

# The separate legal entity concept law company business partnership essay

[Law](#)



Section 124(1) of the Corporate Act 2001 says a company has the legal capacity and powers of an individual both in and outside this jurisdiction. This means that most of the legal entity in business is separate from another business or individual with value to accountability. Besides, the example of a corporation or a limited liability company is found in a separate legal body. This is because the corporation tend to separate the actions of the entity from those of the individual or other company. Besides, a company also has all the powers of a body corporate which include issue and cancel shares in the company; grant options over unissued shares in the company; distribute any of the company's property among the members, give security by charging uncalled capital; grant a floating charge over the company's property; arrange for the company to be registered or recognised as a body corporate in any place outside this jurisdiction and so on. (See: CA s124 (1))The modern company law in Australia, and in other countries such as China, Singapore, Malaysia, England, New Zealand, Canada and South Africa, which is described about the others on the heritage of the fundamental legal principle. The case of the Salomon v Salomon & Co Ltd (1897) AC 22 is one of the cases illustrating of the separate legal entity principle. This case is jurisdiction for the legal principle that an incorporated company is a separate legal entity from its directors and principal shareholders. It is a legal person with its own legal personality separate from that of its shareholders or directors. Even though the Salomon's case was in 1897 but it is still as valid case in Australia and also in many parts of the common law world until today. Thus, Salomon's case could be worth of people to pay more attention. Further detail explanations of the Salomon's case would be as follow.

## **Salomon v Salomon**

The separate personality of a company as distinct from its shareholders was established by the House of Lords in *Salomon v Salomon & Co* [1897]. This led to the veil of incorporation; that a registered company is a legal person separate from its members[1]. " The company is at law a different person altogether from subscribers to the memorandum" per Lord Mcnaughten[2]. It established the position in English law of the concept of separate legal personality for companies. It is the leading case on the fundamental importance of the separate personality of a company. Mr Salomon was a boot and shoe manufacturer. At First Instance, it was held that the company had conducted the business as agent for Mr Salomon, so he was responsible for all debts incurred. The House of Lords rejected this approach " a company may be said to carry on a business for and on behalf of its shareholders but this does not in point of law constitute the relation of principal and agent between them or render the shareholders liable to indemnify the company against the debts which it incurs[3]." It was held that however large the quantity of shares and debentures owned by one man even if the other shares were held in trust for him the company's acts were not his acts, nor were its liabilities his liabilities; nor is it otherwise if he has sole control of its affairs as governing director[4]. There was strong evidence of good faith and confidence in the company and the House of Lords found no evidence of fraud or deliberate abuse of the corporate form. It is impossible to dispute that once the company is " legally incorporated it must be treated like any other independent person with rights and liabilities appropriate to itself[5]." The House of Lords approved that a company is not the agent of its

shareholders, even if control is concentrated in only one shareholder. Once the company is legally incorporated it must be treated like any other independent person with rights and liabilities of its own.

## **Legal consequences of the separate legal entity concept**

There are many legal consequences of the separate legal entity concept after the decision in Salomon's case. Once a company is incorporated, some of the consequences would be flowing from the application of the separate identity principle. The main consequence includes distinction between private and company debts; distinction between private and company assets; company contracting with its member (as employee and director); and company liable in tort to a member. Further detail explanations are as follow. Firstly, the debts are undertaken into the company's name is belong to the company as well as not to the controller or director or any other else. This is confirm by the House of Lord's when make a decision in Salomon's case. In this way, the debts or liabilities are liable by the company due to separate legal person. However, there have some exceptions in certain circumstances, that is, common law can be modified by statute law. For example, Section 588G and Section 197 of the Corporation Act 2001 applies that directors of a trustee company or directors on grounds public policy can be personally liable for corporate debts incurred during trading while insolvent (see: CA s588G & s197). Secondly, assets purchased by the company's name are belong to the company. It does not belong or owned to the directors, shareholders and other else even though the shareholders who own 100% of the shares also do not have the right to own the assets of the company. This is because company is a separate legal entity and can own

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property in its own right (see CA s124), which means the company is legal owner with ownership right to the property. The case of *Macaura v Northern Assurance Co Ltd* (1925) AC 619 shows that a company holds its property separately from the property of its members. Thirdly, a company, as a separate legal entity, can enter into contractual relations with the shareholder or director due to they are company controlling members. This can be illustrated in the case of *Lee v Lee's Air Farming Ltd* (1961) AC12. This case shows that the company could enter into an employment contract with Mr. Lee. Lord Morrison as he is a major shareholder of a company. Lastly, employer in a company, as a separate legal entity, owes an obligation to provide a safe system of work with no matter of the injured employees may also be a director or controller of the company. For example, the High Court was make a decision in the *Andar Transport Pty Ltd v Brambles Ltd* (2004) 206 ALR 387; (2004) HCA 28. This case illustrates the consequences arising from the intersection between legal principles in corporate law and the employer's duty of care to provide a safe system of work arising under employment law.