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UNIT 2 (Business Structure)

- **Types: Sole trader, partnership, company**
  - **Sole trade**r: A person carrying on a business as an independent individual
    - Adv: Inexpensive to form, full control of the business, keep all profits, flexible, maintenance of privacy
    - Disadv: Unlimited liability, difficult to raise large capital, lack of expertise, business will end when owner dies
  - **Partnership**: exists between 2-20 partners carrying on a business with a common view on profit.
    - Adv: Easy and inexpensive to form, flexible, different areas of expertise, maintenance of privacy, large pool of capital
    - Disadv: Unlimited liability, divided control, split of income, not a separate legal entity.
  - **Company**: An association of people who satisfy Corporations Act 2001 (Cth) with separate legal entity.
    - Adv: limited liability, separate legal entity, transferable shares, taxed at a flat rate
    - Disadv: management role for shareholders is limited, heavy legal responsibilities for company officers
    - Proprietary company: limited share, unlimited capital, small business, restricted fundraising ability, less regulations
    - Public company: raise funds from the public, more regulations, limited shares, unlimited capital
    - Upon incorporation, a company becomes a separate legal entity, separate from its members and controllers (Salomon v Salomon & Co. Ltd)
    - Corporate veil: The artificial screen that separates legal identity of company from its members/directors.
      - The person behind the company do not become personally liable for the company's debts.
      - It can be lifted by the court in special and limited circumstances to see why the company was formed. (Eg. To enforce legal and contractual obligations when the owner deliberately uses the company to facilitate fraud, avoid tax or breach of contract.) (Gilford Motor Co. Ltd v Horne)
        - Lifting the corporate veil reveals the identity of owners and forces personal liability for company's debts.
        - It disregards the separate legal entity principle.

1. **Salomon v Salomon & Co. Ltd. [1897] AC22**

- Principle: Separate Legal Entity
- Facts: Mr. Salomon (a major shareholder, director and secured creditor) borrowed money from Mr. Broderip and lent it to the company. The company failed as the loans were insufficient to pay the company's creditors.
- Issues: Was Mr Salomon personally liable for the debts owed to Broderip?
- Decision: House of Lords held that the company has a separate legal entity from its shareholders. Therefore, Mr. Salomon was not personally liable for the company's debts.

2. **Gilford Motor Co. Ltd v Horne [1933] 1 Ch935**

- Principle: Corporate veil
- Facts: Horne signed an employment contract with GMC, promising not to solicit its customers after resignation. However, Horne set up a new company and targeted GMC's customers. Horne argued that it was not breach of contract.
- Decision: Horne misused the corporate personality to avoid legal obligations under the contract when he left GMC. The corporate veil was lifted by the court, granting Horne and his new company an injunction, claiming that the new company was a sham.