



CORPORATE AND COMMERCIAL LAW

AUTHOR – V.HAREENA & SHARON .T, STUDENT AT SATHYABAMA INSTITUTE OF SCIENCE AND TECHNOLOGY

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Abstract

This research paper delves into the dynamic landscape of corporate and commercial law in the contemporary world, examining the evolving regulatory frameworks that govern businesses amidst globalization and technological advancements. It explores key aspects of corporate law, including the formation, governance, and dissolution of corporations, as well as the rights of shareholders and directors. Additionally, the study delves into commercial law, focusing on crucial areas such as contract formation, interpretation, and enforcement, highlighting the essential elements that define legally binding agreements. The paper also scrutinizes corporate governance mechanisms, director responsibilities, and shareholder protections in the context of modern business practices. Furthermore, it analyzes the impact of global trends and digital commerce on corporate and commercial law, addressing how regulatory responses adapt to market changes and technological disruptions. Through an examination of case law, statutes, and scholarly works, this research contributes valuable insights into the legal principles that underpin business entities and transactions in today's interconnected and fast-paced world. By shedding light on these complex legal issues, the paper aims to deepen understanding of the intricate interplay between law, business operations, and governance in the ongoing global landscape.

Keywords : corporate and commercial law , governance , legal issues

Introduction :

In the dynamic realm of business transactions and corporate governance, the legal landscape of corporate and commercial law stands as a cornerstone for regulating and facilitating economic activities. Corporate law governs the formation, operation, and dissolution of corporations, while commercial law regulates business transactions and trade practices. Understanding the intricate web of regulations, contracts, and liabilities that underpin these legal domains is essential for businesses to thrive in a competitive marketplace.

The evolution of technology and globalization has reshaped the practices and challenges faced by businesses, necessitating a closer examination of legal frameworks. From data privacy regulations to cybersecurity measures, modern businesses must navigate a complex array of legal requirements to protect their

interests and comply with regulatory standards. Moreover, the rise of digital transformation has revolutionized traditional business practices, requiring legal adaptations to address novel issues such as e-commerce, online contracts, and intellectual property rights in the digital sphere.

Through an exploration of key principles, case studies, and emerging trends, this paper seeks to shed light on the multifaceted nature of corporate and commercial law and its implications for businesses operating in a rapidly evolving global economy.

Literature review :

"The literature on corporate and commercial law offers a multifaceted view of the legal frameworks governing business operations. Scholars like Coffee (2005) delve into corporate governance, emphasizing stakeholder



alignment, while Twigg-Flesner (2012) explores contract law's role in commercial transactions. Regulatory discussions by Black (2018) highlight the impact of antitrust laws on market competition. Through case studies like *R v. Tesco Stores Ltd* (2017) and *Apple Inc. v. Samsung Electronics Co.* (2018), practical insights into legal disputes are gained. This diverse body of work provides a comprehensive understanding of the legal landscape shaping modern businesses."

Research methodology :

The methodology used for the paper is secondary and the materials were collected from various websites.

Shareholders rights and responsibilities

According to CA, 2013, a "member" of a company is defined as: the subscribers to the company's memorandum. They are considered to have consented to become members of the company, and their names are added to the membership register upon the business's registration. Any other individual whose name is listed on the membership register and who formally consents to become a member of a firm through written consent. Every individual in possession of company shares whose name appears as the beneficial owner in a depository's records. As a result, a shareholder is an employee of the business. While "shareholder" and "member" can be used interchangeably, "member" has a wider definition.

Limited liability businesses and limitless corporations might not have stockholders since they lack share capital. They do, however, have members. A person can join a corporation as a member by signing a memorandum, receiving shares as allotment, or committing in writing to join and having their name added to the register of members, beneficial owners in depository records, or shares transferred or transmitted.

1. Voting Rights: As per Section 47, CA, 2013, each equity shareholder of a corporation is

entitled to cast a vote on each resolution that is presented to the company. An equity shareholder's ability to vote in a poll will be determined by how much of the company's paid-up equity share capital he owns. A company's preference shareholders may only vote on resolutions that directly affect their rights associated with their preference shares, as well as decisions pertaining to the company's winding up, repayment, or reduction of equity or preference share capital. Each preference shareholder's voting rights in a poll will be determined by how much of the company's paid-up preference share capital he owns. The ratio of equity shareholders' paid-up capital to preference shareholders' paid-up capital will determine how many voting rights each class of shareholders has. Preference shareholders will be entitled to vote on all resolutions presented to the firm if dividends on their class of shares are not paid for a duration of two years or more. In the event that shareholders contribute unpaid share capital that the firm has not yet called up, they will not be eligible to vote on the shares they have contributed.

2. Dividend: In line with Section 143 of the CA, 2013, each equity shareholder is entitled to an annual dividend as well as an interim dividend announced by the directors of the firm. As stated in the conditions of the preference share issuance, each preference shareholder is entitled to a preferred dividend. Preference shareholders who participate also have the right to earn additional dividends from revenues that exceed their needs.

3. Right to calls on shares that are uniform: If the corporation makes a call on a class of shares from its uncalled capital, it should make the call uniformly for all shares in that class.

4. Right to payment upon company winding up: Each preference shareholder is entitled to payment upon company winding up or capital repayment. In the event that they are participating type, they might also be entitled to share in surplus capital. The capital of the company that remains after paying creditors



and preference shareholders is also entitled to payment to equity shareholders when the business is wound up.

5. Right of shareholder variation: S. 48, CA, 2013 prohibits changing a shareholder's rights unless the holders of at least three-fourths of the issued shares of the class of shares whose rights are being modified give their written consent. A memorandum or the company's articles may contain a provision allowing for such a variation, or in the absence of such a provision, the terms of the issue of shares of that class may permit such a variation. Alternatively, a special resolution may be passed at a separate meeting of the class's shareholders.

The approval of three-fourths of the other class of shareholders must also be acquired if an alteration made by one class of shareholders impacts the rights of any other class of shareholders. A request for cancellation of the variation may be made to the Tribunal by dissenting shareholders holding at least 10% of the issued shares of that class, the shares that are subject to the variation.

6. The right to notice for attendance at the company's annual general meeting (AGM) is a privilege that belongs to shareholders. Financial statements, the auditors' report, and any other papers appended to the financial statements, as well as the directors' report given by the board of directors at the annual general meeting, are all entitled to be sent to each shareholder.

7. Rights Issue: When a business decides to raise additional capital, each equity shareholder has a right to be offered shares. This privilege, which is safeguarded by Section 62 of the Companies Act of 2013, belongs to the pre-emptive rights of current shareholders of any business with share capital.

8. Transferability of shares, securities, or other corporate interests: Section 44, Capital Act of 2013 permits the free transfer of any member's securities or other stake in a publicly traded corporation. A public company's shareholders

are entitled to freely transferable securities and shares without any limitations on share transferability. For private corporations, a board of directors' consent could be required prior to any share transfers. Members may also transfer shares, securities, or other interests they may hold in the business. Upon receiving notification of the transfer of any legal right to securities from any individual to whom such right has been transferred in accordance with Section 56 of the CA of 2013, the firm is authorised to register.

Each and every security holder has been granted the authority to designate any individual to whom his securities shall vest in the case of his passing. If the nominee is a minor, the holder must designate a survivor who will be eligible to receive company securities in the event that the nominee passes away while still a minor [s. 72, CA, 2013].

9. The Companies Act, Section 176, gives shareholders the authority to designate a proxy to represent them at meetings and cast votes on their behalf. Because proxies may cast ballots even if they are not company members, this is especially helpful for shareholders who are unable to attend in person. Companies are required by law to notify shareholders of their ability to designate proxies in notices of meetings. Companies are required to accept proxies filed within 48 hours of the meeting.

DUTIES OF SHAREHOLDER :

Members' Duties and Liabilities: The terms and conditions outlined in the company's articles govern all of the members' rights and liabilities. The CA. 2013's provisions are also relevant. It is the members' responsibility to attend company meetings and cast their votes on resolutions. They ought to be more than just "functionless rentiers" of capital⁵. They ought to be concerned about their dividend in addition to actively participating in the process of making decisions. A few significant resolutions where their involvement is essential are those pertaining to the appointment of directors, auditors, and modifications to the company's



articles and memoranda. Vigilance is also necessary for minority shareholders to protect their interests within the company.

Companies' shareholders are obligated to pay the full value of their ownership stake. Being movable property, shareholders may also be obliged to pledge or mortgage their shares. If a share certificate is physically held, it may be offered as security for a loan. Pledge keeps ownership of everything provided as security until the loan balance is paid back. Share mortgage occurs when a creditor receives a transfer of a right or interest in shares. A pledge or mortgage on shares that are in dematerialised form and held by depositories must be recorded with the depository.

REGULATIONS AND LEGAL FRAMEWORKS :

❖ COMPANIES ACT ,2013

The main piece of legislation controlling the formation, administration, and control of corporations in India is the corporations Act, 2013. Its goals are to safeguard shareholder interests, ensure transparency, and enhance corporate governance. It superseded the Companies Act of 1956. Important highlights include of:

1. Corporate Governance: Tighter guidelines for the makeup of audit committees, independent directors and boards.
2. Incorporation: Streamlined processes for establishing businesses and classifying various kinds (public, private, and one-person corporations).
3. The requirement that select businesses allocate at least 2% of their net profits to corporate social responsibility (CSR) initiatives.
4. Audits and Reporting: Higher accountability, required auditor rotation, and improved financial reporting requirements.
5. Shareholder Rights: Clauses shielding minority investors from litigation, such as class action lawsuits.

6. Acquisitions & Mergers: More precise rules pertaining to restructuring, acquisitions, and mergers.

Transparency, corporate accountability, and convenience of doing business are the three main objectives of the Act. The following Central government Acts are administered by the Ministry of Corporate Affairs: Companies Act of 2013 Companies Act of 1956 (this Act's provisions are still applicable) Insolvency and Bankruptcy Code of 2016 Chartered Accountant Act of 1949 Competition Act of 2002.

INDIAN CONTRACT ACT, 1872

The fundamental legal framework for contracts in India, especially those pertaining to businesses and commercial transactions, is provided by the Indian Contract Act, 1872. Here is a quick synopsis of its role and importance in this particular context:

The Indian Contract Act's objectives

1. Legal Framework for Contracts: The Act ensures that parties can enter into agreements with confidence by providing the required legal framework for the formation, execution, and enforcement of contracts.
2. Defining Contractual Elements: This section describes the elements that are necessary for any business transaction and include offer, acceptance, consideration, lawful object, and free consent.
3. Protection of Parties: The Act strives to uphold the duties and rights of parties to a contract, guaranteeing responsibility and justice in business transactions.
4. Remedies for Breach: This section outlines the possible remedies in the event of a breach of contract. These remedies, which are essential for businesses to settle disputes, include specified performance, damages compensation, and injunctions.
5. Regulating Particular Contract Types: The Act also addresses certain types of contracts, including:
Pledge and bailment contracts are important



for businesses that deal with products and services.

Contracts of Agency: Crucial for companies using agents to conduct business.

Importance in Businesses and the Commercial Environment

1. Business Transactions: To enable efficient commercial operations, the Act offers the contracts, including service agreements, partnership agreements, and sales contracts.
2. Clarity in Commercial Practices: By outlining rights and responsibilities, it encourages clarity in transactions, lessening miscommunications and disagreements between parties on the law, and helping to prevent fines.
3. Building Trust: Long-term relationships depend on building trust among stakeholders, clients, and business partners, which is why the Act's enforceability of contracts is important.
4. Legal Compliance: It is crucial for businesses to comprehend the terms of the Indian Contract Act in order to guarantee that legal requirements are met, avoiding fines and promoting sound corporate governance.
5. Dispute Resolution: In order to preserve business continuity and safeguard company interests, it is imperative that the Act establish the framework for resolving contractual issues.

❖ Regulation of Securities

1. Insider trading: Legal ramifications and safeguards
2. Rules for corporate disclosure and securities fraud.
3. The Securities and Exchange Board of India's (SEBI) function in market regulation.
4. Legal requirements for businesses issuing securities.

❖ Law on Corporate Finance

1. Laws governing the financing of corporate debt.
2. Corporate law's use of equity financing.
3. Aspects of private equity and venture capital law.

4. Control over financial derivatives in the funding of businesses.

❖ Resolution of Commercial Disputes

1. The benefits and drawbacks of corporate conflict arbitration over litigation.
2. The function of mediation in business conflict resolution.
3. application of foreign judgements in business conflicts.
4. Corporate law class action lawsuits: The law's state and ramifications.

❖ Data privacy and cybersecurity in corporate and commercial law :

Data privacy and cybersecurity are crucial aspects of corporate and commercial law, especially in today's digital age. Here are some key points along with examples to illustrate their significance

• Data Privacy Regulations :

Data privacy laws like the General Data Protection Regulation (GDPR) in Europe and the California Consumer Privacy Act (CCPA) in the US have stringent requirements for how companies handle personal data.

For example, under the GDPR, companies must obtain explicit consent before collecting personal data, and individuals have the right to access, correct, or delete their data. Non-compliance can result in hefty fines.

• Impact on mergers and acquisitions :

Data privacy and cybersecurity due diligence have become critical in mergers and acquisitions to assess potential risks and liabilities associated with the target company's data practices.

For instance, during the acquisition process, the acquiring company conducts a thorough review of the target company's data security policies, breach history, and compliance with privacy regulations to mitigate any future legal issues.

• Consumer Trust and Reputation :

Maintaining strong data privacy and cybersecurity practices is essential for building



consumer trust and protecting the company's reputation.

A data breach can not only lead to financial losses but also damage the company's brand image and erode customer confidence. Companies like Equifax and Yahoo faced significant repercussions due to data breaches.

By incorporating these examples, you can highlight the importance of data privacy and cybersecurity in corporate and commercial law, emphasizing the legal obligations and consequences associated with safeguarding data in today's business landscape. If you need further details or have more questions, feel free to ask!

Case study and analysis :

In the case of *Salomon v. Salomon & Co. Ltd.*, the facts centered around Mr. Salomon, a leather merchant who transferred his business to a company he formed, *Salomon & Co. Ltd.* Mr. Salomon held most of the company's shares, and his family members held the rest. When the company went into liquidation, Mr. Salomon claimed to be a secured creditor, while unsecured creditors sought to hold him personally liable for the company's debts.

The key issue in this case was whether the company, as a separate legal entity, could shield Mr. Salomon from personal liability for the company's debts. The court had to determine the validity of the company's incorporation and the nature of Mr. Salomon's relationship with the company. The decision would have significant implications for the concept of limited liability and the separate legal personality of companies.

In its judgment, the House of Lords ruled in favor of Mr. Salomon, affirming the separate legal personality of the company. The court held that once a company is legally incorporated, it becomes a distinct entity from its shareholders and directors. This principle, known as the "corporate veil," protects shareholders from personal liability for the company's debts. The court emphasized that as long as the company

is properly constituted, it must be recognized as a separate legal person, regardless of the extent of share ownership.

The case established a crucial precedent in corporate law, solidifying the concept of limited liability for shareholders in incorporated companies. It emphasized the importance of respecting the legal distinctions between a company and its members. The judgment highlighted that individuals who invest in companies should generally not be held personally liable for the company's obligations beyond their investment.

The legal provision underpinning the decision in *Salomon v. Salomon & Co. Ltd.* is the principle of corporate personality. This principle states that a registered company is a separate legal entity from its shareholders and directors. As a separate legal person, the company can enter into contracts, own property, and sue or be sued in its own name. This legal fiction allows companies to conduct business independently of their owners, shielding shareholders from personal liability for the company's debts.

Overall, the *Salomon* case remains a landmark in corporate law, shaping the foundation of modern company law principles. It underscores the significance of the corporate veil doctrine in upholding limited liability and the separate legal identity of companies, thereby influencing the legal landscape for corporate and commercial dealings.

Future trends and developments in corporate and commercial law :

Some future trends and developments in corporate and commercial law with explanation and illustration .

Digital Transformation

The future of corporate and commercial law is heavily influenced by digital transformation. Technologies like AI, blockchain, and data analytics are reshaping legal processes, making them more efficient and cost-effective. Companies are increasingly using AI tools for legal research, contract analysis, and due



diligence, streamlining legal operations. Blockchain technology is enhancing transaction security and transparency, reducing the need for intermediaries.

For Example :

Imagine a large multinational corporation that traditionally handled contract reviews manually, which was time-consuming and prone to human error. With digital transformation, the company implements an AI-powered contract analysis tool. This tool can quickly review contracts, identify key clauses, flag potential risks, and provide insights, saving time and improving accuracy .

• **Environmental, Social, and Governance (ESG) Factors :**

ESG considerations are becoming increasingly important in corporate decision-making and regulation. Companies are now expected to consider not only their financial performance but also their Impact on the environment, society, and governance practices.

For Example :

many countries are implementing regulations that require companies to disclose their ESG practices in their annual reports. This trend is pushing companies to adopt more sustainable and socially responsible practices to meet regulatory requirements and stakeholder expectations .

• **Technology in Corporate and Commercial Law :**

The integration of technology, such as AI and blockchain, is revolutionizing the legal landscape. AI-powered tools can streamline contract review processes, while blockchain technology can enhance the security and transparency of transactions.

For Example :

smart contracts, which are self-executing contracts with the terms directly written into the code, are gaining popularity in commercial transactions. These contracts automatically enforce and execute terms based on

predefined conditions, reducing the need for intermediaries

• **Globalization and Harmonization of Laws :**

As businesses operate across borders, there is a growing need for harmonization of laws to facilitate international trade and investment. Harmonized laws can create a more predictable and stable legal environment for multinational corporations.

For Example :

The United Nations Commission on International Trade Law (UNCITRAL) develops model laws that countries can adopt to standardize commercial practices globally. These model laws aim to reduce legal barriers and promote uniformity in international trade.

These examples provide a glimpse into the future trends and developments shaping corporate and commercial law.

Analysis :

In your research paper on corporate and commercial law, you can explore various findings that highlight trends, developments, case studies, rules, and regulations in the field. Trends may include the increasing focus on corporate social responsibility, the rise of alternative dispute resolution methods in commercial disputes. Developments could cover recent legislative changes like the GDPR affecting commercial data handling and emerging trends in corporate governance practices. Case studies such as the Enron scandal or the Volkswagen emissions scandal could provide insights into corporate law breaches and their legal ramifications. Rules and regulations can encompass areas like antitrust laws, consumer protection regulations, and contract law principles that govern commercial transactions. By analyzing these aspects, you can paint a comprehensive picture of the dynamic landscape of corporate and commercial law.



Conclusion :

As we conclude our exploration of corporate and commercial law, it becomes evident that the legal landscape governing business activities is intricate and ever-evolving. Through the lens of case studies, trends, and regulations, we have uncovered the multifaceted nature of this legal domain and its profound impact on modern businesses.

The analysis of case studies has illuminated the practical application of legal principles in real-world scenarios. From landmark court decisions to negotiated settlements, these cases serve as poignant reminders of the importance of legal compliance, ethical conduct, and strategic decision-making in the corporate realm. By dissecting these cases, we have gleaned valuable lessons on corporate governance, contractual relationships, and liability management.

Moreover, the examination of trends in corporate and commercial law has revealed a shifting landscape shaped by technological advancements, globalization, and regulatory reforms. The emergence of new business models, such as the sharing economy and blockchain technology, presents both opportunities and challenges for legal frameworks to adapt and keep pace with innovation. As businesses navigate these trends, the need for agile legal strategies that balance risk mitigation with business growth becomes paramount.

In conclusion, the intricate interplay of case studies, trends, and regulations in corporate and commercial law underscores the indispensable role of legal expertise in guiding businesses towards sustainable growth and responsible conduct. By staying attuned to legal developments, embracing best practices, and fostering a culture of compliance, businesses can navigate the complexities of the legal landscape with confidence and integrity.

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