

Advantage & Disadvantage of Company

<u>Advantage</u>	<u>Disadvantage</u>
-Limited liability -Transferability of Ownership -Unlimited Investors(except private companies) -Contractual capacity	-Compliance Cost -Enforcement(ASIC regulate, scrutinise & penalise) -Lift corporate veil
-Perpetual Succession -Rules -Taxation	-Disclosure(AISC&ASX)

Corporations Act 2001

Separate Legal Entity

Company is treated as a separate person from its participants.

Corporations Act s124-Gives company **legal capacity and power of a natural person**. Includes entering into contract & hold property.

Salomon v Salomon & Co Ltd-Incorporated a company, members comprise of him and his family. The company paid a part purchase for Mr Salomon's sale of business to the company and agreed to pay remainder over time. To give security to pay, the company gave Mr Salomon security on assets. When business failed, **Salomon was entitled to be paid his debts** after creditors as company had insufficient assets to pay all debts.

Separate Legal Entity Features

-A **company's obligations and liabilities are its own** and not those of its participants

-A company can sue in its own name

-A company has perpetual succession: "Regardless of change in ownership of the company, company will still **exist until de-registered** under statutory procedure"

-A Company's property is not the property of its participants: Mr Macaura transferred interest in timber to company controlled by him. He had insured insurance in his name and not in the company. When timber was destroyed he did not have it insured under the company and it was not covered case name is Macaura v Northern Assurance Co Ltd

- A Company can **contract with its controlling participants**: Controlling shareholder and managing director of a company operated business and was killed in a flying accident. His widow argued she was entitled to payout under workers compensation insurance as her husband was a worker. Finding that contract existed between company and the worker. Lee v Lee's Air Farming Ltd

**Ultra vires: ASIC attempted to do something outside performance of functions would have no legal effect by operation*

Limitations on Powers

Corporations Act s125(1): If a **company has a constitution** it may contain an **express restriction** on, or a prohibition of, the **company exercise of any** of its **powers** - *Exercise of power is not invalid because it is contrarily to restriction in constitution*

Corporations Act s 125(2): If a **company has a constitution**, it may set out the **company's objects** – Act of company is not invalid because it is contrary to objects of company

- Restriction is to allow third parties to enforce obligations. There may be consequence to acting outside company's constitution to person such as director

Limited Liability

The liability of members to contribute to the debts of the company is limited to the amount unpaid on their shares.

Corporations Act s9 – "Company formed on principle of **having the liability** of its members **limited to the amount unpaid on the shares** respectively held by them