

1. Veil of Incorporation

Separate legal personality of company operates as a shield - the courts will not normally look beyond the façade of the company to the shareholders who comprise it.

The screen separating the company from its individual shareholders and directors is commonly referred to as "the veil of incorporation".

2. Piercing the Corporate Veil

Sometimes the law is prepared to examine the reality which lies behind the company façade - this is described as "lifting" or "piercing" the corporate veil.

(a) Statute

Some statutory provisions have the effect of piercing the corporate veil to make directors personally liable.

Presumption is in favour of separate personality and courts will not normally infer that legislation is intended to pierce the corporate veil.

Dimbleby & Sons Ltd v NUJ (Case 20)
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.

This provision is rigidly enforced:

Durham Fancy Goods v Michael Jackson (Fancy Goods) Ltd (Case 21)
(iv) Insolvency Act 1986, ss.213 & 214

s.213 applies where company is being wound up and it appears that business has been carried on with intent to defraud creditors.

s.214 applies where company is in insolvent liquidation and the director(s) should have known this, but did not take sufficient steps to minimise losses to creditors.

In either case, the court can order that those involved make a contribution to the companies assets for the benefit of creditors.

(v) Insolvency Act 1986, s.216 & 217

The director of a company which has gone into insolvent liquidation cannot become a director of another company with the same name within a five year period. If he does he can be made personally liable for all the debts of the new company.

(vi) Company Directors Disqualification Act 1986, s.15

A person will be jointly and severally liable with the company for all the company's debts if he takes part in the management of the company while he is under a disqualification order.

NB: For the purposes of these provisions, "person" includes legal as well as natural persons.

(b) Common Law

The courts are willing to pierce the veil of incorporation in some circumstances:

(i) Fraud, Façade or Sham

Courts will examine the reality behind the company where the company was set up purely to evade a legal obligation, or to allow someone to do something he would not be allowed to do as an individual:

Gilford Motor Co v Horne (Case 22)

Jones v Lipman (Case 23)

Re Bugle Press Ltd (Case 24)

(ii) Agency

Court may lift the veil on the basis that one company is merely carrying on business as the agent of another - so that transactions entered into by the subsidiary can be regarded as transactions of the holding company:

Smith, Stone & Knight v Birmingham Corporation (Case 25)

Firestone Tyre & Rubber Co v Lewellin (Case 26)

But see: Adams v Cape Industries Ltd (Case 27)

(iii) Single Economic Unit

In the past, courts have been willing to lift the veil on the basis that a group of companies was not a group of separate persons, but a single economic unit:

DHN Food Distributors v Tower Hamlets (Case 28) Later cases have doubted this principle:

Woolfson v Strathclyde Regional Council (Case

29) Adams v Cape Industries Ltd (Case 27)

(iv) State of Hostility

In times of war, courts may regard a British company as an enemy alien if the company is controlled by nationals of an enemy country:

Daimler Co Ltd v Continental Tyre and Rubber Co (GB) Ltd (Case 30)

(v) Justice and Equity

Courts have sometimes been prepared to pierce the corporate veil where they feel this is in the interests of justice:

Re a Company (Case 31)

Creasey v Breachwood Motors Ltd (Case

32) But see: Adams v Cape Industries Ltd

(Case 27) Ord v Belhaven Pubs Ltd (Case

33)

Yukong Lines Ltd v Rendsburg Investment Corp (Case 34)