

Revision Summary Chapter 19

Incorporation and bodies corporate

- A company can be incorporated by Act of Parliament, Royal Charter, or registration. The vast majority of companies are incorporated by registration.
- Promoters of a company will be personally liable for any contracts entered into prior to the company being fully incorporated.
- Public companies may offer shares to the public, are subject to minimum capital requirements, must have at least two directors, and are legally required to appoint a company secretary.
- Private companies cannot offer shares to the public, have no minimum capital requirements, can be formed with one director, and do not need to appoint a company secretary.
- All companies have corporate personality, which means that a company is a legal person, with many of the same rights and abilities as a natural person.
- In a company limited by shares, a shareholder's liability is limited to the amount unpaid on their shares. Where the company is limited by guarantee, a guarantor's liability is limited to a specified amount.
- A company's corporate personality can be set aside, or pierced, by statute or the courts (although the courts will only do so in one instance and only then if it is necessary to do so).
- A company's constitution is found principally in its articles of association, which provide the internal rules of the company.
- The purpose of a company may be limited by placing a restrictive objects clause in the company's articles. In the absence of such objects, the company has unrestricted contractual capacity.
- A company may alter its articles by passing a special resolution, but statute may limit the company's ability to alter its articles and any alterations must be exercised bona fide for the benefit of the company as a whole.
- The constitution of a company forms a statutory contract between (i) the company and its members; and (ii) the members themselves. Only those provisions relating to membership rights will form part of the statutory contract.
- Two or more persons who wish to carry on a lawful business with a view to profit can create a body corporate known as a 'limited liability partnership' (LLP).