placing the advertisement that it is not discriminatory and it is reasonable for him to do so, the publisher will not commit an offence but the person placing the advertisement will. The matter is triable summarily and can result in a fine of up to £5,000.

Education

The education of children with special educational needs and of students with learning difficulties is consolidated in the Education Act 1996. The Disability Discrimination Act 1995 made some modest changes to legislation existing in 1995 requiring governing bodies and local authorities to provide *information* as to arrangements made and facilities for disabled pupils and students. These provisions are now to be found in the Education Act 1996 (see s 528 (duty to publish disability statements)).

Public transport

Transport facilities are limited to access improvements provided this does not involve altering the physical features of the vehicle and, with rail, the changes relating to access do not take effect until 2020. Other forms of transport, e.g. by aircraft, may be brought in at some time in the future by regulations.

The Disability Rights Commission

The Disability Rights Commission Act received the Royal Assent on 27 July 1999. It sets up the Disability Rights Commission. The DRC will:

- work towards eliminating discrimination against disabled people;
- promote equal opportunities for disabled people;
- provide information and advice in particular to disabled people, employers and service providers;
- prepare codes of practice and encourage their use;
- review the working of the Disability Discrimination Act 1995;
- investigate discrimination and ensure compliance with the law;
- arrange for a conciliation service between service providers and disabled people to help resolve disputes on access to goods and services.

The major powers of the Disability Rights Commission are as follows:

- ***The conduct of formal investigations***. The Commission may conduct a formal investigation into alleged discrimination and it may be *required* to do so by the Secretary of State.
- ***The issue of non-discrimination notices***. If after a formal investigation the Commission is satisfied that a person is committing or has committed an unlawful act, it may issue a non-discrimination notice which may include recommendations as to action which the person concerned could reasonably be expected to take to comply with the law. The notice may also require the drawing up of an *action plan* by the person who is the subject of the notice to change procedures, practices and policies or other arrangements which have caused or contributed to the breach of law.
- ***Non-discrimination agreements***. As an alternative to setting up an investigation or issuing a non-discrimination notice the DRC may make an agreement with the person concerned that no action will be taken if there is an agreement that the person concerned will take such action as may be specified in the agreement.

Non-compliance with a non-discrimination notice, agreement or action plan makes the offender liable to a fine of up to £5,000.

Disability: reform

The Disability Discrimination Act 1995 (Amendment) Regulations 2003 came into force on 1 October 2004. They extend the Disability Discrimination Act 1995 to cover partnerships, qualifying bodies, vocational training, employment agencies, barristers and advocates and the police. The regulations also remove the small employer exemption. Employers with less than 15 employees were not covered though associated organisations were taken into account such as the total number of employees in a holding company and its subsidiary.

Additional areas of discrimination

Regulations as indicated have brought in new areas of discrimination consequent upon EU directives as follows:

- ***The Employment Equality (Religion or Belief) Regulations 2003 (SI 2003/1660)***. These regulations that came into force in December 2003 make it unlawful to discriminate on grounds of religion or belief in employment and vocational training. They prohibit direct and indirect discrimination and harassment on the grounds of any religion, religious belief or similar philosophical belief. There is the usual general occupational requirement defence and a special one allowing bias where the employer has an ethos based upon religion or belief.
- ***The Employment Equality (Sexual Orientation) Regulations (SI 2003/1661)***. These regulations make it unlawful to discriminate on the grounds that a person is gay, heterosexual or bisexual in employment and vocational training. They prohibit direct and indirect discrimination, victimisation and harassment. There is a GOR that provides an exemption in the case of an organised religion to avoid conflict with the religious convictions of a significant number of its followers.

The areas of non-employment discrimination broadly follow those already considered in sex, race and disability discrimination.

However, they are not given by the regulations but appear in the Equality Act 2006 for religion or belief. The same Act gives power to make regulations to cover the non-employment areas for sexual orientation. At the time of writing these had not been made.

- ***The Employment Equality (Age) Regulations 2006.*** These regulations, which came into force on 1 October 2006, outlaw age discrimination in employment and vocational training only.

The Gender Recognition Act 2004

Under the provisions of this Act, transsexual persons are given all the rights and responsibilities appropriate to the acquired gender. Gender Recognition Panels will grant recognition in the new gender. Once this has been obtained, a person will be treated as a person of the acquired agenda so, for example, a male-to-female transsexual will be able to marry as a woman and obtain a birth certificate showing that she is a woman. State benefits and pension benefits will be given as a woman. Female-to-male transsexuals are also included.

It is not necessary for transsexuals to have had surgery, but they must have lived for at least two years in the new gender and intend to continue to live in it. They must also meet medical criteria, so that gender dysphoria must be diagnosed. Rights and obligations under the former gender are retained, e.g. as a mother or a father.

The Civil Partnership Act 2004

This Act allows same-sex partners to give notice of their intention to register their civil partnership at a Register Office. UK law restricts the registration of a marriage to heterosexual couples. Of most importance so far as the general law is concerned is to note the areas where the word 'spouse' is used to give rights or duties to heterosexual married couples and where civil partners acquire those rights and duties. For example, there is a duty to provide reasonable maintenance for a partner and the partner's children. There is also an equality of treatment in life assurance and pension benefits. There is recognition under the intestacy rules where a partner dies without leaving a will and access to fatal accident compensation. Thus, where a negligent act results in the death of a partner, the right to claim in the same way as a spouse can now be enjoyed by a same-sex registered partner. For tax purposes, civil partners will be treated in the same way as married couples so that, for example, no inheritance tax will be payable on property coming to a partner on the death of the other partner.

The Act allows couples who have entered into legally recognised overseas partnerships to be treated as civil partners in the UK.

Persons and legal relationships

The law recognises and defines certain common relationships. The following, in particular, have relevance to the various branches of substantive law dealt with in later chapters.

Agency

It is quite common to find parties having the relationship of principal and agent. Sometimes a person (the principal) wishes to have certain tasks carried out – he may wish to sell a house or buy shares in a company. He therefore employs an estate agent or a stockbroker to carry out his purposes. Sometimes an agent is a specialist who carries out a limited range of duties, e.g. an auctioneer who sells a wardrobe put into an auction. Sometimes he has wider powers, and may even be able to bind the principal in all the ways the principal could bind himself, as where the agent has a power of attorney.

An agent may be specifically appointed as such, but in some cases an agent acquires his status without specific authority being given to him, and such an agent may bind his principal by what is called usual authority. If P appoints A to be the manager of a hotel, A may be able to bind P in a contract although he had no actual authority to make it, for the law is not solely concerned with the actual authority of an agent but regards him as having the usual powers of an agent of his class. It follows that the usual powers of a hotel manager will be relevant in deciding the sort of agreement which A can make on behalf of P. The doctrine of usual authority does not apply where the third party knows that the agent has no authority to make the contract.

An agent's powers may also be extended in an emergency. If A is a carrier of perishable goods for P, he may be able to sell them on behalf of P if the goods are deteriorating and he cannot get P's instructions with regard to disposal. A becomes an agent of necessity for the purpose of sale, though his actual authority is to carry the goods. Agency may also arise out of conduct resulting in apparent authority. If a husband pays the debts which his wife incurs with the local dressmaker, he may be liable to pay for an expensive article of clothing which she buys without his consent, because the husband has, by his conduct, led the dressmaker to believe that the wife has power to bind her husband in contracts of this nature. This type of agency is not peculiar to the relationship of husband and wife and could arise wherever P holds out A as having authority to make contracts on P's behalf. It is also possible in certain circumstances for a principal to ratify, i.e. adopt, the contracts of his agent, even though the agent had no actual authority when making the contract.

At one time, if a person appointed an agent to manage his or her affairs, the appointment became invalid when the person making the appointment lost mental capacity. However, under the Mental Capacity Act 2005 it is possible to enter into an agency agreement called a Lasting Power of Attorney which does not terminate on the principal's loss of mental capacity.

Bailment

A bailment arises when one person (the bailor) hands over his property to the care of another (the bailee). The reasons for such a situation are many. The bailee may have the custody of the property by way of loan or for carriage. The article may be pledged, or left with another to be repaired or altered. Sometimes the bailee has the mere custody of the goods; sometimes he may use the property, as when he 'purchases' a radio set under a hire-purchase (or consumer credit) agreement or borrows a lawn mower. In all cases of bailment, the property or ownership remains with the bailor; the possession with the bailee.

A bailment is an independent legal transaction and need not necessarily originate in a contract. When X hands his goods to Y under a bailment Y has certain duties in regard to the care of the goods even though the bailment is not accompanied by a contract. Thus Y may be held liable for negligent damage to the goods even though he had not been promised any money or other benefit for looking after them. Bailment is considered in more detail in Chapter 22.

Lien

A lien is a right over the property of another which arises by operation of law and can be independent of any contract. In its simplest form it gives a creditor, such as a watch repairer, the right to retain possession of a debtor's property, in this case his watch, until he has paid or settled the debt, incurred in this case as a result of repairing the watch. Lien is considered in more detail in Chapter 22.

Juristic persons

As we have seen, the concept of personality is not restricted to human beings and we shall now consider corporate personality in terms of the nature and types of corporations.

The registered joint stock company

The enormous increase in industrial activity during the industrial revolution of the last century made necessary and inevitable the emergence of the registered joint stock company and the concept of limited liability. For the first time it was possible for the small investor to contribute to the capital of a business enterprise with the assurance that, in the event of its failure, he could lose no more than the amount he had contributed or agreed to contribute. The principles of 'legal entity' and 'perpetual succession' apply, whereby the joint stock company is deemed to be a distinct legal person, able to hold property and carry on business in its own name, irrespective of the particular persons who may happen to be the owners of its shares from time to time.

The concept of corporate personality is capable of abuse and where, for example, the concept has been used to evade legal obligations, the courts have been prepared to investigate sharp practice by individuals who are trying to hide behind a corporate mask or front.

Salomon v *Salomon & Co*, 1897 – The concept of legal personality (**41**)
Gilford Motor Company v *Horne*, 1933 – Looking behind corporate personality (**42**)

Joint Stock Companies are formed by registration under the Companies Act 2006 or previous Acts. The main current controlling statute is the Companies Act 2006. It provides for two types of registered companies: the public limited company and the private company. A registered company is fully liable for its debts but the liability of the members may be limited either to the amount unpaid on their shares, i.e. *a company limited by shares*, or to the amount they have agreed to pay if the company is brought to an end (wound up), i.e. *a company limited by guarantee*. Some companies are *unlimited* and the members are fully liable for the unpaid debts of the company if, and only if, the company goes into liquidation.

The allotted capital of a public limited company, which must before it can trade or borrow money be at least £50,000 with 25 per cent of the nominal value and the whole of any premium paid up, is usually raised by the public subscribing for its shares, which are issued with varying rights as to dividends, voting powers, and degrees of risk. Shares are freely transferable and are almost invariably but not necessarily listed on a recognised investment exchange such as the London Stock Exchange. When making a public issue of shares, the company is under a statutory obligation to publish full particulars of the history, capital structure, loans, profit record, directors, and many other matters calculated to assist the intending shareholder to assess the possibilities of the company. Such a document is called Listing Particulars or a Prospectus, and the directors are liable to penalties for fraud, misrepresentation or failure to disclose the material information as required by the Prospectus Regulations 2005 (SI 2005/1433) for listed securities. Part VI of the 2005 Regulations applies to unlisted securities on the Alternative Investment Market maintained by the Stock Exchange, together with the rules of a recognised investment exchange such as the London Stock Exchange.

The Listing Rules are now under the control of the Financial Services Authority: the City of London regulator which derives its authority from the Financial Services and Markets Act 2000.

The minimum number of members is usually two. However, s 123 of the Companies Act 2006 provides for the registration of private limited companies with only one member. Existing multi-member companies may also convert to one-member status. There is no upper limit.

Incorporation of companies is achieved by making an application to the Registrar of Companies at Companies House, of which the main office is in Cardiff.

The application for registration must give:

- the name of the company;
- the situation of the registered office, i.e. England and Wales or Wales (for Welsh companies if the promoters wish);
- the status of the company, i.e. whether it is to be public or private;
- a statement of initial shareholdings and a statement of capital (these two documents are required where the company is to have a share capital);
- a statement of guarantee where the company is to be limited by guarantee as where the members agree to pay a certain sum to the liquidator if the company is wound up (or is brought to an end).

The application must also state the company's proposed officers and the intended address of the registered office. It must be accompanied by a copy of the proposed articles (unless the company intends to use the model articles issued by the Secretary of State currently for Trade and Industry). There must also be a copy of the company's memorandum and a statement of compliance with the requirements of the Companies Act 2006.

The relevant documents can be delivered online as well as paper. The above requirements appear in ss 9–13 of the Companies Act 2006.

As regards the memorandum, this used to be the main constitutional document but it now serves to carry the names of those who wish to form the company and is merely a formation

document. The main constitutional document is now the articles of association and all companies have unlimited objects unless the members wish to restrict the objects by a clause in the articles.

If the application satisfies legal requirements, the Registrar will issue a certificate of incorporation which is conclusive evidence that the company was properly formed. Thus, in the UK, the activities of a company cannot be challenged even if there was a defect in the formation procedures.

The directors of a company stand in the fiduciary position of agents towards the company whose money they control, and many of the provisions of the Companies Act 2006 are framed to ensure the maximum possible degree of disclosure by the directors of information calculated to keep the members acquainted with the affairs of the company.

The Memorandum and Articles of Association are public documents which must be deposited with the Registrar of Companies at Companies House in Cardiff and are open to public inspection along with other records relating to charges on the company's property, and copies of important resolutions. Each year the company's Annual Return, giving particulars of share capital, debentures, mortgages and charges, list of members, particulars of directors and secretary, is sent by the Registrar of Companies to the company for checking and, if necessary, alteration if there have been changes, before return to the Registrar. In addition, the company's accounts and the directors' and auditors' reports are filed with the Registrar within nine months (private company) and six months (public company) of the end of the accounting period to which they relate. Under ss 477 to 479 of the Companies Act 2006 small private companies whose annual turnover does not exceed £5.6 million need not appoint auditors, so they would not file an auditors' report if they had taken advantage of the exemption. Any person may inspect the Register of Members at the Registered Office of the company.

The private company, for which the usual minimum is two members (but see above) and no maximum number, is now a firmly established feature of the business world. The private company is barred by the Financial Services Authority Prospectus Rules 2005 from going to the general public for subscriptions for its securities. As we have seen, under the Companies Act 2006, a private company limited by shares or guarantee may be formed with only one member or allow its membership to fall to one.

Dissolution of a registered company usually takes place by the company being put into liquidation, as a result of the process of winding-up.

Other types of corporation

Incorporation may also be achieved by a *Royal Charter* granted by the Crown. The procedure is for the organisation desiring incorporation to address a petition to the Privy Council, asking for a grant of a charter and outlining the powers required. If the Privy Council consider that the organisation is an appropriate one, the Crown will be advised to grant a charter. Charter companies were formerly used to further the development of new countries, e.g. the East India Company and the Hudson Bay Company, but now they are usually confined to non-commercial corporations, e.g. the Institute of Chartered Accountants in England and Wales and the Institute of Chartered Secretaries and Administrators. Universities are also incorporated in this way. It is possible for the liability of members to be limited, and a chartered company, sometimes known as a 'Common Law Corporation', has the same powers as an individual person in spite of limitations in its charter. However, it is said that the Crown may forfeit the charter if the company pursues *ultra vires* activities, and certainly a member can ask the court to grant an injunction preventing the company from carrying out *ultra vires* activities.

Jenkin v *Pharmaceutical Society*, 1921 – Charter companies: acts inconsistent with charter (**43**)

Companies have also been created by special Act of Parliament, and governed by their special Acts and also by Acts which apply to statutory companies generally, which are known as 'Clauses Acts'. These Acts together define and limit their activities. The purpose of statutory companies was to promote undertakings of the nature of public utility services, e.g. gas and electricity, where monopolistic powers and compulsory acquisition are essential to proper functioning. The liability of members could be limited. Many of the former statutory public utility companies were nationalised by other statutes and operated on a national basis. In more recent times these undertakings have been privatised and run as public limited companies, e.g. gas and electricity.

All the forms of incorporation which we have discussed have one feature in common, i.e. they produce corporations aggregate having more than one member. However, English law recognises the concept of the *corporation sole*, i.e. a corporation having only one member. A number of such corporations were created by the common lawyers. They were concerned because land did not always have an owner, and there could be a break, however slight, in ownership. Church lands for example were vested in the vicar of the particular living, and at higher levels in other church dignitaries, such as the bishop of the diocese. When such persons died, the land had no legal owner until a successor was appointed, so the common lawyers created the concept of the corporation sole whereby the office of Vicar or Bishop was a corporation, and the present holder of the office the sole member of that corporation. The death of the office holder had thereafter no effect on the corporation, which never dies, and each successive occupant of the office carries on exactly where his predecessor left off. The Bishop of London is a corporation sole, and the present holder of the office is the sole member of the corporation. The Crown is also a corporation sole. A private *registered* company can have one member but is not a corporation sole.

It does not seem likely that any further corporations sole will be created by the common law, but they may still be created by statute. For example, the Public Trustee Act 1906 sets up the office of Public Trustee as a corporation sole. The Public Trustee (who is also the Official Solicitor) works as part of the Public Trust Office in London, and is prepared to act as executor or trustee, when asked to do so, and much property is vested in him or her from time to time in the above capacities. It would be most inconvenient to transfer this property to the new holder of the office on the death or retirement of the current one, and so the person who holds the office of Public Trustee is the sole member of a corporation called the Public Trustee, and the property over which he has control is vested in the corporation, and not in the individual who is the holder of the office.

Unincorporated associations

Having considered juristic personality, we will now turn to organisations which have no personality separate and distinct from the members. Many groups of people and institutions exist which carry on their affairs in much the same way as incorporated associations, but which are in fact non-charitable unincorporated associations. Examples are cricket clubs, tennis clubs, and societies of like kind. Such associations have no independent legal personality, and their property is treated as the joint property of all the members. The main areas of legal difficulty arising in regard to these associations are as follows:

Liability of members in contract. This rests on the principles of the law of agency. Thus a member who purports to make a contract on behalf of his club is usually personally liable. The other members will only be liable as co-principals if they had authorised the making of the contract. This would be the case if, for example, the rules of the club so provided. Alternatively, the members may ratify the contract after it is made. However, it appears that no member has authority to make a *purchase on credit* (*Flemyng* v *Hector* (1836) 2 M&W 172) unless he is specifically authorised to do so. Membership of a club usually involves payment of an annual subscription and nothing more. Consequently, it is expected that everything needed by the club will be paid for from existing funds. If more money is needed, a meeting of members should be called so that subscriptions might be raised rather than pledge the credit of the members.

Liability of members in tort. A person is liable if he committed the tort and in addition may be liable vicariously for the tort of his employee (see Chapter 20). These principles have been applied to clubs in two main types of case, viz.:

(*a*) Where a person has been injured as a result of the dangerous condition of the club premises. The Court of Appeal held in *Robertson* v *Ridley* [1989] 2 All ER 474 that at common law membership of the committee of a members' club did not of itself carry with it any duty of care towards the members. However, this rule could be changed by the rules of the club which could create a duty of care in the committee in regard to the safety of club premises. It was, however, held in *Jones* v *Northampton Borough Council* (1990) *The Times*, 21 May, that if a member of a club or of its committee is given a task to do on behalf of the other members he owes them a duty of care to warn them of any circumstances of which he becomes aware which give rise to the risk of injury. In this case A who was the chairman of a sports club booked accommodation for a six-a-side football match in premises which to his knowledge had a leaking roof making the floor slippery. He was held liable to a member of the team who was injured because of this.

(*b*) Where a person has been injured as a result of the negligence of an employee of the club. The tendency here is to find that the employee is employed by the officer or committee or trustees who appointed him (*Bradley Egg Farm Ltd* v *Clifford* [1943] 2 All ER 378).

Rights of members in the assets of the association. While a club is functioning the individual members have no separate rights in its property. They do, however, acquire realisable rights when the club is dissolved. On dissolution the general rule is that the assets are sold and after liabilities have been discharged any surplus is divided equally among those persons who are members at the time of dissolution regardless of length of membership or of subscriptions paid (*Re GKN Bolts & Nuts Ltd Sports & Social Club, Leek and Others* v *Donkersley and Others* [1982] 2 All ER 855), subject, of course, to any contrary provision in the rules of the club. It should be noted that a club is not dissolved simply because it changes its name and constitution with the express or implied consent of the members (*Abbatt* v *Treasury Solicitor* [1969] 3 All ER 1175).

Rights of members under the rules. The rules of an unincorporated association constitute a contract between the members of the association and the court will grant an injunction to a member who is denied a right given under the rules, e.g. the right to vote at meetings (*Woodford* v *Smith* [1970] 1 All ER 1091), or if he is expelled either where there is no power of expulsion under the rules, or if the power exists it has not been exercised properly as where the principles of natural justice (see Chapter 3) have not been observed.

Procedure. If only a few of the members are liable no problems arise since they can all be sued personally. If, however, it is intended to allege that all the members are liable this

procedure is impracticable since all would have the right to be individually defended and represented. In this sort of case a representative action is available. Under the Rules of the Supreme Court and the county court rules the claimant may ask for a *representative order* to be made against certain members of the association and sue them. If he is successful these members will be liable to pay the damages but may also be entitled to an indemnity from the funds of the association, and in this way the claimant is in effect paid from the association's funds. Similarly, some members of an unincorporated association can sue for wrongs done to the association by means of the representative order procedure.

Trade unions

As regards the status of trade unions, the Trade Union and Labour Relations (Consolidation) Act 1992 is the governing statute and ss 10 and 12 provide that a trade union shall not be treated as if it were a body corporate but it is capable of making contracts; the property of the trade union is vested in trustees on trust for the union; it is capable of suing and being sued in its own name, whether in proceedings relating to property or founded on contract or tort or any other cause of action whatsoever; proceedings for any offence alleged to have been committed by it or on its behalf may be brought against it in its own name and any judgment made in proceedings of any description brought against a trade union are enforceable, e.g. by way of execution against the property held in trust for the union as if the union were a body corporate.

Section 127(2) extends the identical provisions to an employers' association where it is unincorporated. However, an employers' association may be a body corporate.

Under s 20 the liability of trade unions is as follows:

Industrial action against the employer of its members (primary action)

In an official strike the union would at common law be liable for torts committed during the dispute. The most usual tort is interfering with contracts of employment by organising the strike. There may be other torts for which it is liable, e.g. damage to the employer's property.

A trade union has immunity, however, in regard to the tort of interference with contracts of employment only if the industrial action is preceded and supported by a ballot of members and the action is commenced within four weeks of the ballot taking place, or such longer duration, not exceeding eight weeks, as is agreed between the union and the members' employer, unless under s 234 the union was prevented from calling action during that period by, e.g., a court injunction when the union can apply to the court for an order that the period of injunctive restraint shall not count towards the relevant period. The rationale behind the provision allowing the union and the employer to agree a period beyond four weeks and up to eight weeks is that the shorter period might pressurise the union into calling industrial action before the end of four weeks. This can prejudice continuing post-ballot negotiations.

However, a ballot becomes ineffective in any case after the end of a period of 12 weeks beginning with the date of the ballot. The employer is entitled to seven days' notice of strike action. The majority of those voting must vote in favour of the action. Under the 1992 Act the ballot must be secret, and there must be separate ballots for each place of work where there are separate workplaces. An official scrutineer must supervise the way in which voting papers are drawn up and sent to members to prevent ballot-rigging. Under s 62 balloting is extended to self-employed members of a trade union. Section 229 requires the voting papers for industrial action ballots to say who can call for such action if there is a vote in favour. The

statutory immunity of the trade union will not apply unless the action is called by the specified person.

If there is no ballot the union can be sued for an injunction and damages which are limited according to the number of members it has.

Under provisions of the Employment Relations Act 1999, which inserted those provisions into the 1992 Act, it is automatically unfair (see Chapter 19) to dismiss employees or select them for redundancy for the first eight weeks of their participation in an official and otherwise lawfully organised, protected industrial action. Dismissal during unofficial action is not protected and action is not protected if it involves unlawful secondary action.

Action which is not against the employer (secondary action)

Basically, secondary action is a term used to describe industrial action taken by workers where the real dispute is not between themselves and their own employer. A major example is a 'sympathy strike'.

Under s 224 virtually all forms of secondary action are unlawful and the union is liable for torts including interfering with contracts of employment and there is no immunity by reason of a ballot. An injunction and damages may be awarded and again the damages are limited according to the membership of the union involved.

Unofficial industrial action

Section 20 makes a trade union legally responsible for the acts of its committees and officials including shop stewards and other officials regardless of whether they are authorised by the rules of the union to act on its behalf. This means that a trade union is potentially liable for industrial action organised by any of its officials or committees unless the union takes steps to repudiate the call for action. Section 20 contains a requirement that the union must 'do its best' to give individual written notice to the members involved.

Contracts made by a trade union are normally enforceable in accordance with the general principles of the law of contract. However, under s 179 collective agreements, i.e. with an employer in regard to wages, hours and conditions of work of a group of workers, are presumed *not* to be intended to be legally enforceable *unless* they are in writing and contain a provision to that effect.

Political strikes

A political strike is not a trade dispute. Strikes against government policy are not covered by the statutory immunity. In *Beaverbrook* v *Keys* [1978] IRLR 34 the TUC's 'Day of Action' against the then Conservative government and its policies was ruled unlawful.

Citizen's right

Under s 235A of the 1992 Act any individual who is deprived or likely to be deprived of goods or services because of an unlawfully organised form of industrial action can bring proceedings before the High Court to restrain the unlawful action. Such an individual can apply to the Commissioner for Protection against Unlawful Industrial Action for assistance at his office in Warrington.

Essential workers

In contrast to some other European countries UK law does not impose more stringent restrictions on its essential workers such as firefighters. It once did but the criminal sanctions as they were became repealed shortly after the Second World War.

Human rights law

Article 11 of the Convention which is given direct effect in the UK by the Human Rights Act 1998 gives a right of association which extends to membership of and protection by trade unions. However, Art 11 does not expressly include a right to strike and the European Court of Human Rights has not implied one. Contracting states are left a choice as to how the freedom of trade unions can be safeguarded.

The partnership

A partnership is defined in s 1 of the Partnership Act 1890 as 'the relationship which subsists between persons carrying on a business in common with a view of profit'. It will be noted that there must be a business; that it must be carried on in common by the members (whether by all of them, or by one or more of them acting for the others, will depend on the agreement subsisting between them); and that there must be the intention to earn profits. An association of persons formed for the purpose, say, of promoting some educational or recreational object to which the whole of the funds of the association shall be devoted, and from which no advantage in the nature of a distribution of a profit shall accrue to the members, is not a partnership.

Sharing profits

Participation in the profits of a business may be regarded as *prima facie* evidence of a partnership, but it is not conclusive – the intention of the parties must be examined. Thus, an employee whose remuneration is based on a share of profits, or the widow or child of a deceased partner receiving an annuity in the form of a share of profits, would not legally be deemed to be partners. Neither does the common ownership of property constitute a partnership (see further Chapter 22), nor the lending of money in consideration of an agreement to pay the interest, or to repay the capital, as a share or percentage of profits as they accrue. (But in such a case the lender should take the precaution of having the agreement embodied in writing, signed by all the parties, and setting out clearly the fact that he is not to be considered a partner.)

Citation as partner

The question of citation as a partner is of great importance because the existence of a partnership, if such is proved, will involve all parties cited as partners in unlimited liability for the debts of the firm. Partners are agents for the firm, and can bind the other partners in contracts concerning the business of the firm whether they are specifically authorised to make them or not.

No formalities

Two or more persons can combine to form a partnership, which can be brought into existence in a highly formal or a very casual manner. *No legal formalities are required*, but it is desirable and usual for the rights and liabilities of the partners to be defined in a formal Deed of Partnership, or at least in a written Partnership Agreement. On the other hand, a mere oral agreement is equally binding, and in extreme cases a relationship of partnership may be inferred from the conduct of the parties. The partners are at liberty to vary the arrangements made between them and, where the conduct of the parties has for a lengthy period been inconsistent with the terms as originally agreed, it will be presumed that they intend that the new arrangements shall be binding on them. The Partnership Act 1890 makes provisions as to contribution of capital, division of profits, rights of partners to participate in active