

Company as legal entity

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THE MOST DISTINGUISHED CHARACTERISTIC OF THE COMPANY AS A FORM OF BUSINESS IS THAT IT IS A LEGAL ENTITY. EXPLAIN WHAT IT MEANS. A company is considered a legal entity(artificial person created by the law). The law treats a company as being a separate person from its members and those who manage it.(The modern law review vol 31-pg 481) The following are characteristics which makes a company a legal being: a) Has a right to own properties. A company owns its own properties. Directors and shareholders do not own the company's properties, the company does.(no shareholder has any right to any item of property owned by the company, he has no legal or logical interest in it. Example. MACAURA v NORTHERN ASSURANCE CO LTD (1925) AC 619 " Macaura own land on which stood timber. He sold the land and timber to a company he formed and received as consideration all the fully paid shares. The company carried the business of felling and milling timber. A fire destroyed all timber which had been felled. Macaura had earlier insured the timber against loss of by fire in his own name. He had not transferred the insurance policy to the company. When Macaura made a claim his insurers refused to pay arguing that he had no insurable interest in the timber. Only persons with a legal or equitable interest in property are regarded as having interest in it. The insurers were not liable. Only Macaura's company, as owner of the timber, which had the requisite insurable interest in it. Only the company, and not Macaura, could insure its property against loss or damage. Shareholders have no legal or equitable interest in their company's property"(<http://syarikat.tripod.com/english.html>) b) Can sue or be sued. It can sue and be sued in its own name. The members of the company generally cannot take any legal action

on behalf of the company. Only the company itself can enforce its rights.

Example *FORSE V HARBOTTLE* Richard Foss and Edward Starkie Turton were two minority shareholders in the "Victoria Park Company". The claimants alleged that property of the company had been misapplied and wasted and various mortgages were given improperly over the company's property. They asked that the guilty parties be held accountable to the company and that a receiver be appointed. The defendants were the five company directors who had become bankrupts. The court dismissed the claim and held that when a company is wronged by its directors it is only the company that has standing to sue. (wikipedia) . c) Has perpetual succession It will continue in law with its own identity regardless of changes in its membership. A company continues to exist until it is dissolved according to the law or it is struck off the register. Even if the membership changes or all the original members die, the company does not come to an end. This continuous life of the company is said to be perpetual succession. " A company does not die but continue to exist until its name is struck off or dissolved through a legal process known as winding up or liquidation even though without any directors, members, employees, and business . Its members may come and go but this does not affect the legal personality of the company"(<http://syarikat.tripod.com/english.html>) d) Liability of the Members The company's liabilities are its own and not those of shareholders and directors. Once a company is incorporated it is liable for its own debts and obligations. The company's debts are separate from the debts of its members. Creditors of the company cannot ask the member of the company to pay the debt because a company is separate entities