

# Business law assignment

[Business](#), [Management](#)



Debtor v Wilkinson It is commonplace within the law that equity will not allow an individual to use a company as a shield for improper conduct or fraud; the courts are thus prepared to pierce the corporate veil to combat fraud. Fraud allegations must be proven in depth as failure to prove such results in a penalty of payment of costs. CA Williams in the decision of Debtor v Wilkinson posited that the corporate vehicle will not be used as a device to treat employees unfairly.

Here the Defendant (Foster) purchased a hotel business from Bream's (a company) . The sale agreement included a requirement that listed employees would be retained on their original terms of employment and allowed F to maintain the name Bream's. F transferred the hotel business to another company, Debtor, of which he was the majority shareholder and which he controlled. Subsequently, one of the listed employees was dismissed by Bream's and she obtained Judgment against that company for wrongful dismissal.

The Judgment was not satisfied by F and she levied execution on the goods and chattels at her place of work. The court Marshall prior to removing the good which he had already loaded on o a truck was handed a cheque by F which was drawn on Debtor's account and the goods were returned. Debtor subsequently claimed a refund of the money from the chief Marshall. The court on appeal held that it was not the ordinary case of a third party making a claim to goods and chattels, or the proceeds thereof, which were wrongly taken in execution.

It is that of a businessman using the corporate device to further his own ends and without regard for the rights of those who work for him. The former employee was truly employed by Bream's however this company was no more than a shell, and according to the terms of the sale agreement the company was to be indemnified by F for any claim of an employee arising out of termination of employment. *William Core and Son Ltd v Doorman Young and Co Ltd* In the case of Agency this may either be expressed or implied.

In some instances it may be possible to attribute the actions of the subsidiary company directly to the parent company. This attribution is dependent however on whether activities of the subsidiary are closely and directly controlled by the holding company, and whether the subsidiary company is wholly owned by the holding company. In *William Core and Son Ltd v Doorman Young and Co Ltd* the court allowed the existence of an implied agency relationship between the Plaintiffs and another company (L) to preclude them from limiting liability. On the facts the plaintiffs supplied the defendants with barges for the removal of soil. By the negligence of a barge damage Business LAW By barge Plaintiffs brought an action under the Merchant Shipping Act to limit their liability and the question arose as to whether the plaintiffs were the "owners" or the harassers by demise of the barge. The courts held that the William Core & Son Ltd, as the agents of the Lighter company, carried on the Lighter company's business in the name of the L thus when they contracted with D they were merely acting as the agents of the L.

L was at material times still receiving the profits of the contracts and thus were in truth the owners of this lighter for all relevant purposes. The category of enemy is by far one of the more effective tools used to pierce the corporate veil. Section 5 of the Anti-Terrorism Act 2002 of Barbados pierces the reporter veil imposing criminal liability of million if a person responsible for the management or control of an entity located or registered in Barbados or in any other way organized under the assisted, aided or abetted a terrorist.

There may be instances where the statute pierces the corporate veil. Under section 22 of the Jamaica Company Act “ a company and every officer of the company who is in default shall be liable to a fine not exceeding two thousand dollars” for failure to send a copy of its articles to members. Group Enterprises Another situation where the veil is often lifted is in group enterprises where the aren’t company and a subsidiary are treated as one entity if they carry out the same business.

Smith Stone & Knight Ltd v Birmingham Corporation Atkinson J in the case of Smith Stone & Knight Ltd v Birmingham Corporation went a step further than his learned counterpart and laid down the six essential points that ought to be considered when regarding the question as to whether an agency relationship exists between parent company and subsidiary company. Here’s the property of the subsidiary company (which was owned by the parent company) was acquired and the question of compulsory purchase arose. The parent company in efforts to maximize the compensation payable argued that the subsidiary carried on business as an agent for the parent.

His Lordship posited “ I find six points relevant , (i)were the profits treated as profits of the (parent) company ? (ii)were the persons conducting the business appointed by the parent company Was the company the head and brain of the trading venture? ,(iv)Did the company govern the adventure; decide what should be done and what capital should be embarked on the venture? ,(v)Did the company make the profits by its skill and the company in any constant and effective control? In this instance the questions were answered in favor of the Claimants.

DON Ltd v Towel Hamlet This dicta was followed by Lord Denning in his judgment in the case of DON Ltd v Towel Hamlet here where the parent company requested that the courts pierce the veil because the subsidiary company had been compulsorily acquired by the local authority without taking into account the impact on both companies. Lord Denning in his ruling departed from the principle in Salomon introducing the concept of the single Economic Unit theory. According to him a single economic unit (SUE) could be chivvied by drawing an analogy with a partnership.

There was an agency relationship between the parent and subsidiary company thus the corporate veil and holding that DON were entitled to compensation, said that the group was virtually a partnership and for the purpose of compensation the two companies should be treated as one (I. E DON), and that DON (being the parent company) had a sufficient interest in the land to qualify them for compensation for disturbance. The defendants in a later case, *Wolfs*, failed in their attempt to rely on DON to base a claim for compensation.

Lord Keith, upholding the decision of the Court of Appeal held that DON was distinguishable on the facts. While in DON the company that owned the land was the wholly owned subsidiary of the company that carried on the business here C (the company that carried on the business of a bridal shop), had no control over the owners of the land, Soldered and Wolfs.

Furthermore, notwithstanding the compulsory acquisition of the shop there was no basis for which the corporate veil could be pierced to the effect of holding Wolfs to be the true owner of Campbell business or of the assets of Soldered.