

An incorporation and corporate personality law company business partnership essay...

[Law](#)



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Introduction

This essay critically looked into the concept of the core of company law. In the first part, the discussion focuses on the most famous Company Law case of Salomon v Salomon & Co Ltd [1897] AC. The principle of separate personality forms the cornerstone of English Company Law, as consolidated in the landmark decision of the house of Lords in Salomon v Salomon. Through that it will examine the concepts of incorporation and corporate personality and it can analyse the effect of corporate personality. In the second part, to restrict this power of separation, the court decided to introduce the "piercing the corporate veil" which attributes of blames. There are some circumstances which court can obtain and pull off the mask in order to look the real motives of action. Littlewoods Mail Order Stores Ltd v Inland Revenue Commissioners case is represent the above concept as we shall see on discussion below. Throughout the essay will adopt many example cases for better understand and court evidence.

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SALOMON v SALOMON & CO LTD

Mr. Salomon ran a boot and shoe business as a sole trader then decided to form the business into a limited company with the name "A Salomon & Co Ltd". In reality, almost nothing about the business had altered except the sign outside containing the word "LTD", legally everything has changed. Then, he sold the business to the company and the payment to Mr. Salomon was made by cash, who has the majority stake and debentures. The debentures amount was £10000 and had been secured by a charge collateral on the company's assets. The company ran into financial difficulties and borrowed money from unsecured creditors. Unfortunately, the company failed under financial difficulties, leaving no assets for the unsecured creditors on liquidation. The court of appeal held that the company to be 'sham' and treated as his agent. On the other hand, the House of Lords disagree and held that, as the company was a separate entity, distinct from Salomon, the debentures were valid. Thus, Salomon was entitled to the assets owing to this security. Salomon can claim the money because did not have nothing against and the debenture that issues was valid. This case is representable example for the concepts of incorporation and corporate personality.

Incorporation and corporate personality

Incorporation is the procedure to create new or existing company register as a limited company. Incorporation by registration was introduced in 1844 and the doctrine of limited liability followed in 1855. Under the company act 2006, on the registration of a company, the registrar of companies shall give a certificate that the company is incorporated. In a register company the

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assets and liabilities are those of the corporation and not of the members. Company's incorporation is the creation of two independent bodies: the company and its membership. A company once incorporated becomes a separate legal entity or personality and the liability of the members are said to be limited. This represented by *Salomon v Salomon and Co Ltd* [1897] AC 22 and *Adams v Cape Industries Plc* [1990] Ch 433 . Therefore, the company is distinct from its members, they are limited by share and they are not liable of the company's debts. The House of Lords affirmed the principle that the company was a separate legal person and can own property, sue and be sued in its own corporate name. The logic of separate personality and limited liability was not tested to its full extent until the late 19th century as exemplified by the case of *Salomon v Salomon and Co Ltd* [1897] AC 22. One of the most significant effects of corporate personality based on the most famous company law, the case of *Salomon* is that the members are not liable to pay for the debts of the corporation. Company owns property and not its shareholders. The case that unequivocal this effect is *Macaurea v Northern Assurance Co* [1925] AC 619. Company can take loans and contracted with everyone on its name. Company can employ one of its members under a contract of service like *Lee V Lee's Air Farming Ltd* [1961] AC 12. Furthermore, corporation can act tortuously like negligent or nuisance and be sued in its own name and vice versa. *Foss v Harbottle* [1843] 2 Hare 461 , *Williams v natural Life Health Foods* [1998] 1 WLF 830 are the illustrated cases. The company has perpetual succession that mean a change of membership, the death or bankruptcy of a member is not a change in the life of the company.

Littlewood

Littlewoods was a giant company which had their head offices in London. It had a 99 year lease for £23444 with Oddfellows Friendly Society and after 11 year surrendered the lease. The new agreement made the wholly-owned subsidiary of Littlewoods the new owner of the property. In addition, by reason of gave up their lease, Littlewoods took instead a lease from the Oddfellows for 22 year at a rent of £42450. Thus, with the passage of 22 years, Littlewoods had the entire freehold possession through their subsidiary. Based on this agreement Littlewoods obtained a short lease at a higher rent and therefore deductible. The court held that, if the increase of the rent was made for the purposes of trade can be deductible, but in this case the increase had clearly the purpose of acquiring a capital asset, therefore was not deductible. According to Lord of Denning it would not acceptable in the present case that wholly-owned subsidiary and parent as a separate and independent entity. As noted by Lord Denning in this case must cast a veil over the personality of a limited company through which the courts cannot see. The courts have the power, and often do, pull off the mask. They look to see what really lies behind.

Lifting the corporate veil

It continues to be one of the most litigated and most discussed doctrines in all of corporate law. This separation of the corporation and its members, which is sometimes, referred to by the phrase " The veil of incorporation". The veil creates a separate, legally recognized corporate entity and shields the people behind the corporation from personal liability. In the Salomon case, arising that members are not liable for the debts of the company and

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this may change the mentality of people that believe always are not legally responsible. The courts will break through the corporate shell and apply the principle of lifting or piercing the corporate veil. The judge can lift the veil in order to look behind of them and to discover the real situation. The motive of those behind the alleged facade is often a determining factor in the outcome of the case. The terms lifting and piercing behind the veil are also regularly used. In Salomon case, the court has been prepared to go behind the corporate veil but did not find something illegal as a result to legitimately claim money for the debentures. Littlewoods Mail order Ltd v Inland Revenue Commissioners [1969], the court removes the corporate veil to find the real situation which according the Lord Denning reject that group of companies was a single entity.

Circumstances

In view of the difficulty in conceptualising what amounts to a facade some academics offered a number of alternative definitions. The law in order to prevent fraud and torts adopted the lifting the corporate veil. There are different circumstances that courts lift the corporate veil. One of the earlier instances where the Court pierced the corporate veil was in the case of Gilford v Horne [1933] CH 935, which the company was formed for fraudulent purpose. Moreover, The court made it clear that if a group of companies was found to be a single economic unit, then it was justifiable to lift the corporate veil. This is illustrated by Adams v Cape Plc [1990] CH 433. Another situation that the court is piercing the veil is when the company can be defined as an enemy to the public or national interest for instance in the case of Daimler Co. v Continental Tyre Co Ltd [1916] AC 307. In conditions

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that the major shareholders apply their power to direct the other members to decide the undesirable because of the little influence in the decision making as happened in the case of *Re Bugle Press* [1961] CH 270. The avoidance of legal obligations is a usual phenomenon which court piercing the veil. *Jones v Lipman* [1962] 1 All ER 442, is one example of this circumstance. Conclusion - WIPLimited liability clearly encourages investments as the member's risk is minimised. Risk taking is easier for members as a result of knowledge that will not lose their personal fortune.