

ch-2 - legal status of company

- Q Three Persons are only members of Pvt company. All of them go for Pleasure trip in a car and dies due to accident does the company exist.
- According to section 9 of the Companies Act, 2013, the members of the incorporated company may change either because one sharehold sold/transferred to any other persons or his legal representative on his death.
- Perpetual succession denotes the ability of a company to maintain its existence by the succession of new individual.
- Perpetual succession means that the company may change its members from time to time, but this does not affect the continuity.
- An incorporated company never dies except when it is wound up for law.
- In the above case even if all the member of the Pvt company dies the company still exist.
- > The members is liable.
- According to the section 3A, in which members are severally liable in certain cases:
- The number of members of the company is reduced to below seven in case of Public company or below two in case of Private company.
 - The company carries on business for more than 6 months with such less numbers.
 - The members of the company is cognizant of fact that the company is carrying business.

in the above situation the period is not more than 6 months after the death of 'A' one of members of the company

∴ C cannot make personally liable.

However B have to appoint / admit another member before 3rd Feb 2020.

Q members of the limited company nevertheless have unlimited liability.

→ The Privilege of the limited company for business debts is one of the principal advantages of doing business under the corporate form of organisation.

→ The liability of a member as a shareholder, extends to the contribution to the capital of the ~~capital of~~ company upto the nominal value of the shares held not paid by him.

Q The fundamental attribute of corporate personality is that the company is legal entity distinct from members.

→ A company incorporated under the Act is vested with a corporate personality.

a) it bears its own name and acts thereunder.

b) its assets are separate and distinct from those of its members.

c) it's a different person from the members who compose it.

d) it can incur debts, borrow money, have a bank account, or people enter into contracts and can sue or be sued and

e) it is capable of owing property.

Q A company is an artificial juristic person. It does not have citizenship, residence and domicile. Comment

→ Though it is established through judicial decisions that a company cannot be a citizen yet it has nationality, domicile and residence.

→ In Gasque vs inland Revenue commissioners it held that a limited company is capable of having a domicile is the place of its registration and that domicile clings to it throughout its existence.

Q short note.

1) Perpetual succession:-

→ Perpetual succession means that the membership of the company may change from time to time, but this does not affect its continuity.

→ An incorporated company never dies, except when it is wound up as per law.

→ Perpetual succession denotes the ability of company to maintain its existence by the succession of new individuals.

→ Professor L.C.B. Gower rightly mentions "L.C.B. Gower rightly mentions "members may come and go, but the company can go on forever."

→ members variation or their identity does not affect the legal existence and identity of a company.

Q. Transferability of shares.

→ section 44 of the companies Act, 2013 states that the shares held by the members are movable property and can be transferred from one person to another in the manner provided by the article.

→ In case of public ltd company a member may sell his shares in the open market and realise the money invested by him.

→ The stock exchange provide adequate facilities for the sale and purchase of shares of listed entities.

→ In the listed companies, the shares are transferable through electronic mode.

→ However there are restrictions with respect to transferability of shares of private limited company.

→ Even if shares of a private limited company is in demat form restrictions by the articles of the company shall apply.

Q. limited liability of shareholders.

→ The company, being a separate person is the owner of its assets and bound by its liabilities.

→ The liability of a member as shareholder, extends to the contribution to the capital of the company up to the nominal value of the shares held by him but not paid.

→ In the case of company limited by guarantee the liability of a members is limited to a specified amounts of the guarantee mentioned in the memorandum.

Corporate Personality

→ A company incorporated under the Act is vested with a corporate personality.

a) it bears its own name and acts thereunder
b) its assets are separate and distinct from those of its members.

c) it is a different 'person' from the members who compose it

d) it can incur debts, borrow money, have a bank account, employ people enter into contracts and can sue or be sued and

e) it is capable of owning property.