

FOR PRIVATE CIRCULATION ONLY



O.P. Jindal Global University
A Private University Promoting Public Service



Jindal Global Law School
Jindal's First Global Law School

COURSE MANUAL

COMPANY LAW I

Semester: Fall 2019

COURSE INSTRUCTORS

Abhishek Mishra

Fouzia Zafar

Karan Latayan

Prateek Bhattacharya

Sakshat Bansal

This course manual is not exhaustive. The reading material may be supplemented and/or modified (with additional readings and/or assignments) during the semester by the Course Instructors with prior notice to the students.

Part I

Course Title: **Company Law- I**

Course Code:

Course Duration: **15 weeks x 5 hours per week = 75 hours**

Number of Credit Units: **4**

Level: **BA LLB & BBA LLB**

Medium of Instruction: **English**

Pre-requisites: **Law of Contracts I and II and Property Law**

Pre-cursors: **Nil**

Equivalent courses: **Nil**

Exclusive courses: **Nil**

Part II

A. Course Description

This course covers aspects of the law that govern the formation and operation of companies in India. It will examine rules relating to formation of companies, their objects and powers; their constitution; their management and governance, as well as, nature and classes of shares; raising and maintenance of share capital; and transfer of shares. In order to provide an analytical framework for examination of these rules, consideration will also be given to concepts of separate corporate personality and limited liability, the generic principal-agent problems, and principles underlying share capital rules.

In almost all market economies, including that of India, the law of business firms recognises and regulates five core legal characteristics of the firm. These are: (1) legal personality, (2) limited liability, (3) transferable shares, (4) centralised management under a board structure, and (5) shared ownership by contributors of capital.¹ Consider this the skeleton of our course – these are the broad topics that will be covered as we study how the Companies Act, 2013 (the “**2013 Act**”) establishes a structure for these legal features, and makes rules for facilitating business through the corporate form.

The course will also require students to engage in discussions over the aims of the law in regulating companies in their formation, management and financing. This will involve examining how, among other objectives, the law tries to balance the interests of all those who have a stake in the affairs of the company, including its shareholders, employees, creditors, and third-parties, such as local communities.

A word about terminology; “corporate law”, “company law”, and “law of incorporation” are synonymous. Do not get confused if texts, or your instructors, interchange these terms. They all refer to the vast body of law that governs the life cycle of the corporation. As mentioned above, for the purposes of this course, we will focus on the central statute governing Indian company law – the 2013 Act. However, given that the 2013 Act is still a relatively recent piece of legislation, we will also be relying on the relevant law applicable prior to the 2013 Act coming into force, to the extent that, it has not been changed by, or is inconsistent with, the 2013 Act or its interpretation.

¹ Armour, John, Henry Hansmann and Reinier Kraakman. The Essential Elements of Corporate Law: What is Corporate Law? – available at http://www.law.harvard.edu/programs/olin_center/papers/pdf/Kraakman_643.pdf

While the course is designed to familiarise students with certain fundamental aspects of company law, it will also try to expose them to corporate advising, negotiation and drafting exercises so that they can formulate relevant and practical advice for the benefit of an interested party.

B. Course Aims and Objectives

The course seeks to familiarise students with

- key features of the corporate form as a legal structure and its advantages and disadvantages compared to other structures available, such as partnerships and limited liability partnerships;
- the rules relating to corporate capacity and how companies relate to third parties;
- provisions regarding amendments to and interpretation of memorandum and articles;
- the various classes of shares and the rights attached to them;
- the rules relating to share issue, share transfer and the maintenance of share capital;
- provisions relating to meetings of members;
- remedies for minority shareholders; and
- issuance and transfer of shares, and mechanisms for raising equity funding by companies.

C. Teaching Methodology

Keeping in mind the fact that lawyers do have to deal with matters relating to company law on a regular basis, this course will be taught with a practical outlook. A mixture of lectures and the Socratic method will be used to impart instruction. Concepts and principles will be taught through discussion on the provisions of law and the interpretation of statutory provisions by courts. A strong emphasis will be placed on learning through case studies.

Students are expected to read the assigned materials in advance of the class so that the lectures are made more fruitful by class discussions.

In addition to the lectures and class discussions, there will be an effort to include class presentations by the students, quizzes, seminars and/or guest lectures and workshops that will focus on mock corporate advising, negotiations and drafting.

The students may also be expected to write a short research paper on an assigned topic.

D. Intended Learning Outcomes

<u>Intended Learning Outcomes and Weightage</u>		<u>Teaching and Learning Activities</u>	<u>Assessment Tasks/Activities</u>
By the end of the course, students should be able to:			
(i) Have a sound understanding of the fundamental principles of company law, provisions of the 2013 Act and related statutes.	60%	(i) <u>Lectures</u> : -- Students will be introduced to the basic principles of company law and the various issues that are associated with this practice area.	Students' ability to grasp and critically evaluate the topics/issues discussed in the syllabus will be tested in the following ways: (i) End-semester examination (50%). (ii) Internal assessment (50%). Each Course Instructor will inform the students separately as to the methods by which the students will be assessed internally.
(ii) Comprehend how the rules and principles laid out in the 2013 Act apply in corporate practice and courts.	30%	-- Students will acquire the ability to critically analyse, discuss and present their arguments on the concepts learnt through class discussion and participation.	
(iii) Apply: (a) the principles learnt in context of advising clients and in drafting key corporate documents, and/or (b) the knowledge of company law to legal problems and suggest solutions thereto.	10%	(ii) <u>Reading of statutes, case laws other materials</u> : -- Students will acquire knowledge of the principles of company law pertaining to the topics to be covered in the syllabus. (iii) <u>Tutorials</u> : -- Students will be presented with fact patterns/legal problems and/or drafting and	

	<p>negotiation exercises relating to the topics being discussed in class. This will help the students in applying the principles learnt and honing their advisory and drafting skills;</p> <p>-- Students will research, scrutinize, analyse and evaluate current issues in the area of company law and write short papers addressing those issues.</p>	
--	---	--

E. Grading of Student Achievement

To pass this course, students must obtain a minimum of 50% in each of the coursework and the examination elements of the assessment. Coursework for this purpose means those ways in which students are assessed otherwise than by the end of session examination. End of semester exam will be in the form of a traditional 3 hours written exam.

Letter Grade	Percentage Of marks	Grade Definitions	
O	80% and above	Outstanding	Outstanding work with strong evidence of knowledge of the subject matter, excellent organisational capacity, ability to synthesize and critically analyse and originality in thinking and presentation.
A+	75 to 79.75%	Excellent	Sound knowledge of the subject matter, thorough understanding of issues; ability to synthesize critically and analyse
A	70 to 74.75%	Good	Good understanding of the subject matter, ability to identify issues and provide balanced solutions to problems and good critical and analytical skills.
A-	65 to 69.75%	Adequate	Adequate knowledge of the subject matter to go to the next level of study and reasonable critical and analytical skills.

Letter Grade	Percentage Of marks	Grade Definitions	
B+	60 to 64.75%	Marginal	Limited knowledge of the subject matter, irrelevant use of materials and poor critical and analytical skills.
B	55 to 59.75%	Poor	Poor comprehension of the subject matter; poor critical and analytical skills and marginal use of the relevant materials.
B-	50 to 54.75%	Pass	“Pass” in a pass-fail course. “P” indicative of at least the basic understanding of the subject matter.
F	Below 50%	Fail	Fails in the subject

F. Internal Assessment

The course instructor will decide the mode of assignments for internal assessment. It may include all or any of the following, but is not limited to, tests, presentations, research paper, moot court, case briefs, quiz, class participation, viva, etc.

G. Word of Caution on Online Readings

Online sources can be classified into reliable, unreliable and outright bogus. The internet is an open domain in which all and sundry can create web pages and indulge in propaganda, falsification or misrepresentation of events. Students should consult with the instructors about the veracity and authenticity of a particular web site and its suitability for researching topics covered in this syllabus.

H. Laptop Policy

Students may be permitted to use their laptops in class for the purposes of reviewing reading materials and taking notes. Under no circumstances should laptops be used in class to access email, social or other networking websites or use instant messaging software. A violation of this policy will result disciplinary action which may include the entire forfeiting this permission for the remainder of the semester. The instructors may withdraw this permission at any time.

I. Cellphone policy

Students must keep their cellphones on switched off/ flight mode. Any student found using a cellphone while class is ongoing will be liable to face disciplinary action.

J. Punctuality

Tardiness will not be tolerated. Failure to appear in class on time will result in the student being marked absent.

K. Disability Support and Accommodation Requirements:

JGU endeavors to make all its courses accessible to students. All students with a known disability needing academic accommodations are required to register with the Disability Support Committee dsc@jgu.edu.in. The Committee has so far identified the following conditions that could possibly hinder student's overall well-being. These include: physical and mobility related difficulties; visual impairment; hearing impairment; medical conditions; specific learning difficulties e.g. dyslexia; mental health.

The Disability Support Committee maintains strict confidentiality in its discussions. The students should preferably register with the Committee in the month of June/January as disability accommodation requires early planning. DSC will approve and coordinate all the disability related services such as appointment of academic mentors, specialized interventions and course related requirements such as accessible classrooms for lectures, tutorials and examinations.

All faculty members are required to refer students with any of the above-mentioned conditions to the Disability Support Committee for addressing disability-related accommodation requirements.

Part III:

Internal Grading of Student Achievement

To pass this course, students are required to obtain at least of 50% of the marks assigned under internal assessment.

Part IV

A. Keyword Syllabus

Process of raising capital for the company; prospectus; SEBI Guidelines; promoters and shareholders; issuance of shares; buy-back and transfer of shares; board of

directors; piercing of corporate veil; ultra vires; indoor management; articles of association; memorandum of association; ordinary shares; preference shares; due diligence; rights issue; initial public offering; private placement; transfer of shares and rights; pre-emptive rights; Takeover Code; majority powers and minority protection.

B. Reading Material

Students are welcome to purchase and use any of the textbooks mentioned below.

(i) Textbooks:

- Avtar Singh, Company Law, 17th Edition, 2018 (Eastern Book Company)
- A. Ramaiya, Guide to The Companies Act, 18th Edition, 2015 (Wadhwa Book Company)
- Gower's Principles of Modern Company Law, 10th Edition 2016, by Paul L. Davies and Sarah Worthington (Sweet and Maxwell)
- M.C. Bhandari, Guide To Company Law Procedures, 24th Edition, 2018 (Lexis Nexis)
- Pennington's Company Law, 8th Edition, 2001 (Butterworths).
- Company Law and Practice: A Comprehensive Text Book on Companies Act 2013, 23rd Edition July 2018, by Dr. G.K. Kapoor and Dr. Sanjay Dhamija (Taxmann)

(ii) Key Statutes:

- Companies Act, 2013
- Reference to Companies Act, 1956 and relevant SEBI Regulations shall be made only if necessary.

C. Course Content and Overview of the Lectures

Week	Topic	Essential Reading	Supplementary Reading
1	<p>Introduction to the Corporate Form</p> <ul style="list-style-type: none"> - Nature of the Corporate Form - Advantages and Disadvantages of the Corporate Form - Difference between Company, LLP, Partnership & Agency and Sole Proprietorship 	<p>Statutes:</p> <ul style="list-style-type: none"> • Sections 3, 23 of the Limited Liability Partnership Act, 2008 • Sections 11, 25 of the Partnership Act, 1932 <p>Case Law: <i>Tennant v. Stanley [In re Stanley]</i> (1906) 1 Ch. 131</p> <p>Secondary Sources: “What is Corporate Law”, Henry Hansmann and Reinier Kraakman</p>	<ul style="list-style-type: none"> • Sections 4-8, 28 of the Limited Liability Partnership Act, 2008 • Sections 4, 6,, 13, 26-28 of the Partnership Act, 1932
2	<p>Conflict of Interest of between</p> <ul style="list-style-type: none"> - owners/managers; - majority/minority; - company/creditors & employees 	<p>Agency Problems, Legal Strategies And Enforcement, John Armour, Henry Hansmann, Reinier Kraakman</p>	

3	<p>Corporate Personality and Lifting of Corporate Veil</p>	<p>Case Law:</p> <ul style="list-style-type: none"> • <i>Salomon v. Salomon</i> [1897] A.C. 22 • <i>In Re: The Kondoli Tea Co. Ltd.</i> (1886) ILR 13 Cal. 43 • <i>In re Dishaw Maneckjee Petit</i> AIR 1927 Bom 371 • <i>Daimler Co. Ltd v. Continental Tyre & Rubber Co. Ltd.</i> (1916) 2 AC307 • <i>Macaura v. Northern Assurance Company</i> (1925) AC 619 • <i>Prest v. Petrodel Resources Limited</i> [2013] UKSC 34 • <i>Vodafone International Holdings BV v. Union of India</i> (2012) 6 SCC 613 (excerpts) • <i>State of Rajasthan v. Gotan Lime Stone Khanji Udyog Pvt. Ltd</i> • <i>State of U.P. & Ors v. Renusagar Power Co. & Ors.</i> (1988) 4 SCC 59 <p>Secondary Sources: Corporate Personality in India, Arjya B. Majumdar</p>	<ul style="list-style-type: none"> • <i>Sudhir Gopi v. Indira Gandhi National Open University and Ors</i> 16 May 2017 • <i>Balwant Rai Saluja v Air India Limited</i> (2014) 9 SCC 407
4 & 5	<p>Memorandum of Association & Articles of Association</p> <p>- Doctrine of Ultra Vires</p>	<p>Statutes: Section 4-6, 13 – 16 of the Companies Act, 2013</p> <p>Case Law:</p> <ul style="list-style-type: none"> • <i>Royal British Bank v. Turquand</i> (1856) 6 E&B 327 • <i>Ashbury Rly. Carriage & Iron Company v. Riche</i> (1875) LR 7 HL 653 	<ul style="list-style-type: none"> • <i>MRF Ltd. v. Manohar Parrikar</i> • <i>Re: Akola Electric Supply Co. Pvt. Ltd.</i> (1962) 32 Com Cases 215 • <i>H. Fillunger and Company Private Limited Pune v. Ajit Arvind.</i>, 2017 Indlaw MUM 1208

	<ul style="list-style-type: none"> - Doctrine of Constructive Notice - Indoor management <p>Articles of Association</p> <ul style="list-style-type: none"> - Conflict between Articles of Association and Shareholders' Agreement - Difference between Public Company and Private Company <p>Amendment of Memorandum & Articles of Association</p>	<ul style="list-style-type: none"> • <i>Lakshmanaswami Mudaliar v. L.I.C.</i> AIR 1963 SC 1185 (excerpts) • <i>V.B. Rangaraj vs V.B. Gopalakrishnan And Others</i> AIR 1992 SC 453, 1992 • <i>World Phone India Pvt. Ltd v. WPI Group Inc USA</i>, (2013) 178 Comp Cas 173 	
6	<p>Incorporation of a Company</p> <ul style="list-style-type: none"> - Pre-incorporation contracts 	<p>Statutes:</p> <ul style="list-style-type: none"> • Section 3, 7-11 of the Companies Act, 2013 • Sections 15, 19 of the Specific Relief Act <p>Case Law:</p> <ul style="list-style-type: none"> • <i>Kelner v. Baxter</i>, (1866) LR 2 CP 174 	

		<ul style="list-style-type: none"> • <i>Erlanger v. New Sombrero Phosphate Co.</i>, (1878) 3 App Cas 1218 • <i>Gluckstein v. Barnes</i>, [1900] AC 240 • <i>Weavers Mills v. Balkis Ammal</i>, AIR 1969 Mad 462 	
6 & 7	<p>Shares</p> <ul style="list-style-type: none"> - Shares as Property - Preference and Equity Shares - Rights of Shareholders - Convertible Securities - Voting Rights, Differential Voting Rights 	Sections 43 to 55 of the Companies Act, 2013	
7 & 8	<p>Issue of Shares</p> <ul style="list-style-type: none"> - Rights issue - Bonus Issue - Sweat Equity - Employee Stock Option Schemes 	<p>Statutes/Regulations:</p> <ul style="list-style-type: none"> • Sections 23, 42, 54 and 62, 63 of the Companies Act, 2013 • Companies (Prospectus and Allotment of Securities) Rules, 2014 <p>Case Law: <i>Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd. and Ors.</i>, AIR 1981 SC 1298</p>	

8	<p>Issue of Capital (Private Placement)</p> <ul style="list-style-type: none"> - Process - Due diligence - Negotiation - Investor Protection through Shareholder Agreements - Private Investment in Equity of Companies 	<ul style="list-style-type: none"> • Arjya B. Majumdar, “Regulatory Framework Governing M&A in India” in Christopher Kummer, Franz Ferdinand Eiffe and Wolfgang Molzer, Guide to Mergers and Acquisitions, (LexisNexis: New Delhi, 2013) • Afra Afsharipour, The Indian Private Equity Model, NSE Working Paper 8/2013 	<p>Global Legal Insights – Mergers and Acquisitions 2016 (India Chapter): https://www.globallegalinsights.com/practice-areas/mergers-and-acquisitions/global-legal-insights---mergers-and-acquisitions-6th-ed./india</p>
9 & 10	<p>Issue of Capital (Public Issue)</p> <ul style="list-style-type: none"> - Private Placement v. Public Issue - Initial Public Offering - Listing Requirement 	<p>Statutes/Regulations:</p> <ul style="list-style-type: none"> • Section 23 to 41 of the Companies Act 2013 • SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009 <p>Case Law:</p> <ul style="list-style-type: none"> • <i>Sahara India Real Estate Corporation Limited & Ors v. Securities and Exchange Board of India</i> http://supremecourtfindia.nic.in/outtoday/CA9813%20Sahara%20combined.pdf • <i>Peek v. Gurney</i> (1873) LR 6 (HL) 377 • <i>Derry v. Peek</i> (1889) LR 14 AC 337 	<ul style="list-style-type: none"> • IPO Mechanisms in India: A Brief Note, by Amit Bubna and Nagarpurnanand Prabhala (2015) https://www.nseindia.com/research/content/nse_nyu/NSE_NYU_12-13WPCh-4.pdf • Anchor Investors in IPOs: a working paper produced as part of the NSE-NYU Stern School of Business Initiative for the Study of Indian Capital Markets, by Amit Bubna and Nagarpurnanand Prabhala (2015)

		<ul style="list-style-type: none"> • <i>Sundaram Finance Service & Ltd. v. Grandtrust Finance Ltd.</i> (2003) 42 SCL 89 (Mad) • <i>Shiromani Sugar Mills Ltd v. Debi Prasad</i>, AIR 1950 All 508 • <i>Securities Exchange Board of India vs M/S Opee Stock-Link Ltd. & Anr</i>, SC 2016, Civil Appeal No. 2252 of 2010 • <i>DLF Limited v. SEBI</i> (SAT Order in Appeal No. 331 of 2014) <p>Secondary Sources:</p> <ul style="list-style-type: none"> • Global Legal Insights – Initial Public Offerings 2017 (India Chapter): https://www.globallegalinsights.com/practice-areas/initial-public-offerings/global-legal-insights---initial-public-offering-2017-1st-ed./india 	
11 & 12	<p>Transfer of Shares (Private Companies)</p> <ul style="list-style-type: none"> - Statutory Requirements - Pre-emptive Rights on Transfer 	<p>Statutes: Section 56 of the Companies Act 2013</p> <p>Case Law:</p> <ul style="list-style-type: none"> • <i>V.B. Rangaraj vs V.B. Gopalakrishnan & Ors.</i>, AIR 1992 SC 453, 1992 • <i>Messer Holdings Limited v. Shyam Madanmohan Ruia</i>, [2010] 159 Comp. Cas. 29 (Bombay High Court) 	

		<ul style="list-style-type: none"> • <i>Bajaj Auto Ltd vs Western Maharashtra Development</i>, (MANU/MH/0820/2015, Bombay HC) • <i>World Phone India Pvt. Ltd v. WPI Group Inc USA</i>, [2013] 178 Comp Cas 173 (Del) <p>Secondary Sources:</p> <ul style="list-style-type: none"> • Arjya B. Majumdar, “Regulatory Framework Governing M&A in India” in Christopher Kummer, Franz Ferdinand Eiffe and Wolfgang Molzer, <i>Guide to Mergers and Acquisitions</i>, (LexisNexis: New Delhi, 2013) 	
12	Transfer of Shares (Public Listed Companies) - Takeover Code 2011	<ul style="list-style-type: none"> • Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 • Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 	
13	Reduction of Capital and Buyback	Sections 67 to 70 of the Companies Act, 2013 SEBI (Delisting of Equity Shares) Regulations 2009	
14	Shareholder Meetings - Pre-requisites of a valid meeting	Statutes: Sections 96 to 118 of the Companies Act, 2013 Case Law:	

	<ul style="list-style-type: none"> - Notice and quorum - Voting - Resolutions and Minutes 	<ul style="list-style-type: none"> • <i>LIC of India v. Escorts Ltd.</i>, [1986] 59 Comp Cas 548 • <i>Chandrakant Khare v. Shantaram Kale</i>, (1989) 65 Comp Cas 121 SC • <i>M.S. Madhusoodan v. Kerela Kaumudi (P.) Ltd.</i>, (2003) 46 SCL 695 (SC) 	
15	Review		
