

Corporate legal personality was started by law to recognize a company as a legal entity distinct from its members. A company with such a personality is an independent legal person separate from its shareholders, directors, officers and creators.

In **Salomon v Salomon & Co. Ltd**¹ the company went into liquidation but some creditors remained unpaid. The House of Lords held that the incorporation process made Salomon and his company two separate persons and that the Company was not an agent or trustee and the court recognized Salomon as a separate person who can be a secured creditor with enforceable rights against the company.² This means that contracts of a company are not contracts of the shareholders, and debts of a company are not debts of its shareholders but are the debts of the company itself.³ This is known as the veil of incorporation as it safeguards the shareholders from being personally held liable for the liabilities of the company.

Corporate personality of a company has got several principals, and among those principles are the following:

Perpetual succession. As a separate legal person, a company will not be affected by changes which might happen such as death, transfer of shares or resignation of any members or even if all the original members die something which will influence change of membership, still the company will continue to exist. In **Re Noel Tedman Holdings Pty Ltd**⁴ the company had a husband and wife as the only shareholders and company directors. Unfortunately they died in an accident, leaving behind an infant child. After their death, still the company existed. But there was a problem as the

¹ [1897] AC 22

² Principles of Company Law 2nd Ed at page 9

³ Business Law and the Regulatory Environment. Concepts and Cases: 10th Ed at p. 826.

⁴ [1967] QDR 561

shareholders and directors had died the shares could not be transferred to an infant according to the will of the deceased. The court allowed personal representatives of the deceased to appoint directors of the company so that they could transfer shares to the child. Despite the fact that all the shareholders and directors died but the company still existed because of corporate legal personality.

Proprietary interest. Is the ability of the company to own property. The company with a corporate legal personality can own property such as land, buildings and cars. Also the company has all the rights to dispose and transfer those said properties in its own name. In **Macaura v Northern Assurance Co. Ltd.**,⁵ Macaura had sold all the timber in his estate to a company called Irish Canadian Sawmills Ltd in which he owned all the shares. Meanwhile he had insured all the timber he sold to the company in his own name. The fire broke out destroying the timber and Macaura went to claim but the insurance company refused to pay. The House of Lords said that, since Macaura had sold the insured timber to the company, he had given up his insurable interest in it and therefore, the timber was a property of the company.⁶

The ability to sue and be sued. A company as a separate legal entity, it can sue and be sued in its own name. The company can sue in respect of the rights that it has, and when it has liabilities other parties can sue against it. In **Foss v Harbottle**⁷, two shareholders of the company brought actions against directors of the company for improper use of the company's properties. The Court held that, as the injury complained was injury to the company and not to the members, such members could not take actions against fellow members. Only the company had a right to sue.⁸ Therefore,

⁵[1925] AC619

⁶ Company Law 2nd Ed at page 55

⁷ [1843] 2 Hare 461

⁸ Essential Company Law 3rd Ed at page 7

only the company can enforce its rights and members cannot take any legal action on behalf of the company.

Debt is another principle in corporate legal personality. The company being a legal person it may also have debts. If it has then the company is fully responsible to the debts that have been incurred during the course of doing business. In the case of **Re Yee YutEe**⁹ the High Court held that a director cannot be liable for the company's debts. In case the company is insolvent, members are not required to pay more than the initial amount invested on their share. This means that the shareholders are not liable to contribute anymore to the company if he has fully paid for his shares. Therefore, creditors of the company cannot take any legal action against the members if the company went into liquidation, because members are separate from the company as it was established in the case of **Salomon v Salomon & Co. Ltd.**¹⁰

Lifting of Corporate Veil.

This is an exception to the principle of corporate legal personality where the Court would disregard the separate personality of a company and treats the company as a mere agent or puppet of its controlling shareholders in order to hold them liable for the obligations of the company. This is because the veil of incorporation can lead to injustices when misused.

In **United States v. Milwaukee Refrigerator Co.**,¹¹ the court observed that *"A corporation will be looked upon as a legal entity as a general rule... but when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud or defend crime, the law will regard the corporation as an association of persons."* Due to these outcomes it became necessary for

⁹ [1978] 2 MLJ 142

¹⁰ [1897] AC 22

¹¹ [1905] 142 Fed 247

the courts to break through or lift the corporate veil, cracking the shell of corporate personality and look at the persons behind the company who are the real beneficiaries.¹²

There are different circumstances in which corporate veil can be lifted, the following are among of them under judicial:

Prevention of fraud. The Court may be willing to lift the corporate veil to make the members of the company liable if it is found that the members are plotting a fraudulent scheme behind the veil of incorporation.¹³ In **Jones v Lipman**,¹⁴ a vendor had agreed to sell a piece of land. Subsequently, he changed his mind. In an effort to defeat a move to obtain specific performance, the vendor transferred the land to a company which he controlled. The court refused to countenance this. The veil was lifted and specific performance was ordered against the vendor and the company. Therefore, when fraud has been planned behind the veil of incorporation, members of the company with knowledge of the fraudulent scheme will be guilty of a crime and will be put responsible for the debts and other liabilities of the company without any limitations.

When the company is an agent Here the agency is between the holding company and subsidiary company carrying on the same business. A holding company dominates a subsidiary company usually by owning some or all of their shares but they are still two separate legal entities. This means that each of them have got their own corporate veil. In **Smith, Stone and Knight Ltd v Birmingham Corporation**,¹⁵ the parent company owned property which was compulsorily acquired by Birmingham Corporation, Atkinson J lifted the veil so that the subsidiary company which occupied the property for carrying business could claim compensation for

¹²<http://lawteacher.net/free-law-essays/company-law/principles-of-corporate-personality-company-law-essay.php> [Accessed on 6th May 2017 at 19:30]

¹³ Company Law 2nd Ed at page 67

¹⁴[1962] All ER 442

¹⁵[1939] 4 All ER 116.

removal and disturbance on the ground of agency because the subsidiary company was operating on the property, on behalf of the parent company¹⁶. Therefore, if the subsidiary company does something illegal then the corporate veil will be lifted by the Court and holding company will be responsible for it and can be sued as if they were a single entity because the holding company is like a principal to a subsidiary company which is like an agent.¹⁷

Where the company is a sham or is formed to avoid a legal obligation. The Court will not hesitate to lift the corporate veil to make members of the company liable if its members used the veil as a way to avoid an existing legal obligation. This normally occurs when members of the company use the corporate legal personality that is separate legal entity to do some forbidden acts. In **Gilford motor Co. Ltd v Horne**,¹⁸ Horne a former employee of a company was subject to a restrictive covenant not to solicit its customers. He formed a company to carry on a business that, if he had done so personally, would have been liable due to a breach of the covenant. An injunction was granted against him and the company to restrain from carrying business. The company was described in a judgment as “a device, a stratagem” and as a mere sham for the purpose of enabling the defendant to commit a breach of his covenant against competing with his former employers.¹⁹

Protecting public policy. The courts may disregard the legal personality and lift the corporate veil when a company has been formed to accomplish an act which is against public policy and prevent transactions contrary to public policy.²⁰ In the case of **Connors v Connors Ltd**²¹ the company operating in England was under the control of Germans as they had many shares. During the First World War, England was at war with Germany and

¹⁶ Company Law 2nd Ed at page 73

¹⁷ Principles of Company Law: 2nd Ed at page 15

¹⁸ [1933] Ch. 935 C.A., [1933] All ER 109.

¹⁹ Essential Company Law 3rd Ed at page 10

²⁰ <https://blog.ipleaders.in/lifting-corporate-veil/> [Accessed on 7th May, 2017 at 15:30]

²¹ [1940] 4 All ER 174

therefore, allowing the company to operate would have meant giving money to the enemy's company something which was held to be against public policy. The Court further stated that, where there is a conflict with public policy, the court will lift the veil of incorporation.

However, there are also circumstances in which the corporate veil can be lifted under statute. Under **section 82(2)** of the *Companies Act*²² provides for a company to issue all the share certificates to the rightful owners within 60 days after allotment of any of its shares and two months after transfer of shares to a new share owner. Failure to comply with such requirement will cause the company officers to be liable. Also, under section 50(1) of the Act provides for a member of a company offering misstatements and causes others to incur loss or damage will be made liable to pay compensation.

Therefore, the effect of corporate legal personality means that the company has a separate existence from its members. However, this may be detrimental to the creditors of the company as they cannot get through the members of the company or sue them when the assets of the company are not enough to cover their liabilities.

²² No.12 of 2002

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