

# The case of littlewoods mail order stores law company business partnership essay

[Law](#)



## COMPANY LAW AND AUDIT CORPORATE VEIL IN-COURSE

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2013 In company law and audit, a company may be defined as an association where two or more persons come together for a common business goal. In numerous ways, a sole trader or partnership share the same philosophy like a company apart from it exists as a " separate legal entity" from the owners in a sense that it is handled as an entity utterly discrete from its shareholders. Therefore, there are many types of companies can be established including sole trader or proprietorship, partnership, public limited company and well as private limited company. The sole trader business, is a type of business where it is owned wholly by one person and the owner has full control over the company. The business may employ staff for operating but as far as the law is concern, sole trader company is attached with only one name to it. Sole traders include tradesmen and professionals working for themselves ie: professional photographers or certified architects. As for partnership, it is a business formed by two or more owners. A partnership company can be formed without any particular legal procedures being followed but it is wise to have some sort of agreement in any case of undesirable event occurs. Characteristics of a partnership are financial gained and liabilities are shared between owners and the expertise and capitals of owners are pooled for the benefit of the company. Another type of company is private limited company, where the company formed is owned by individuals other than the public. Hence, every name of a private limited company is bound to end with " limited" compared as sole trader and

partnership and public limited companies. The minimum number of directors and shareholders required for a private company is only limited by two (2). Public limited company nevertheless is a company that offers their shares or ownership open to the public. Unlike from the private limited company, the name of a public limited company should always end with " public limited company". This type company is appropriate for larger businesses pursuing to promote superior shareholder involvement. Nevertheless, all of the types of companies mentioned have to comply with the Companies Act 2006 which forms the primary source of United Kingdom corporation law. Companies Act 2006 is a piece of primary legislation applies to companies or corporations directly (CompaniesHouse. com, 2013). In the extent of corporate veil, the world of company legislation has changed thanks to the leading case of *Salomon v Salomon & Co Ltd* [1897] AC22. For thirty (30) years as a successful leather merchant specializing in manufacturing leather boots, he, Aron Salomon operates his business as a sole trader. In the year of 1892, his sons had become engrossed in compelling part in his father's trade. With that said, Salomon & Co. Ltd was established by Salomon and Salomon & Co. Ltd was incorporated as a limited company (Adams, 2010). During the time, at least seven (7) person required to subscribe as a member of the company for any incorporation. As a managing director at that time, Mr. Salomon retained 20, 001 of the company's 20, 007 shares and the outstanding six (6) were shared independently between the other six (6) shareholders consists of Mr. Salomon's wife, his daughter, and his four sons. Later on, Mr. Salomon sold his business to the new corporation, Salomon & Co, for a sum of £39, 000, of which the £10, 000 was a debt to him. He was thus simultaneously

the company's principal shareholder and chief creditor. When the company fell into bankruptcy, the liquidator contended that the debentures used by Mr. Salomon as security debt were void. The judge, Vaughan Williams J. recognized this argument, ruling that since Mr. Salomon had shaped the business merely to relocate his business to it. The company in reality was his agent and he as principal was liable for debts to unsecured creditors

Characteristics of a partnership are financial gained and liabilities are shared between owners and the expertise and capitals of owners are pooled for the benefit of the company. Another type of company is private limited company, where the company formed is owned by individuals other than the public. Hence, decades since Salomon's case, various exceptional circumstances have been delineated, both by legislatures and the judiciary, in England and elsewhere when courts can legitimately disregard a company's separate legal personality, such as where crime or fraud has been committed. (Oxford, CCH Asia Pte, Hicks & Goo's, 2008) Nevertheless, there are similar cases on corporate veil other than Salomon vs Salomon & Co. These cases are related to the corporate veil and form of company legislation. However the case of Lee V Lee's Air Farming Ltd [1961] UKPC 33, AC 12 was held at Canterbury, New Zealand. Lee established a company named Lee's Air Farming Ltd. After the event of Lee's death during his work of crop spraying, Lee's widow requested reimbursement from Lee's company with the help of New Zealand legislation. The decision was held that Lee's widow was eligible for reimbursement in accordance death during the course of employment to widow. More or less the same in Salomon vs Salomon & Co Ltd, the owner of the business was reflected as a worker contained by the

regulation, because Lee and the Lee's Air Farming Limited were distinct legal entities. Both parties are entitled to enter into contract of employment (one as employer, one as employee), even though Lee represented the employer (Rush, Ottley, 2006). In other case such as *Battle v Irish Art Promotion* [1959] IR 423, the case is more or less alike to Salomon's and Lee's cases, but the principle of separate entities worked to the drawback of the plaintiff (LexVidhi. com, 2013). The court believed that while a human person can stand for himself in Court, a lawful person such as a corporation can solitary be epitomized by a Solicitor or Barrister (Lawteacher. com, 2013). Therefore, there are many types of companies can be established including sole trader, partnership, public limited company and private limited company. Sole trader, is a type of business where it is owned wholly by one person and the owner has full control over the company. The business may employ staff for operating. In event of *Salomon vs Salomon & Co*, the defendant requests the courts to " lift the corporate veil" (CCH Asia Pacific, 2008). There are two types of veil lifting which are judicial lifting and statutory lifting. Under the judicial lifting, it is not likely to distil any single standard from the decided case as to when the courts will raise the veil, nor will any two clarifications categorise the case law in precisely the same way (Goulding, 1999). According to *Daimler Co Ltd v Continental Tyre Company* [1916] 2 AC 307, Daimler has been sued by Continental Tyre Company due to respect of goods supplied. However, Daimler Co. Ltd appealed that the company was essentially owned by German Nationals and compensating them was illegitimate under the interchange with the Enemy Act. Nevertheless, all of the types of companies mentioned have to comply with the Companies Act

2006 which forms the primary source of United Kingdom company law. Companies Act 2006 is a piece of primary legislation applies to companies directly (Vijaychandran, 2008). Conversely in Statutory Lifting, there is a case of evasion of obligations whereby there is an abuse to the principles of the company when an individual uses a company to evade legal obligations, the court will lift the veil. Conferring to *Gilford Motor Co Ltd v Horne* [1933] CH 935, Horne's arrogated, it was not him that was operating the businesses but the company and according to Company Act they were two (2) different people. The court however, was doubtful and raised the veil of incorporation. It was held that the court could raise the veil to ascertain whether the assets of the company were really possessed by them or whether there was an misuse of the principal that a company is a separate legal entity and the court concluded to evade the non-complete clause was the single or dominant purpose of the company (CCH Asia, 2008). The Canadian case of *Garbutt Business College Ltd v Henderson and Henderson Secretarial Ltd* [1939] 4 DLR 151 was decided not long after the *Gilford Motor* case and involved in a similar fact situation (Tomasic, 2002). Similar case in evasion of obligation in Malaysia was *Aspatra Sdn. Bhd v Bank Bumiputra Malaysia Bhd* in 1988 (Chandran, 2008). According to the case of *Jones v Lipman* [1962] 1 WLR 832, Lipman had made a contract with Jones to sell him a house. But Lipman changed his mind in the afterthought. To avoid any claimed by Jones, Lipman set up a company named *Alamed Ltd* and transferred the title of the house to the company. The court pierced the corporate veil and treated the contractual obligation on Mr. Lipman to relocate the land as also binding on the company. This is because the court took the view that the company had

been used by Mr. Lipman as a device to avoid his existing contractual obligations (Oxford, 2008). Favourably, the lift of corporate veil obtain an advantage, according to the case of *Smith Stone & Knight Ltd v Birmingham Corporation* [1939] 4 ALL ER 116, an agency relationship will only be implied where there is a disregard for the company's separate legal personality. The defendant compulsorily acquired the premises on which, at first glance, the plaintiff's secondary conducted business. The parent company plaintiff seek compensation for the interruption. The respondent said the proper claimant was the subsidiary, a separate legal entity from its parents company. The court held that certain factors dictated the subsidiary was merely a representative of the parent company. *Birmingham Corporation* required to pay compensation due to the fact that the subsidiary company was an agent to the parent (Cassidy, 2006a). These cases indicate some of the difficulties that the courts encounter when dealing with a common feature of modern corporate organisation or corporations commonly form groups which are linked in a variety of ways, via mechanisms such as interlocking shareholdings, common directorship, or even informal understandings. The question of whether to disregard the discrete legal status of one corporation in a class can arise not only when we want to determine who exercises control and power within a particular corporation, but also when to examine the wider enterprise within which a particular corporation is located.

(Tomasic, Bottomley, Mcqueen, 2002) Other intention for court to lift the corporate veil is when the entities are considered to be a single economic unit. The related case is *DHN Food Distributors Ltd v Tower Hamlets London Borough Council* [1976] 1 WLR 852. The court went behind the corporate veil

and treated the companies in the group as one on the basis that each of the three companies were akin to partners in a partnership. The courts held that DHN was able to claim compensation because it and its subsidiary were a single economic unit (Cassidy, 20006b). Use of the incorporated form in order to dodge tax will always result in the court piercing the veil (Talbot, 2008). According to the case of Littlewoods Mail Order Stores Ltd v Inland Revenue Commissioners [1969] 1 WLR 1214, Littlewoods Company attempted to pass off a capital purchase as a running cost. The Inland Revenue (IRC) claimed that in reality Littlewoods was acquiring the freehold for a sum of £ 997, 900, whilst having it assessed as tax deductible because rent was tax deductible as a running expense whereas the purchase of a tangible asset was not. The court determined that Fork Manufacturing Co. Ltd, the company wholly subsidiary owned by Littlewoods was not a separate and independent identity, the extra rent was enable Littlewoods to acquire the freehold, and so the rent was not deductible (Dignam, 2011). As Scott LJ held in Re Polly Peck International Plc v Nadir [1992] 4 ALL ER 769, it was held that there were no requirement to prove a fraudulent misapplication of funds to found a claim on knowing receipt. Rather, it was enough to demonstrate that the recipient had had the requisite knowledge both that the funds were trust funds and that they were being misapplied (Hudson, 2013). The decisions in the DHN case and in Smith, Stone and Knight Ltd give an indication of discretion which the courts have to facilitate the operation of private commercial interests in face of public intervention. The DHN decision relies upon a judicial finding that one corporation had a sufficient degree of control over another so as to warrant the conclusion that they should be



treated as part of the same enterprise. However, the problem is that the notion of control is not easy to define, and according to this approach does not provide certain and predictable guidelines for other cases. (Tomasic, Bottomley, Mcqueen, 2002) In summary, despite the general rule established by Salomon's case that a company and its participants must be treated as separate legal entities, courts are sometimes asked to "lift or pierce the corporate veil" and ignore the separate personality of the company. The request may come from a creditor of the company who wants participants to be held liable for the company's debt. Salomon's was an example of such a claim by creditors, which was unsuccessful. In my humble opinion, the court should lift the corporate veil to prevent or avoid fraud by a company and its participants, where the corporation is found to be a business meant to facilitate fraud against third parties. However, corporate veil will not be lifted just because justice demands. According to Nariman, the corporate veil should be lifted, suggest that existence of an agency of an agency relationship between a company and its controller is ground most frequently argued before the courts (Nariman, 2008). According to an article of B. Brown, as the proprietor of a business, the need to shield personal assets from creditors of your business is essential. This is an absolute given. Thereafter, during the life of the company, the company must follow certain legal rules for the debts of the company. Therefore, the modern corporate form is not an impenetrable suit of armor (Brown, 2012).