The consequences of a corporate personality law company business partnership essa...

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The consequences of a corporate personality have significant affects for corporations and its members. firstly Ownership of property, which can be an aspect of security with company holding the property in its own name (no shareholder rights), this gives shareholders and employees the security needed if a director is to change hand and then sell the assets owned. The advantage is that this then allows a more attractive investment to the shareholders. However looking at the case of Macaura v Northern Assurance Co Ltd [1925] AC 619, where Mr Macaura had insured timber under his name which was destroyed, the insurance company refused any claim to pay for the damages by fire for the reason he had no insurable interest as it was owned by the company, this is the same principle for a parent company who has no " interest" of its subsidiary. This can be further clarified with the case of Short v TreasuryCommissioners [1948] 1 KB 116 112 with the statement:" Shareholders are not, in the eyes of the law, part owners of the undertaking. The undertaking is something different from the totality of the shareholding" Evershed LJLimited Liability is another significant aspect, as it can mean members not being completely liable for debts. This gives shareholders a found sanctuary as it allows members to benefit from the profits of the company while knowing that their personal liability is limited to only the amount they have purchased in shares. However directors, those who run the organisation on the other hand may not be protected, and so this concept as a whole may put off potential creditors who require more security for their investment/loan. However the after effects of the Salomon case showed that there is the possibility of even limited liability for a small owned by one person, also for a one man company as can be seen in the lee v lee’s farming Ltd case.[3]The ability to sue as well as the liability to be sued is another affect, where the concept of limited liability is to an advantage of an incorporated company, it can still be of a disadvantage to third parties such as creditors. The creditor if entered into a contract will be capable of suing a company, there is still the risk it may not recover all of its money should the company become insolvent, with this though a company can sue its debtors and so it works both ways legally. Perpetual succession is another significant characteristic, while people are not ever lasting; companies in essence are unless under the company’s act 2006 (CA 2006), a company is to be terminated. There are many benefits to this, firstly shareholders are just agents of the company who come and go, of course the more shareholding a member has, the more effect on its arrival or leave. But in regards to continuous succession they come and go without affecting its existence. This means should an employer change hand or die then the employees job will not necessarily be at risk and so the company will continue to exist. With these effects being prominent, how a separate entity is applied in practice with its consequence has led to many theories. In legal practice a company much like a minor can have restrictions, for example in the memorandum and articles association a company is not allowed take on activities outside of their specified restriction, for instance the doctrine of ultra vires will actually prevent it from doing so with regards to joint stock companies. In recognising a separate entity the law takes the concept of artificial (companies) and real (human beings) which helps to understand the legal capacities involved. The fiction theory that the legal personality of an artificial entity is based on the idea that everyone has a will of their own and is capable of acting independently and to which they could be attributed to it[4]. The Salomon v a salomon co ltd shows how this was applied. Lord Halsbury mentioned how the importance to deciding was due to a question on where the artificial creation of the legislature had been validly constitutes. To which was held that as the company had actually fulfilled the requirements of the CA 2006 and so the company actually becomes a person in the eyes of law separate from its members. However critiques had argued that the use of fiction was not sufficient description as a company has perpetual succession. The concession theory is where the state is at the same level as a real person and so has the power to give or take away legal personality from groups. The difference between the concession theory and fiction theory is how corporations have no legal personality except when the state deems it to, parts of the fiction theory do support this theory, however while it is more so a philosophical theory where a corporation is a thing of intellect (creature of the law) the concession theory is more focused on the question of reality of a corporation on where the foundations or where the legal power is sourced from. For instance governments can use this as a means to manipulate freedom to associate their political agenda. The realist theory states that a legal person is a real personality in a juridical sense. It also takes the assumption that the rights given belongs to not just the human being but to any being which possesses a will of its own or life of its own and so does a corporation. With the realist theory a corporation exist objectively as a real entity and the law thus recognises its existence and gives effect to it. It also states that the law only has the right to recognises it as an artificial entity rather than to create it, there has however been great difficulty in actually describing the personality and comparability, so in essence it can be seen as a social organism and the human the physical side of it. Even so there is still critique in the sense that the common law does not give full personality to those that should be given it, such as partnerships. From the above theories, it can be observed how realist and fiction theory contrast greatly, where fiction states the entity of a corporation as a separate legal person is factious and exist only with intendment of the law, whereas the realist theory states it is a legal person and not fiction but rather real or natural. However the significant point of these theories is stemmed from how a company exists. While the theories above don’t necessarily form the backbone of court decisions[5]they do provide an analogy as to what how as a corporate separate personality is and works, it still however must conform to the regulations and such theories are a mere guidance in describing the attributes of a corporation such as perpetual succession. For instance toulson J had said in Yukong Line Ltd v Rendsburg Invetment Corporation[6]" metaphore can be used to illustreate a principle" so such use is more so to describe rather than to come to a conclusive decision as the significant point of these theories is stemmed from how a company exists. In accordance with CA 2006, a company can only exist, providing it has been promoted by promoters and been registered and on the registry of the companies house. So it can be seen how it still requires other people to act on its behalf, so directors are the only way the company can act, so members appoint directors and they carry out functions, purposes and objectives of the company. The director’s act for the company and not members due to the fiduciary relationship, this corporate personality needs people to act on its behalf and so as a consequence there must be this relationship between the directors and the company as the company can not act on its own. When such duties are breached, the courts will then lift the veil of incorporation. With this the courts recognise that a company may be used as either contrary to its own interest or others interest. It means there are some legal principles which make one person liable for another person’s liability, so it assumes if there is a sham company or a facade, it will be more pragmatic and in not encouraging fraud, so it is taking that more pragmatic view of yes it has rights which are only given by statute law. And there maybe situations which are best and fair to take these rights away. The term corporate veil is used to refer to the consequences of separate corporate personality, often meaning both the real and narrower consequences and the supposed wider consequence, it does not always carry the same[7]for instance professor Ottolen categorises the modes of lifting the veil into four, peeping behind the veil, piercing, extending and ignoring the veil[8]. Peeping behind the veil will look for new information relevant in to deciding the matter at hand by looking behind the corporate form[9]. Piercing imposes liability on shareholders for acts of the company where as extending will question the separate existence independently from a group[10]. And ignoring will question the existence of a company all together, so if it’s a sham company[11]. Even with such exceptions, what some human agencies are doing (directors, members etc) are using this as an aid for fraud so using the law as an engine for fraud (as some may use the Salomon principle for this)[12]. This means there is a need to look behind the legal form of the actual reality and its affects, as the participants are using it as an engine for fraud. However the company itself may not be a sham but is being used in such a way to create illegality, or some other kind of avoidance of legal liability. For example Creasy v Breachwood Motors, where the court held by lifting the veil regarded both businesses as the same, as directors were trying to avoided legitimate obligations on part of the garage. It may be a common view that with statutory exceptions such as fraudulent and wrongful trading, the courts will immediately pierce the veil, however when it came to the case of Dadourian group v Simms the veil was not case or even in the case of Williams v Natural life health Foods Ltd, it can seen how even with statutory exceptions the UK law doesn’t just readily lift the veil as it may counter the interest of justice. In contrast with the USA and India, it can be seen how in the US the constitutional rights are recognised as those of a citizen, where Indian law and English law are similar in regards to corporate personality and also lifting the veil as they base it on the English approach as can be viewed in CIT v Meenakshi mills Ltd. But the US however is more ready in lifting the veil especially when it comes to enterprise law. With this it is believed that India itself should like the US follow a more prevention of justice approach, as Zeigler had argued that all other common law exceptions in lifting the veil such as agency and fraud can be construed as subsets of it. To conclude Corporate personality gives the company rights and the capacity to enrich certain rights, such as sue, have its own name and to ability to own property. The Salomon case was a landmark in decision in the understating of a separate legal personality, helping to come to decisions in future cases in regards to stripping away this separate corporate personality and looking behind the veil, Most notably in situations of fraud, or sham companies. However though the case has helped in, it has also been used as an engine for fraud, and so dealing with it in this manner has shown at times its prominent affect and finding out what has happened precisely, and so in this sense gives a tool for such prevention. With statutory exceptions it can at first be seen as clear and straight forward. But in the sense of legal practice there is no mandatory guideline be followed by all, and so in this sense courts may be reluctant or hold back on going behind the veil, including, piercing, peeping etc. and so with this if courts at present were to be faced with cases using the principle of Salomon to be applied. It would be difficult to assess whether the same decision would be made as the Salomon case itself. Bliography: Arjya B Majumdar. (2007). Company & Commercial - India (The concept of corporate personality). Available: http://www. internationallawoffice. com/Newsletters/Detail. aspx? g= a20d49a0-77b0-4fb8-937e38445a9a1565&utm_source= ILO+Newsletter&utm_medium= email&utm_campaign= Company+ %26+Commercial+Newsletter&utm_conte. Last accessed 20 Feb 2013Publications parliament . (1998). Judgments - Williams and Another v. Natural Life Health Foods Limited and Mistlin. 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