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Quick Revision Notes(QRN): Company Law for CLAT PG

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Navigating corporate jurisprudence is essential for a top rank, making high-yield company law quick revision notes for clat pg a vital component of your study toolkit. With the focus shifts in the LLM entrance exam toward detailed corporate compliance and corporate governance, skimming massive acts isn't efficient in the final stretch.

This article breaks down the essential provisions of the Companies Act 2013, key corporate doctrines, and recent NCLAT updates you need to know.

Incorporation of a Company

The process of incorporation is regulated by the Companies Act, 2013. **Section 3 of this Act regulates a public company as one with at least seven members, a private company as one with at least two members, and a one person company as one having only one member.**

However, according to **Section 2(68), private companies can have only 200 members (excluding current and former employees), cannot freely transfer shares**, and cannot invite the public to subscribe for shares.

The Companies (Amendment) Act, 2015 eliminated the minimum paid-up capital requirement from the Act, making it possible for any company to be registered with any amount of capital without raising money from the public.

The procedure goes through the office of Registrar of Companies. The application is made by promoters reserving a name and filling in SPICe+ form along with memorandum (Section 4) and articles of Association (Section 5).

The memorandum states the name of the company, the situation of its Registered Office, its objectives, liability of the members and capital. The Articles of Association lay down the rules governing the internal affairs of the company which have to comply with the provisions of the Act.

Under **Section 7(2), the incorporation certificate serves as definitive proof that all the requisite steps have been taken. Section 7(7) permits action to be taken if a company has been formed using dishonest or fraudulent information**.

The incorporation memorandum and articles established under Section 10 bind the company and its members as if they had also signed them.

Definition of a promoter: According to **Section 2(69), a promoter is defined as a person mentioned in the prospectus or annual return, a person who controls the business activities of the company, or a person on whose advice the board acts.**

The promoter has a fiduciary duty to the company; ***Erlanger v. New Sombrero Phosphate Co. establishes the requirement of complete disclosure of profits***, and ***Gluckstein v. Barnes obliges promoters to give up any secret profits earned.***

Pre-incorporation contracts. A company cannot ratify a contract made before it existed, as ***Newborne v. Sensolid (Great Britain) Ltd*** held. Under ***Kelner v. Baxter***, the promoters stay personally liable. Indian law, through the *Specific Relief Act, 1963* *as amended in 2018, now lets a company adopt a pre-incorporation contract that falls within its objects.*

To READ about Incorporation of a Company in Detail, CLICK HERE

Corporate Personality

Section 9 makes the registered company a body corporate with perpetual succession and the power to hold property, contract, and sue or be sued. A company may have a common seal.

Salomon v. Salomon & Co. Ltd. **is the foundation, because it held that a one-man company is a separate person from its controller, who ranked ahead of unsecured creditors as a secured debenture holder.**

Three consequences follow. ***Macaura v. Northern Assurance Co. held that a shareholder has no insurable interest in company assets. Lee v. Lee's Air Farming Ltd held that a controlling shareholder can also be an employee.***

In India, ***State Trading Corporation v. CTO*** held that a company is not a citizen and cannot claim Article 19 rights.

Lifting the veil: Courts and the legislature look behind the company in limited cases.

Ground	Authority
Fraud or sham	Gilford Motor Co. v. Horne [1933] Ch 935; Jones v. Lipman [1962] 1 WLR 832
Enemy character	Daimler Co. v. Continental Tyre Co. [1916] 2 AC 307
Evasion of a legal obligation	Prest v. Petrodel Resources Ltd. [2013] UKSC 34
Public interest and tax evasion	LIC v. Escorts Ltd. (1986) 1 SCC 264
Fraud on a statute	Delhi Development Authority v. Skipper Construction Co. (1996) 4 SCC 622
Statutory	Section 7(7), Section 34, Section 35, Section 339, Section 447 of the Companies Act

Separate Legal Entity and Corporate Personality

Important Doctrines Under Company Law: CLAT PG

Important Cases of Company Law (Part 4): Corporate Personality and Lifting of

Corporate Veil.

Directors

Section 2(34) defines a **director as a person appointed to the board**. **Section 149 requires at least three directors for a public company, two for a private company, and one for a one person company, with a cap of 15 unless a special resolution allows more.**

Every company needs a director who stayed in India for at least 182 days, and prescribed classes need a woman director. A listed public company needs one-third of the board as independent directors.

Each director needs a Director Identification Number (Sections 152 to 154). Section 164 lists disqualifications, and Section 165 caps directorships at 20 companies, of which no more than 10 may be public companies.

Section 169 allows removal by ordinary resolution after special notice and a hearing. Section 152(6) not less than **two-thirds of the total number of directors** must be persons whose period of office is **liable** to retirement by rotation. At every AGM, **one-third of such rotational directors** (i.e., one-third of the two-thirds pool) shall actually retire.

Duties

Section 166 codifies the duties.

Act within the articles and in good faith to promote the company's objects.

It is essential to safeguard the interests of the business, its workers, investors, society, and the ecosystem.

All actions must be performed in a careful, skilled, diligent, and independent manner. There should not be any conflict of interests or any undue personal advantage.

A director's office **cannot** be transferred. Section 166(6) explicitly states that a director *shall not assign his office* and any such assignment **shall be void**.

There are also relevant provisions related to self-dealing since Section 184 requires to disclose interests, Section 188 deals with transactions with related parties, and Section 180 requires

passing a special resolution in case major steps are taken like selling an undertaking.

At the same time, Section 197 limits managerial remuneration to not more than 11% of the net profits of the company.

Section 2(60) fixes liability on an officer in default, and Section 447 punishes fraud.

Shareholders' Rights

Section 2(55) defines a member, and shares are movable property under Section 44. Members enjoy the following rights:

Vote in proportion to paid-up equity, under Section 47.

Receive notice of meetings and attend them (Section 101), and appoint a proxy (Section 105).

Demand a poll (Section 109), and requisition an extraordinary general meeting with at least 10 percent of voting capital (Section 100).

Inspect registers and receive the annual report (Sections 94 and 136).

Receive declared dividends (Sections 123 and 127).

Subscribe first to a rights issue (Section 62).

Seek rectification of the register (Section 59).

The principle of majority rule and its boundaries. In the case of ***Foss v. Harbottle***, it was ruled that the **proper plaintiff in any case of wrong done to a firm is the firm itself.**

A member is only allowed to take legal action in cases of ultra vires or illegal acts, fraud committed against the minority, acts requiring special resolution, or that infringe his personal rights. In ***Edwards v. Halliwell*** the last two grounds have been dealt with. Legal remedies regulated below have virtually taken the place of these exceptions.

Company Law Important Cases (Part 2): Doctrine of Indoor Management

Company Law Important Cases (Part 3): Ultra Vires, Directors' Powers & Corporate Governance

Share Capital and Shareholders' Rights: Company Law

Oppression and Management

Chapter XVI (**Sections 241 to 246**) **provides a legal remedy, while its implementation is the competence of the NCLT.**

Reasons: Section 241(1)(a) states that the court may intervene if it the conduct of business is prejudicial to public interest or creates oppression for any member or harms the company, but it has to be established that liquidation would be just and equitable but would in the end bring unfair disadvantages to members of the company.

Section 241(1)(b) deals with the change of management.

The Central Government can also apply in the public interest under Section 241(2).

Who can apply: Section 244 allows at least 100 members or one-tenth of the total members, whichever is less, or members holding at least one-tenth of the issued share capital. A company without share capital needs one-fifth of its members. The Tribunal can waive these thresholds in an appropriate case.

Relief: Section 242 empowers the NCLT to regulate the company's future conduct, order a buyout of shares, restrict share transfers or allotments, and set aside or modify an agreement with a managing director.

It can also remove a director, recover undue gains, and pass interim orders. Section 243 bars compensation to a removed managing director and stops such a person from returning to a

managerial role for five years without leave of the Tribunal.

Class action: Section 245 lets a prescribed number of members or depositors sue for the company's benefit and seek damages or injunctions against the company, its directors, auditors, and experts.