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THE LAW OF UNINCORPORATED  
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# THE LAW OF UNINCORPORATED ASSOCIATIONS

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## FOREWORD

by the Rt Hon Lord Millett of St Marylebone

What does one's golf club or freemasons' lodge have in common with the Carlton Club and the local working men's club, sewing circle, and model railway club? or with the Oxford Union, the National Union of Seamen, the Royal National Rose Society, the Lichfield race-course, the Penzance Public Library, the Friends of the local hospital and the Animal Rights Movement; but not with the local amateur investment group or the Conservative Party? The answer is that all but the last two are unincorporated associations, while the last two are not, the investment circle being regarded in law as a partnership and the Conservative Party seeming to have no existence of any kind, not even as much as the Penzance Public Library.

People are drawn together for purposes and to pursue common interests of all kinds, whether charitable or non-charitable; social, sporting, political, self-improvement, or to pursue a hobby or indulge a common interest whether it be in art, history, science, or literature. Unless they establish a company or other body corporate through which to pursue their activities, or their object is to make a profit (as in the case of an investment circle), their association will be unincorporated. Such associations may be small or very large, local or national; they are both very numerous and astonishingly diverse.

They do, however, give rise to difficult legal problems. An unincorporated association is not a legal person. Since its existence as an entity distinct from its members is not recognized by the law, it cannot hold property, whether legal or equitable, and a conveyance or lease cannot be taken in its name. Nor, unless it is charitable, is it possible for property to be held on trust for its purposes. It cannot enter into a contract, nor can it be liable in tort, whether directly or vicariously. It cannot be defamed; only individual members can sue for defamation.

Yet such associations do exist in fact, even though not in law. They have a name and property and a degree of continuity and permanence – the Hurlingham Club was founded in 1869 and is regarded as the same club today even though the founder members have long since died and the sole purpose for which it was established – to afford facilities for clay pigeon shooting – was abandoned more than a century ago. Unincorporated associations do enter into contracts for the benefit of their members, even though the persons who purport to contract on their behalf are usually treated as doing so as agents not for the association but for some or all of the members or the governing committee.

In the case of some unincorporated associations, notably trade unions, Parliament has intervened and given them a quasi-corporate status, allowing them to hold property, enter into contracts, and sue and be sued in their own name as if they were bodies corporate distinct from their members but without incorporating them. But these are the exception. In the great majority of cases the Courts have had to reconcile legal theory with the practical needs of society. They have found solutions – and not all unincorporated associations are susceptible to the same solution – in a combination of contract and trust. One solution is to regard the association's property to be held in trust for the members from time to time; but then

some means has to be found to prevent individual members from selling their shares without infringing the rule against perpetuities.

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*Foreword*

The huge variety of unincorporated associations means that the subject is of considerable complexity. But it is not of merely academic interest. It is of great practical importance. For over 60 years it has lacked a textbook to guide the practitioner through what is a legal mine-field. The present work contains not only a wide-ranging and close analysis of the problems arising from the nature of unincorporated associations, but also a helpful guide to the way in which they may bring or defend legal proceedings and judgments may be enforced by or against them. It also contains useful precedents of Rules and disciplinary regulations. It is an intensely practical book written for practitioners, and will be an invaluable addition to any lawyer's library. I commend it unreservedly.

Lord Millett  
September 2011

## PREFACE

Clubs and societies are an integral part of the social fabric of the United Kingdom. From choral societies to amateur football clubs they cover a diverse range of human activities. The social historian Dominic Sandbrook in *'Never had it so good'* comments 'For decades the British had been notorious for their love of clubs; a well known French quip from the nineteenth century had it that if two Englishmen were stranded on a desert island, their first move would be to form a club.'<sup>1</sup> Hughes LJ in *R v RL, JF* referred to the variety of unincorporated associations thus,

'There are probably almost as many different types of unincorporated association as there are forms of human activity. This particular one was a [golf] club with 900 odd members, substantial land, buildings and other assets, and it had no doubt stood as an entity in every sense except the legal for many years. But the legal description 'unincorporated association' applies equally to any collection of individuals linked by agreement into a group. Some may be solid and permanent; others may be fleeting, and/or without assets. A village football team, with no constitution and a casual fluctuating membership, meeting on a Saturday morning on a rented pitch, is an unincorporated association, but so are a number of learned societies with large fixed assets and detailed constitutional structures. So too is a fishing association and a trade union.'<sup>2</sup>

Yet these unincorporated associations all have one thing in common. They have no legal identity, although, as noted by Hughes LJ 'As to fact, many unincorporated associations have in reality a substantial existence which is treated by all who deal with them as distinct from the mere sum of those who are for the time being members.'<sup>3</sup> For example, if a football club has no legal identity, then which individuals are going to be responsible for the cost of beer supplied for the clubhouse? Which individuals will be liable if a cleaner slips and is injured while cleaning the club showers? Will this involve a potential criminal liability under the Health and Safety at Work etc Act 1974, and if so who can be prosecuted? If the club wants to lease land for its football pitch, who are going to be the tenants? As well as these external problems, internal problems of administration will also arise. When can members challenge decisions of the executive committee? What rights of redress are available to an expelled member, and against whom?

The purpose of this book is to show how the law has provided solutions to the various conundrums. We aim to give a practical guide to those advising on legal issues, as well as those involved in the administration of unincorporated associations, to resolve those internal and external queries and disputes which tend to flare up from time to time even in the most well-ordered associations with the most benign membership. The authors wish to thank Edmund Whelan, now retired Deputy Chief Executive and Head of Legal and Government at the Royal Yachting Association, for inspiring the preparation of this text together with

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<sup>1</sup> Abacus (2006) p128.

<sup>2</sup> [2008] EWCA Crim 1970 para 11.

<sup>3</sup> para 14.

Natalie Campbell's work with the RYA and RYA-affiliated clubs. The authors also wish to thank Richard Baldwin, Consultant of Deloitte and Chairman of the CASC development forum, for advising on the finance chapter, and Shveta Deb of Ely Place Chambers for preparing notes on the licensing of alcohol.

26 May 2011  
Nicholas Stewart QC  
Natalie Campbell  
Simon Baughen



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