Law of Associations

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Topic 1: Unincorporated Non-Profit Associations	
The nature of unincorporated non-profit associations	
Key Points:	They are **not a legal entity, in reality is not more than the aggregate of all its members at a particular time**. Normally formed for social, religious, educational, literary, artistic, charitable purposes – for 'non-profit' reasons. *Conservative and Unionist Central Office v Burrell (Inspector of Taxes) [1980] 3 All ER 42* established 6 characteristics which are either essential or normal of a non-profit association: ○ There must be members of the association ○ There must be a contract binding members among themselves ○ There will normally be arrangement for meetings of members ○ A member will normally be free to join/leave ○ The association will normally continue in existence independently of any change in the composition of the association; and ○ There must have been a moment in time when people banded together to form the association. Assets of associations: • They can however still be involved in profit-making activities as long as the associations objectives aren't focused on profit for members but are orientated to 'charitable' ends. • If the association has assets, they belong to the members for the time being (subject to the rules) – *Kibby v Santiniketan Park Association Inc*
Re James Alexander Bacon, Steve Black and Kevin Reynolds (1989) 25 FCR 495	Key principles: • **Lack of Separate Legal Personality:** An unincorporated association is not a separate legal entity distinct from its individual members. It has no independent corporate capacity to hold property or enter into contracts in its own right. • **Contractual Matrix:** The internal structure and relationship between members of an unincorporated association are governed fundamentally by contract, as established by the association's rules, constitution, or implied agreement among members. • **Property and Gift Interpretation:** Property or gifts directed to an unincorporated association are typically construed as gifts to the existing members jointly or subject to the contractual rules of the association, unless framed properly as a trust for charitable purposes.
Liability of members	*Wise v Perpetual Trustee Co Ltd* [1903] AC 139

	• Held: trustees are personally o the lessor and they are not entitled to be indemnified by ordinary members of the association. Members of peculiar nature association perpetually change. It is not a partnership and not an association for gain. However, if the rules of the association are regarded as legally binding and the members have agreed to accept greater liability then they will be bound by that.
Formation	Little formality required, although usually members adopt a name and set of rules for themselves. Common law restriction on choosing a name is that a person doesn't use it to deceive – *Earl Cowley v Countess Cowley [1901] AC 450.* Where a committee is formed, the committee members are often personally responsible for debts incurred in the name of the association – *Bradley Egg Farm v Clifford* [1943] 2 All ER 378
Gifts	*Bacon v Pianta* (1966) 114 CLR 634 - According to the High Court, which applied the reasoning in Leahy's case, a gift to an unincorporated association is valid if it operates as one to the individual members at the time of the bequest. However, if it is a gift in trust 'for the benefit of both present and future members', it may well fail as not vesting within the perpetuity period, and if it is a trust for a purpose, it will fail unless charitable. The High Court held that the gift in question was a noncharitable-purpose trust.
Court's intervention in internal management	
Cameron v Hogan (1934) 51 CLR 358	There are 5 exceptions to the general assumption that these types of associations are not legally binding. Held: Any rules the association has to regulate its affairs do not necessarily constitute an enforceable contract between the members and are presumed to not be legally binding. However, there are exceptions: ○ A clear indication of legal binding (Plenty's case) ○ A proprietary right in property (Rendall's case) ○ Concerns right to work (Lee's case) ○ Unreasonable restraint of trade/public policy (Tutty's case)
Legal Identity	Rules aren't intended to be contractually binding, unless rules make it clear that there are legal obligations - *Plenty v Seventh Day Adventist Church of Port Pirie* [2003] SASC 68 & *Redhead Grange Incorporated v Davidson* (2002) 55 NSWLR 14 • Some exceptions where court has intervened: ○ Disputed property rights - *Rendall-Short v Grier [1980] QdR 100* ○ Applications of public policy justifying judicial intervention - *Australian Football League v Carlton Football Club Ltd* [1998] 2 VR 546 ○ The enforceability of unreasonable restraint of trade - *Tutty v Buckley* (1971) 125 CLR 353 ○ A denial by committee members of the association of a 'right' to work in a chosen field - *Nagle v Fielden* [1966] 1 All ER 689 • As an association like this is not a legal entity in its own right, it lacks 'the necessary personality' to enter into binding contracts.

	◦ Any contract will have to be made with all the members or with an agent acting on behalf of the members to be enforceable. ◦ Members of an association are not generally liable for contracts made on their behalf by committee members – *Freeman v McManus* [1958] VR 15. • The liability of members in respect of tort claims is determined by general legal principles. Membership of the association doesn't itself create any special duty of care. Committee is liable as occupiers of the premises (based on Bradley's case) *Camenzuli v Morrison* [2022] NSWCA 51 - Courts treat the internal rules and pre-selection mechanisms of voluntary, unincorporated associations as domestic or political matters rather than enforceable legal contracts, barring clear property or civil rights infringement.
Topic 2: Incorporated Non-Profit Associations	
Key points	To avoid some of the problems with unincorporated non-profit associations (e.g. limited enforceability by members of association's rules; contractual enforcement; potential personal liability for committee members; uncertainty surrounding enforceability of gifts made to an association), once registered under relevant legislation an association becomes incorporated and is given legal entity status as a body corporate.
Legislation - Associations Incorporation Act 2009 (NSW)	• S3 - Objects ◦ s3(a) to establish a scheme for registration of associations "*for purpose of small-scale, non-profit and non-commercial activities*" including: associations that are currently unincorporated or incorporated under other legislation. ◦ s3(b) to make provision with respect to the corporate governance and financial accountability of associations • s5 – an organisation provides pecuniary gain for its members if: it carries on an activity for purpose of securing pecuniary gain; or it has capital that is divided into shares or stock held by the organisation's members; or it holds property in which members have a disposable interest; or it is included in a class of organisations that is prescribed by the regs for the purposes of this subsection. • S5(2) – won't be pecuniary gain if: ◦ organisation established for protection of trade, business, industry but the organisation doesn't take part in any such trade, business, industry; or ◦ members derive pecuniary gain by way of bona fide payment of remuneration or through enjoyment of services provided by organisation for social, recreational or educational or other purposes; or ◦ members compete for trophies or prizes in contests directly related to objects of organisation • Steps to register: ◦ Five or more individuals authorise an application for incorporation/registration that includes a statement of objectives; and a copy of the associations proposed constitution