

Syllabus (Course Outline) cum Lecture Plan
Semester – VII Credit: 3
Faculty : Nandita S Jha Assistant Professor, CNLU Patna
Class Hours: 65Hrs

<u>Prescribed Legislation:</u> The Companies Act, 2013
<u>Prescribed Readings:</u>
Paul L. Davies, Gower and Davies <i>Principles of Modern Company Law</i> (Latest edition)
Gower's and Davies' <i>Principles of Modern Company Law</i>, (8th ed., 2008)
A. Ramaiya, <i>Guide to the Companies Act</i> (17th ed., 2010)
Hicks, Andrew & Goo S H, <i>Cases and Material on Company Law</i>, Oxford University Press (8th ed., 2008)
Kershaw, David, <i>Company Law in Context</i>, Oxford University Press, UK, (2nd ed., 2012)
Avtar Singh, <i>Company Law</i> (19th ed., 2019)
H.K.Saharay, <i>Company Law</i>, (9th ed., 2019)
<u>Prescribed Journals:</u>
<i>Chartered Secretary: ICSI, New Delhi</i>
<i>Corporate Law Adviser</i>
<i>Company Law Journal</i>
<u>Recommended Readings:</u>
• <i>Report of Companies Law Committees</i>
• <i>The Companies (Amendment) Bill, 2020</i>
• <i>Human Rights Responsibility of Multinational Corporations, Political Ecology of Injustice: Learning from Bhopal Thirty Plus?</i>
<i>Prof. Upendra BAXI</i>

Module 1 : Nature and Kinds of Companies	12 Hours
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(a) ‘**Company**’ – Definition; Evolution; History of Company Legislation in India; Meaning and Nature of Company with Emphasis on its Advantages and Disadvantages over other forms of Business organizations. Comparison between Company and Partnership and Company and Limited Liability Partnership; New Provisions of Companies Act, 2013; The Companies (Amendment) Bill, 2019

(b) **Theory of ‘Corporate Personality’**; Concept of Separate Legal Entity, Company not a citizen of India; Lifting of the Corporate Veil, Statutory Exceptions to Limited Liability.

1. <i>Salomon v. Salomon & Co., Ltd.</i> (1897) A.C. 22 (H.L.): (1895-95) All ER Rep. 33	14
2. <i>State Trading Corporation v. CTO</i> , AIR 1963 SC 811	20
3. <i>TELCO v. State of Bihar</i> , AIR 1965 SC 40	26
4. <i>R.C. Cooper v. Union of India</i> (1970) 3 SCR 530	
5. <i>Daimler Co., Ltd. v. Continental Tyre and Rubber Co. (Great Britain), Ltd.</i> , 1916 AC 307 : (1916-17) All ER Rep. 191	32
6. <i>Lee v. Lee’s Air Farming, Ltd.</i> (1960) 3 All E.R. 420	42
7. <i>In re Sir Dinshaw Maneckjee Petit</i> , AIR 1927 Bom. 371	51
8. <i>CIT v. Meenakshi Mills Ltd.</i> , AIR 1967 SC 819: (1967) 1 SCR 934	64
9. <i>Workmen v. Associated Rubber Industries Ltd.</i> (1985) 4 SCC 114: (1986) 59 Comp. Cas. 134 (SC)	68
10. <i>Gilford Motor Co., Ltd. v. Horne</i> (1933) 1 Ch. 935	71
11. <i>Subhra Mukherjee v. Bharat Coking Coal Ltd.</i> (2000) 3 SCC 312	78
12. <i>Kapila Hingorani v. State of Bihar</i> (2003) 6 SCC 1	

Learning Outcome :categories the common forms of business organization, able to delineate the legal distinction between incorporated and unincorporated associations.

- Quiz
- Activity

Module 2 :Promotion and Formation of Company	8 hours
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(a) **Promotion:** Promotion of Company, Promoters Sec.2 (69), their position, Powers, Duties and Liabilities.

- 2.1 Promoters : Promotion Of Companies
- 2.2 Promoters: Position, Duty And Liability

2.3 Pre-Incorporation Contracts

- 1) By Promoters
- 2) By Company

13. *Erlanger v. New Sombrero Phosphate Co.* (1878) 3 AC 1218:

(1874-80) All ER Rep. 271

82

The objectives of this module is to apprise the reader about the promoter their role in promotion. The module also aims to give a glimpse about the range of activities that a promoter shall be doing in promotion of a company.

Module 3 :Company's Share Capital/Debenture and Members	15 Hours
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Meaning and nature of shares/kinds of shares
Difference between shares and stocks
Difference between share and share certificates

Difference between share and share certificates

- a) 1.4. Kinds of capital
- b) 1.5. Issue of shares, ipo, rights issue, bonus issue,
- c) 1.6. Allotment, transfer, forfeiture, surrender of shares
- d) 1Alteration and reduction of share capital

Buy back of shares

Debentures: meaning and characteristics

(a) **Equity Finance:** Shares Sec. 2(84), Kinds of Share capital Sec.43

(a) Equity share (b) Preference share

(b) **Debt Finance:** Debentures Sec. 2(30) Nature of shares or debentures Sec.44

Comparison between Share and Debenture

Members: a) Individual b) Institutional

A shareholder by virtue of his membership in a company enjoys two types of rights viz., corporate membership rights and individual membershiprights.

- e) Individual Members Rights
- f) Corporate Membership Rights\

Module 4: Corporate Governance: Meetings**10 Hours**

Protection of the investors is one of the primary objectives of corporate law. One of the forum through which such an objective is fulfilled are the meetings of a company and the business is also transacted through these different kinds of meeting. Their procedure is well regulated through law. It is at the meeting that majority and minority friction comes out in open. Meetings are conducted by both company as well as by board.

Types / Kinds of Meetings, Essential Conditions of a Valid Meeting, Procedure for Calling Company Meetings.

4.1 Meaning

4.2 Kinds Of Company Meetings

4.3 Voting/Polling

4.4 Resolutions

4.5 Board Meetings

Module 5 : Prevention of Oppression and Mismanagement**10 hours**

Protection of Minority Shareholders

Protection against oppression

Protection against mismanagement

Shareholder's Derivative Action – Nature, Scope, and Development

Investigation power

Class Action Suit: The concept of Class Action Suits is among one of the many novelties introduced by the Companies Act, 2013. Though the concept per se is not new but in Indian context it has found statutory recognition and enforceability now only by means of Companies Act 2013

Role of Central Government

Sections: S.241 to S.246

Key Takeaway: Class Action Suit, Serious Fraud Investigation Office (SFIO)

Cases:

1. Foss v. Harbottle (1845) Ch 319
2. Scottish Co-op Whole Sale Society Ltd. v. Mayor (1958) 3 All E R 66 (self study)
3. Shanti Prasad Jain v. Kalinga Tubes 1965 SC 1535

4. Raja Mundry Elect. Supply Corp. v. NageshwaraRao AIR 1956 SC 213
5. N.I.I.Ltd. v. N.I.N.I.H. Ltd. AIR 1981 SC 1298
6. RakeshMalhotra v. Rajinder Kumar Malhotra [2015] 53 taxmann.com 135 (Bombay)
7. Haryana Telecom Ltd. v. Sterlite Industries (India) Ltd [1999] 2 SCL 156 (SC)
8. CDS Financial Services (Mauritius) Limited Vs. BPL Communications Limited and others, (2004) 121 Comp Cases 375
9. 'Prime Century City Developments Pvt. Ltd. v. AnsalBuildwell Ltd. – [2003] 113 CC 68
Protection of Minority Shareholders; Powers of Tribunal and Central Government; Prevention of Oppression and Mismanagement Sec.241-244;

Class Action Suit (Sec.245)

Foss v. Harbottle Rule - Exceptions – acts ultra vires, fraud on minority, acts requiring special majority, wrongdoers in control, etc.

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| 23. <i>Percival v. Wright</i> (1902) 2 Ch. 421 | 146 |
| 24. <i>Burlandv. Earle</i> (1902) AC 83 : (1900-03) All ER Rep. 1452 | 150 |
| 25. <i>City Equitable Fire Insurance Co., Re</i> (1925) Ch. 407 | |
| 26. <i>Regal (Hastings) Ltd. v. Gulliver</i> (1967) 2 A.C. 134 (HL) | 157 |
| 27. <i>Industrial Development Consultants Ltd. v. Cooley</i> (1972) 1 WLR 443 28. | 175 |
| <i>Standard Chartered Bank v. Pakistan National Shipping Cop.</i>
(2003) 1 All ER 173 (HL) | 185 |

□Case Study on Satyam Scandal

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| 29. <i>Foss v. Harbottle</i> (1843) 2 Hare 461: (1843) 67 ER 189 | 191 |
| 30. <i>H.R. Harmer Ltd., Re</i> (1958) 3 All E.R. 689 | |
| 31. <i>Scottish Co-operative Wholesale Society, Ltd. v. Meyer</i> 1959 AC 324 | |
| 32. <i>Shanti Prasad Jain v. Kalinga Tubes Ltd.,</i> AIR 1965 SC 1535 | 212 |
| 33. <i>Rajahmundry Electric Supply Corporation Ltd. v. A. NageshwaraRao,</i>
AIR 1956 SC 213 | |
| 228 | |
| 34. <i>Bharat Insurance Co. Ltd. v. KanhaiyaLal,</i> AIR 1935 Lah. 792 | 232 |
| 35. <i>Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holdings Ltd.,</i>
AIR 1981 SC 1298 | |
| 36. <i>M.S.D.C. Radharamanav. M.S.D. ChandrasekaraRaqja</i>
(2008) 6 SCC 750: AIR 2008 SC 1738 | |

Articles:

1. The relative importance of the Statutory Derivative Action in Australia by Stephen Bottomley, International Corporate Law Annual, Vol 2:2002, p.141

2. Protecting Minority and Public Interest in Nigerian Company Law: The Corporate Affairs Commission as a Corporations Ombudsman, by AmezeGuobadia, International Corporate Law Annual, Vol 1:2000 , p.79
Quiz and Activity

Module 6 :Company’s Constitutional Documents 10 hours

The constitutional structure of a company is governed by its memorandum and articles of association. This module commences by examining the company’s memorandum and the powers available to a company to alter clauses contained therein. It moves on to consider the format of a company’s articles and the so-called statutory contract created under Companies Act 2013. In considering this it examines the powers available to both the company and its membership to enforce and alter obligations created by the articles, then considers government proposals to reform the constitutional structure of a company. And then moves on to consider a company’s power under companies act to alter its articles. Finally, it considers contractual agreements other than those created under the act for example, membership/shareholder agreements.

(a) ***Kinds of Companies*** – Public Sec.2(71) and Private Companies Sec.2(68); Holding Sec.2(46) and Subsidiary Companies Sec.2(87); Limited and Unlimited Companies Sec.2(92); Share-holding and Guarantee Companies Sec.2(21/22); Producer Companies; Small company Sec.2(85); One person company Sec.2(62); Government company Sec.2(45); and foreign company Sec.2(42) etc.

(b) ***Formation:*** Formation of Company (Sec.3), Procedure of registration including online registration of a company, Effects of Certificate of Incorporation And Registration of company (Sec.9).

(b) ***Memorandum of Association Section 4 and Articles of Association Section 5*** –

Importance, Registration and Its Effect; Binding Nature; Clauses in Memorandum of Association, Alteration of Memorandum of Association and Articles of Association **Section 10-16**

© ***Doctrine of Ultra vires*** – A critical analysis of doctrine of Ultra Vires.

14. *Ashbury Railway Carriage and Iron Co. Ltd. v. Riche* (1875) L.R.7 H.L.: (1874-80) All ER Rep. 2219 (HL) **91**

15. *Cotman v. Brougham*, (1918-19) All ER Rep. 265 (HL) **101**

16. *In re (Jon) Beuforte (London) Ltd.* (1953) Ch. 131 **107**

17. *Bell Houses, Ltd. v. City Wall Properties, Ltd.* (1966) 2 All E.R.674 **111**
18. *Re Introductions, Ltd., Introductions, Ltd. v. National Provincial Bank Ltd.* (1969) 1 All ER 887 **121**
19. *Dr. A. LakshmanaswamiMudaliar v. Life Insurance Corporation of India,* AIR 1963 SC 1185 **124**

(c)**Doctrine of Indoor Management**; Binding Nature of Articles of Association between members/shareholders *inter se* and also outsiders; Rule of Constructive Notice; Doctrine of Indoor Management and its exceptions.

20. *Royal British Bank v. Turquand* (1856) 119 ER 886 : (1843-60) All ER Rep. 435 **130**
21. *Freeman &Lockyer (A Firm) v. Buckhurst Park Properties (Mangal) Ltd.* (1964) 1 All ER 630 **133**
22. *KotlaVenkataswamy v. ChintaRamamurthy,* AIR 1934 Mad. 579 **144**

Note:

1. Apart from the cases that have been mentioned above, the students are also advised to take note of the other cases mentioned in the books and discussed in the class.
2. The topics and cases given above are not exhaustive. The teachers teaching the course shall be at liberty to add new topics/cases.
3. The students are required to study the legislations as amended up-to-date and consult the latest editions of books.