INTERNATIONAL JOURNAL OF RESEARCH AND INNOVATION IN SOCIAL SCIENCE (IJRISS)
ISSN No. 2454-6186 | DOI: 10.47772/IJRISS | Volume IX Issue X October 2025

"The Doctrine of Salomon Vs A. Salomon: Examining the Myth and Fiction of Corporate Incorporation"

Dr. Merinda Afanui Sama

The University of Bamenda

DOI: https://dx.doi.org/10.47772/IJRISS.2025.910000051

Received: 26 November 2024; Accepted: 04 September 2025; Published: 03 November 2025

ABSTRACT

This paper sets out to examine the case of Salomon V.A. Salomon and Co. Ltd (1897). The case of Salomon V.A. Salomon and Co. Ltd (1897) UKHL1, Commonly referred to as the ''Salomon's case'' is a landmark decision in Corporate law that established the principle of separate legal personality for companies. This doctrine has been widely regarded as a cornerstone of modern company law. However, there are claims that the Salomon's case is a myth and a fiction. Suggesting that the doctrine established is flawed or misunderstood. *In this essay, we critically examine these claims and demonstrate that the doctrine of separate legal personality is a valid and essential principle in the incorporation of companies.*

Keywords: Company Incorporation, Doctrine of Solomon Vs A. Solomin, Fiction, Myth.

GENERAL INTRODUCTION

Background to the Study

The Salomon's case involved a dispute over the liquidation of a leather manufacturing business owned by Mr. Aaron Salomon Mr. Salomon incorporated his business as a limited liability company, with himself as the majority shareholder and his family members as minority shareholders. When the company faced financial difficulties, it went into liquidation, and the liquidator sought to hold Mr. Salomon personally liable for the company's debts. The central issue before the House of Lords was whether the company should be treated as a separate legal entity distinct from its shareholders.

The principle of incorporation was highlighted in the landmark United Kingdom company law case of SALOMON V. A. SALOMON & Co. Ltd (1896). The ruling of the House of Lords was to uphold firmly the Doctrine of corporate personality, as set out in the Companies Act 1862, so that creditors of an insolvent company could not sue the company's shareholders for the payment of outstanding debts.

Following the company's Act legislation of 1862, any seven or more persons associated for any lawful purpose, May by subscribing their names to a memorandum of Association, and otherwise complying with the requisitions of this act in respect of registration, form an incorporated company with or without limited liability. The requirement of seven members were important[1]. It is frequent among contemporary law scholars to find elaborate discussions on the basic elements underpinning corporate law. Some group of company lawyers have listed five elements relating to this subject matter, which are; Separate Legal Personality, Limited Liability, Transferable Joint Stock, Delegated Management and Investor Ownership[2].In reality, the relationship between incorporated and unincorporated companies is rather an ambiguous one. The modern association between separate personality and limited liability was developed only after that separate legal personality was granted to all companies in the middle of the 19th century and that law courts realized its full participation in the famous Salomon's case towards the end of the century. To better understand the development of

[1] W. BLACKSTONE, *Commentaries on the Laws of England*, Oxford, Clarendon Press, vol. 1, cap. 18, 1765, p. 138.

[2] T. D. TURNER, "The Development of English Company Law 1900", *Research handbook on the history of corporate and company law*, Cd. H.L. WELLS, CELTENHAM, E. ELGAR, 2018, pp. 117-121.

Salomon's case under English law, we should however, keep separate the two elements of (legal personality and limited liability). Between these two concepts, the more multifaceted and complex is Legal personality. When a company is considered as a legal person, it is able to do what most other (physical) persons can do, for instance, entering into contracts, owning assets, delegating authority to others (agency)and suing and being sued in its own name[3].

Furthermore, some of the few companies that benefitted from the principle of incorporation were Joint Stock companies and regulated companies[4].Some scholars argued that, by the late 17th century, incorporated companies enjoyed full limited liability[5].But what was not clear is whether this Ltd liability could be analogically applied in full or in part also to incorporated companies.

In addition, insulation can also be understood as ltd liability. The fact that the partner's exclusion of his personal liabilities is one of the main reasons for seeking or paying the considerable fees unofficially required to get incorporation. In England, despite the great talent of contemporary lawyers in drafting deeds of settlement, having full limited liability was still better than relying on trust law. It was difficult for a small partnership to be incorporated due to the expenses needed to acquire it[6].English law recognized a long time ago, that a corporation would have legal personality if the entity is subject of legal rights and duties. Historically, in London, municipal councils or charitable establishments would be the primary examples of corporation[7].A corporation does not suffer penalties administered by courts, but those who stand to lose their investment will. A company will, as a separate person, be the first liable entity for any obligations its directors and employees create on its behalf. If a company does not have enough assets to pay its debts, as they due, it will be insolvent -bankrupt. Unless, an administrator (someone like an auditing firm partner, usually appointed by creditors on a company's insolvency is able to rescue the business, shareholders will lose their money, employees will lose their jobs and a liquidator will be appointed to sell off any remaining assets to distribute as much as possible to unpaid creditors. Yet if business remains successful, a Company can persist forever, even as the natural people who invest in it and carry out its business change or pass away[8].When we talk of a fiction, it is something that is untrue, or invented or a mere story, fake news, alternative fact, falsehood, fantasy, fancy, illusion, sham, nonsense etc.[9]

Meanwhile a myth is a mere story. The court of appeal declaring the company to be a myth, reasoned that Salomon had incorporated the company contrary to the true intent of the company. Mr. Aaron Salomon's scheme is a device to defraud creditors. In this write up, we shall elaborate on the case of Salomon V. A. Salomon & Co. Ltd in relation to the principle of corporate personality.

Mr. Aron Salomon fabricated leather boots or shoes and he was the sole owner of his Company or sole proprietor. His sons were interested in becoming partners, and so he decided to transform the company into a limited liability Company. He sold the business at an excessive price for its value. His wife and five children became subscribers and his two eldest sons became directors[10].

Salomon owned the largest number of shares in the Company that is, he took 20,001 of the Company's 20,007 shares as payment for his old business. Each share issued had a value of 1% share. This transfer was done in 1892. The Company also issued to Mr. Salomon a 10,000 Pounds in debentures. On the security of his debentures, Mr. Salomon collected an advance payment of 5000 Pounds from Edmund.

[3] AMOUR, HANSMANN, KRAAKMAN and PARGENDLER, *A comparative and functional approach*, 2017, p. 10.

[4] R. HARRIS, *Industrializing English Law, Entrepreneurship and Business Organization, 1720-1844,* Cambridge University Press, 2011, p. 144.

[5] JONES and S. P. VILLE, ''Efficient transactors or Rent-seeking Monopolists'', *The Journal of Economic History*, 1996, p. 915.

[6] L. BRUNORI, O. DESCAMPS, X. PREVOST, *Pour une histoire européenne du droit des affaires : comparaisons méthodologiques et bilan historiographiques*, Presses Universitaires de Toulouse Capitole, 2021, p. 234.

[7] H. HANSMANN & R. KRAAKMAN, ''The Essential Role of Organizational Law'', *Yale Law Journal nº387,* 2000, p. 110.

[8] O. KAHN-FREUND, ''Some reflections on company law reform'', *Modern Law Review, 7th edition*, 1994, p. 54.

[9] B. A. GARNER, *Black's Law Dictionary 7th edition*, Eagan (Minnesota), West Group, 1999, p. 1046.

[10] See the Landmark case of SALOMON v. SALOMON & Co Ltd (1897) AC 22 CHL.

ISSN No. 2454-6186 | DOI: 10.47772/IJRISS | Volume IX Issue X October 2025

After sometime, after Mr. Salomon incorporated his business, there was a drastic decline in the sale of boots. He was a huge supplier of boots to the government. Business was flourishing in 1890 & 1892, and his sons decided to become shareholders in the Company. They later on became partners. Mr. Salomon had 40,000 shares & his sons 1 share each.

- Though there were 7 members, Mr. Salomon was the overwhelming owner of the business. The Company gave Mr. Salomon 30,000 Pounds in cash & 10,000 in debentures (40,000 U) as payment for transfer of business.

- Unfortunately, 1893 was a tough decade economical for England, the economy was down, there were strikes, recessions & the government decided that it was good to have a range of suppliers, so that if one collapses the others will still be running. To Salomon's Company this was a disaster & they lost a massive portion in the government business.

- Lord McNauten describes how the attempts made to push the business on behalf of the new company crammed its ware houses with unsaleable stocks.

- They (Salomon & the wife) tried to inject more money into the business to keep it afloat to no avail.Mr. Salomon & wife loaned more money to put in the Company.

- They took the debentures worth 10,000 pounds & sold it to Mr. Broderip at 5000 pounds[11].Mr. Broderip paid the 5000 cash and the company promised to pay him 10,000 pounds at the end of each month. But none of this worked.

- The Company failed&was put up for Liquidation[12].

- Mr. Broderip filed a case against the Company claiming his 10,000 Pounds that he was promised under the "I owe U".

- When the Company failed, the Company's liquidator contended that the floating charge should not be honored, & Salomon should be made responsible for e Company's debts. Thus, Salomon was sued[13].

Statement of the problem

The doctrine of separate legal personality allows shareholders to abuse limited liability by evading personal responsibility for their actions. They claim that the separation of legal personality is a fiction that enables individuals to engage in fraudulent or reckless behavior without facing personal consequence.

Though this doctrine provides legal certainty, encourages investment, promote economic efficiency, some shareholders still abuse the principle of corporate personality, by hiding behind the corporate veil to defraud others.Critics of this doctrine argue that it allows shareholders to abuse limited liability by evading personal responsibility for their actions. They claim that the separation of legal personality should be disregarded especially when the company is used as a mere façade or a device to perpetrate fraud, injustice or wrongdoing.

Thus, it is essential to examine the extent to which the courts may pierce the corporate veil to hold shareholders personally liable, though these exceptions do not undermine the fundamental significance and validity of the doctrine.

Research Questions

- To what extent may the courts pierce the corporate veil to hold shareholders personally liable for the company's debt?

---

[11] MITCHELL, ''Lifting corporate veil in English courts. An empirical study'', *Financial insolvency* law, 1999.

[12] O. KAHUN-FREUND,''Some Reflections CPY Law Reform'', *Modern Law Review nº54*,

[13] H. HASSMANN and KRAAKMAN, ''The essential role of organizational law'', *Yale Law Journal nº587*, 2000, p. 110.[13]

- To what extent does the doctrine of separate legal personality form the basis of corporate law?
- Can the principle of separate legal personality be considered as the cornerstone of modern company law?

Significance of the study

The doctrine of corporate legal personality is considered as a cornerstone in modern company law today, because of the advantages it offers. This principle motivates entrepreneurs to take risk without jeopardizing their personal assets, encourages innovations and entrepreneurship.Removing limited liability would discourage risk taking and stifle economic progress.

Justification of the Study

The doctrine of separate legal personality is crucial for economic efficiency and investment. It provides certainty and predictability, allowing investors to assess risks and make informed decisions. Without limited company liability, individuals may be to invest in companies, hindering economic growth and development.

METHODOLOGY

This research exploits both primary and secondary methods of data collection and analysis.

In this research, we have exploited the qualitative research methodology that is considered as one of the most important and oldest forms of research methods.

Here the usage of opened questionnaires was very imperative in collecting information. The data collected in this research were deployed using primary and secondary sources. As to the relevant primary data, we analyzed the data using legal exegetical methods. Meanwhile, secondary data were collected from existing literature, documented facts and policies in libraries.

FINDINGS AND DISCUSSIONS

Contractual Relationships

The separate legal personality of a company enables it to enter into contract contracts, sue and be sued in its own name. This facilitates business transactions and provides a stable framework for commercial relationships. Disregarding the doctrine could create reluctant legal uncertainty and undermine the foundation of contractual agreements.

Risk Allocation

Limited liability is a fundamental aspect of modern business organizations. It allows entrepreneurs to take risks without jeopardizing their personal assets, encouraging innovations and entrepreneurship. Removing limited liability would discourage risk taking and stifle economic progress.

On behalf the Company, the liquidator counter claimed everything that was paid to Salomon paid back & his debentures cancelled. He argued that Salomon had breached his fiduciary duty to the New-Company he was promoting by selling his business for an excessive price. He also argued that the whole formation of the Company in this way was intended as a fraud against its potential unsecured creditors in the future.

The facts of the Salomon's case and Judgment

At the Court of first instance, Judge Vaughan Williams ruled in the case entitled Broderip v. Salomon that Mr. Broderip's claim was valid. It was undisputed that the 200 shares were fully paid up. He said the Company had a right of indemnity against Salomon. He said the signatures of the Memorandum of incorporation were mere "dummies" & that the Company was really just Mr. Salomon in another form, an alias or at least, his agent.

ISSN No. 2454-6186 | DOI: 10.47772/IJRISS | Volume IX Issue X October 2025

Therefore, it was entitled toindemnities from the principal. The liquidator amended the counter claim, and award was made for indemnity.The agency argument was accepted.The case was appealed against. The Court of Appeal confirmed Vaughan Williams J's decision against Mr. Salomon had abused the privileges of incorporating a Ltd Liability Company, which Parliament had intended only to confer on independent not on subordinate shareholders who had a mind of their own & were not mere puppets.

Lindley L.J held that the Company was a trustee for Salomon & as such Salomon was bound to indemnify the Company's debts. Mr. Aron Salomon's scheme is a device to defraud creditors.Lopes L.J & Kay LJ variously described the Company as a myth & a fiction and said that the incorporation of the business by Mr. Salomon had been a mere scheme to enable him to carry on as before but with his personal liability for debt limited. If assets belong to the Company, if debts belong to the Company and not by the shareholders, the Company is a different person from its shareholders. The Company is at law a diff person from that of its shareholders. This decision inflicted harm on the creditors of e Company. The shareholders will have consulted the register to know if theCompany was making sales or not or was solvent before extending credit to the Company. With the corporate veil after incorporation, the Company has a separate legal entity from its members. The Corporate Veil in the UK is a metaphorical reference used in Company law for the concept that the rights & duties of a company are the responsibility of that company alone. As a general principle, shareholders, directors & employees cannot be bound by rights & duties of a corporation[14].

The Concept has traditionally been likened to a 'veil' of separation between the legal entity of a corporation and the real people who invest their money and labor into Company's operation. In the UK, the corporate veil is however capable of being lifted so that people who run the Company are treated as being liable for its debts, or can benefit from its rights, in a very limited number of circumstances defined by the courts. It generally only happens when there is wrongdoing by the people in control[15].

This matters mostly when a Company has gone insolvent, because unpaid creditors will wish to recover their money if they can prove wrongdoing by the people in control. On the other hand, when we talk of limited liability, it means that when a company goes insolvent, unpaid creditors cannot generally seek contributions from the Company's shareholders and employees who fitted handsomely before Company's fortunes declined or who bear primary responsibility for the losses under ordinary civil law principles[16].The liability of the Company itself is unlimited, Companies have to pay all they owe with the assets they have, but the liability of those who invest their capital in a Company is limited to their shares, & those who invest their labor can only lose their jobs[17]. However, Ltd liability acts merely as a default position. It can be contracted around, provided creditors have the opportunity & bargaining power to do so[18].

A bank for instance, may not lend to a small Company unless the Director of the Company gives her own house as security for the loan. The assets are beyond reach behind the metaphorical "veil of incorporation". There are certain situations in Company law where the courts may decide to lift up a veil of incorporation on a ltd liability Company, and make share-holders/Directors contribute to paying off outstanding debts of creditors[19]. Although the Court held in this case that Mr. Salomon had registered dummy shareholders, and the court would have made him indemnify the Company, the House of Lords held that so long as the simple formal requirements of registration were followed, the Shareholders assets must be treated as separate from the separate legal person that is a Company. There could not in general, be any lifting of the veil.

Piercing of the Corporate Veil

If a company goes insolvent, there are certain situations where the Courts lift the veil of incorporation on a

[14] B. MARTOR and al, *Business Law in Africa: OHADA and the Harmonization Process*, London, Eversheds Kogan Ltd, 2002, pp. 1-29.

[15] B. DICKSON, *Introduction to French Law*, London, Pitman Publishing, 1994, pp. 104-109.

[16] OLAKUNLE OROJO, *Company Law and Practice in Nigeria*, Lagos, 1992, pp. 78-82.

[17] J. CHARESWORTH and G. MORSE, *Company Law 15th Edition*, London, Sweet & Maxwell, 1995, pp. 85-90.

[18] T. COLLIN, *Company Law, 2nd Edition, United Kingdom*, London, Teach Yourself Books, *1990*, pp. 39.

[19] B. DICKSON, *Introduction to French Law*, London, Pitman Publishing, 1994, pp.129.

limited company, and make shareholders or directors contribute to the payment of outstanding debts to creditors[20]. However, in the United Kingdom, the range of circumstances is heavily limited. This is derived from the principle in Salomon v. Salomon & Co. Ltd. (Refer facts of the case above). The most painful part in this case is that, the company went insolvent, & the Company liquidator acting on behalf of unpaid creditors attempted to sue Mr. Salomon personally. Although the Court of Appea held that Mr. Salomon had defeated Parliament's purpose in registering dummy shareholders, & would have made him indemnify the company, the House of Lords held that so long as the simple requirements of registration were followed, the shareholders' assets must be treated as separate from the separate legal person that is a company. There could not in general be any lifting of the veil[21].The people in Salomon's case is open to a series of qualifications. Most significantly statute may require directly or indirectly that the Company not be treated as a separate entity. Under the Insolvency Act 1986, Section 214 stipulates that Company directors[22].Must contribute to payment of company debts in winding up if they kept the business running up more debts when they ought to have known there was no reasonable prospect of avoiding insolvency[23].There are cases where exceptions to the Salomon principle, though their respective scope is not wholly stable. The present rule under English law is that only where a Company was set up to commission fraud, or to avoid a pre-existing obligation can its separate identity be ignored[24]. In Adams v Cape Industries PLC. It is very rare for English Courts to lift the veil.

In conclusion, contrary to the claims that the doctrine of separate legal personality established in the Salomon case is a myth and a fiction, it remains a valid and necessary principle in the incorporation of companies. The doctrine provides legal certainty, encourages investment and promotes economic efficiency.

While there are instances, where the courts may pierce the corporate veil to hold shareholders personally liable, these exceptions do not undermine the fundamental significance and validity of the doctrine. The Salomon case and its doctrine continue to form the bedrock of modern company law, facilitating commerce and economic growth.

REFERENCES

Cases

1. CONNELLY v RTZ Corporationplc(19970UKHL30 (1999) CC 533.
2. LEE'S Air Farming Ltd (1961) AC 12, a statutory corporation was set up in part & operated like the veil was not lifted, and a director was treated as a worker of the CPY.
3. Lubble V. Cape PLC (2000) 1 WLR 1545.
4. The famous Case of Daimler Co. Ltd v. Continental Tyre and Rubber Co. (Great Britain) Ltd.)
5. Adams v Cape Industries PLC) - Chandler V. Cape PLC (2011) EWHC 951 (QB) stipulated that a parent CPY (Cape PLC) owed a duty of care to one of e employees of the subsidiary CPY.
6. The Landmark case of SALOMON v. SALOMON & Co Ltd (1897) AC 22 CHL.

Publications

1. BLACKSTONE W., *Commentaries on the Laws of England*, Oxford, Clarendon Press, 1765, vol. 1, cap. 18.
2. BRUNORI L., DESCHAMPS O. et PREVOST X., *Pour une histoire européenne du droit des affaires : comparaisons méthodologiques et bilan historiographiques*, Presses Universitairesde Toulouse Capitole, 2021.
3. CHARESWORTH J. and MORSE G., *Company Law 15th Edition*, London, Sweet & Maxwell, 1995.

[20] CONNELLY v RTZ Corporation plc (19970 UKHL30 (1999) CC 533.

[21] LEE'S Air Farming Ltd (1961) AC 12, a statutory corporation was set up in part & operated like the veil was not lifted, and a director was treated as a worker of the CPY.

[22] Lubble V. Cape PLC (2000) 1 WLR 1545.

[23] (Refer the famous Case of Daimler Co. Ltd v. Continental Tyre and Rubber Co. (Great Britain) Ltd.)

[24] (Refer Adams v Cape Industries PLC) - Chandler V. Cape PLC (2011) EWHC 951 (QB) stipulated that a parent CPY (Cape PLC) owed a duty of care to one of e employees of the subsidiary CPY.

4. COLLIN T., *Company Law, 2nd Edition, United Kingdom*, London, Teach yourself Books, 1990.
5. DICKSON B., *Introduction to French Law*, London, Pitman Publishing, 1994.
6. GARNER B. A, *Black's Law Dictionary 7th edition*, Eagan (Minnesota), West Group, 1999.
7. HARRIS R., *Industrializing English Law, Entrepreneurship and Business Organization, 1720-1844,* Cambridge University Press, 2011.
8. MARTOR B. and al, *Business Law in Africa: OHADA and the Harmonization Process*, London, Gmb Pub Ltd, 2007.
9. MITCHELL C. C. J., *Lifting corporate veil in English courts: An empirical study*,Mansfield Press, 1996.
10. OLAKUNLE OROJO, *Company Law and Practice in Nigeria*, Lagos, Mbeyi and Associates, 1992.

Articles

1. ARMOUR J., HANSMANN H., KRAAKMAN R. and PARGENDLER M., ‘‘What is Corporate Law? A comparative and functional approach’’, *The Anatomy of Corporate Law*, 2017, pp. 1-28.
2. TURNER T. D., "The Development of English Company Law before 1900", in WELLS H. (Ed.) *Research handbook on the history of corporate and company law*, ELGAR E. Publishing Ltd, 2018, pp. 1-28.
3. JONES S. R. H. and VILLE S. P., ‘‘Efficient transactors or Rent-seeking Monopolists? The Rationae for eary chatered trading companies’’, in CONGLETON R. D., KAI A. K. and HILLMAN A. L., *40 years of research on rent seeing 2,* 1996, pp. 509-526.
4. HANSMANN H. and KRAAKMAN R.,‘‘The Essential Role of Organizational Law’’, *Yale Law Journal nº 387,* 2000, pp. 387-440.
5. KAHN-FREUND O., ‘‘Some reflections on company law reform’’, The *Modern Law Review, volume 7, Issue 1-2*, 1994, pp. 54-56.