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CPT – IPCC - Final

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Companies Act, 2013

Q - 1
Case Studies

1. Salomon Vs Salomon & Co. Ltd.

- Salomon has shoe business (sole proprietor)
- Convert its business into Public company.
- Salomon & Co. Ltd. Purchase the business of Salomon.
- Paid: Equity capital – 20000, Debenture – 10000 and Cash 8782
- Company went into losses.
- Company went into liquidation.
- Assets realised only 6050.
- At the time of liquidation payment is made: Secured creditors 10000, unsecured creditors 80000, equity capital.
- **Separate legal entity**
- **Artificial person**
- **Company can sue and can be sued on its own name.**

2. Lee Vs Lee Air Farming Ltd

- Lee:
  - Majority of shares (almost all shares)
  - MD
  - Chief Pilot (employee)
- Lee Farming Ltd take insurance of its employee.
- Mrs Lee demanded for workman compensation on death of Mr Lee.
- **Artificial person**
- **Separate legal entity**

[redacted]

3. Bacha F. Guzdar Vs Commissioner of Income Tax

- Mrs. Guzdar invested the money in a company (agriculture nature).
- Income – Agriculture income which is exempted from income tax.
- The company distributed the income to its shareholders by way of dividend.
- The tax on dividend demanded from the income tax department.
- Mrs Guzdar refused to pay tax.
- **Separate legal entity**

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Q - 2

Characteristics of a Company

1. Incorporated Association

- Formed and registered after complying the formalities prescribed under the Act.

2. Artificial Person

- Not a natural person
- It is exist only in the eyes of the law.

3. Separate legal entity

- It is distinct from its members.
- It has its own rights and obligations.

4. Common seal

- May have a common seal.
- It is a official signature of the company.

5. Transferability of shares

- Shares are movable property
- Transferable in the manner prescribed in the article.
- Private: restricted the right
- Public: freely transferable

6. Separate management

- Members do not participate in the day to day business.
- Management lies in the hand of Board of Directors.
- Directors are elected and removed by the members.

7. Perpetual Succession

- Death of member → shares are transferred → to his Legal Representative. **(Transmission of shares)**
- in case of death/insolvency of all members, the existence of the company is not affected.
- Members may come and go, but the company goes on forever.

8. Limited Liability

Company having shares	**Amount unpaid on shares**
Company having guarantee	**Amount guaranteed by each member**
Company having shares and guarantee	**Amount unpaid on the shares + amount guaranteed by each member**
Unlimited company	**Unlimited liability**

9. Separate Property

- Company can own and enjoy property in its own name.
- Members are not co-owners of the company's property.
- Members have no insurable interest in the property of the company.

Q - 3
Corporate Veil

Corporate Veil

Company

Managed by

BOD

Properties
Liabilities
Rights
Duties
Powers
Functions

Separate

Members/ shareholders

Properties
Liabilities
Rights
Duties
Powers
Functions

Separate

Effect of Corporate Veil

- The company itself is liable for its acts.
- Its members/directors/employees are not liable for the acts of the company.

Lifting of Corporate Veil

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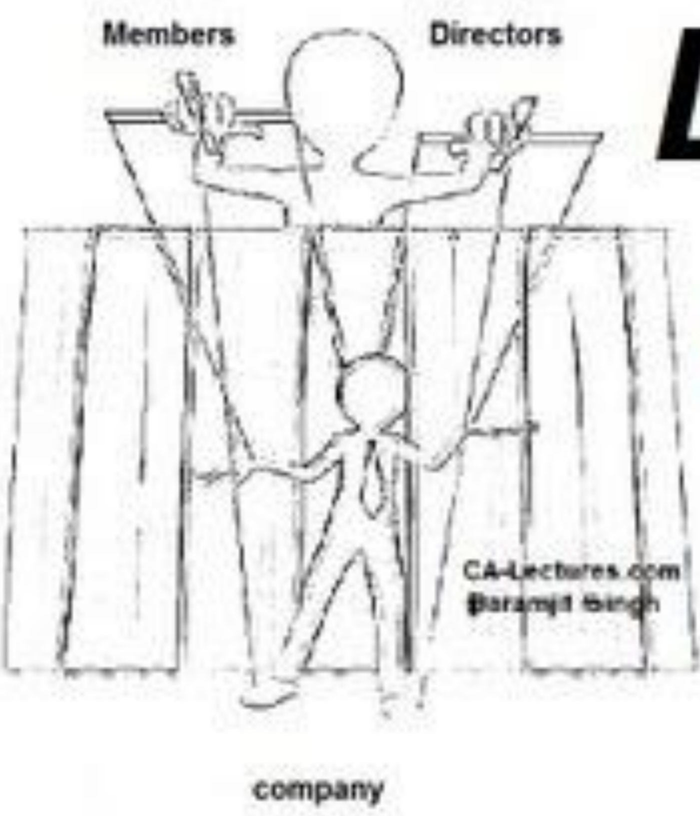

Lifting of CORPORATE VEIL

Lifting of Corporate Veil

Puppets example

1. At the court description (judicial interpretation)
2. According to provisions of Companies Act

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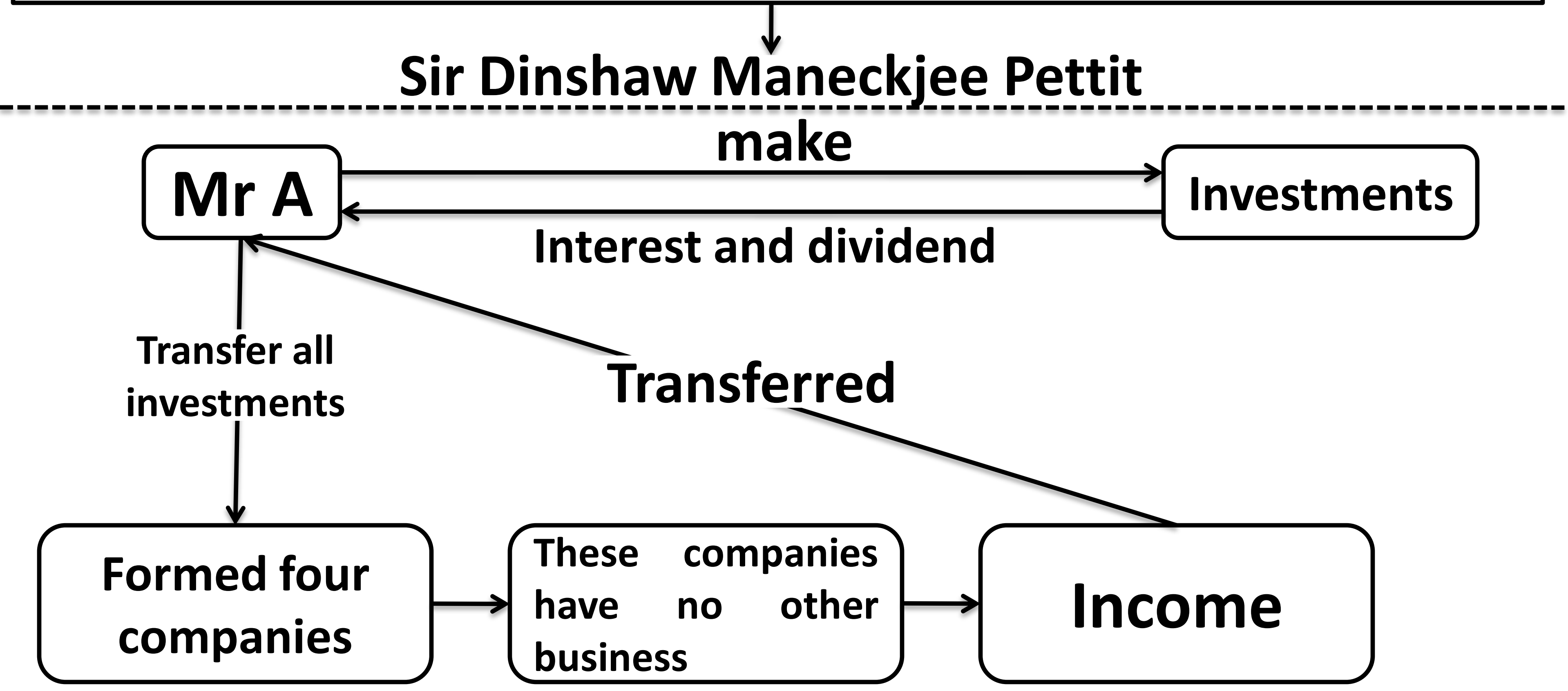
1. At the court description

a. Protection of Revenue



1. Only purpose was to evade taxes.
2. Income earned by these companies was treated as the income of Mr A.

b. Prevention of fraud

Gilford Motor Co. Ltd Vs Horne

Contract

employee → Employer

He will not solicit the customer of the company after leaving the employment

After leaving the employment

Formed a Company →

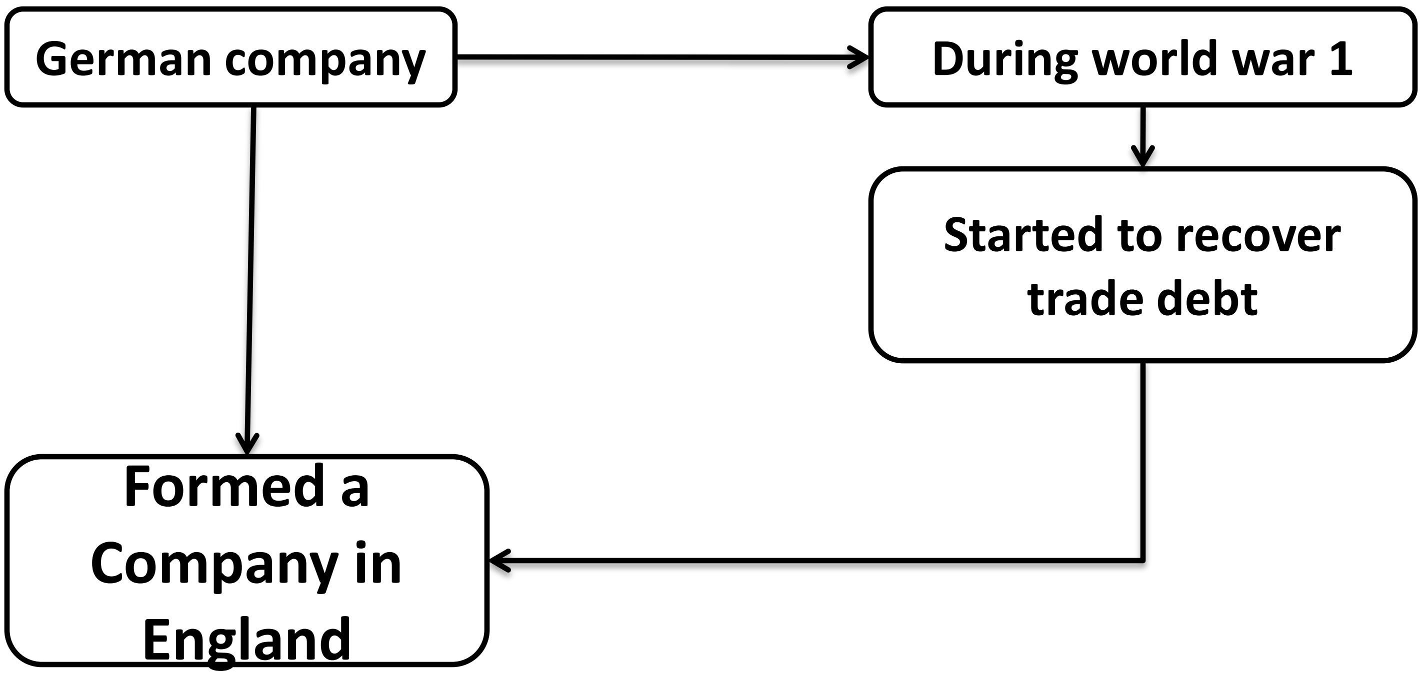
- He – himself
- His wife
- One other person

→ Started soliciting the customer of the employer.

1. Only purpose was to avoid a legal obligation arising from the contract, which was not permissible.
2. The company was restraining from soliciting the customers of the employer.

c. Enemy company

Daimler Co. Ltd Vs Continental Tyre & Rubber Co. Ltd.



1. The corporate personality of the company be ignored.
2. And the person in the ultimate control of the company shall be ignored.
3. The person controlling the company were enemies, the suit was not maintainable.

d. Avoidance of welfare legislation

Workmen in Associated Rubber Industries Ltd Vs Associated Rubber Industries Ltd.

Company → Incorporated / Transferred its investments → Subsidiary Company

Subsidiary Company → No any other business; No any other assets

1. The court lifted the corporate veil.
2. The subsidiary was merely formed for the purpose of reducing the liability of bonus payable under the Bonus Act.
3. The profit of the subsidiary was held to be the profit of the holding company.

2. Under Statutory Provisions

a. Minimum number of members

Private Company : 2 members
Public Company: 7 members

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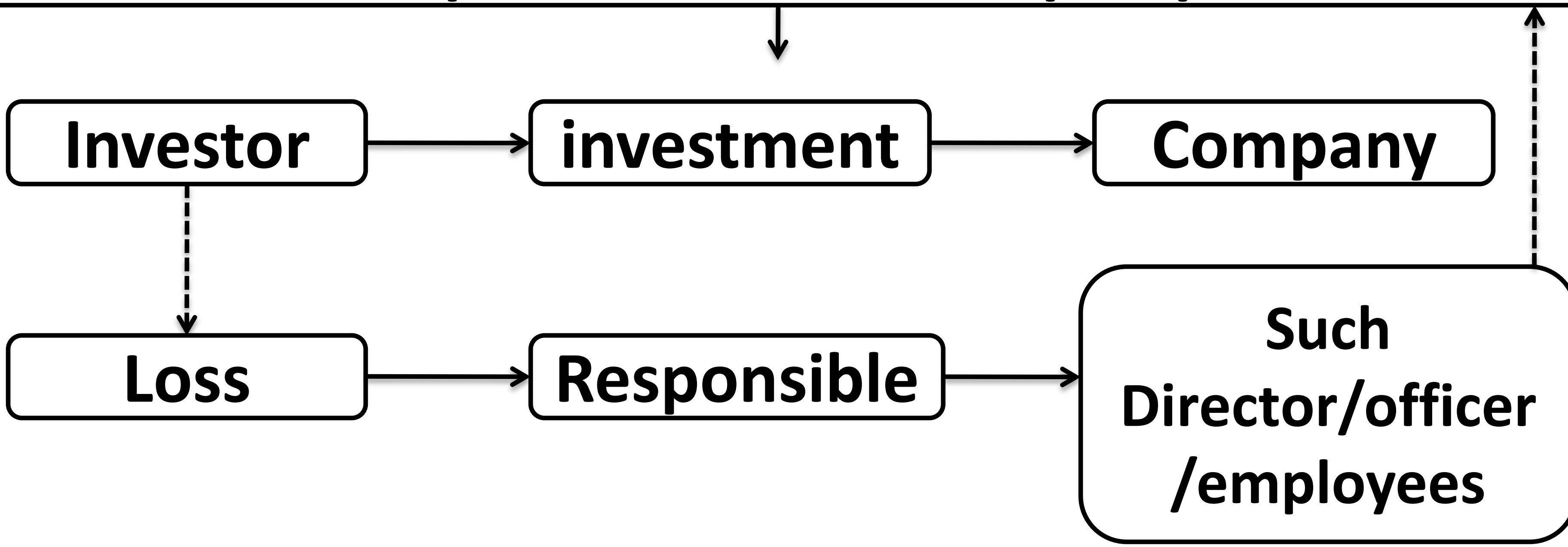
1. Minimum members reduced – within 6 months increase the numbers.
2. All acts done after 6 months – remaining members are liable.

b. Misrepresentation in the prospectus



c. Failure to pay application money

↓

Minimum subscription

↓

Must be subscribed within 30 days

↓

If not subscribed within 30 days

↓

Refund the application money

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1. If not refunded, then the promoters are liable for the acts done on behalf of the company.

d. Misdescription of company's name

Company can enter into contract on its own name, through directors

- Name is not mentioned
- Not mentioned properly

Then, Directors are responsible for such contracts

e. Holding and subsidiary Company

Holding company is liable for the acts of the subsidiary company

f. Ultra virus acts

Q - 4
Is company a Citizen?

Company is not a citizen

Citizen Act

Give citizenship

- To an individual
- ~~To an company~~
  - Fundamental rights are not available to company.

Q - 5
Use of Private limited and Public limited

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Private Company

Use word
'Private Limited'

Public Company

Use word
'Limited'

Exemption: Under section 8 companies are not required to use word 'Private limited' and 'limited'.

Important questions

1. **Explain the concept of perpetual Succession. (PM Q:7)**
2. **What is company? (PM Q:1)**
3. **'A company is a person separate from its members.' Explain.(PM Q:3)**
4. **Examine the circumstances under which the court may disregard the company's corporate personality. (PM Q:3)**
5. **Briefly explain the circumstances to lift the status of corporate legal entity of company under the Companies Act, 2013. (PM Q:3)**