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ADR	Alternative Dispute Resolution
AGM	Annual General Meeting
CASC	Community Amateur Sports Club
CIO	Charitable Incorporated Organization
CPR	Civil Procedure Rules
DPA	Data Protection Act 1998
ECHR	European Convention on Human Rights
EGM	Extraordinary General Meeting
HMRC	Her Majesty's Revenue and Customs
SGM	Special General Meeting
TEN	Temporary Event Notice

1

NATURE OF UNINCORPORATED ASSOCIATIONS

A. Characteristics of an Unincorporated Association		B. Distinguishing Unincorporated Associations from other Forms of Club	
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A. Characteristics of an Unincorporated Association

(1) Historical development

Unincorporated associations were originally established primarily for social intercourse, mutual support, and recreation amongst groups of people. They have existed in England for many centuries, with the oldest documented unincorporated associations being the Inns of Court dating from 1388.¹ Many associations were established from the sixteenth century and thereafter for the purpose of their members' mutual development of academics. One of the older unincorporated associations is the Society of Antiquaries, established as the College of Antiquaries in 1586 as a debating society.² Other such associations include the Royal Society, officially established on 28 November 1660 as a development from weekly meetings held since the mid-1640s of 12 professors of Gresham College for the purpose of witnessing scientific experiments and discussing science.³ The first documented Freemasons' lodge was dated 16 October 1646, the origins of which in England are uncertain but they are believed to be connected to the stonemasons who built the great medieval cathedrals and castles.⁴ The coffee-houses of the eighteenth century in London particularly were locations for businessmen to associate, thereby forming unincorporated associations such as Lloyd's

¹ Baker, 'The Inns of Court in 1388' (1976) 92 LQR 184. *R v Gray's Inn* (1780) 1 Doug KB 353, 99 ER 227. *Booreman's Case* (1641) March NR 177, 82 ER 464.

² Information provided the Society of Antiquaries.

³ Information provided by the Royal Society.

⁴ Information provided by the United Grand Lodge of England.

of London in 1771.⁵ In the eighteenth century, shipowners decided to group together in mutual hull insurance associations, as an alternative to seeking insurance in the traditional market centred in London.

- 1.02 The success of early unincorporated associations attracted statutory regulation and the requirement of incorporation where they concerned business matters. For instance, associations for the purpose of mutual provident benefits such as the maintenance of their members in sickness, old age and infirmity, and for similar purposes, attracted statutory regulation by the Friendly Societies Act 1793. This statute permitted the form of unincorporated association to be used for any number of persons to form a society of good fellowship for the purpose of raising among themselves a fund for their mutual benefit. The principal benefits of an unincorporated association bringing itself within the regulation of the statute were (i) to enable the rules of the association to be confirmed by justices, leading to a cheap and speedy remedy against defaulting officers of the association, (ii) exemption from certain stamp duties, (iii) priority of the association against the estates of a deceased or bankrupt officer, (iv) the vesting of the association's property in trustees without transfer with a provision against the abatement of actions, (v) protection of the funds against misappropriation and illegal distribution, (vi) the reception of the rules in evidence, and (vii) a provision for the settlement of disputes by arbitration or by the justices. The statutory law relating to friendly societies has since been extended and amended many times with a significant shift between the Friendly Societies Act 1974,⁶ when the associations were still recognized as unincorporated associations, and the Friendly Societies Act 1992 under which new mutual associations are required to be incorporated companies. Likewise, until 1852 industrial and provident societies were unincorporated associations registered under the Friendly Societies Acts, when the Industrial and Provident Societies Act 1852 was passed and the societies moved to being registered under this statute.⁷ This statute defined the purpose of the societies as the carrying on or exercising in common of any labour, trade or handicraft and the structure was that of a co-operative. The members were paid for their work and services, and could receive interest on their subscriptions.⁸ Up to one third of the profits made by the society could be divided amongst the members and the remaining profits were retained by the society. The registered societies were required by the Industrial and Provident Societies Act 1862 to change their status from unincorporated associations to incorporated companies with limited liability of the members.⁹ Similarly, building societies prior to the Building Societies Act 1874 were unincorporated associations. The Act of 1874 did not force societies established under the Act of 1836 to be registered as incorporated bodies and so there co-existed incorporated and unincorporated building societies.¹⁰

⁵ Incorporated by the Lloyd's Act 1871. Wright and Fayle, *A History of Lloyd's*, (Macmillan & Co, 1928). Gibb, D.E.W., *Lloyd's of London, A Study in Individualism*, (Macmillan & Co, 1957).

⁶ Since 1 February 1993 (i.e. the commencement date of the Friendly Societies Act 1992, s 93), no new society can be registered under the Friendly Societies Act 1974. Those previously registered under the Friendly Societies Act 1974 may remain as unincorporated associations or re-establish the society as an incorporated company in accordance with the provisions of the Friendly Societies Act 1992. Any new society seeking registration as a friendly society since 1 February 1993 is obliged to take the form of an incorporated company registered in accordance with the Friendly Societies Act 1992.

⁷ Industrial and Provident Society Act 1852, s 1 (repealed).

⁸ *Ibid's* 2 (repealed).

⁹ Industrial and Provident Society Act 1862 (repealed).

¹⁰ See Scratchley, A., *Building Societies*, (Shaw & Sons, 1875).

A. Characteristics of an Unincorporated Association

There are also unincorporated associations which have become national or international regulatory authorities such as the Panel of Take-Overs and Mergers in London,¹¹ the British Olympic Association and the International Association of Athletics Federations. 1.03

(2) Distinguishing an unincorporated association

Under the common law individuals are free to associate with each other for any lawful purpose, but must be content to accept the remedies which the common law provides. These associations are unique to common law legal systems.¹² Private individuals have sought to curtail association, such as employers who have often sought by the inclusion of a term of their employment contracts to prohibit employees from associating in trade unions. However, the law of England and Wales has enshrined the freedom to associate in both international and European conventions, as well as in legislation.¹³ The legislature has sometimes limited the common law right of persons to combine, either with or without facilities, such as by the restriction on trade unions to associate for the purpose of industrial action,¹⁴ or the restriction on associations purely for a criminal purpose. 1.04

Unincorporated associations are private arrangements such as amateur circles, clubs and friendly societies. Although unincorporated associations can retain a domestic nature, their contractual basis raises the association to something more than someone willing voluntarily to mind a few friends' children, a group who meet regularly to play games or to travel together every so often. Although unincorporated associations can and do provide facilities and services to their members,¹⁵ they are neither partnerships nor even quasi-partnerships.¹⁶ Nor are they a creation of statute.¹⁷ 1.05

(a) *A contractual entity*

An unincorporated association was defined by Lawton LJ in *Conservative and Unionist Central Office v Burrell (Inspector of Taxes) as*,¹⁸ 1.06

...two or more persons bound together for one or more common purposes, not being business purposes, by mutual undertakings, each having mutual duties and obligations, in an

¹¹ Established in 1968 as an unincorporated association whose main functions were and are to issue and administer the City Code on Takeovers and Mergers and to supervise and regulate takeovers and other matters to which the Code applies.

¹² Scruton, R., *England: An Elegy*, (Continuum, 2006).

¹³ Human Rights Act 1998, s 1 – adopting the provisions of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950 and since amended by protocols), art 11 – freedom of assembly and association. The Trade Union and Labour Relations (Consolidation) Act 1992 incorporating the spirit of the International Labour Organization, Convention no. 87 – 'Convention Concerning Freedom of Association and Protection of the Right to Organize', adopted 9 July 1948 and ratified by the UK on 27 June 1949, concerning the freedom to associate by workers and employers, the International Labour Organization, Convention no. 98 – 'Convention concerning the application of the Principles of the Right to Organize and to Bargain Collectively', adopted 1 July 1949 and entered into force on 4 July 1950, concerning the rights of workers and employers and the European Social Charter, adopted 1961 and revised 1996, guaranteeing social and economic human rights including at art 5 the freedom to form trade unions and employers' organizations to defend economic and social interests.

¹⁴ Trade Union and Labour Relations (Consolidation) Act 1992.

¹⁵ *Charter v Race Relations Board* [1973] AC 868 (HL) 886–7.

¹⁶ *Harington v Sendall* [1903] 1 Ch 921 (Ch) 927 (Joyce J), concerning the Oxford and Cambridge University Club founded in 1830.

¹⁷ *London Association for Protection of Trade and Another v Greenlands Ltd* [1916] 2 AC 15 (HL) 38 (Lord Parker of Waddington). *Lloyd v Loaring* (1802) 6 Ves 773 (Ch) (Lord Chancellor) 31 ER 1302.

¹⁸ [1982] 1 WLR 522 (CA). *Hanchett-Stamford v AG and Others* [2009] Ch 173 (Ch).

organisation which has rules which identify in whom control of it and its funds rests and upon what terms and which can be joined or left at will.

- 1.07 A contract exists between each and every member of the association.¹⁹ When a person joins an unincorporated association they enter into a contract with each of the existing members, usually through the agency of the club officer who approves their membership. The terms of that contract are the rules of the association which will identify the persons having control of the association and its funds. The rules also identify the terms on which a person may join and leave membership of the association.²⁰ Unincorporated associations are contractual entities rather than voluntary associations, as the members' contributions are the contractual price for which a benefit is gained rather than a voluntary contribution for which no benefit is gained.²¹ They are supported where necessary by trust law.
- 1.08 Unincorporated associations can be tied together by a number of associations being affiliated to another unincorporated association, such as is found with football, political parties and student unions.²² A local football club may belong to an association of clubs in a league, which in turn is a member of a county association, which itself is affiliated to the Football Association, and so on internationally. The rules of one association may be incorporated into the rules of the affiliated association.

(b) *Not a legal entity*

- 1.09 Unincorporated associations are not legal entities, however they are perceived by their members and the man on the street.²³ Unincorporated associations can only be treated as legal entities where expressly provided for by statute. In *Leahy v Attorney-General for New South Wales* Viscount Simonds referred to 'the artificial and anomalous conception of an unincorporated society which, though it is not a separate entity in law, is yet for many purposes regarded as a continuing entity and, however inaccurately, as something other than an aggregate of its members'.²⁴ However, legally an unincorporated association is nothing more than an aggregate of its individual members, who are bound to each other by mutual contracts on the terms of the rules of the association. It is individual members who will incur liabilities in contract and tort and it is individual members who will own the property of the association. An unincorporated association derives its legal powers from the aggregate of the individual members and, unlike a corporate body, it does not in itself possess a legal personality distinct from its members.²⁵

¹⁹ *Dawkins v Antrobus* (1879) 17 Ch D 615 (Ch).

²⁰ *Conservative and Unionist Central Office* (n 18). *Hopkinson v Marquis of Exeter* (1867) 1 R 5 Eq 63 (Eq 67 (Lord Romilly MR)). *Clarke v The Earl of Dunraven and Mount-Earl (The Satanita)* [1897] AC 59 (HL).

²¹ *British Legion v British Legion Club (Street) Ltd* (1931) 48 RPC 555 (Ch). *The Overseers of the Poor and Chapel Warden of the Royal Precinct of the Savoy in the County of London v The Art Union of London* [1896] AC 296 (HL) 305-6 (Halsbury LC). *Halsbury's Laws of England*, Vol 50 para 2083, 5th ed (2008) uses the term 'voluntary' in respect of friendly societies probably because the benefit of the society is not necessarily received by the member but instead by a relation of the member.

²² *AG v Ross and Others* [1986] 1 WLR 252 (Ch).

²³ *Worthington Rugby Football Club Trustees v Inland Revenue Commissioners*, sub nom *Frampton and Another (Trustees of Worthing Rugby Football Club) v IRC* [1985] 1 WLR 409 (Ch) 413 (Peter Gibson J).

²⁴ [1959] AC 457 (PC) 477. *Feeney and Shannon v MacManus* [1937] IR 23.

²⁵ *Smith, Re Johnson v Bright-Smith* [1914] 1 Ch 937 (Ch) 948 (Joyce J), '[t]he Courts consider the persons of whom the society or association is composed to be the legatees - the named society or association being in truth only a compendious or conventional designation for the aggregate of the members.'

A. Characteristics of an Unincorporated Association

Therefore, unincorporated associations have neither the privileges nor the liabilities of being a legal entity. For instance, an unincorporated association cannot incur a liability in tort or be held guilty of a crime unless specified by statute, and contracts cannot be formed in the name of the association, except as a privilege granted by statute.²⁶ Instead, contracts made by an unincorporated association will be made by its officers as individuals, usually the management committee for the time being. **1.10**

A member's contractual liability is generally limited to the membership fee and any other fees due in accordance with the rules.²⁷ It is also individual members who will incur any liability in tort arising out of the activities of an unincorporated association, with the risk that the membership at large may become vicariously liable for the torts of those individual members through the application of the principles of agency.²⁸ **1.11**

(c) Objects and purpose

The purpose of an unincorporated association is for individuals to group together under a contractual relationship for a common object. The members usually pay a subscription and devote the pooled funds in pursuit of a lawful purpose²⁹ other than business for profit,³⁰ so that any income must cover the running costs of the association and any incidental profit is applied to the objects of the association and not divided among its members.³¹ Unincorporated associations are prevented from undertaking business for profit, so as to avoid any mischief arising from large trading undertakings being carried on by a large fluctuating body of members, in which case persons dealing with the association might not know with whom they are contracting and so might be put to great difficulty and expense.³² The purpose of the association may solely benefit the members, combine a personal benefit with an outside purpose or offer no personal benefit to the members with the funds being applied exclusively for an outside purpose.³³ **1.12**

(d) Perpetual existence

Unincorporated associations are organic bodies, with one member joining and another leaving, so that the body is continually changing. The members may constantly change, with the new members agreeing to the terms standing at the time of their joining. The new **1.13**

²⁶ *Worthington Rugby Football* (n 23) 413.

²⁷ *Wise v Perpetual Trustee Co Ltd* [1903] AC 139 (PC) 149 (Lord Lindley) stated that the distinguishing feature of unincorporated associations '... is that no member as such becomes liable to pay to the funds of the society or to any one else any money beyond the subscriptions required by the rules of the club to be paid so long as he remains a member. It is upon this fundamental condition, not usually expressed but understood by everyone, that clubs are formed.'

²⁸ 8.42-5.

²⁹ *Amalgamated Society of Railway Servants v Osborne* [1910] AC 87 (HL). *Brown Jenkinson & Co Ltd v Percy Dalton (London) Ltd* [1957] 2 QB 621 (CA) 638 (Pearce LJ).

³⁰ *Lloyd* (n 17) 776 dismissed the notion that a society should be permitted to effect a corporate character but accepted that a group of individuals could have a private agreement between themselves and have a joint interest in property. *Re Recher's Will Trusts: National Westminster Bank Ltd v National Anti-Vivisection Society Ltd and Others* [1972] Ch 526 (Ch) 538 (Brightman J). *London Association* (n 17). *Smith v Anderson* (1880) 15 Ch D 247 (CA) 273 (James LJ). *Wise* (n 27) 149. *R v Webb* (1811) 14 East 406, 104 ER 658.

³¹ *Blackpool Marron Rotary Club v Martin (Inspector of Taxes)* [1988] STC 823, 830 (Hoffmann J); *Worthington Rugby Football* (n 23); *Fletcher v Income Tax Commissioner* [1972] AC 414 (PC); *Carlisle & Silloth Golf Club v Smith* (1912) 6 TC 48, 55; *Bohemians Club v Acting Federal Commissioner of Taxation* (1918) 24 CLT 334.

³² *Smith v Anderson* (n 30).

³³ *Re Recher's Will Trusts* (n 30) 538.

membership succeeds to the assets of the old membership, subject to any pre-existing charges on such assets. In this manner, an unincorporated association operates in perpetual existence until such time as the current membership dissolves the association.³⁴

(e) *Ownership of property*

- 1.14 As an unincorporated association has no separate legal identity, property cannot be owned by the association itself. If the association is a charity its property will be held on trust for its purposes but this will not be possible if the association's purposes are not exclusively charitable. If the purposes of the association are not charitable, its property will be held by way of 'a sub-species of joint tenancy'³⁵ on behalf of the current members, subject to their contract with each other on the terms of the rules of the association.³⁶ This means that a member is contractually restrained from severing his share so as to claim a proportionate share of the association's assets. Only on the dissolution of an unincorporated association will the current members (i.e. the members at the date of dissolution) be able to claim a share of the association's assets. On leaving the association, former members will cease to be joint tenants of the association's property while new members, on joining, will become joint tenants with the existing members, subject to the association's rules. In most instances, the assets of the association will be vested in the names of one or more of the officers of the association, who will be the legal owners of such assets. This will have to be the case with assets such as land or shares. Those officers, as legal owners, will hold the association's assets on a bare trust for the current members, subject to the rules of the association.

B. Distinguishing Unincorporated Associations from other Forms of Club

- 1.15 There are two important differences between a partnership and an unincorporated association. The first is that a partnership is essentially composed of the particular individuals who originally entered into the contract of partnership with each other, so that if a person leaves the partnership and a new person joins the partnership, strictly a new partnership is formed. The second difference is that the object of a partnership is to carry on a business and make a profit to be divided amongst the members of the partnership, whilst the object of an unincorporated association is a purpose other than making a profit so that any income of the unincorporated association matches the costs of running the association and is not divided amongst the members.³⁷ Partnerships are governed by the Partnership Act 1890.³⁸
- 1.16 An unincorporated association is distinguished from a company in two ways. First, an incorporated company is an artificial legal person created by Royal Charter or an Act of

³⁴ *Re Taylor: Midland Bank Executor and Trustee Company Limited v Smith* [1940] Ch 481 (Ch).

³⁵ *Hanchett Stamford* (n 18) 188.

³⁶ This is the 'contract-holding' theory propounded by Cross J in *Neville Estates Ltd v Madden* [1962] Ch 832 (Ch) 849, which is now the accepted theoretical explanation of how non-charitable associations hold property.

³⁷ *Harington* (n 16) 927.

³⁸ A limited liability partnership ('LLP') may be established under the Limited Liability Partnerships Act 2000 (in England, Wales, and Scotland) and the Limited Liability Partnerships Act (Northern Ireland) 2002 in Northern Ireland. A limited liability partnership is a corporate body, having a continuing legal existence independent of its members, and is not subject to the law of partnership at all. The LLP is commonly used by firms of accountants and solicitors.

B. Distinguishing Unincorporated Associations from other Forms of Club

Parliament or formed in accordance with the Companies Acts, and granted the status of a legal entity, whereas an unincorporated association is not a legal entity and cannot take the benefits of a legal entity. An incorporated company is established for preserving in perpetual succession certain rights which are usually only conferred on natural persons. By contrast, an unincorporated association consists of natural persons drawn together by a contract between each and every member of the association. Secondly, an incorporated company is not restricted from making a profit which can be divided amongst the shareholders, whereas the object of an unincorporated association is not profit and any inadvertent profit is not divided amongst the members of the association.

Unincorporated associations are distinguished from proprietary clubs on one significant ground. Proprietary clubs are businesses owned by the proprietor, who controls the affairs of the club and is ostensibly the sole owner of the property used by the club. All the subscriptions and profits made by carrying on the club belong to the proprietor and the proprietor carries any losses. A member of a proprietary club enters into a contract solely with the proprietor. However, the members of the club may establish a committee to manage the internal affairs of the club, which committee is managed as an unincorporated association. 1.17

Unincorporated associations are distinguished from friendly societies registered in accordance with the Friendly Societies Act 1992 on one basic point: that such friendly societies are required by the statute to be incorporated entities and therefore have been provided with an artificial legal personality. The activities which a friendly society may carry on are restricted to those specified by statute and are principally concerned with provision of life assurance, annuities, general insurance and certain discretionary benefits 1.18

Unincorporated associations are distinguished from societies registered under the Industrial and Provident Societies Acts 1965 to 1978.³⁹ In the first instance, such registered societies are bodies corporate with limited liability, so that the societies are artificial legal persons distinct from the legal identities of the members of the society. The purposes of the societies are to carry on industry, business or trade so that the members receive pay for their work or services as part of the society.⁴⁰ 1.19

(1) Pros and cons of taking unincorporated association status

Pros

1.20

- Ease for a person to join an unincorporated association and to leave by notice in writing. An incorporated entity requires the cost of registering and de-registering a shareholder.
- Unregulated unless identified in a statute, leading to lower management costs, such as being free from the requirement to file annual accounts and returns with Companies House.
- The rules can easily provide for amendment by resolution at a general meeting.
- Individual liability of each member is limited to the fees specified in the membership rules. (Though the rules cannot protect members from personal responsibility for tort or crime.)

³⁹ Industrial and Provident Societies Act 1967, Industrial and Provident Societies Act 1968, and the Industrial and Provident Societies Act 1975.

⁴⁰ Industrial and Provident Societies Act 1965, s 1.

- The association can be readily dissolved by agreement at a general meeting, with the administration costs of dissolution being minimal.
- There is no strict protocol for meetings of unincorporated associations and members can adopt the format which they prefer (in accordance with their own rules).
- Officers do not carry statutory responsibilities of duty of care towards the association and its members.

1.21 Cons

- Unincorporated associations do not have a legal personality and therefore cannot enjoy the privileges of legal entities.
- Employees hold their contracts with individual members of the unincorporated association, usually officers of the association, and the contract must be remade with another member or members when a contracting member retires as an officer of the association or ceases membership of the association.
- Unincorporated associations cannot directly own property, so there are administration issues and costs of trustees.
- The officers of the association are personally responsible for contracts made on behalf of the association with third parties, although this responsibility can be limited by incorporating the rules of the association into the contract, by officers' liability insurance and a provision in the rules that any liability attracted by an officer in the course of his administration of the affairs of the association, other than by the personal negligence of the officer, can be settled from the mutual funds of the association.
- The supply of alcohol is limited to the members of the association.
- Members, usually officers of the association, must be the named parties in any civil proceedings concerning the unincorporated association.

(2) Charitable status

- 1.22** When an unincorporated association is set up for exclusively charitable purposes, its property will be held on trust for those purposes. Charitable trusts have substantial fiscal privileges and may be of perpetual duration. They are not subject to the 'beneficiary principle' which requires trusts to be for the benefit of ascertainable human beneficiaries.⁴¹ They are also subject to the *cy-près* doctrine which enables the Charity Commission and the courts to prescribe new purposes for a charity whose existing trusts have failed or need to be modernized due to changing circumstances. Charities are regulated by the Charity Commission. In 2011 a new form of charitable entity, the charitable incorporated organization, is due to be introduced and will allow charities to have a corporate form without having to incorporate under the Companies Acts (which would subject them to the dual regulation of the Charity Commission and the Companies Registrar).⁴²

(3) Statutory governance

- 1.23** Although the individual members of an unincorporated association are subject to the authority of statutes, unincorporated associations, having no separate legal identity from their members, are not subject to ordinary statutes without special provision. However, specific legislation has been drafted which is directed at the proper administration of

⁴¹ *Leahy* (n 24), 3.02.

⁴² <<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101122/text/101122w0006.htm>>

B. Distinguishing Unincorporated Associations from other Forms of Club

some classes of unincorporated association, such as those societies registered under the Friendly Societies Act 1974 and trade unions by the Trade Union and Labour Relations (Consolidation) Act 1992. Legislation directly addressing friendly societies can be traced back to 1793. In the administration of such associations, the members must comply with the directions contained in the statute and then revert to the common law applying to unincorporated associations where statute law is silent. Legislation relating to trade unions can be traced back to 1871. The current statute is the Trade Union and Labour Relations (Consolidation) Act 1992. Its provisions as they relate to the administration of trade unions and the rights of union members are considered in Chapters 5 and 6. The Act also contains extensive provisions on industrial relations, the political fund, and the immunity of trade unions from suits in tort arising out of industrial action. These are beyond the scope of this work and a specialist work should be consulted.⁴³

A few general statutes expressly recognize unincorporated associations or entities. These include: schedule 1 of the Interpretation Act 1978 which defines 'person' as including 'a body of persons corporate or unincorporate'; the Gangmasters (Licensing) Act 2004, s 21; the Financial Services and Markets Act 2000, s 32 authorizing unincorporated associations for the purposes of the statute – regulated activities are investments of a kind specified by the Treasury in accordance with schedule 2 of the statute.⁴⁴ There are also various provisions of the Companies Act 2006 which refer to unincorporated associations.⁴⁵ 1.24

(a) Quasi-corporate character

Unincorporated associations have no inherent corporate character and a quasi-corporate status can only be established by statute. Some regulatory statutes, such as the Trade Union and Labour Relations (Consolidation) Act 1992, s10, permit associations recognized by that specific statute to have a quasi-corporate character, despite the statute acknowledging that the associations are unincorporated. Therefore, by statute, a trade union certified under the Trade Union and Labour Relations (Consolidation) Act 1992 is capable of making contracts in the name of the association⁴⁶ or suing and being sued in the name of the association,⁴⁷ and proceedings for an offence alleged to have been committed by it or on its behalf may be brought against it in its own name.⁴⁸ Likewise, associations which register under specific statutes, such as the Friendly Societies Act 1992, which grant an incorporated character to the association, are no longer unincorporated associations. 1.25

(b) Royal Charters and company law

Royal Charters⁴⁹ – The character of an unincorporated association has been used to establish associations prior to seeking corporate status by means of a Royal Charter, also known as a 1.26

⁴³ Bowers, Duggan, Reade, *The Law of Industrial Action and Trade Union Recognition*, 2nd ed, (OUP, 2011).

⁴⁴ s 22.

⁴⁵ Section 1123(4) concerning the responsibility by default of officers of an unincorporated association for any obligations required of an unincorporated association by the statute, s 1130 concerning proceedings against unincorporated bodies for an offence under the Companies Acts, s 1252(2)(b) by which the functions of the Secretary of State may be delegated to an unincorporated association and s 1255 concerning offences by unincorporated associations. An unincorporated association is not defined by the Companies Act 2006.

⁴⁶ Trade Union and Labour Relations (Consolidation) Act 1992, s 10(1)(a).

⁴⁷ *Ibid* s 10(1)(b).

⁴⁸ *Ibid* s 10(1)(c). *Taff Vale Company v Amalgamated Society of Railway Servants* (1901) AC 426 (HL) 430–1.

⁴⁹ Information on Royal Chartered societies is included here because case authority arising from their activities has been applied to unincorporated associations.

Royal Warrant. An association ceases to be unincorporated when it is granted a Royal Charter. The administration of associations incorporated by Royal Warrant or Charter (usually called societies) is the same as for unincorporated associations given that the members have the same involvement with the society as members of unincorporated associations, with the same case law applying to both these associations and unincorporated associations.

- 1.27** Application of the company law statutes – Company law statutes do not apply to unincorporated associations unless specifically stated therein. The Companies Act 2006, s 1043 applies to corporate bodies having a principal place of business within the United Kingdom and which are not registered under the Companies Acts. Therefore, the section applies to bodies other than those incorporated by, or registered under, a public general Act of Parliament.⁵⁰ However, the section does not apply to bodies not formed for the purpose of carrying on a business that have for their object the acquisition of gain by the body or its individual members,⁵¹ nor does the section apply to bodies exempted for the time being from this section by direction of the Secretary of State⁵² and open-ended investment companies.⁵³ Therefore, this section will not apply to unincorporated associations which for some reason have gained a quasi-corporate status by statute, because they are not incorporated bodies and they are not formed for the purpose of carrying on a business that has for its object the acquisition of gain by the body or its individual members.
- 1.28** However, this section will apply to associations incorporated by Royal Charter, subject to regulations introduced by the Secretary of State.⁵⁴ The regulations may provide that the application of specified parts of the Companies Act is limited or is subject to such adaptations and modifications as may be specified.⁵⁵ This section does not repeal or revoke the enactment, Royal Charter or other instrument constituting or regulating any body in relation to which provisions of the Companies Acts are applied by regulations under this section⁵⁶ or restrict the power of Her Majesty to grant a charter in lieu or supplementary to any such charter,⁵⁷ but the operation of any such enactment, charter or instrument is suspended insofar as it is inconsistent with any of those provisions as they apply for the time being to that body.⁵⁸
- 1.29** Where an unincorporated association is connected with a company, its officers will come within the scope of the Companies Act, s 1162 which defines 'parent and subsidiary undertakings' and will subject them to the group accounting obligations contained in sections 399–408. Section 1121 deals with the liability of officers in default of obligations under the Act. In relation to an unincorporated body other than a partnership the references to a director of the company shall be read as referring to a member of the body where its affairs are managed by its members or in any other case to a member of the governing body, and the reference to a manager or secretary of the company shall be read as referring to any manager, secretary or similar officer of the body.⁵⁹

⁵⁰ s 1043(1)(a).

⁵¹ s 1043(1)(b).

⁵² s 1043(1)(c).

⁵³ s 1043(1)(d).

⁵⁴ s 1043(2).

⁵⁵ s 1043(3).

⁵⁶ s 1043(4)(a).

⁵⁷ s 1043(4)(b).

⁵⁸ There are currently no regulations made in accordance with this statutory authority.

⁵⁹ Companies Act 2006, s 1123(4).

2

FORMATION OF UNINCORPORATED ASSOCIATIONS

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A. Creating an Unincorporated Association

(1) Introduction

- 2.01** An unincorporated association is created by a contract between each and every member, encapsulating their desire to co-operate for a mutual purpose other than business. Provided that a constitution or rules are adopted, or an implicit but sufficiently clear understanding is reached by two or more people, there is a contract forming an unincorporated association. We give guidance below on the matters to be covered as best practice but a written contract need not be lengthy or elaborate. Megarry J noted the rules of The Fulham and Hammersmith Ratepayers' and Residents' Association, founded in 1935, in *Woodford v Smith*:¹

The rules themselves are brief. There are only twelve of them, and they occupy a single side of a sheet of foolscap paper.

- 2.02** The terms of the contract may be contained in a constitution or in rules, regulations, bye-laws or a code. The choice of terminology is not important as they are legally the same. We shall use the labels 'constitution' or 'rules'. If the association is subject to a statute, such as the Trade Union Acts, then the contract must comply with the statutory requirements. However, even where such a statute applies,² the unincorporated association owes its existence to the contractual agreement between its members, with the statute specifying required terms of the contract. The initial terms of the contract must still have been agreed by the founding members.

(2) First founding meeting

- 2.03** An unincorporated association is easily established and, depending on the constitution or rules, generally easily dissolved, though dissolution will usually involve questions of distribution of assets and discharge of liabilities (discussed in Chapter 4). To constitute an unincorporated association, a group of people, either as private individuals or as representatives of legal entities or other unincorporated associations, must have met or had discussions for the purpose of agreeing, and usually drafting, the contractual terms by which they wish

¹ [1970] 1 WLR 806 (Ch) 808.

² e.g. Trade Union and Labour Relations (Consolidation) Act 1992; Friendly Societies Act 1974, sch 2.

A. Creating an Unincorporated Association

to regulate their relationship. An example of such a meeting is recorded by the Royal Solent Yacht Club:³

130 years ago 9 men met in the George Hotel in Yarmouth and established the Solent Yacht Club. They recruited three more members and agreed to donate £5 each and make an annual subscription of one guinea. Within two years the membership had swelled to over 50 and in that same year of 1880 they held their first Annual Regatta.

The guidance given here is best practice. Usually a small group of people wishing to form an association meets to discuss and agree. The founding members may be content to limit membership of the association to themselves for the time being, in which case only they will attend the first meeting,⁴ or they may wish to maximize the number of potential founding members by calling a public meeting. Where the group decides that the first meeting should be open to the public, the purpose, date, time and place of the meeting can be advertised by a notice in local newspapers, display of posters or distribution of leaflets. The public meeting should be given the widest possible publicity and the originators may well invite prominent individuals, other interest groups and bodies with related interests. 2.04

In the case of the National Childbirth Trust, the association originally known as the Natural Childbirth Association was initiated in 1956 when Prunella Briance, inspired by the writings of Grantly Dick-Read, placed an advertisement in the personal columns of *The Times* and the *Daily Telegraph* inviting interest in the formation of an association to promote and better understand the Dick-Read system of natural childbirth. The overwhelming interest and support helped form the Natural Childbirth Association, which obtained charitable status in 1961 and became the National Childbirth Trust.⁵ 2.05

Likewise, a letter was published in *The Literary Gazette* of 24 May 1828 to raise interest in establishing an association subsequently known as the Royal Geographical Society, founded in 1830.⁶ At the meeting of those interested in establishing a Geographical Society, a resolution was adopted by acclamation: 2.06

That a Society was needed whose sole object should be the promotion and diffusion of that most important and entertaining branch of knowledge – geography; and that a useful Society might therefore be formed, under the name of the Geographical Society of London: that the interest excited by this department of science is universally felt, that its advantages are of the first importance to mankind in general, and paramount to the welfare of a maritime nation like Great Britain, with its numerous and extensive foreign possessions; that its decided utility in conferring just and distinct notions of the physical and political relations of our globe must be obvious to every one, and is the more enhanced by this species of knowledge being

³ <<http://www.royalsolent.org>>. See Martin, J. N., *Daly's Club Law*, 7th ed (Butterworths), pp 10–11.

⁴ The Royal Astronomical Society was established on 12 January 1820 at an intimate dinner between 14 friends at the Freemasons' Tavern near Lincoln's Inn Fields in London, 'to take into consideration the propriety and expediency of establishing a society for the encouragement and promotion of Astronomy'.

⁵ Information provided by the National Childbirth Trust; www.ras.org.uk – see, Dryer, J.L.E. and Turner, H.H., *History of the Royal Astronomical Society 1820–1920*, p. 2, (London 1923). See also, Courtney, N., *Gale Force 10*, p. 244, (Review 2003). Likewise, the Geological Society was established on 13 November 1807 at a meeting of likeminded men dining at the Freemasons' Tavern. This meeting resolved:

'That there be forthwith instituted a Geological Society for the purpose of making geologists acquainted with each other, of stimulating their zeal, of inducing them to adopt one nomenclature, of facilitating the communications of new facts and of ascertaining what is known in their science and what remains to be discovered.'
<<http://www.geolsoc.org.uk>>.

⁶ Mill, H.R., *The Record of the Royal Geographical Society 1830–1930*, pp. 13–14.