

FORMS OF COMPANY.
ADVANTAGES AND DISADVANTAGES OF
INCORPORATION.

What is a company?

As a group of persons, associated together to achieve some common objective. In its legal sense, the term company, as per the Companies Act, 2013, under section 2(20), is defined as “a company incorporated under the Companies Act 2013 or any previous company law.”



Basic similar characteristics of business corporations

- legal personality
- limited liability
- transferable shares
- delegated management under a board structure
- investor ownership

Advantages of Incorporation of a Company

Creates a Separate Legal Entity:

Company has Perpetual Succession

Can own Separate Property

Capacity to sue and be sued

Easier access to Capital

Creates a Separate Legal Entity

This states that a company is independent and separate from its members, and the members cannot be held liable for the acts of the company, even when a particular member owns majority of shares. This was held in the case of **Salomon v Salomon & Co. Ltd. (1897) AC 22.**



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Salomon V A Salomon And Co Ltd [1897] AC 22 Case Summary

The requirements of correctly constituting a limited company

Introduction

Separate Legal Personality (SLP) is the basic tenet on which company law is premised. Establishing the foundation of how a company exists and functions, it is perceived as, perhaps, the most profound and steady rule of corporate jurisprudence. Contrastingly, the rule of "SLP" has experienced much turbulence historically, and is one of the most litigated aspects within and across jurisdictions.¹ Nonetheless, this principle, established in the epic case of *Salomon v Salomon*,² is still much prevalent, and is conventionally celebrated as forming the core of, not only the English company law, but of the universal commercial law regime.

Commonly known as: **Salomon v Salomon**

FACTS

Salomon transferred his business of boot making, initially run as a sole proprietorship, to a company (Salomon Ltd.), incorporated with members comprising of himself and his family. The price for such transfer was paid to Salomon by way of shares, and debentures having a floating charge (security against debt) on the assets of the company. Later, when the company's business failed and it went into liquidation, Salomon's right of recovery (secured through floating charge) against the debentures stood prior to the claims of unsecured creditors, who



Company has Perpetual Succession

The term perpetual succession means continuous existence, which means that a company never dies, even if the members cease to exist. The membership of a company changes from time to time, but that has no effect on the existence of the company. The company only comes to an end, when it is wound up according to law, as per the provisions of the Companies Act, 2013.

Can own Separate Property

- : Since a company is termed as a separate legal entity in the eyes of law, it can hold property in its own name and the members cannot claim to be the owner of the companies property(s). The Supreme Court, in the case of **Bacha F. Guzdar v CIT Bombay** stated that a company being a legal person, in which all its property is vested and by which it is controlled, managed and disposed of a member cannot, ensure the companies property on its own name.

Capacity to sue and be sued

The company has the capacity of suing a person or being sued by another person in its own name. A company, though can be sued or sue in its own name, it has to be represented by a natural person and any complaint which is not represented by a natural person is liable to be dismissed in the same way in which an individual complaint is liable to be dismissed in the absence of the complainant.

Easier access to Capital

Raising capital is easier for a corporation, since a corporation can issue shares of stock. This may make it easier for your business to grow and develop. If the in the market for a bank loan, that's another reason to incorporate, since in most cases, banks prefer and easily lend money to incorporated business ventures.