

**Company** – legal fiction created by laws and granted a type of personhood in the law. Separate from individuals (natural persons)

- S. 9 – ‘means a company registered under this act’
- **When do companies start to exist?** S.119 – company comes into existence as a body corporate at the beginning of the day it’s registered
- **What are the capacity & powers of a company?** S.124 – issue/cancel shares, debentures, options, property distribution, grant circulating security interests, do anything its authorised to do

**Why use companies?**

- Raise capital, earn profit, do NFP activities

**Nature of companies**

- Separate legal entity & limited liability
- Perpetual succession – company goes on even if a director dies
- Interest transferability – through instruments of ownership like shares etc.

**Forms of business structures**

- sole trader - run under the name of a person
- Partnership – undertaking a business in common with a view to profit, 2 or more people. S.7 of *Partnership Act 1895 WA*. Partners joint & severally liable. Partnership ends when other partner dies. Existence of partnership agreements.
- Joint venture – partnership for a single project by companies
- Trusts - owner of the trust property to deal with that property for the benefit of a beneficiary or for the advancement of certain purposes.

## **Week 2 – Incorporation & its consequences**

**S.57A** - (1) Subject to this section, in this Act, **corporation** includes:

(a) a company; and

(b) any body corporate (whether incorporated in this jurisdiction or elsewhere); and

(c) an unincorporated body that under the law of its place of origin, may sue or be sued, or may hold property in the name of its secretary or of an office holder of the body duly appointed for that purpose.

**Separate legal entity** –Complicated practical manifestation.

- *Sutton’s Hospital Case* – a company is invisible, immortal, resting only in consideration of the law. Corporations have no predecessor nor successor.

**SLE: corporate veil**

- Company is separate from those that operate it. It owns the rights, privileges, duties, and liabilities to itself. Shareholders have no proprietary interest to a company’s rights.
- ***Hobart Bridge Co Ltd v FCT (1951) 82 CLR 372***
- **Encourages entrepreneurial risk taking**

**SLE: agency**

- Company needs agents to act e.g. board of directors, shareholders general meeting

*Salomon’s Case* – corporation is a different legal entity. They conducted businesses on its own right. Minimal liability. Outsourcing costs to the public and privatising profits?

Mr Salomon had incorporated his long-standing personal business of shoe manufacture into a limited company. He held nearly all the shares, and had received debentures on the transfer into the company of his former business. The business failed, and a subsequent debenture holder now said that the sums paid by the company for the business were too high.

Held: The Company had been properly incorporated, and it was not for the court to speculate as to the motives and exhorbitance of the incorporation. The fact that the shares were nearly all owned by one person made no difference. A company and the person or persons constituting its directing mind are two or more separate persons in law. From the date of incorporation a limited company becomes a legal person with the rights and duties distinct from those of the members and shareholders. There is a corporate veil between them, though this might be lifted or pierced in an extraordinary case.

**Case reflected in S.124 of Corps Act:**

(1) A company has the *legal capacity and powers of an individual both in and outside this jurisdiction*. A company also has all the powers of a body corporate, including the power to:

- (a) issue and cancel shares in the company;
- (b) issue debentures (despite any rule of law or equity to the contrary, this power includes a power to issue debentures that are irredeemable, redeemable only if a contingency, however remote, occurs, or redeemable only at the end of a period, however long);
- (c) grant options over unissued shares in the company;
- (d) distribute any of the company's property among the members, in kind or otherwise;
- (e) grant a security interest in uncalled capital;
- (f) grant a circulating security interest over the company's property;
- (g) arrange for the company to be registered or recognised as a body corporate in any place outside this jurisdiction;
- (h) do anything that it is authorised to do by any other law (including a law of a foreign country).

A company limited by guarantee does not have the power to issue shares.

Note: For a company's power to issue bonus, partly--paid, preference and redeemable preference shares, see section 254A.

(2) A company's legal capacity to do something is not affected by the fact that the company's interests are not, or would not be, served by doing it.

(3) For the avoidance of doubt, this section does not:

- (a) authorise a company to do an act that is prohibited by a law of a State or Territory; or
- (b) give a company a right that a law of a State or Territory denies to the company.

**Debentures** – Debt instrument unsecured by physical assets or collateral. Backed by creditworthiness & trustworthiness of the issuer.

**Option** - contract which gives the buyer (the owner or holder of the option) the right, but not the obligation, to buy or sell an underlying asset or instrument at a specific strike price on a specified date, depending on the form of the option.

***Lee & Lee's Air Farming***

**Facts:** Lee was a pilot. Had a cropdusting business conducted by his company. Lee held 2999 shares, 1 is his solicitor. He had a contract w/ his company (workers compensation & insurance included) as an employee. Lee died while working.

**Issue:** Is Lee the company's employee even though he owned the company?