constitution of Ministry of Finance

Apex Controlling authority of Four Central Services

- Indian Economic Service
- Indian Audit and Accounts Service
- Indian Revenue Service
- Indian Civil Account Service

## Department of Ministry of Finance

- Department of Economic Affairs
- Department of Revenue
- Department of Investment and Public Asset Management
- Department of Public Enterprise
- Department of Expenditure
- Department of Financial Services

MoF is also an Apex Controlling authority of Indian Cost and Management accounts Service

- MoF Present Union Budget
- Union Budget Provides
  - Rates of Tax
  - Budget allocation for upcoming Year

## Ministry of Corporate Affairs

- It is an Indian Government Ministry
- Primarily Concerned with
  - Companies Act 2013
  - Companies Act 1956
  - LLP Act 2008
  - Insolvency and Bankruptcy Code 2016



- Ministry in run by Civil Servants of ICLS Cadre
  # ICLS → Indian Corporate Law Service
- officers are elected through Civil Service Examination Conducted by UPSC # UPSC → Union Public Service Commission
- Highest Post → Director General of Corporate Affairs [ Fixed at Apex Scale of ICLS]

## Ministry of Home Affairs

- Also known as Grah Mantralaya
- It is Ministry of Government of India.
- It is Interior Ministry of Government of India responsible for Maintainence of
  - Internal Security.
  - Domestic Policy.
- Home Ministry is headed by
  ↳ Union Minister of Home Affairs
- Department of Ministry of Home Affairs
  - Department of Border Management
  - Department of Internal Security
  - Department of Jammu kashmir and Laddakh.
  - Department of Home
  - Department of Official Language
  - Department of State

- Department of Official Language

Central Translation Bureau | Central Hindi Training Institute | Directorate of Census operation.

## Ministry of Law and Justice.

- It is Cabinet Ministry in Government of India.
- It deals with

Management of Legal Affairs
↓
through department of legal affairs.

Management of Legislative Activities
↓
through Legislative department.

Administer Justice in India
↓
through department of Justice

Department of Legal Affairs is Concerned with
↓
Advisory Ministry of Central Government

Legislative department is Concerned with
↓
Drafting of Principal Legislation of Central Government.

## SEBI



# SEBI = Security Exchange Board of India

Regulatory Body for Security and Commodity market in India.

- It is under Ownership of Ministry of Finance
- Established 12/4/1988 as Executory Body.
- On 30/01/1992 was given Statutory Power through SEBI Act, 1992

## Reserve Bank of India

- RBI is India's Central Bank and Regulatory Body
- Responsiblity for Regulation of India's Banking System.
- It is under Ownership of [ Ministry of Finance and Government of India.
- It is responsible for [ Issue, Control, Maintain Supply ] of Indian Rupee.
- It also manages Country Main's Payment System.
- It promotes Economic development.

## BRBNM

BRBNM → Bhartiya Reserve Bank Note Mudran

- Specailsed division of RBI through which it
  - Prints } Indian
  - Mints } Currency
- 2 Printing Press
  - Nashik (MH)
  - Dewas (MP)

## NPCI

NPCI → National Payment Corporation of India

- Regulate Payment
- Settelment in India

## DICGC

DICGC → Deposit Insurance and Credit Guarantee Corporation.

Providing
- Insurance of deposit
- Guarantee of Credit Faecility to all Indian Banks

## Insolvency and Bankruptcy Board of India.

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- It is Regulator for Overseeing Insolvency Proceedings.
- It is Regulator for entities like
  - Insolvency Professional Agency (IPA)
  - Insolvency Professionals (IP)
  - Information Utility in India
- Established on 01/10/2016.
- Given Statutory Power through
  ↳ Insolveny and Bankruptcy Code 2016 which was passed by Lok Sabha on 05/05/2016.
- It deals with
  - Individuals
  - Company
  - LLP
  - Partnership

Simplify Process of Bankruptcy

- It handels Cases through
  - National Company Law Tribunal (NCLT)
  - Debt Recovery Tribunal (DRT)

# Structure of Indian Judicial System

- Introduction
- Functions of Judiciary
- Hierarchy of Court
- Decision of Supreme Court
- Decision of High Court

**Introduction** → When there is dispute between Citizens (or) Between Citizen and Government, this dispute is solved by Judiciary.

## Functions of Judiciary

- Regulate Interpretations of Act and Codes.
- Dispute Resolution.
- Promotes Fairness among Citizens of land.

## Hierarchy of Court

- Supreme Court on Top
- Followed by High Court
- Followed by District Court.



| Decision of Supreme Court | Decision of High Court |
|---|---|
| • Bindings on all high Courts. Under Article 141 of Indian Constitution. # Final Word of Matter. | • Binding on respective states but only persuasive in other states. |

# Types of Court

- Supreme Court
- High Court
- District Court
- Metropolitan Court.

**Supreme Court**

- Apex body of Judiciary
- Established on 26/01/1950
- Chief Justice of India is highest authority appointed under Article 126 of Constitution of India.
- Principal bench of Supreme Court has 7 Members [including Chief Justice of India]

- Presently Number have increased to 34 Members (including Chief Justice of India, due to rise in number of Cases.

An Individual Can Seek Relief in Supreme Court by filing Writ Petition under article 32.

रिक्वेस्ट एप्लीकेशन

## High Court

- Highest Court of Appeal in each State and Union territory

- High Court have
  - Original Jurisdiction. [HC अपने हिसाब से काम करेगा]
  - Supervisory Jurisdiction. [HC किसको Advice देगा (or) HC किससे Advice/Directions लेगा]
  - Apellaent Jurisdiction [Ek Party का दूसरी Party पर Case लगाना]

- An Individual Can Seek Remedy against Violation of Fundamental Right by filing Writ Petition under Article 226

- Oldest high Court is in Calcutta established on 02/07/1862
- In India there are 25 high Court one for each State and Union territory
- Six State Share Single High Court
- Article 227 of Constitution limits
  ↳ High Court Supervisory Power.

## District Court

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- District Court is below high Court
- District Court deals with Civil law ie
  - Contractual disputes
  - Claim for damages

- Court of session deals with Criminal Case

- Under Pecuniary Jurisdiction → Civil Judge Can try Suits Valuing not More then ₹ 2 Crore
  Monetary Value
  Court Case

- Courts get territorial Jurisdiction based on the basis of areas Covered by them.
  Power to Control

- Cases are decided on
  - Local limits within which Party Reside
  - Situation of Property Under dispute.

## Metropolitan Court

- Metropolitan Courts are established in Metropolitan Cities in Consultation with high Court
  ↳ Cities having population of Ten lakhs or More.

Chief Metropolitan Magistrate
↓
has Power of
↓
Chief Judicial Magistrate.

Metropolitan Magistrate
↓
has Powers of
↓
Court of Magistrate of First Class.

### Why Indian Regulatory Frame work.

- Purpose of IRF is to Provide Set of Uniform Rules and Regulation.
  ↳ that will Govern Conduct of People Interacting with each other [ Personal Relationship and / Business Relationship ]

## Sources of Law.



- Main Sources of law are:-
  - Constitution
  - Statues (or) Laws Made by Parliament and State Assemblies.
  - Judicial decisions of Various Courts
  - Established Custom and Usage

### Brain Teaser Topic

- About Parliament
- Government of India Act 1935
- Federal Court
- Central Law v/s State Law.

## About Parliament

- India is Parliament democracy.
- Constitution of India is Basis and Sources of law.
- Parliament is Law making Body.
- Representatives of People make law [ in Parliament / in State Assemblies of Various State.

Law Passed by Parliament may apply throughout India (or) On Portion of India.

Law Passed by State Assemblies apply
↳ within borders of State.

# Government of India Act, 1935

Government of India Act was passed Parliament of United kingdom.

- Government of India Act is Precursor for Constitution of India.
- It defines characteristics of Government from Unitary to Federal.

# Federal Court

- Federal Court was established in 1937 and has Jurisdiction
  - Appelate
  - Original
  - Advisory

Federal Court operated for 12 Years and heard Roughly 151 Cases.

Power of Appelate Jurisdiction is for
- Civil Case
- Criminal Case

Power of Advisory Jurisdiction to Give advice to Governor General in Matters of Public opinion.

Federal Court was replaced by
↓
Apex Court
↓
The Supreme Court of India.

# Central Law v/s State Law.

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Indian Constitution has 3 lists
- Central list
- State list
- Joint list

- Depend upon list in which it figures a Matter it would become subject for
  - Central law
  - State law.

**Process of Making Law.**

- Law is Proposed is parlimaent is called as Bill
↓
- After discussion and debate, law is passed in Lok Sabha
↓
- Then it is to be passed at Rajya Sabha
↓
- Then it is obtain Assent of President of India.
↓
- Law will be notified by Government in publication called as "Official Gazette of India"
- Once notified and effective it is Called as "An act of Parliament"

Law will become applicable from date Mentioned in notification
↓
as Effective date.

# Types of Law.

- Criminal Law
- Civil Law.
- Common Law
- Principal of Natural Justice

## Criminal Law.

- Criminal law is concerned with laws pertaining to Violation of Rule of law or Public Wrong and Punishments for same
- Criminal law is governed under
  - Indian Penal Code
    - It define
      - Crime
      - Nature
      - Punishment
  - Code of Criminal Procedures.
    - It define Exhaustive Procedures for Executing Punishment of Crime.
- Exampels → Murder, Theft, Cheating

## Civil Law.



- Civil law focuses on dispute Resolution rather then Punishment
- Act of Process and Administration of Civil law
  ↳ is governed by Code of Civil Procedures
- Civil Court enforce Violation of Certain right and Obligation through Civil suit.
- Civil Case is classified into
  - Law of Contract
  - Family law.
  - Property law.
  - Law of tort [Civil Wrong]
- Example → Non- delivery of Goods/ Non payment of dues

## Principal of Natural Justice.

- Natural Justice is known as Jus Natural deals with Fundamental Justice going beyond Written law.
- Judgement Can Override (or) Alter Common law but Connot override Statue [Law]

**Nemo Judex in Causa Sua**

- It Means no one should be Made Judge in own Cause.
- It is Rule against Prejudice

**Audi Alteram Partem**

- It Means
  - Hear the other party (or)
  - Give other party a fair Hearing

# Reasoned decision are Rules of Natural Justice.

## Common Law

Judicial Precedent (or) Case law is Common Law.

**Doctrine of Stare Decisis**

Judgement delivered by Supreme Court will be binding within territory of India under article 141 of Indian Constitution

- It is latin phrase
  - "To stand by that what is decided"
- It Reinforces Court to follow same Judgement where Facts are similar on all Four legs with earlier decision

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0 0045

CA. Anshul Jain

Minimum → 6 Marks

Maximum → 10 Marks.

# Only theoritical Questions.

Limited liability

Partnership Act 2008

- 81 Sections
- 4 Schedules

### Dates for Reference.

09/01/2007 → Ministry of Law and Justice

12/12/2008 → Passed by Lok Sabha and Rajya Sabha [Bill]

07/01/2009 → President Signature [Bill becomes Law]

## 4 Schedules

**Schedule - 1** Mutual Rights and duties of Partner as well as LLP in the Absence of LLP Agreement

**Schedule - 2** → Provisions for Conversion of Firm into LLP

**Schedule - 3** Provisions for Conversion of Private Company into LLP

**Schedule - 4** Provisions for Conversion of Unlisted Public Company into LLP.

## Administration of LLP Act 2008

Ministry of Corporate Affairs and Registrar of Companies will Administer LLP Act 2008

- Central Government has Power to make new Rules/ and Ammend old Rules by notification official Gazette.

## Meaning of LLP



- LLP is
  - New Form of Legal Business Entity with limited liability.
  - Alternate Corporate Business Vehicle
  - Allow the Partners the flexibility of Organising their Internal Structure
  - liable to full Extent of assets
  - Liability of Partner is limited.

## What is Business.

Business include
- Trade
- Profession
- Service
- Occupation

Except any activity which CG may by notification Exclude.

## Financial Year.

Financial Year in relation to LLP, means the Period from 1st day of April to 31st day of March of following Year

DON'T FORGET

If LLP is incorporated after 30th day of September the Financial Year May end on 31st day of March next following that Year.

## Foreign LLP

It Means any LLP
- Formed
- Incorporated
- Registered

Outside India and having Place of Business in India

## Body Corporate

- Body Corporate Means
  - a Company defined u/s 2(20) of Companies Act 2013
  - LLP Registered Under this act
  - LLP Incorporated outside India
  - Company incorporated outside India.

Body Corporate does not Include
- Corporate Sole
- Corporate Society registered under any law for time being in force.
- any body Corporate which Central Government may by notification in Official Gazette specify in this behalf.

## Partners [Section 5]



- Any Individual/ Body Corporate may be Partners in LLP.
- An Individual shall not become partner if
  - who is found to be of unsound mind by a court of Comptentent Jurisdiction.
  - who is an undischarged Insolvent
  - who has applied to be adjudicated as an insolvent and application is pending.

adjudicated ↳ दिवालिया

## Designated Partner.

- Every LLP shall have atleast Two Designated Partner who are Individuals and one of them shall be Resident in India.

- If all partners are body Corporate
  Or
- in which One or more Partners are Individual and body Corporate

atleast two Individuals who are Partners of LLP (or) nominee of such body Corporate shall be designated Partner.

### Who are Residents

"Resident in India Means who stayed in India for a period not less then 120 days ↳ during the Financial Year"

## LLP Agreement

It Means any Written Agreement between the Partners of LLP and Partners which determine
- Mutual Rights and duties of Partners
- their rights and duties in Relation to LLP

## Small LLP

- Contribution of which do not exceed Twenty Five Lakh Rupees or Such higher amount not exceeding five Crore Rupees as may be Prescribed. **and**
- Turnover of which do not exceed Fourty Lakh Rupees as per Statement of Accounts and Solvency for Immediately Preceeding financial Year. or Such higher amount not exceeding Fifty Crore Rupees as may be Prescribed. **and**
- which Meet others Requirements as may be Prescribed and fulfill terms and Conditions as may be Prescribed.

| | Contribution | Turnovers | Small LLP? |
|---|---|---|---|
| Case (a) | 24,00,000 | 38,00,000 | Yes |
| Case (b) | 23,25,000 | 45,46,000 | No |
| Case (c) | 26,75,000 | – | No |
| Case (d) | 25,00,000 | 40,00,000 | Yes. |

## Minimum No. of Partners

# Characteristics of LLP

1. LLP Agreement
2. Artificial Legal Person
3. Common Seal
4. Management of Business
5. No. of Partner
6. Business for Profit only
7. LLP is body Corporate
8. Perpetual Succession
9. Seperate Legal Entity
10. Mutual Agency
11. Limited Liability
12. Investigation
13. Compromise (or) Arrangement
14. Conversion into LLP
15. E-filing of documents
16. Foreign LLP.

## ① LLP Agreement

- Mutual Rights and duties of Partners
- Flexibility to make LLP Agreement
- In the Absence of LLP Agreement
  → Mutual Rights and duties as per LLP Act.

## ② Artificial Legal Person

- LLP is artificial legal Person because
  - Created by Legal Process
  - Clothed with Right of Individuals.
- LLP Can do what a Natural Person can do.
- LLP Cannot
  - Sent to Jail
  - Marry / Divorced
  - Take oath [शपथ]
  - Practice Learned Profession.
- LLP is
  - Invisible
  - Intangible
  - Immortal

  but not fictitious [because it really Exists]

## ③ Common Seal.

- Common Seal is optional
- In Custody of Responsible official/ Partner

# Affixed in Presence of Two Designated Partner.

→ पेपर पर सील को लगाना

## ④ Management of Business

- Partners will Manage Business

# Designated Partner will be responsible. for legal Compliances.

## ⑤ Minimum and Maximum No. of Partner

Minimum
- Two Partner
- Two Designated Partner

Who shall be Individual and One them is Resident in India

Maximum → No Limit

## ⑥ Business for Profit Only

- Essential Requirement for forming LLP is carrying on Lawful Business with View to Earn Profit
- LLP Cannot be for Charitable (or) Non- Economic purpose.

## ⑦ LLP is Body Corporate

- LLP is Body Corporate formed and Incorporated under this Act and is legal entity seperate from that of its partners and shall have perpetual Succession.

Any Change in partner shall not affect
- Existence
- Rights
- Liabilities

of LLP.

## ⑧ Mutual Agency.

- No Partner is liable on account of Independent or Unauthorise action of other Partner.
- Individual Partner are Sheilded from Joint liability by another partner
  - Wrongful business decision (or)
  - Misconduct

## ⑨ Perpetual Succession.

- LLP Can Continue its Existence irrespective of Change in partners.
- Death / Insolvent / Retirement / Insolvent } of Partners will not affect Existence of LLP
- It is Capable of [ Entering into Contract / Hold property in its own name

## ⑩ Seperate Legal Entity

- LLP is liable to full Extent of assets
- Liability of Partner is limited to agreed Contribution

# Creditor of LLP Shall be Creditor of LLP alone.

## ⑪ Limited Liability

- Every partner of LLP for the purpose of Business is agent of LLP but not of partners
- Liability of Partner is limited to Agreed Contribution in LLP

Such Contribution may be
- Tangible
- Intangible
- Both.

## ⑫ Investigation

- Central Government has Power to Investigate affairs of LLP by appointment of Competent Authority

## ⑬ Compromise / Arrangement

Any Compromise / Arrangement [including Merger and Amalgamation] of LLP according to Provisions of LLP Act.

## ⑭ Conversion into LLP

Firm / Private Company / Unlisted public Company } Can get Converted into LLP in accordance with Provisions of LLP Act

## ⑮ E-filing of document

[ Every form / Application of document } as Per Act and Rules Shall be filled on www.mca.gov.in in Computer Readable Electronic form

- Authenticate by Partner/ Designated Partner
- Authenticate through Electronic Signature/ Digital Signature.

## ⑯ Foreign LLP

- Limited liability Partnership [ Formed / Incorporate / Registered } Outside India which has established Place of Business within India

# Foreign LLP Can become Partner in Indian LLP

## Advantages of LLP

**2 Chotu**
- Easy to form
- Easy to Dissolve.

**2 Medium**
- All Partners enjoy Limited liability
- Flexible Capital Structure.

**2 Large**
- Provides flexibility without Imposing Legal detailed and Procedural Requirements
- LLP is Organised and operates on basis of Agreement.

# Incorporation Document
# [ Section – 11 ]

**Incorporation Document**

For LLP to be incorporated

- Two or More Person associated for Carrying lawful business with View to Earn profit shall subscribe there names to Incorporation document.
- Incorporation document shall be filed in such Manner with such Fees as may be prescribed with Registrar of state in which Registered office of LLP is to be situated.

**Statement in Prescribed Form**

- Along with incorporation document statement in Prescribed form shall be filed

Made by
- Advocate (or) CA (or) CS (or) Cost Accountant who is engaged in formation of LLP

$\boxed{\text{and}}$

- by anyone who subscribed his name to incorporation document

that all the Requirments of this Act and Rules made there under in respect of Incorporation and Matter Preceedent and Incidental have been ~~Compiled~~ Complied



## Contents of Incorporation Document

- Be in form as may be prescribed.
- State Name of LLP
- State Proposed business of LLP
- State Adress of Registered office of LLP
- State Name and Adress of Persons who are to be Partners of LLP on incorporation
- State Name and Adress of Persons who are to be Designated Partners of LLP on incorporation
- Contains such other information as may be prescribed

## Penalty Provisions

- If Person makes the statement in Prescribed form which
  - he knows to be False
  - does not belive it to be true

Shall be Punishable with

Imprisonment which may Extend to two Years

$\boxed{\text{and}}$

with fine which shall not be less then 10 000₹ which may Extend to Rs 5,00,000.

## Registered office of LLP and Change therein Section - 13

- Every LLP shall have Registered office to which all Communication and notice may be adressed and there shall be Received.
- A document may be Served on
  - LLP
  - Partner
  - Designated Partner

by Sending it by
- Under Certificate of posting (or)
- any Manner Prescribed

at
- Registered office and
- other adress specifically declared.

LLP May Change place of its Registered office and file the notice of such Change with Registrar in such form and Manner and subjected to such Condition as may be Prescribed.

↳ and such change will take upon filing

### Penalty Provisions

If LLP Contravens any of the Provision of this Section } Penalty on Partner and LLP
Rs 500 for each day during which default Continue and subjected to Max Rs 50000.

## Effect of Registration [Section - 14]

- On Registering LLP shall by its name be Capable of
  - Suing and be Sued [केस करना]
  - Acquiring / Owner / Holding / Developing / Disposing } of Property whether Movable, Immovable, Tangible, Intangible
  - Having a Common Seal if it decides to have one
  - Doing and Suffering such other acts and things as Body Corporate may lawfully do and suffer

## Name of LLP [Section - 15]

- Every LLP shall have either the words Limited Liability Partnership (or) word LLP as last words of its name.
- No LLP shall Registered by name which in opinion of CG is
  - Undesirable
  - Identical (or) too nearly Resembel to
    - any other LLP
    - any Company
    - Registered Trademark of any Person Under Trade mark Act 1999

## Reservation of Name [ Sec-16 ]

· A Person may apply in such form and Manner and accompanied by such fee as may be prescribed
to Registrar for Reservation of Name set out
in application
- Name of Proposed LLP
- Name to which LLP proposed to Change.

· upon Receipt of application under subsection (1) and on payment of Prescribed fee
if Registrar is satisfied that name to be reserved not one to Reject on any ground U/s 15(2)

· Registrar will Reserve the name for a period of 3 Months from date of Intimation by Registrar.

## Change of Name of LLP [ Section 17 ]

Notwithstanding anything Contained in Section 15 and Section 16
if through
- Inadvertence (or)
- Otherwise

LLP is Registered by name which is Identical (or) too nearly Resemble to any LLP/ Company/ Registered Trademark
CG May direct LLP to change name
within 3 Months from date of Issue of such direction.

An application of Proprietor of Registered Trademark shall be Maintainable for a period of 3 Years from
- date of Registration of LLP
- date of Incorporation of LLP
- Change of name of LLP

Where LLP Change its name (or) new name under Sub section (1), it shall within Period of 15 days from date of such Change ↓

Give notice of such Change to Registrar along with Order of Central Government ↓

who shall Carry out necessary Changes in Certificate of incorporation ↓

and within 30 days of such Change in Certificate LLP Change name in LLP Agreement.

If LLP is in default in Complying with any direction under Sub Section (1) CG shall allot New name to LLP and Registrar shall enter New name in place of old name and Issue Fresh Certificate of Incorporation.

# Nothing in that Sub-section shall Prevent LLP from Subsequently Change name in accordance with Section 16.

Marks → 21

Types of Question
- CBQ
- TQ

# Companies Act 2013

# Applicability of Companies Act

- Companies Incorporated under this Act or Previous Company law
- Insurance Company except where Provisions are Inconsistent with Provisions of
  - Insurance Act 1938
  - IRDA Act 1999
- Banking Company except where Provisions are Inconsistent with Provisions of Banking Regulation Act 1949
- Electricity Company ie Companies engaged in Generation (or) Supply of Electricity except where Provisions are Inconsistent with Provisions of Electricity Act 2003.
- Any other Company governed by any Special Act.
- Any Body Corporate incorporated in any other act where CG may notification specify in this behalf

# Meaning of Company

Company means a Company incorporated under this act (or) Previous Company law.

# Why Companies Act 2013

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# Features of Company

- Seperate Legal Entity
- Perpetual Succession
- Limited Liability
- Artificial Judicial Person
- Common Seal.

## I Seperate Legal Entity

On Registration Clothed with legal Personality and Rights/Power of human being [Individual]

Company is different from Subscribers to Memorandum.

Company is different from Member.

Company के मस्ती गया

- Company Can
  - Own Property
  - Have Bank account
  - Raise Loan
  - Incur Liability
  - Enter into Contract
  - Can Sue and Can be Sued.

- Member Can
  - Contract with Company
  - Acquire right against it [Member ने पैसे उधार दिये हों]
  - Incur Liability to it. [Member ने पैसे उधार लिए हों]

CASE LAW

Macaura v/s Northern Assurance Co. Ltd

- Macaura was the holder of all shares except one
- Macaura was major Creditor of Company.
- He Insured timber in its own name
- Timber was lost in fire
- Shareholder has no right in assets of Company
- A Member does not have Insurable Interest in Property of Company.

## ② Perpetual Succession

- Members may die / change, company goes on Until wound up
- Shares of Company may Change hands Infinetly, it will not affect existence of Company.
- Company is artificial Legal Person, Law will bring end to its life

## ③ Limited Liability



### Company Limited by Shares

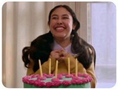
Member liability is limited to Extent of Nominal Value upto Amount unpaid on Shares.

# Amount may be called at any time.

Ex- Holding → 10,000 × 8 = 80,000
Total Loss → 500 Crore
$500 \times \frac{10}{100} = 50$ Crore Rs.

Unpaid → 10,000 × 2 = 20,000 Rs
Max Amt to be Paid = 20,000 Rs

### Company Limited by Guarantee



Liability of Member limited to Guaranteed amount
↳ at the time of liquidation

### Unlimited Company

Member liability is Unlimited
↳ at the time of liquidation

## ④ Artificial Legal Person

Part - A

- Company is artificial legal Person because it is Created by Process other then natural Birth.
- Company is Person as it is Clothed with Rights of Individual
- Company Can
  - Own Property
  - Have Bank account
  - Raise Loan
  - Incur Liability
  - Enter into Contract
  - Can Sue and Can be Sued

- Company Can do what natural Person Can do
- Company Cannot
  - Sent to Jail
  - Marry/ Divorced
  - Take oath
  - Practice Learned Profession

## Part - B

- Director Cannot Control affairs of Company, but act as agent of Company but not agent of Members
- Company is artificial legal Person and act through some human agency Called as directors.
- Directors will authenticate Formal Act Using Common Seal.
- Therefore a Company is called artificial Judicial Person

## ⑤ Common Seal

- Common seal is Used as Symbol of Incorporation
- It is official Signature of Company which is affixed by officers/ Employees

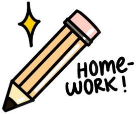
\# As per Companies (Ammendment) Act 2015, Common seal is Optional.

## Authorisation in Absence of Common Seal



Company have Company Secretary [CS]
↓
Authorisation shall be Given by one director and one Company Secretary

Company do not have Company Secretary [CS]
↓
Authorisation shall be Given by Two directors.






# Classification of Companies

## On the basis of Liability
- Company Limited by Shares
- Company Limited by Guarantee
- Unlimited Company

## On the basis of Members
- One Person Co.
- Private Co.
- Public Co.

## On the Basis of Control
- Holding and Subsidiary Co
- Associate Co.

## On the Basis of Access to Capital
- Listed Company
- Unlisted Company

## Other Company
- Government Co.
- Foreign Co.
- Nidhi Company
- Dormant Co
- Public Financial Inst.
- Formation of Company with Charitable Objects [Sec- 8]

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Business law → Companies Act.

# PRABJOT SINGH