

COMPANY LAW – LECTURE NOTES

I. DISTINCTIONS BETWEEN CORPORATIONS AND PARTNERSHIPS

I. Definition of a "Company"

- A company is a "corporation" – an artificial person created by law.
- A human being is a "natural" person.
- A company is a "legal" person.
- A company thus has legal rights and obligations in the same way that a natural person does.

II. Companies and Partnerships Compared

- (a) A company can be created only by certain prescribed methods – most commonly by registration under the Companies Act 1985. A partnership is created by the express or implied agreement of the partners, and requires no formalities, though it is common to have a written agreement.
- (b) A company incurs greater expenses of formation, throughout its life and on dissolution, though these need not be paid.
- (c) A company is an artificial legal person distinct from its members. Although in Scotland a partnership has a separate legal personality by virtue of s.4(2) of the Partnership Act 1890, this is much more limited than the personality conferred on companies.
- (d) A company can have as little as one member and there is no upper limit on membership. A partnership must have at least two members and has an upper limit of 20 (with some exceptions).
- (e) Shares in a company are normally transferable (and can be in a public company). A partner cannot transfer his share of the partnership without the consent of all the other partners.
- (f) Members of a company are not entitled to take part in the management of the company unless they are also directors of it. Every partner is entitled to take

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