



FACULTY OF JURIDICAL SCIENCES

Course : B.A.LL.B./BBALL.B IInd Semester

SUBJECT: COMPANY LAW
SUBJECT CODE: BAL 406/BBL 406

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LECTURE-7

IV. CONSEQUENCES OF INCORPORATION

1. Separate Legal Personality:

A company is a separate person in law from its members. This has several important consequences:

(a) Company is liable for its own debts:

The shareholders are not liable for the debts and liabilities of the company and cannot be sued by the company's

creditors. A shareholder can be a debtor or creditor of the company and can sue or be sued by the company. **Salomon v A Salomon & Co Ltd, Lee v Lee's Air Farming Ltd.**

(b) Limited Liability:

The fact that the company is a separate person from its shareholders makes limited liability possible.

(Remember: the company's liability is always unlimited - it is the members' liability that is limited and that liability is to the company, not to the individual creditors.)

(c) Company Property:

A company owns its own property - the shareholders have no direct right to this or any share of it.

Person who no longer wishes to be a member is only entitled to whatever price he can get for his shares. A shareholder has no legal interest in the company's property and cannot insure it against theft, damage, etc. **Macaure v Northern Assurance Co** (This may not apply to someone who is a secured debenture holder.)

(d) Contractual Capacity:

A company has full contractual capacity - and only the company can enforce its contracts. *(Companies may also be liable in negligence - shareholder cannot be made liable for the negligence of the company, unless he was also personally negligent).*

(e) Crimes:

A company can be convicted of a crime, regardless of whether its directors are also convicted.

Some limitations:

- it has been held that a company cannot be convicted of a crime which requires the physical act of driving a vehicle: **Richmond on Thames Borough Council v Pinn & Wheeler.**

- a company cannot be convicted of any crime for which the only available sentence is imprisonment.

There are particular problems with crimes which require mens rea ("a guilty mind") - most common law crimes require mens rea, while many statutory

offences involve strict criminal liability.

In order to convict companies of common law crimes, courts may regard the mens rea of those individuals who control the company to be the mens rea of the company. However, the courts have been very restrictive in their use of this approach: **Tesco Supermarkets v Nattrass**, **R v P&O European Ferries (Dover) Ltd**, **R v Kite and OLL Ltd**, **Transco plc v HM Advocate (No 1)**.

Crimes Against the Company:

A company can be the victim of crime. It is theft to steal from a company, even if those accused of the theft are also the company's only shareholders: **R v Philippou**.

(f) Perpetual Succession:

Separate personality means that the existence of a company does not depend on the existence of its members. Membership may change or members may die - the company continues in existence until wound up.

(g) Borrowing:

A company can borrow money and grant a security for a debt. Only a company can create a floating charge.

Floating charge = a kind of security for a loan. The charge "floats" because it does not attach to any particular asset, but floats over the company's assets as they exist from time to time. Certain events cause the charge to "crystallise" and attach to whatever assets the

company has at the time.

MCQs

1. A company is a separate person in law from its members.

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

2. A company can be convicted of a crime, regardless of whether its directors are also convicted.

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

3. A company can be the victim of crime. It is theft to steal from a company, even if those accused of the theft are also the

company`s only shareholders:

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

4.The shareholders are not liable for the debts and liabilities of the company and cannot be sued by the company' s creditors.

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

5.A company owns its own property - the shareholders have no direct right to this or any share of it.

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

