

## THE POWERS AND CAPACITIES, AND LIABILITIES, OF ROYAL CHARTER CORPORATIONS

Does a Chartered Corporation as an artificial legal or juristic person or entity (being an incorporate person having artificial personality) have all the powers and capacities of a natural living person? - in contrast to a Statutory Corporation which has only the powers expressly given to it by the Statute that creates it.

YES, it does ('speaking generally') - BUT subject to any restrictions in its Charter or in the Statutes established under its Charter (as enforced for eleemosynary chartered corporations such as universities and Oxbridge colleges by the role of the Visitor); and subject also to any restrictions within the common law or as set by legislation (eg charity law, health & safety law, consumer protection law, data protection law, the recently enacted law on corporate manslaughter).

Authority for the above answer YES (albeit 'speaking generally') -

\* 'English Private Law' (OUP, 2007), Ch 3 on 'Companies and Other Associations' - In para 3.29 it is warned that 'it cannot safely be assumed that all corporations possess the same capacities as each other, that all corporations possess the same capacities as natural persons' and later in para 3.39 the distinction is made between statutory corporations and chartered corporations. The former 'have such powers as are expressly stated in the statute, or may fairly be regarded as incidental to, or consequential on, these express powers, and in the event that they purport to act in a way that lies outside the scope of their powers, their acts are void because ultra vires'. But the chartered corporation 'has unlimited powers, unless expressly or impliedly limited by statute, and it may therefore validly act in a way that is not expressly authorised by statute' - adding, 'or indeed in a way that is expressly prohibited by its charter [citing 'Sutton's Hospital' as below]' and also 'although if it does act in such a way, its charter may be revoked by [the Crown via] the proceedings on [or known as] a 'scire facias' [a writ to in effect cancel a Charter] and for this reason, a member can obtain an injunction restraining the corporation from the commission of an unauthorised act'.

\* 'Halsbury', Vol 24 (2010) - This text surely must count as the definitive statement on this issue? It says: 'A corporation aggregate... [is] vested by the policy of the law with the capacity of acting in several respects as an individual' (para 312). And: 'Corporations may be created either by statute or by royal charter, and a fundamental distinction exists between the powers and liabilities of the two classes. Statutory corporations have such rights and may do such acts as are authorised directly or indirectly by the statutes creating them; chartered corporations, speaking generally, may do everything which an ordinary individual may do, but are subject (in the manner of any individual) to any restrictions imposed directly or indirectly by statute. When a corporation is created otherwise than by the authority of Parliament, all incidental powers and liabilities attach as a matter of course. Thus generally, although there is no express power conferred to purchase land or to sue or be sued, the corporation may so purchase, or sue or be sued, as fully as though all these necessary incidents had been expressly given.' (para 424). Plus: 'A corporation created by

charter has at common law power to deal with its property and to incur liabilities in the same way as an ordinary individual.’ (para 431); but in contrast: ‘The powers of a corporation created by statute are limited and circumscribed by the statute which regulates it, and extend no further than is expressly stated therein, or is necessarily and properly required for carrying into effect the purposes of its incorporation, or may be fairly regarded as incidental to, or consequential on, those things which the legislature had authorised. What the statute does not expressly or impliedly authorise is to be taken to be prohibited.’ (para 432). Thus, a statutory corporation acting beyond the powers given within its creating statute is acting ultra vires and any such ‘ultra vires transaction... is void ab initio and has no legal effect’ (para 442).

\* Note Halsbury 2010 follows Halsbury 1998 and 1909 - Thus, at 1909 para 801 we have: ‘A corporation as a general rule and apart from the operation of general or specific statutes has the same powers and is subject to the same liabilities as a natural person’. While at 804, we find that the statutory corporation ‘can do only such acts as are authorised directly or indirectly by the statute creating it’ - but the non-statutory corporation ‘speaking generally, can do everything that an ordinary individual can do unless restricted directly or indirectly by statute’. Para 805 explains that the ultra vires limitation of powers applies only to a corporation created by statute. From the 1998 edition we find that a corporation aggregate is ‘vested by the policy of law with the capacity of acting in several respects as an individual’ (para 1005) and at para 1130 a similar wording as in the 1909 edition: ‘Corporations may be either statutory or non-statutory, and a fundamental distinction exists between the powers and liabilities of the two classes. Statutory corporations have such rights and may do such acts only as authorised directly or indirectly by the statutes creating them; non-statutory corporations, speaking generally, may do everything which an ordinary individual may do unless restricted directly or indirectly by statute... Where a corporation is created otherwise than by the authority of Parliament, all incidental powers and liabilities attach as of course.’ Later we get (para 1136): ‘A corporation created by charter has at common law power to deal with its property and to incur liabilities in the same way as an ordinary individual.’; while for a statutory corporation ‘what the statute does not expressly or impliedly authorise is to be taken to be prohibited’. It will be seen from the sections below that these forms of words and phrases used in the various edition of the Halsbury volume on Corporations follow the earlier texts on the Law of Corporations.

\* Grant, ‘The Law of Corporations’ (1850) - As for ‘the invention of incorporations’ it has been ‘an invention which, perhaps more than any other human device, has contributed to the civilisation of Europe, and the freedom of its states’ (p 4). The corporation has wide common law powers ‘so far as these are not excluded... by the charter or constituting act of parliament’ (p 154) - as usually in the case of corporations created by statute.

\* Shelford, ‘A Practical Treatise of the Law of Mortmain and Charitable Uses and Trusts’ (1836), p 22 - The corporation is ‘vested by the policy of the law with the capacity of acting, in several respects, as an individual’ - but (p 28) ‘some corporations have a corporate capacity for some particular purpose only’.

\* Ángell & Ames, ‘A Treatise on the Law of Private Corporations Aggregate’ (1832) - This is the American version of Kyd below and like Kyd refers to ‘certain incidents and attributes’

being 'annexed to this legal or artificial person' by the common law (p 58), including powers in relation to property (p 78) and to sue (p 207): although a comparison with the powers and capacities of a natural person is not explicitly made.

\* Kyd, 'A Treatise on the Law of Corporations' (1793), Vol 1 - The phrase copied by Shelford above is found at p 13: 'vested, by the policy of the law, with the capacity of acting, in several respects, as an individual'. And at p 69: 'When a corporation is duly created, many powers, capacities, and incapacities, are tacitly annexed to it without any express provision... [including to] do all other acts as natural persons may'.

\* Blackstone, 'Commentaries on the Laws of England' (1765), Book I 'Of the Rights of Persons', Ch 18 'Of Corporations' - The corporation allows 'a perpetual succession' and so the entity can 'enjoy a kind of legal immortality'; as in 'the case of a college in either of our universities' which has its own 'rules and orders for the regulation... of this little republic' and as the individual members come and go the corporation continues as 'a person that never dies' ('in a like manner as the river Thames is still the same river, though the parts which compose it are changing every instant'). The concept of the corporation stems from Roman law but 'our laws have considerably refined and improved upon the invention, according to the usual genius of the English nation' - and thus 'it acquires many powers, rights, capacities, and incapacities' and it may 'do all other acts as natural persons may do'.

\* Anon, 'The Law of Corporations' (1702) - The corporation 'is a Body formed by Policy or by Fiction of Law' and: 'When a corporation is duly created, all other Incidents are tacitly annexed to it, as is reflected in the Case of Sutton's Hospital...' (p 16); and (p 17): 'If the King make a Corporation by a certain name, without any words of Licence to purchase Lands, or to I plead, or be impleaded, yet the Corporation may purchase, implead, or be impleaded well enough; for by the making of the Corporation, these necessary incidents are included'(it being different if the King 'may make by special words a limited Corporation, or a Corporation for a special purpose').

\* Shephard, 'Of Corporations, Fraternities, and Guilds' (1659) - The phrase 'Fiction of Law' is used, as a 'Body Politick' in contrast to a 'Body Natural'; and they may do 'as any one man do, or be'. Moreover, it is 'needless in Law' to spell out the powers of a corporation in the case of it having capacity to sue and be sued for 'it is incident to every good Corporation, and yet it is not amiss to express it' - and similarly 'it is incident to the Corporation' that 'this Body may buy, sell, give and grant, take and have, as well as any natural body or single man by Law may so do'. And later: 'The Law in all points as to these things is the same, where the things are in the hands of a Body Politick, as where they are in the hands of a natural body'. (NB Often referred to as Sheppard.)

\* 'Sutton's Hospital' Case, 1612 (Sir Edward Coke aka Lord Coke) - In this important case Coke 'summed up the medieval rules and laid down the modern rule' concerning the creation of corporations (Holdsworth, 'English Corporation Law in the 16th and 17th Centuries', The Yale Law Journal, 1922, Vol 31, No. 4, pp 382-407); while on the 'powers and capacities incident to a corporation' Holdsworth comments: 'the wide general rules with which the law started have been modified to meet practical needs' as Coke laid down that 'other powers and capacities belonged to a corporation by necessary implication' and hence

the law came to regard 'certain powers and capacities as incident to that [corporate] personality, and as inseparably annexed to it as a natural person'. In the SH case-report we find the phrase 'tacitly annexed' used by Kyd above - 'That when a corporation is duly created, all other incidents are tacite [sic] annexed' (citing earlier case law).

So, in conclusion - All this, as Holdsworth notes, 'gives corporations great liberty of action' as lawyers 'equated [the corporation] as far as possible with the natural men' - which, however, 'is not without its dangers' and thus corporations have always been subject to the common law and also in many cases to control by a Visitor, as well as by what evolved 'as a matter of public policy' and as 'a necessary and salutary restraint' in the form of 'the doctrine of ultra vires' (in relation to statutory corporations - thus, Street, 'A Treatise on the Doctrine of Ultra Vires', 1930, at p17 is clear that the doctrine of ultra vires is 'inapplicable' to certain kinds of corporation such as eleemosynary ones while being applicable to chartered corporations such as municipal ones). Indeed: 'This idea that the corporation is to be treated as far as possible like a natural man is the only theory about the personality of corporations that the common law has ever possessed. It is a large and vague idea, but, on that account, it is a very flexible idea... the view that the corporation was to be given, so far as was consistent with its artificial nature and with the purposes for which it was created, the capacities and liabilities of the natural man is probably as workable a theory of corporate personality as can be devised - provided that the means of enforcing corporate liabilities civil or criminal are adequate, and provided that the law is enforced with vigilance'.

Finally and more as a By The Way, the key significant modern study of university governance - as controlled by a mix of the law of corporations, of charity law, and more recently for the English university of the regulatory regime set by the OfS under the authority granted to it by the Higher Education and Research Act 2017 - is Edwin D. Duryea, 'The Academic Corporation' (2000), which is focussed on US universities and colleges but its two chapters on the 'Medieval Origins' and 'English Antecedents' are of relevance when we consider the UK's pre-92 chartered universities and the Oxbridge colleges. He tracks the concept of the 'corpora' or 'universitas' through Roman law and into the creation (from the guilds or societies as collectives of scholars) of the 'studium generale' as the corporate University of Paris - and a bit later a similar process happened in Oxford as well as in Cambridge, and then their many colleges sprung into being duly incorporated by Royal Charter. Around the same time we see the trades guilds of London become by the award of Royal Charters the livery companies, some of great wealth, still with us today (Palfreyman, 'London's Livery Companies'); and we also find boroughs across the land becoming municipal corporations (corporations as registered commercial companies come very much later).

There is, of course, a huge difference in that the US higher education institutions and also the English universities except Oxford & Cambridge are governed by their lay-majority councils/boards while both Oxford and Cambridge along with all their colleges are entities governed by their sovereign bodies of academics, folk mostly denied elsewhere in the world any formal constitutional power outside of Oxford & Cambridge. The medieval self-governing academic guild model for the Oxbridge colleges was not carried over into the legal form for the creation of the early private US universities such as Harvard and Yale, and when the model of the US public/state university came back across the Atlantic by way of

the 1900s civics ultimate power was given to the lay-majority councils (even if the civics were private chartered rather than public statutory corporations).

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