

Corporate veil

[Business](#), [Company](#)



Introduction The main concept in the assignment is about corporate personality. First of all, we need to clarify the meaning and characteristics of company. In short, company means a body of persons combined for a common object. A company exist there must be a group of persons that more than 1 persons. In eyes of law, a company is a separate legal personality from its members. In Section 16(5) CA1965, it stated that a body corporate obligations and liabilities are its own, and not those of its participation; it can sue and be sued in its own name; the property is not the property of its participants; and company can enter into a contract.

Whilst, we need to understand the types of Joe's company belong to. In section 16(4), it stated that company divided into 4 types that are limited by shares, limited by guarantee, limited by guarantee and shares and the last one was unlimited companies. While Joe's company belongs to company limited by shares, it means that member's liability is limited to unpaid amount on the shares taken up by them, it stated in section 18(3) CA 1965. From the whole assignment, we need to identify whether corporate veil can be lifted in the particular situation.

So, we need to obtain an understanding what is corporate veil. Corporate veil it can define as separates company from its members, or we can say that legal person (company) separate from its members. Since company is a separate entity with its members, the company has power to hold land, enjoys perpetual succession even the death of one of its member, the company will not dissolve. Next, we going to identify in what situation corporate veil will be lifted. Lifting the corporate veil it means that separation between company and its participants does not exist anymore.

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The court will lift the corporate veil when controllers behave some unethical behavior, or controllers concern about their interest much more than other parties' interest. Corporate veil may be lifted either by the courts/case law or by statutory. Under case law it can be divided into 6 different categories, it shows as below:

- i. Fraud It means individual used the separate legal entity to do something forbidden from doing to avoid from legal obligation.
- ii. Agency It means authority or capacity of one person to create legal relations between a person occupying the position of principle and third parties.
- iii. Group of companies Group of companies means that corporate group structure; corporate veil is lifted to treat the parent company as liable for the acts of the subsidiary.
- iv. Single economic entities It means each company in a group of companies is a separate legal entity possessed of separate rights and liabilities
- v. Tax evasion Company trying to reduce tax by inter transfer their assets between subsidiary
- vi. Tortious claims It means allows lawsuits by people who claim that they have been harmed by wrongful acts, including negligence by government agencies or their employees.

Under statutory,

- i. Section 36 Company Act 1965 By this section where the number of members of a company falls to one and the sole remaining member knowingly carries on business for a period longer than six months, he will be personally liable for the debts incurred after the first six months.
- ii. Section 121(1) & (2) Company Act 1965 By this section where an officer signs on behalf of the company, a cheque, promissory note etc, and the company's name is not properly stated therein, he will be personally liable to the holder of that bill etc, if the company does not pay.
- ii. Section 67 Company Act 1965 A company cannot give financial assistance directly or

indirectly to any person to purchase its own shares. iv. Section 169 Company Act 1965 Directors of a holding company are required to produce group accounts in which the assets, liabilities, profit and losses of the group as a whole are reflected. v. Section 140 Income Tax Act 1967 By this section the Director General of Inland Revenue may ignore any transaction or disposition which has the effect of avoiding or evading tax. vi.

Section 365(2) Company Act 1965 If a dividend is paid when there are no profits available, every directors and manager of the company who willfully paid or permitted the payment of dividend is guilty of an offense. vii. Section 303(3) Company Act 1965 In the course of a winding up, it appears that an officer of a company who was party to the contracting of a debt had no reasonable expectation that the company would be able to pay the debt, the court may declare that the officer be liable for the payment of the whole or part of the debt. iii. Section 304(1) Company Act 1965 If in the course of a winding up it appears that the business of a company has been carried out on with the intent to defraud creditors or for any fraudulent purpose, the court, on the application of the liquidator, may declare that any persons who were knowing parties to the fraud are liable to make such contributions (if any) to the company's assets as the court thinks proper.