COURTS' ROLES IN CLAIMING LIMITED LIABILITY AND SEPARATE LEGAL PERSONALITY: A CRITICAL ANALYSIS

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ABSTRACT

The globalization of trade and business is covertly altering the existing legal landscape. As a result of globalization, we have seen an increase in the circulation of goods, services, and financial arrangements across the entire world. Large publicly traded corporations are no longer the dominant force on the global stage. Business opportunities are being pursued by corporations that are privately held as well as publicly held through the use of branches, foreign subsidiaries, and joint ventures. In this article, we discussed a critical analysis in light of different cases, and for critical analysis, the qualitative research methodology has been applied.

KEYWORD: Separate Personality, limited liability, corporate evils, case laws.

INTRODUCTION

Business globalization is subtly altering the legal landscape. We have seen an increase in the flow of goods, services, and money around the world due to globalization. Large public companies no longer dominate the global market. Through branches, overseas subsidiaries, and joint ventures, privately and publicly held corporations are pursuing business opportunities. Nevertheless, despite these intricate and high-stakes mergers, the fundamental idea of incorporation—"*limited liability and separate legal personality"* —remains the same. In *" Gallagher v. Germania Brewing Co., 53*

Minn. 214 (1893)," (Gallagher v. Germania Brewing Co., 53 Minn. 214 (1893). It has been established that, despite the fact that a corporate entity is a separate legal personality, it is actually an association of individuals who are the beneficiaries of the corporate property. In reality, all businesses are run by individuals. Consequently, based on these principles, there is always a chance for fraud and malpractice, and when that happens, the court system pierces the veil of incorporation for justice.

The two ideas research just described are the cornerstones of current company law, and the court system has worked hard to uphold them, as evidenced by numerous cases. Defining each term before arguing that *"limited liability and separate legal personality"* (Ireland, 2010) are essential to a corporation, This essay's main goal is to critically examine the solid assumptions that underlie company law to determine whether it is appropriate for judges to use case laws to lift the veil and hold parent companies accountable for the debts of their subsidiaries. The notions will be discussed first, then concentrating on the criticisms they have prompted. An effort will then be made to determine how much of the curtain can be lifted to conclude the sustainable development of penetrating the system's governance.

SEPARATE CORPORATE PERSONALITY

The *"the Joint Stock Companies Act 1844 (7 & 8 Vict. c. 110)"* (Barnes, V., & Newton, L. 2022) was the first to allow incorporation by certification, but limited liability was not a concept at the time. As a result of incorporating, the "*thing"* (Company) becomes a distinct legal entity, a *"legal person,"* with the ability to incur legal responsibilities and exist independently of its members. After that, company law was significant consolidated legislation. Although the term *"artificial person"* is frequently used, Its consequences were not completely understood until a landmark decision at the end of the nineteenth century known as *" Salomon v. Salomon & Co Ltd [1897] AC 22, in as stated by Lord Macnaghten."* The corporation is remarkably separate from the subscribers in terms of personality under the law. While the company may remain unchanged following integration, the same individuals will continue to serve in management roles and receive profits (Shub, 2006). The subscribers will not be held liable in any way that is not expressly provided for by the Act. Therefore, even though the company is controlled by its shareholders, the House of Lords asserted that the corporation is not inherently acting as its agent (Salomon v. Salomon & Co Ltd 1897).

The establishment of the company as a separate entity is crucial because it gives it the freedom to evolve into a tool for business shaped by those in charge of it. According to the well-known study by Berle and Means, a company is a creature of its rights, and that control and ownership are in different hands. Marxists, However, it has been criticized for dehumanizing the connection among capitals and labours. Theoretically, this concept could be unfavorable for shareholders, especially if they assert an introspective loss claim. This rule has been upheld in many instances, including *" Lee vs. Lee Air Farming Limited, 1960, where it was decided that Mr. Lee and the Corporation* *could act in two capacities as distinct legal entities. It has even been used when the founder of the company was not the beneficiary of the approach, like in case of Macaura v Northern Assurance Co Ltd [1925] AC 619."* This demonstrates the truth of Gooley's assertion that the separate legal personality ideology is a *"two-edged sword."* In definitions of capitalism, growing a business into a titan was a wise move, but this led to much unethical behavior (Macaura v Northern Assurance Co Ltd [1925] AC 619). Consequently, the English System is strongly entrenched in Solomon's judgment that a corporation must be regarded as a distinct legal entity (Lee vs. Lee Air Farming Limited, 1960).

LIMITED LIABILITY

The concept of limited liability is another crucial component of common law. This is related to distinct corporate personality. The important distinction is that members of the company are only liable for the insignificant value of the share, and anything over cannot be recovered. The rule, nevertheless, only applies if we concentrate on the members' positions and if the company is still in operation. There will be no protection for members who participate in management, and the agency doctrine will determine how much liability they may incur. Now, however, our attention is focused more on those who typically receive protection from being personally liable. Each company member limited by shares is responsible for paying the full share value unless paid in full, as is common knowledge since a company can be limited or unlimited (Butarbutar, 2022). As a result, the company, not the member, is responsible for any obligations that the company incurs. The idea is the exact opposite of a non-profit organization. The real impact of limited liability in English law manifests itself in a legal interaction between the organization and its members in the event of the company's insolvency. The question of whether the liquidator can make contributions from its representatives during liquidation arises. In these circumstances, limited liability is impossible to determine, and the Insolvency Act of 1986 makes members liable. Fortunately, a company that has issued shares does not need any additional contributions, effectively granting its member's limited liability (Chassang, S., & Kapon, S. 2022).

The limited liability provision allowed the large, modern businesses that now control the economy to expand. Previously, businesses with significant share and loan capital were granted this privilege; however, in recent years, entrepreneurs and investors have also been granted it, creating a booming market. The limited liability notion is crucial because it safeguards the business and its owners and makes it easier to pursue any potential business ventures. The principle also promotes corporate investment, which is crucial for accelerating societal advancement. Even one might contend that the doctrines were only partially effective because they gave shareholders a way to avoid responsibility, which led to widespread fraud. Therefore, it is impossible to say that the creditors' claims have been fully satisfied. Company law has made two significant attempts to stop instances of rule abuse. They engage in wrongful and fraudulent trading. While the latter was designed to prevent punitive abuses resulting from negligent rather than deceptive practices, the former was formed to penalize those who commit fraud on creditors. It is crucial to discuss alternatives to limited liability in this context, such as commensurate liability, which gives the lienholder the right to demand repayment from each shareholder in an amount proportionate to that shareholder's equity stake in a company when the latter's assets are insufficient to cover the creditor's claim. These alternatives, however, are never able to achieve the desired outcome (Østbye, 2022).

EXCEPTIONS TO THE PRINCIPLES

The fundamental rules of company law mentioned earlier have two exceptions, specifically when a company and its shareholders have an agency relationship based on the facts. The caregiver company acknowledged that the subsidiary acted as its representative in the transaction in *" Smith, Stone and Knight Limited v Birmingham: 1939,"* even though a company is not per se the agent of its shareholders according to Salomon's case (Smith, Stone and Knight Limited v Birmingham: 1939). In order to determine the relationship of agency, Atkinson J. identified several factors, including who ran the company, who garnered the profits, who was the head, etc (Biswas, 2022). This case demonstrates that agency relationships are possible but must result from factors other than simply sharing control. Some enterprises have been explicitly declared by the courts to be nothing more than names; for example, *" Gencor ACP Ltd & Ors v Dalby & Ors [2000] 2 BCLC 734, The company was deemed to be devoid of physical assets and to have earned profits despite this. This is the second instance in which the corporate structure only serves as a front to hide the truth. As a result, even though the concept of limited liability may be straightforward to implement, it encourages shareholders to begin gambling with their finances, which could cause the creditors to suffer sizable losses, some of whom may not be able to deal with it."* (Gencor ACP Ltd & Ors v Dalby & Ors 2000)

HOLDING SUBSIDIARIES LIABLE THROUGH CORPORATE VEIL

Due to the expansion of business, it is now impossible for one company to maintain control over all aspects of the industry. To carry out its obligations effectively, it divides its operations among several businesses, each with a distinct corporate identity. All of the subsequently established businesses are interconnected, each of which is a distinct legal entity with limited liability for its shareholders. The question of whether a holding company can be made accountable for the debts of a subsidiary company now arises. Due to the lack of an express statutory provision in corporate law and common law, the law on this matter is unclear; however, particular instance laws hold and exempt the parent company as the parent company sees fit (Shoroye, B. S. 2022).

Limited liability is also available to corporations that own stock in other corporations. In " *In re Polly Peck International plc: ChD 1996, a subsidiary with Cayman Islands incorporation,"* company-issued debt securities to the general public and loaned the profits to its holding company. The parent company guaranteed the problem. The holding company was found to be a guarantor of its subsidiary and entitled to submit the proof of the subsidiary's bankruptcy as a contingent lender (In re Polly Peck International plc: ChD 1996). The limited partnership was accused of acting as the main company's representative when it issued debt securities, but the court also dismissed this claim, refusing to lift the guise. However, the rules established in the Salomon case are widely regarded as the foundation of company law, which did not stop the courts from removing the curtain to avoid injustice. Piercing the company veil entails putting aside the organization and looking outside of it to hold a person accountable for mistakes. However, it is clear that English courts are having trouble using words like *" simple deception, charade, dummy, and change ego "* in their rulings. Even so, incorporation does not completely *"cast a veil over the personality of a body corporate through which the courts cannot see,* as noted by Lord Denning in *Stores Ltd. Vs Inland Revenue Commissioners Same V. Mcgrfgor (Inspector Of Taxes),"* which did not stop the courts from drawing back the curtain (Stores Ltd. Vs Inland Revenue).

The courts have the ability and frequently do so. They examine what is hidden behind them. As a result, the court keeps an eye out for any abuse of the corporate structure. It was decided that the company was a pretense even in the *"Jones v Lipman [1962]"* case. The veil of incorporation will be lifted when the holding company forms a subsidiary company intending to commit fraud. The intention is to be deduced from the situations and evidence to support it. This will become clear upon a thorough analysis of these cases (Jones v Lipman 1962).

The issue with English courts is that they hold shareholders liable for the hirer, and the Salomon concept—which emphasizes the distinct legal identities of each member of the group—is at the center of most group law decisions. It is frequently asserted that this is how courts maintain the Salomon principle. The *" Adams v Cape Industries Plc [1990] Ch. 433 (27 July 1989),"* which altered the court's perspective on the issue of lifting the veil to define a controlling interest, held that if the holding company exerted significant control over the operations of the subsidiary company and to the large extent that the retention company ran the company's policies of its subsidiary, then there was a controlling interest (Adams v Cape Industries Plc 1990). The justifications for piercing the corporate veil have since been clarified by courts and bolstered and included First, if the court is trying to interpret a law, agreement, or another record that calls therefore for a veil to be raised; second, if the court is persuaded that the corporation is a *"mere facade;"* and third, if it can be established that the corporation is an approved agent of its members. The European Court of Justice (ECJ) demonstrated in the case *"Allen v Amalgamated Construction Co Ltd (C-234/98) EU:C: 1999:594"* It was prepared to make necessary adjustments to a company's internal processes. In *"Pirelli Cable Holding NV and others (Respondents) v. Her Majesty's Commissioners of Inland Revenue (Appellants),"* The court made it possible to investigate the business practices of both the parent and the subsidiary enterprises. The courts will take great care to prevent piercing the corporate veil while still making valid inquiries. Given the current circumstances, It is very challenging to come to the conclusion that the court system should arbitrarily throw open the door and examine a subsidiary's operations. Research believe that the relevant conditions should be known to the Court system (Pirelli Cable Holding NV and others (Respondents) v. Her Majesty's). The separate entity rule of company law cannot be disregarded because there is evidence that Companies in groups are handled as a single entity. This could be used to undermine each company's distinct legal personality. From a different angle, When the judicial system is contemplating whether or not to hold the holding company liable, another line of reasoning is that the holding company should avoid combining with the subsidiary in order to keep things straightforward and maintain the subsidiary's unique identity. Additionally, the ruling in *"DHN Food Distributors v Tower Hamlets LBC [1976] 1 W.L.R. 852 (04 March 1976)"* that lifted the veil and regarded the enterprises as one has always drawn jeers and criticism. On the other hand, it has also been contended that a caregiver should not always be exempt from the negative effects and that, when appropriate, the veil should be lifted (DHN Food Distributors v Tower Hamlets LBC).

When defining a corporation, EU courts use the *"economic unit theory,"* It states that many different corporations can be treated as a single company if the same individuals run them and they impute the rights and obligations of one company to another. This allows a parent corporation to lift the corporate veil to fulfill a subsidiary's obligations when they are under the same control. Therefore, if the associates lack autonomy, courts do not apply this criterion to peek behind the scenes. Because of this, it makes no difference that an enterprise's members have different corporate personalities when they are all under the same control. Therefore, the parent business, which is the driving force behind the illegal conduct, may be held accountable for the unfair competition of any enterprise member.

These regulations have a significant impact on company law not only in the UK but also in other nations. Comparative analysis reveals that in the UK, among many other things, fraud and sham, which were previously noted, or the amount of influence the parent has over the subsidiary companies are taken into consideration before lifting the lid. In the US, the concept of separate entities is also acknowledged, and up until 1980, the equity principle served as the foundation for lifting the veil. Later on, nevertheless, the courts decided that mere regulation was inadequate and that the parent company's dominant legislation of the subsidiary companies was required, and they investigated inappropriate conduct. The UK and the US courts found several factors to support the parent and subsidiary companies' dominant control, ownership, and unity of interest. Over time, UK courts discovered that the veil of incorporation could be broken in the name of justice. Similar to this, US courts primarily base their judgments on the facts of the case. As a result, we can see a potentially dangerous difference between the two judicial systems, which ultimately threatens the corporate world. The correct perspective is that if the Legislature were to create and pass laws on this subject and clearly define the criteria that the courts should use, it would be simpler to administer justice and less likely that the parent company would be held accountable for the actions of the subsidiary. *"City of Toronto v. Famous Players' Canadian Corp. Ltd., 1936 CanLII 3 (SCC), [1936] SCR 141"*, decided by the Supreme Court, is the leading case in Canada involving piercing the veil of incorporation on the basis of an agency. Rand J. stated that the veil of incorporation may be punctured where *"When the controlling mind and will of the parent penetrate and pass through the corporate mask of the subsidiary and become, themselves, the manifesting agency, it* *can be argued that the subsidiary company is actually the marionette of the parent"* (Nzegwu, S. N., & Uhumuavbi, I. 2022).

The sacredness of Salomon's judgment is still affirmed, as was once more demonstrated in *" Ord & Anor v Belhaven Pubs Ltd [1998] BCC 60,"* which amply illustrates that the courts' conservatism is expected to persist. Another scholar in *"The main issue with the Salomon case, according to the book Overcoming Company Law: Instrumentalism, Expediency, and the Separate Legal Entity Concept, is that the English House of Lords failed to provide any guidance for the courts on how to apply the separate legal entities concept and when to refuse to uphold contracts involving the company structure"* (City of Toronto v. Famous Players').

It is argued that the Denning strategy and attitude toward Salomon at least decided to bring with them the broad application and some degree of consistency to adhere to a principle. There is a claim that the Adams decision is not at all a solution for business; rather, it has a harsher, more serious side that will deny many companies rights. The Adams decision undoubtedly benefits businesses hoping to avoid liabilities in specific circumstances. The verdict is undoubtedly still seen as more practical, but why are courts so reluctant to take these into account if that were the case? In addition, sometimes, the curtain is lifted arbitrarily to pursue justice. The judiciary needs to understand that if the curtain is lifted this way, the idea of an enrolled corporation having a separate entity is in jeopardy (Ord & Anor v Belhaven Pubs Ltd).

In spite of the separate legal entity rule, an increasing number of main company subsidiaries are appearing, and groups are owned by a centralized unit. When a subsidiary declares bankruptcy and its creditors pursue restitution from the parent company, how much is the holding company accountable for the negligence of the subsidiary? The corporate structure is creating new challenges, particularly for the creditors. When a group struggles, the parent is occasionally tempted to rely on the ideology of limited liability, allowing the subsidiary to falter in the process. In this way, the subsidiary's creditors take the biggest financial hit. Even then, it is important to remember that when subsidiary officers act during their employment, the parent company will also be held vicariously liable. However, it is important to consider whether this liability transgresses fundamental corporate law tenets like a separate entity and limited liability. The issue with this strategy is that, once business realities are taken into consideration, the discrepancy between vicarious liability and corporate law principles becomes more evident, and imposing such responsibilities weakens the subsidiary's independent existence.

One must first evaluate the scope of the title's applicability before determining the degree of the company's independent personality and restricted liability. *" Adams v Cape Industries Plc [1990] Ch. 433, According to the Court of Appeal, for better or worse, our law acknowledges the formation of subsidiary companies, which, despite being in certain ways the creation of their parent companies, would indeed be handled as distinct legal entities under the basic law with all the rights and obligations that would typically connect to separate legal entitie*"(Adams v Cape

Industries). Therefore, if an unsecured creditor is unable to reach a settlement, their only option is to file a claim against the parent company using the *"wrongful trading"* clause through the liquidator of the subsidiary company. However, this claim would only be effective if the holding company had been trying to act as a *"shadow director."* The aforementioned parent firm might not consistently act as a *"shadow director"* of some subsidiaries, though. In light of this, it might be useful to briefly consider a series of measures that were adopted to the Australian Corporations Legislation in 1993 and that, more than insolvency law, work to raise the corporate veil. In accordance with these regulations, the liquidator of a *"subsidiary"* firm may sue the *"holding company"* for damages; any money acquired in this way is regarded as a debt due by the subsidiary and is not applied to pay a secured loans of the corporation unless specific requirements are completed (Choudhary, D., Raj, K., & Pal, M. R. 2022). Nevertheless, even those clauses which can release the holding company from liability for the debt the subsidiaries accrued can be deftly defended.

CONCLUSION

Continued discussion of one of the most divisive topics in corporate law to be the Act of lifting the corporate veil. Generally speaking, as was covered in the essay, courts willing to uphold the corporate personality rule will only occasionally pierce the corporate veil. Even though litigants fervently wish and believe they should be able to "*pierce the corporate veil*," in most cases, they will not be able to. See, for example, *"Ord & Anor v. Belhaven Pubs Ltd [1998] BCC 607,"* in which the claimants asserted that the group's firms had acted as a singular entity in transferring the money and claimed that the courts would be justified in piercing the corporate veil. The court, however, rejected the allegation, pointing out that all inter-group contacts were open and conducted in accordance with the freedoms provided to commercial enterprises by the Companies Act. In various cases where it was argued that the courts should accept that legally distinct identity should not be allowed to operate as a conduit for fraud, the courts were not very helpful. The corporate veil's paradox can be found right here. The business is a person with legal responsibilities. People are managing the company on a personal level behind the curtain, and their contractual obligations should not be confused with those of the business. This seemingly obvious rule, though, has occasionally been disregarded, particularly when there was a chance of fraud. Nevertheless, because it is simple and allows for consistent judgments, the idea has largely endured.

In the EU, several conventional corporate law doctrines are used to address situations in which fraud is committed under the guise of a *"corporation."* In order to deliver justice to everyone parties and stakeholders, the Indian Supreme Court and High Courts have also used the concept of *"lifting the corporate veil."* The company management is liable for all losses once the Indian Courts lift the veil, and they must make up those losses or face legal repercussions. On the other hand, the EU demands proof of fault before the parent is held accountable. In the EU, there is less potential for liability, which could put the party who is wronged at a disadvantage financially and allow corporations to commit wrongdoing while concealing themselves behind the corporate veil.

Consequently, the European Community must promptly enact the Directive on the core rules guiding the recognized of the corporate body, ensuring that it is enforced consistently and effectively, and describe the circumstances that will cause the veil of incorporation to be lifted. Some commentators have suggested that the traditional founded sham test should be replaced with a *"genuine ultimate purpose"* test because it has been criticized as unreliable. When trying to pass the Companies Act of 2006, Parliament had a great chance to undertake a thorough revision of this concept but purposefully chose not to. There does not seem to be much judicial exuberance for such revision.

Numerous common law jurisdictions appear to have abandoned the doctrine of piercing the corporate veil, which the Common law courts typically view as an injustice. In such a situation, the courts' only goal in lifting the curtain is to restore equity. However, some courts, such as those in the US, have viewed veil piercing as more acceptable, taking into account factors such as the shareholders' inappropriate activity in attempting to dominate the organization and the strong link between the improper action and the plaintiff's injury. Because separate legal entities and limited liability are essential components of company act and one cannot dispute their importance, it is prudent to leave them alone. In my opinion, it is suitable to lift the veil only when there is emerging viable support that will help rebuild the tenets of company law while also delivering justice. According to other commentators, various factors must be considered when deciding whether or not to pierce the veil of incorporation. According to *L Gallagher and P Ziegler*, the differences between the different causes are not an issue but rather demonstrate that the courts desire to base their judgments on evidence of unfairness. The hesitation in establishing a rigid classification of situations when the veil will and will not be pierced may be due to this very reason. Consequently, all that is required is a strong legal framework to help combat the disputes that are frequently caused by different rulings and affect the standing of the justice process as a whole. No legislation or body of legal precedent can remain in existence without a strong basis. This procedure will start productive conversations that, over time, will help improve corporate law.

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