

## Company Law

The veil of incorporation was first established in the LEADING case of **Salomon v A Salomon & Co Ltd**. In this case it was affirmed separate corporate personality, it is often asserted that courts are able to ignore it, or, at least they can ignore the 'corporate veil'.

A company's property is owned by the company as a separate person, not by the members; the company's business is conducted by the company as a separate person, not by the members; **it is the company as a separate person that enters into contracts in relation to the company's business and property.**

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**Lee v Lee's Air Farming Ltd [1961] AC 12**

**Concerning:** The company has the ability to enter into contracts. This contractual capacity is a major advantage of corporate personality.

**Facts:** Lee was employed as a pilot by a company on which he held 2999 of the 3000 shares and of which Lee was the only director. Whilst engaged in the company business, his plane crashed and he was killed. His widow sought compensation for his death from the company, which under the relevant legislation, was payable only to the widows of deceased employees. The company's insurers argued that Lee was not an employee of the company, on the basis that he was the company and had therefore made a contract with himself.

**Legal Principle:** Lee's widow was entitled to the compensation. Lee had not made a contract with himself, rather he had made a contract with the company, which was a separate entity. The fact that he owned virtually all the shares and that he was the only director did not change the fact that the company was an employer and he was its employee.

- (Remember: the company's liability is always unlimited - it is the members' liability that is limited and that liability is to the company, not to the individual creditors.)

**(c) Company Property:**

- A company owns its own property - the shareholders have no direct right to this or any share of it.
- Person who no longer wishes to be a member is only entitled to whatever price he can get for his shares.
- A shareholder has no legal interest in the company's property and cannot insure it against theft, damage, etc.

The case of **MACAURA v NORTHERN ASSAURANCE CO LTD [1925]** illustrates that a company's property is the property of the company as a separate person not the members.

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**\*Adams v Cape Industries Plc [1990] ch 433**

**Concerning:** This is a case in which the courts went to great length to examine the way in which the veil is lifted and narrowed significantly the way in which the courts could lift the veil.

**Facts:** The defendant parent company (Cape) was based in England. A subsidiary of Cape was based in South Africa where it mined asbestos. The asbestos was sold by two other subsidiary companies- one based in England and the other based in the USA. The asbestos was sold to a factory in Texas and a number of factory's employees developed medical conditions due to the asbestos exposure. A US court ordered that \$15 million to be paid in damages, but this could only be enforced in the UK against Cape if it was present in the USA through its USA subsidiary. For this argument to succeed, the separate personalities of the various companies would need to be ignored.

**Legal Principle:** The court refused to lift the veil and held that the US subsidiary was separate and distinct from the UK parent. Accordingly, Cape was not present in the USA and the judgment of the US court could not be enforced against Cape. SALOMAN allowed the parent company to use its subsidiaries to avoid liability in this way, and the court was of the opinion that, on the facts, there were no grounds to avoid following SALOMAN.

Point of case: In Adams, the claimants put forward 4 arguments for piercing the corporate veil:

1. The US subsidiary was a fraud or a sham
2. The group of companies constituted one single economic unit
3. The US subsidiary was an agent of Cape, and
4. Lifting the veil was fair and just given the circumstances of the case.

All of these arguments failed in this and the court strongly reaffirmed the principle in SALOMAN and indicated that corporate personality will not be lightly set aside. The 4 arguments constitute principal common law instances when the courts may be willing to pierce the veil. It should be noted though that there is considerable academic disagreement regarding the classifications of the instances when the courts will pierce the veil and therefore the 4 categories should not be regarded as universally or definitively accepted.

**Firestone Tyre & Rubber Co v Lewellin**

**3. In a single economic unit:**

Situations where "veil is lifted" by Statute

**(i) Companies Act 1985 s.24** - where membership of a company falls below two for more than six months. Member who knows he is the sole member but continues to trade will be jointly and severally liable with the company for company debts contracted after the six month period has elapsed. (s.24 no longer applies to private limited companies)

**(ii) Companies Act 1985, s.117(8)** - where public company trades without obtaining a trading certificate. If the company fails to comply with any obligations under a transaction within 21 days of being called on to do so, the directors of the company are jointly and severally liable to indemnify the third party against any loss.

**(iii) Companies Act 1985, s.349** - if person acting on behalf of a company signs or authorises the signing of a bill of exchange, cheque, order for goods or similar document in which the company's name is not correctly stated, the person signing will be personally liable if the company fails to pay.

**Durham Fancy Goods v Michael Jackson (Fancy Goods) Ltd (LOOK UP CASE)**

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## STATUTORY LIFTING OF THE VEIL (FRAUDULENT TRADING):

A person who is found to have been knowingly party to the carrying on of a business of a company with **intent** to defraud its creditors, or creditors or any other person, or for any fraudulent purpose, may be declared by the court to be liable to make such contributions (if any) to the company's assets as the court things proper.

- **S.213 INSOLVENCY ACT 1986**

A person who was knowingly a party to a company's fraudulent trading may be made liable to contribute to its assets only when its is wound up, but such a person may at any time be prosecuted for the criminal offence of knowingly being a party to fraudulent trading.

- **S.993 CA 2006**