

Halsbury's Laws of England

**CORPORATIONS (VOLUME 24 (2010))**

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**1. THE NATURE OF CORPORATIONS**

**(1) DEFINITIONS AND CHARACTERISTICS**

**(i) *Characteristics of Corporations***

**301. Corporations and unincorporated associations.**

A corporation may be defined as a body of persons (in the case of a corporation aggregate) or an office (in the case of a corporation sole)<sup>1</sup> which is recognised by the law as having a personality which is distinct from the separate personalities of the members of the body or the personality of the individual holder for the time being of the office in question<sup>2</sup>. There are many associations and bodies of persons which are not corporations. Unincorporated associations do not have legal personality, may not sue or be sued in their own name<sup>3</sup> nor (unless their purposes are charitable) may property be held for their purposes otherwise than by virtue of a contract between the members for the time being<sup>4</sup>.

Some unincorporated associations may be regarded as quasi corporations, as they have some of the usual attributes of corporations<sup>5</sup>.

Friendly societies established on or after 1 February 1993 must be registered as incorporated societies, but registered friendly societies in existence on that date may continue as unincorporated bodies<sup>6</sup>.

<sup>1</sup> For classes of corporations see PARA 305. As to the meaning of 'corporation aggregate' see PARA 312. As to the meaning of 'corporation sole' see PARA 314.

<sup>2</sup> See PARA 302.

3 *Lloyd v Loaring* (1802) 6 Ves 773; *Beaumont v Meredith* (1814) 3 Ves & B 180; *London Association for Protection of Trade v Greenlands Ltd* [1916] 2 AC 15, HL. See PARA 488 et seq.

4 See *Re Clarke, Clarke v Clarke* [1901] 2 Ch 110; *Re Ray's Will Trusts, Public Trustee v Barry* [1936] Ch 520, [1936] 2 All ER 93; *Re Taylor, Midland Bank Executor and Trustee Co Ltd v Smith* [1940] Ch 481, [1940] 2 All ER 637, CA; *Leahy v A-G for New South Wales* [1959] AC 457, [1959] 2 All ER 300, PC; *Neville Estates Ltd v Madden* [1962] Ch 832, [1961] 3 All ER 769; *Re Recher's Will Trusts, National Westminster Bank Ltd v National Anti-Vivisection Society Ltd* [1972] Ch 526, [1971] 3 All ER 401; *Re Lipinski's Will Trusts, Gosschalk v Levy* [1976] Ch 235, [1977] 1 All ER 33; *Re Grant's Will Trusts* [1979] 3 All ER 359, [1980] 1 WLR 360. As to ownership of property see PARA 447 et seq. As to the distinction between unincorporated associations and other corporations see *R v L* [2008] EWCA Crim 1970 at [33], [2009] 1 All ER 786 at [33], [2009] 1 Cr App Rep 230 at [33] per Hughes LJ, giving the judgment of the court.

5 As to quasi corporations see PARA 304. As to certain types of unincorporated companies which are now obsolete see COMPANIES VOL 14 (2016) PARA 3.

6 See the Friendly Societies Act 1974 s 7(1); the Friendly Societies Act 1992 s 93; and FINANCIAL INSTITUTIONS VOL 48 (2015) PARA 557 et seq. See also *Longdon-Griffiths v Smith* [1951] 1 KB 295, [1950] 2 All ER 662 (action for libel against registered friendly society should be brought against society in registered name).

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### (iii) Corporations Aggregate

## 312. Meaning of 'corporation aggregate'.

A corporation aggregate has been defined as a collection of individuals<sup>1</sup> united into one body under a special denomination, having perpetual succession<sup>2</sup> under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations and of suing and being sued, of enjoying privileges and immunities in common and of exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers conferred on it, either at the time of its creation or at any subsequent period of its existence<sup>3</sup>.

1 Some or all of the members of a corporation aggregate may, however, be other corporations rather than individuals: see PARA 347.

2 A corporation may, however, be created by the Crown for a limited period: see PARA 333.

3 1 Kyd on Corporations 13. The earliest definition of a corporation of which a record has been found is in *R v London Corp'n* (1692) Skin 310 (where it is stated to be 'an artificial body composed of divers constituent members like the human body, and that the ligaments of this body politic or artificial body are the franchises and liberties thereof which bind and unite all its members together, and the whole frame and essence of the corporation consist therein'). For a later definition see Grant's Law of Corporations (1850) p 4, where a corporation is defined as a 'continuous identity; endowed at its creation with capacity for endless duration; residing in the grantees of it and their successors, its acts being determined by the will of a majority of the existing body of its grantees or their successors at any given time, acting within the limits imposed by the constitution of their body politic such will being signified to strangers by writing under the common seal; having a name, and under such name a capacity for taking, holding and enjoying all kinds of property, a qualified right of disposing of its possessions, and also a capacity for taking, holding and enjoying, but inalienably, liberties, franchises, exemptions and privileges; together with the right and obligation of suing and being sued only under such name'.

### 313. Composition and capacity.

A corporation aggregate may be either a mere body, composed of constituent parts no one of which differs essentially from another<sup>1</sup>; or it may be a body with a head or other distinct member, the existence of which is essential to the vitality, so to speak, of the body as a whole<sup>2</sup>.

A corporation aggregate has only one capacity, namely its corporate capacity, so that a conveyance to a corporation aggregate can be to it only in its corporate capacity<sup>3</sup>.

1 *Sutton's Hospital Case* (1612) 10 Co Rep 1a, 23a at 30b, Ex Ch. As to the meaning of 'corporation aggregate' see PARA 312.

2 *Sutton's Hospital Case* (1612) 10 Co Rep 1a, 23a at 29b, Ex Ch. An example of a corporation with a head is a dean and chapter.

3 *Fulmerston v Steward* (1554) 1 Plowd 101 at 102b.

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#### (iv) Corporations Sole

### 314. Definition, capacity and presumption of due appointment.

A corporation sole is a body politic having perpetual succession, constituted in a single person, who, in right of some office or function, has a capacity to take, purchase, hold and demise (and in some particular instances, under qualifications and restrictions introduced by statute, power to alienate) real property, and now, it would seem, also to take and hold personal property, to him and his successors in such office for ever, the succession being perpetual, but not always uninterruptedly continuous; that is, there may be, and often are, periods in the duration of a corporation sole, occurring irregularly, in which there is a vacancy<sup>1</sup>, or no one in existence in whom the corporation resides and is visibly represented<sup>2</sup>.

Unlike a corporation aggregate, a corporation sole has a double capacity, namely its corporate capacity and its natural or individual capacity; so that a conveyance to a corporation sole may be in either capacity<sup>3</sup>.

A corporation sole appears now<sup>4</sup> to be capable of taking personality in succession<sup>5</sup>.

The occupant of a corporation sole is presumed to have been duly in possession of his office until the contrary is proved<sup>6</sup>.

1 The difficulties arising from a vacancy have been remedied by the Law of Property Act 1925 s 180(2), (3): see PARAS 448, 450, 473.

2 The definition stated in the text is based on that contained in Grant's Law of Corporations (1850) p 626.

3 *Fulmerston v Steward* (1554) 1 Plowd 101 at 102, 102b; and see PARA 450. As to the meaning of 'corporation aggregate' see PARA 312.

4 The common law rule was to the contrary: *Grant's Law of Corporations* (1850) p 626.

5 See PARAS 450 text and note 5, 462 text and note 2.

6 *Monke v Butler* (1614) 1 Roll Rep 83; *Powel v Milbank* (1772) 2 Wm Bl 851 at 853, citing *Sherard's Case* (circa 1763) unreported; *Grant's Law of Corporations* (1850) p 637.

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### 315. Examples of corporations sole.

Corporations sole were originally ecclesiastical for the most part<sup>1</sup>, but they have never been confined to that class<sup>2</sup>, and there are now many examples of lay corporations sole. The Sovereign is a corporation sole<sup>3</sup>, and many ministers of the Crown and government officers have been created corporations sole by name<sup>4</sup>, with perpetual succession and a common seal, and now, generally speaking, may sue or be sued like any other corporation sole<sup>5</sup>; in some cases the creation is expressed to be for all purposes, while in others the purposes are defined by statute. The Public Trustee is a corporation sole<sup>6</sup>.

1 An archbishop (see 1 Roll Abr 512), a bishop (see Co Litt 250a), a prebendary or canon (see *Mirehouse v Rennell* (1833) 1 Cl & Fin 527 at 538, HL), a dean (see 1 Bl Com 457), an archdeacon (see *Tufnell v Constable* (1838) 7 Ad & El 798), a rector (or parson) (see *Tufnell v Constable*), a vicar (see 1 Bl Com 457), and a vicar choral (see *Gleaves v Parfitt* (1860) 7 CBNS 838) are each a corporation sole. A Roman Catholic bishop is not a corporation sole: *A-G v Power* (1809) 1 Ball & B 145 at 149; and see *In the Goods of Lalor* (1901) 71 LJP 17; *Kehoe v Marquess of Lansdowne* [1893] AC 451 at 457, HL, per Lord Herschell. See also PARA 329; and **ECCLESIASTICAL LAW**.

As to the meaning of 'corporation sole' see PARA 314.

2 See Co Litt 250a; *Fulwood's Case* (1591) 4 Co Rep 64b; *Arundel's Case* (1615) Hob 64; *Howley v Knight* (1849) 14 QB 240.

3 1 Bl Com 457; Co Litt 15b, n 4; *Town Investments Ltd v Department of the Environment* [1978] AC 359 at 384, [1977] 1 All ER 813 at 820, HL, per Lord Diplock. It has also been suggested, however, that the Crown may be a corporation aggregate headed by the Queen: *Town Investments Ltd v Department of the Environment* at 400 and 833 per Lord Simon of Glaisdale; *Re M* [1994] 1 AC 377 at 424, sub nom *M v Home Office* [1993] 3 All ER 537 at 566, HL, per Lord Woolf. See also **CONSTITUTIONAL AND ADMINISTRATIVE LAW** VOL 20 (2014) PARAS 7, 14, 150. As to the meaning of 'corporation aggregate' see PARA 312.

4 See PARA 306 note 2. Examples include the Information Commissioner (see the Data Protection Act 1998 Sch 5 para 1; and **CONFIDENCE AND INFORMATIONAL PRIVACY** VOL 19 (2011) PARA 109 et seq), the Children's Commissioner (see the Children Act 2004 s 1, Sch 1; and **CHILDREN AND YOUNG PERSONS** VOL 9 (2017) PARA 179 et seq); the Judicial Appointments and Conduct Ombudsman (see the Constitutional Reform Act 2005 Sch 13 para 8; and **COURTS AND TRIBUNALS** VOL 24 (2010) PARA 936) and the Secretary of State for Business, Innovation and Skills (see the Secretary of State for Business, Innovation and Skills Order 2009, SI 2009/2748, art 3).

The corporate status of some ministers of the Crown appears to be doubtful or anomalous. For example, the office of Prime Minister is not a corporation sole, but, if (as is customary) the Prime Minister holds the office of First Lord of the Treasury, he is in that capacity one of the Commissioners of Her Majesty's Treasury, and the Commissioners may constitute a corporation aggregate in which the office of the Lord High Treasurer is vested: see the Consolidated Fund Act 1816 ss 2, 3 (both as amended); and **CONSTITUTIONAL AND ADMINISTRATIVE LAW** VOL 20 (2014) PARAS 263–264.

5 As to Crown privileges and limitations on proceedings against the Crown, and as to the status of government departments as agents of the Crown, see **CONSTITUTIONAL AND ADMINISTRATIVE LAW** VOL 20 (2014) PARA 190 et seq. As to procedure in litigation by or against the Crown generally see **CROWN AND CROWN PROCEEDINGS** VOL 29 (2019) PARA 104 et seq.

6 See the Public Trustee Act 1906 s 1(2); and **TRUSTS AND POWERS** VOL 98 (2019) **PARA** 206. As to the Public Trustee as a trust corporation see **TRUSTS AND POWERS** VOL 98 (2019) **PARA** 237.

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**(v) Corporations and Crown Status**

**316. Corporations and Crown status.**

Unlike ministers of the Crown (who are often corporations sole and are part of 'the Crown' when that term is used in the sense of 'the government'), a corporation aggregate created by Act of Parliament, such as the Civil Aviation Authority<sup>2</sup>, will not be entitled to Crown immunities, as being a servant or agent of the Crown<sup>3</sup>, unless the statute creating the corporation expressly enacts that it acts on behalf of the Crown<sup>4</sup>, or unless the corporation is otherwise rightly regarded as such a servant or agent<sup>5</sup>, or the title to the immunity is the logical and necessary consequence of the character of the corporation's powers and responsibilities<sup>6</sup>. It has now become customary, in statutes incorporating public corporations, to specify that the corporation is not to be regarded as the servant or agent of the Crown, or as enjoying any status, immunity or privilege of the Crown, and that its property is not to be regarded as property of or property held on behalf of the Crown<sup>7</sup>. A corporation not subject to control by the Crown is not entitled to Crown immunities on the ground that it is performing a public duty or providing a public service<sup>8</sup>.

The question whether a corporation is a servant or agent of the Crown depends on the degree of control which the Crown, through its ministers, may exercise over it in the performance of its duties<sup>9</sup>. In the absence of any express statutory provision, the proper inference, at any rate in the case of a commercial corporation, is that it acts on its own behalf, even though it is controlled to some extent by a government department<sup>10</sup>. The fact that a minister of the Crown appoints the members of such a corporation, is entitled to require them to give him information and is entitled to give them directions of a general nature does not make the corporation his agent<sup>11</sup>. The inference that a corporation acts on behalf of the Crown is more readily drawn where its functions are not commercial but are connected with matters such as the defence of the realm, which are essentially the province of government<sup>12</sup>.

1 See **PARAS** 306, 315. See also *Town Investments Ltd v Department of the Environment* [1978] AC 359, [1977] 1 All ER 813, HL.

2 The Civil Aviation Authority was incorporated by the Civil Aviation Act 1971 s 1 (repealed) and continued in being by the Civil Aviation Act 1982 s 2(1): see **AVIATION** VOL 2 (2017) **PARA** 752et seq. As to the meaning of 'corporation aggregate' see **PARA** 312.

3 The phrase 'emanation of the Crown' used in *Gilbert v Trinity House Corpn* (1886) 17 QBD 795 at 801, DC, is not suited to a corporation aggregate; to use the words 'servant or agent' of the Crown in preference to 'emanation of the Crown' avoids obscurity (*International Rly Co v Niagara Parks Commission* [1941] AC 328 at 343, [1941] 2 All ER 456 at 462, PC); and see *Bank voor Handel en Scheepvaart NV v Slatford* [1953] 1 QB 248 at 284, [1952] 2 All ER 956 at 964, CA, per Sir Raymond Evershed MR (revsd on another point sub nom *Bank voor Handel en Scheepvaart NV v Administrator of Hungarian Property* [1954] AC 584, [1954] 1 All ER 969, HL).

4 See eg the National Health Service Act 2006 s 8 (power of the Secretary of State to direct a strategic health authority, health authority, special health authority or a primary care trust to exercise specified functions relating to the health service): see **HEALTH SERVICES** VOL 54 (2017) **PARA** 19. See also *Pfizer Corpn v Ministry of Health* [1965] AC 512, [1965] 1 All ER 450, HL; *Mellenger v New Brunswick Development Corpn* [1971] 2 All ER 593, [1971] 1 WLR 604, CA.

5 *Tamlin v Hannaford* [1950] 1 KB 18, [1949] 2 All ER 327, CA.

6 *Bank voor Handel en Scheepvaart NV v Administrator of Hungarian Property* [1954] AC 584, [1954] 1 All ER 969, HL (Custodian of Enemy Property, a servant of the Crown); *Administrator of Austrian Property v Russian Bank of Foreign Trade* (1932) 48 TLR 37, CA (administrator, a servant of Crown); *London County Territorial and Auxiliary Forces Association v Nichols* [1949] 1 KB 35, [1948] 2 All ER 432, CA (Territorial Association entitled to Crown status); and see *Wheeler v Public Works Comrs* [1903] 2 IR 202 at 229 per Palles CB, cited in *Mackenzie-Kennedy v Air Council* [1927] 2 KB 517 at 523, CA. As to Crown immunities see **CONSTITUTIONAL AND ADMINISTRATIVE LAW** VOL 20 (2014) **PARA** 190 et seq; and as to proceedings by or against the Crown see **CROWN AND CROWN PROCEEDINGS** VOL 29 (2019) **PARA** 104 et seq.

7 See eg the Civil Aviation Act 1982 s 2(4) (Civil Aviation Authority: see **AVIATION** VOL 2 (2017) **PARA** 752); the Data Protection Act 1998 Sch 5 para 1(2) (Information Commissioner: see **CONFIDENCE AND INFORMATIONAL PRIVACY** VOL 19 (2011) **PARA** 109 et seq); the Children Act 2004 Sch 1 para 1(2) (Children's Commissioner: see **CHILDREN AND YOUNG PERSONS** VOL 9 (2017) **PARA** 179 et seq); the Constitutional Reform Act 2005 Sch 12 para 18 (Judicial Appointments Commission: see **COURTS AND TRIBUNALS** VOL 24 (2010) **PARA** 935); the National Health Service Act 2006 s 18, Sch 3 para 2 (NHS Primary Care Trusts); the Local Democracy, Economic Development and Construction Act 2009 s 55 (Local Government Boundary Commission for England); and the Parliamentary Standards Act 2009 s 3, Sch 1 para 9 (Independent Parliamentary Standards Authority: see **PARLIAMENT** VOL 78 (2018) **PARA** 736).

8 *Mersey Docks and Harbour Board v Cameron* (1865) 11 HL Cas 443; *British Broadcasting Corp'n v Johns* [1965] Ch 32, [1964] 1 All ER 923, CA; *Greig v Edinburgh University* (1868) LR 1 Sc & Div 348, HL.

9 See *Bank voor Handel en Scheepvaart NV v Administrator of Hungarian Property* [1954] AC 584 at 616, [1954] 1 All ER 969 at 982, HL, per Lord Reid.

10 *Tamlin v Hannaford* [1950] 1 KB 18, [1949] 2 All ER 327, CA.

11 *Tamlin v Hannaford* [1950] 1 KB 18 at 25, [1949] 2 All ER 327 at 329, CA.

12 *London County Territorial and Auxiliary Forces Association v Nichols* [1949] 1 KB 35 at 47, [1948] 2 All ER 432 at 434, CA; *Territorial Forces Association v Philpot* [1947] 2 All ER 376; *Tamlin v Hannaford* [1950] 1 KB 18, [1949] 2 All ER 327, CA. Where, however, a statute specially incorporated the Commissioners of Works, for the purposes of the statute, the corporation was held not to be entitled to Crown immunity either because it did not represent the Crown or because provisions negating the particular immunity claimed were incorporated into the statute: *Re Wood's Estate, ex p Works and Buildings Comrs* (1886) 31 ChD 607 at 619, 621, 622, CA.

